

| Submission Number                                                               | Date Submission Received | Municipality | Submission Author                                                                                                    | Link to Submissions with Regional Responses                                            |
|---------------------------------------------------------------------------------|--------------------------|--------------|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| <b>Submissions from Landowners and Developers received since April 23, 2010</b> |                          |              |                                                                                                                      |                                                                                        |
| Do5.2009.1.178<br>Do5.2009.1.179                                                | 2010-04-29<br>2010-05-04 | RH           | Aird & Berlis LLP (on behalf of E. Manson Investments)                                                               | Do5.2009.1.009<br>Do5.2009.1.019<br>Do5.2009.1.057<br>Do5.2009.1.081<br>Do5.2009.1.125 |
| Do5.2009.1.180<br>Do5.2009.1.190                                                | 2010-05-04<br>2010-05-27 | V            | MMM Group (on behalf of Signature Developments)                                                                      | Do5.2009.1.005<br>Do5.2009.1.036                                                       |
| Do5.2009.1.181                                                                  | 2010-05-05               | RH           | Aird & Berlis LLP (on behalf of North Leslie Residential Landowners' Group Inc.)                                     | Do5.2009.1.124<br>Do5.2009.1.165<br>Do5.2009.1.171                                     |
| Do5.2009.1.182                                                                  | 2010-05-05               | EG           | QX4 Investments Ltd (on behalf of Living Water Faith Fellowship)                                                     | Do5.2009.1.060<br>Do5.2009.1.131                                                       |
| Do5.2009.1.183                                                                  | 2010-05-05               | RH           | Davies Howe Partners (on behalf of Clearpoint Developments, Upper City Corporation and 775377 Ontario Ltd (Belmont)) | Do5.2009.1.016<br>Do5.2009.1.020<br>Do5.2009.1.056<br>Do5.2009.1.130                   |
| Do5.2009.1.184                                                                  | 2010-05-12               | A            | Brutto Consulting (on behalf of Aurora Leslie Landowners Group)                                                      | Do5.2009.1.004<br>Do5.2009.1.021<br>Do5.2009.1.052                                     |
| Do5.2009.1.185                                                                  | 2010-04-23               | YR           | Ontario Restaurant Hotel and Motel Association                                                                       | Do5.2009.1.136                                                                         |

|                                                                                     |            |    |                                                                                  |                                                                                                          |
|-------------------------------------------------------------------------------------|------------|----|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| D05.2009.1.186                                                                      | 2010-05-18 | RH | 583753 Ontario Ltd.                                                              |                                                                                                          |
| D05.2009.1.187                                                                      | 2010-05-19 | M  | Malone Given Parsons Ltd (on behalf of North Markham Landowners' Group)          | D05.2009.1.013<br>D05.2009.1.061<br>D05.2009.1.062<br>D05.2009.1.070<br>D05.2009.1.133<br>D05.2009.1.175 |
| D05.2009.1.188                                                                      | 2010-05-19 | YR | Aird & Berlis LLP (on behalf of 11160 Woodbine Avenue Ltd)                       |                                                                                                          |
| D05.2009.1.189                                                                      | 2010-05-20 | RH | Davies Howe Partners (on behalf of Yonge Bayview Holdings Inc)                   |                                                                                                          |
| D05.2009.1.191                                                                      | 2010-05-20 | G  | Michael Smith Planning Consultants on behalf of Mohinder Sud (Oxford) in Sutton  | D05.2009.1.027                                                                                           |
| D05.2009.1.192                                                                      | 2010-05-21 | G  | Michael Smith Planning Consultants on behalf of Jackson's Landing in Sutton      | D05.2009.1.029                                                                                           |
| <b>Submission from Public Agencies and Government received since April 23, 2010</b> |            |    |                                                                                  |                                                                                                          |
| D05.2009.3.036                                                                      | 2010-05-03 | YR | County of Simcoe<br>(acknowledgement letter; no analysis required)               | D05.2009.3.011                                                                                           |
| D05.2009.3.037                                                                      | 2010-05-04 | EG | Town of East Gwillimbury                                                         | D05.2009.3.009                                                                                           |
| D05.2009.3.038                                                                      | 2010-05-12 | YR | Chippewas of RAMA First Nation<br>(acknowledgement letter; no analysis required) | D05.2009.3.001<br>D05.2009.3.008                                                                         |

Submission Number  
D05.2009.1.178  
D05.2009.1.179

Date of Submission:  
May 4, 2010

Submission Author:  
Aird and Berlis on behalf of E. Manson

| Comments or Requested Change to Draft Official Plan                                                                                                                                                                                                                                                                                                                                                    | Analysis and Recommendation                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1.178</b><br><br>Copy of letter to Larry Clay, Regional Director MMAH, enclosing the decision of the Ontario Municipal Board, dated March 16, 2010, with respect to the North Leslie Secondary Plan Area and requesting the Ministry to modify Figure 2 to remove the "Strategic Employment lands" identification in accordance with Policy 4.3.21 of the York Region Official Plan – December 2009 | <p>Policy 4.3.21 identifies that Figure 2 will be revised accordingly when the OMB decision <u>and order</u> are issued.</p> <p>No order has yet been issued and as such the policy requirements for changes has not been fulfilled.</p> <p>Regional staff will continue to monitor this situation and proposed changes to Figure 2 at the appropriate time.</p> |
| <b>1.179</b><br><br>Letter to Regional Planning and Economic Development Committee requesting that Committee not endorse modification 23 which deletes Policy 4.3.21 committing the Region to revising Figure 2 when the OMB decision and order is issued without modifying Figure 2.                                                                                                                  | <p>See above comment. Should also be noted that this appellant has objected to policy 4.3.21 on an ongoing basis since the policy was added to the ROP when it was adopted.</p> <p>Once the Board order is issued on this matter Figure 2 will revised accordingly.</p>                                                                                          |

Received April 29, 2010

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April 29, 2010

File No. 66490

BY EMAIL: [Larry.Clay@ontario.ca](mailto:Larry.Clay@ontario.ca); [Heather.Hood@ontario.ca](mailto:Heather.Hood@ontario.ca)

Ministry of Municipal Affairs and Housing  
777 Bay Street  
2<sup>nd</sup> Floor  
Toronto, ON M5G 2E5

Attention: Larry Clay, Regional Director and Heather Hood, Planner

Dear Sir and Madame:

**Re: York Region Official Plan - December 2009**  
**Submission Number: D05.2009.1.165**

We are the solicitors for E. Manson Investments, the owner of lands located at the northwest corner of Leslie Street and 19th Avenue, in the Town of Richmond Hill.

We have previously provided to you copies of our client's submissions filed with the Region of York respecting the proposed new Region of York Official Plan.

The purpose of this letter is to provide updated submissions respecting Figure 2 and related policies in the adopted Plan and to request that your Ministry modify the adopted Plan in accordance with the submissions in this letter.

By way of background, Figure 2 in the December 2009 adopted Plan identifies a part of our client's lands as Strategic Employment Land. Policy 4.3.21 reads as follows:

"That the Strategic Employment Land symbol associated with the North Leslie Secondary Plan Area, shown on Figure 2 is subject to an Ontario Municipal Board hearing which will determine the detailed land use designations at the local municipal level. When the Ontario Municipal Board decision and order are issued, Figure 2 will be revised accordingly."

The Decision of the Ontario Municipal Board was issued March 16, 2010 (as a result of a rehearing) and determined that the designation for our client's lands is Low Density Residential, Medium Density Residential and Neighbourhood Commercial.

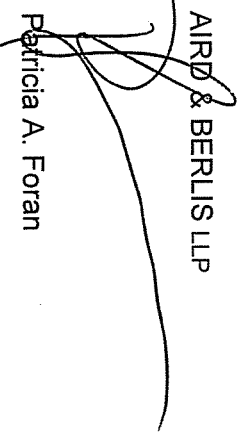
In accordance with Policy 4.3.21 as adopted by Regional Council, we would ask that your Ministry revise Figure 2 to reflect the OMB Decision as it relates to our client's lands, and in particular, to remove the identification of our client's lands as Strategic Employment Land.

We have enclosed a copy of the Board's Decision for your records and review. In addition to the foregoing, we would request the opportunity to meet with your Ministry at your

earliest opportunity to discuss the proper reflection of the Board's Decision in the York Official Plan prior to a decision by your Ministry.

Yours truly,

AIRD & BERLIS LLP



Patricia A. Foran

PAF/jag

Encl:

- c. Bryan Tuckey, Regional Municipality of York  
John Waller, Regional Municipality of York  
Barbara Jeffrey, Regional Municipality of York  
E. Manson Investments

6666250.1



ISSUE DATE:  
**March 16, 2010**



PL020446

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

Lionheart Enterprises Ltd., 583753 Ontario Limited, 625734 Ontario Inc. and others (collectively called Bayview East Landowners Group) have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of Richmond Hill to redesignate lands composed of Lots 26 to 30, Concession 2 and 3, E.Y.S., to establish the North Leslie Planning District and to implement a Secondary Plan for the North Leslie Area in order to facilitate the expansion of the Town's urban boundary

Town's File No: D01-00011

OMB File No: O020073

Lionheart Enterprises Ltd., 583753 Ontario Limited, 625734 Ontario Inc. and others (collectively called Bayview East Landowners Group) have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Regional Municipality of York to redesignate lands composed of Lots 26 to 30, Concession 2 and 3, E.Y.S., from "Agricultural Policy Area" to "Urban Area" and to add the lands to the "Urban Transit Area"

Region's File No: D05 102.41

OMB File No: O020096

E. Manson Investments has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Regional Municipality of York to redesignate lands composed of Lots 26 to 30, Concession 2 and Part of Lots 26 to 30, Concession 3 E.Y.S. in the Town of Richmond Hill from "Agricultural Policy Area" to "Urban Area" and to add the lands to the "Urban Transit Area"

OMB File No: O030043

E. Manson Investments has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of Richmond Hill to redesignate lands composed of Lots 26 to 30, Concession 2 and Part of Lots 26 to 30, Concession 3 E.Y.S. from "Agricultural Policy Area" to "Urban Area"

OMB File No: O030046

**APPEARANCES:**

**Parties**

Town of Richmond Hill

**Counsel**

R. Beaman and D. Germain

|                                                                                       |                         |
|---------------------------------------------------------------------------------------|-------------------------|
| Region of York                                                                        | R. Miller and G. Szobel |
| E. Manson Investments Limited                                                         | P. Foran                |
| Clearpoint Development Limited,<br>Upper City Corporation, and<br>775377 Ontario Ltd. | S. Rosenthal            |
| York Catholic District School Board                                                   | P. Williams             |

**DECISION DELIVERED BY JAMES R. MCKENZIE**

E. Manson Investments Limited (Manson), Clearpoint Development Limited (Clearpoint), Upper City Corporation (Upper City), and 775377 Ontario Ltd. (Belmont) each own land in the vicinity of the 19<sup>th</sup> Avenue/Leslie Street intersection in Richmond Hill. Together, these Land Owners challenged a 2006 Board decision that designated their respective lands for Employment purposes. The Town of Richmond Hill (Town) and the Region of York (Region) opposed that challenge. This hearing, a rehearing, was convened as a result of a review – ordered and undertaken pursuant to Section 43 of the *Ontario Municipal Board Act* – that directed a rehearing of the Land Owners' appeals of their applications to amend the Richmond Hill Official Plan.

Previewing the outcome, the Board has decided generally in favour of the Land Owners, subject to specific findings with respect to three particular issues. This decision will proceed by first establishing a context and then by providing an overview of the evidence. It will then set out its analysis of the issues followed by its formal disposition.

**Context**

There is a long and storied history concerning the Land Owners' applications. To begin establishing a context for what follows, a brief summary of that history is provided following a description of the Land Owners' holdings. Other contextual elements are addressed thereafter.

The lands which are collectively the subject of this rehearing will, for the balance of this decision, be referred to as the Review Lands. The Review Lands include:

1. Lands owned by Manson situated at the north-west corner of the 19<sup>th</sup> Avenue/Leslie Street intersection. These lands comprise approximately 21 hectares;
2. Lands owned by Clearpoint situated generally in the south-east quadrant of 19<sup>th</sup> Avenue/Leslie Street intersection;
3. Lands owned by Upper City situated in the south-west quadrant of the 19<sup>th</sup> Avenue/Highway 404 intersection. These lands include Parcel A1, adjacent to Highway 404, which, with Parcel A2, figures prominently in the Board's analysis and findings; and,
4. Lands owned by Belmont, situated south of the Clearpoint and Upper City lands, extending the full distance between Leslie Street and Highway No. 404. These lands include Parcel A2, noted above in connection with Parcel A1, which are also adjacent to Highway 404.

The Clearpoint, Upper City, and Belmont holdings collectively comprise approximately 30 hectares.

The applications to amend the Richmond Hill Official Plan, the appeals of which are technically the matters before the Board in this rehearing, were commenced by Manson in 1997, as part of a group called the 19<sup>th</sup> Avenue Landowners Group, and by Clearpoint, Upper City, and Belmont in 2000, as part of a group called the Bayview East Landowners Group. The applications were subsequently appealed and consolidated in March, 2003.

A hearing on the appeals, as part of a larger hearing convened to deal with a proposed expansion of the Richmond Hill urban boundary to include an area called the North Leslie Secondary Plan area, began in December, 2003 (2003 hearing). That hearing was interrupted by a provincially-imposed Greenbelt freeze, and ultimately suspended pending a final determination of that freeze.

The *Greenbelt Act* was enacted in February, 2005, and its related Greenbelt Plan came into force, retroactive to December, 2004, through an Order-In-Council. Significant portions of the lands included in the North Leslie Secondary Plan area and

those covered by the appealed applications were included in the Greenbelt Plan. For example, 34% of the total Secondary Plan area and 37% of the Land Owners' holdings were taken for the Greenbelt and related natural heritage system.

With the delineation of the Greenbelt Plan and identification of a related natural heritage system – in some places, the natural heritage system extended beyond the boundary of the Greenbelt Plan – a hearing was further convened in February, 2006 (2006 hearing), to deal with the appealed applications and the proposed North Leslie Secondary Plan area.

The decision resulting from the 2006 hearing was issued in November, 2006 (2006 decision). Among other things, it had the dual effect of bringing the North Leslie Secondary Plan area into the Richmond Hill urban boundary and designating the Owners' lands for Employment purposes – the latter being contrary to their desire to have their lands designated for Residential and Mixed-use purposes.

As noted, the Owners challenged the 2006 decision as it affected their lands through the Section 43 review. The reasons for the granting of that review are set out in the relevant Board decision and need not be recounted here. The inclusion of the North Leslie Secondary Plan area in the Richmond Hill urban boundary was not challenged and is settled.

The North Leslie Secondary Plan covers that area bounded on the west by Bayview Avenue, on the south by Elgin Mills Road East, on the east by Highway 404, and generally on the north by 19<sup>th</sup> Avenue, and includes Manson's total holdings, (both the easterly portion under review in this rehearing and a westerly portion settled in the 2006 decision), located on the north side of 19<sup>th</sup> Avenue – all of which collectively comprise some 620 hectares.

The lands within the North Leslie Secondary Plan area are largely undeveloped; however, in the vicinity of the Review Lands there are several parcels of relevance that are developed.

The Richmond Green complex is situated in the north-west quadrant of the Elgin Mills Road East/Leslie Street intersection and comprises approximately 50 hectares. A number of institutional land uses are situated within the complex, including a library, a

high school, an arena and community centre, a public works yard and related facilities, and several playing fields for outdoor sports and community activities.

The Riotrin development is situated at the north-east corner of the Elgin Mills Road East/Leslie Street intersection. It includes a Home Depot, a Costco, a Staples store, a PetSmart store, a Michaels store, and approximately 25 other retail commercial stores.

North of the Richmond Green complex and the Riotrin development, on the east side of Leslie Street and outside of the Review Lands, is situated The York Centre, a school providing special programming.

The Secondary Plan area is traversed by several tributaries of the Rouge River. For this rehearing, only Tributary 1 and Tributary 2 are pertinent.

The discussion woven into the balance of this decision involves the lands in the North Leslie Secondary Plan area situated east of Tributary 2 – namely, the Review Lands and others not under review. It is important for the context of this decision to also address how the 2006 decision dealt with these lands.

The Bawden-Wood holding is situated between Leslie Street and Highway 404, south of the Belmont lands and north of the Riotrin development. It was designated for Residential and Mixed-use purposes in the 2006 decision.

Except for The York Centre, the Review Lands, the Bawden-Wood lands, and other lands dedicated to the Greenbelt and the natural heritage system, the balance of the lands east of Tributary 2 includes three parcels that were designated for Employment purposes in the 2006 decision. They include holdings opposite the Review Lands, in the south-west quadrant of the 19<sup>th</sup> Avenue/Leslie Street intersection (south-west quadrant Employment lands) and two much smaller parcels in the south-east quadrant – one immediately on the intersection and the other situated further east on the south side of 19<sup>th</sup> Avenue.

Finally, the Phyllis Rawlinson Park and several existing residential properties are located in the Greenbelt on the north side of 19<sup>th</sup> Avenue, outside of the North Leslie Secondary Plan area.

Also critical to appreciating the evidence and arguments respectively advanced by the Parties is an understanding of the Highway 404 corridor in Richmond Hill. Three Business Parks are situated in the corridor between Highway 7 and the North Leslie Secondary Plan area.

The Beaver Creek Business Park includes that area straddling both sides of Leslie Street bounded on the south by highway 7, on the east by Highway 404 and on the north by 16<sup>th</sup> Avenue.

The Headford Business Park includes that area bounded on the west by Leslie Street, on the south by 16<sup>th</sup> Avenue, on the east by Highway 404, and on the north by Major Mackenzie Drive.

The Barker Business Park includes that area bounded on the west by Leslie Street, on the south by Major Mackenzie Drive, on the east by Highway 404, and on the north by a cemetery located on the south side of Elgin Mills Road East. The cemetery is situated opposite the Riotrin development.

Residential neighbourhoods are located opposite the Headford and Barker Business Parks on the west side of Leslie Street. More will be said about this relationship in the Board's analysis of the planners' compatibility evidence.

The effect of the Section 43 review granting this rehearing is a setting aside of the Employment designation approved for the Review Lands in the 2006 decision. Accordingly, this decision regards the Review Lands as having never been designated for an urban land use despite being included in the North Leslie Secondary Plan area that now is in the Richmond Hill urban boundary. Specifically, it is about determining a first urban designation for the Review Lands and nothing more.

Given the dates on which the Land Owners' applications were commenced, they are subject to the 1997 Provincial Policy Statement (1997 PPS), and, as agreed between the Parties and among their respective counsel, are not subject to the 2005 Provincial Policy Statement (2005 PPS) or the Growth Plan for the Greater Golden Horseshoe (Growth Plan). This was the basis upon which the 2006 hearing proceeded. In view of this history, the Board is fully mindful of the present-day regime represented by the 2005 PPS and Growth Plan, and, in view of the agreement among the Parties

and their counsel, the Board will assent to the collective position concerning the regime under which the appeals are to be determined.

For ease of reference, the relevant policies from the 1997 PPS are extracted here:

- 1.1 Developing Strong Communities
  - 1.1.2. Land requirements and land use patterns will be based on:
    - a. the provision of sufficient land for industrial, commercial, residential, recreational, open space and institutional uses to promote employment opportunities, and for an appropriate range and mix of housing, to accommodate growth projected for a time horizon of up to 20 years.
- 1.2 Housing
  - 1.2.1 Provision will be made in all planning jurisdictions for a full range of housing types and densities to meet projected demographic and market requirements of current and future residents of the housing market area by:
    - a. maintaining at all times at least a 10-year supply of land designated and available for new residential development and residential intensification;
    - b. maintaining at all times, where new development is to occur, at least a 3-year supply of residential units with servicing capacity in draft approved or registered plans;
    - c. encouraging housing forms and densities designed to be affordable to moderate and lower income households;
    - d. encouraging all forms of residential intensification in parts of built-up areas that have sufficient existing or planned infrastructure to create a potential supply of new housing units available from residential intensification; and
    - e. establishing cost-effective development standards for new residential development and redevelopment to reduce the cost of housing.

The respective Official Plan of the Region and the Town are also relevant for assessing the merits of the Land Owners' applications and the agreed-to issues for this rehearing.

The central issue to be decided in this rehearing is the land use designation of the Review Lands. Quite simply, the Land Owners seek a Residential and Mixed-use designation, whereas the Town and Region seek an Employment designation. Several other related issues fall out of this central issue, and given their concise nature, they are reproduced here in full:

Overall Issue:

1. Should the land use of the Review Lands be Employment as sought by the Town/Region, or Residential and Mixed Use as sought by the Applicants [i.e., the Land Owners]?

If Residential and Mixed Use:

2. Is the Manson Commercial designation inappropriate? Is it too large?
3. What is the need for Catholic schools in the area in question? Where should any school be located? What conditions should apply to such location?
4. Is the addition of Seniors Residential uses appropriate?
5. Is a Mixed Use Category of Commercial/Residential appropriate?
6. Is the road pattern appropriate? Can it accommodate the proposed Residential and Mixed Use development?
7. Is there a need for additional residential lands in the Town?
8. Are the proposed land uses in the south-east corner of 19<sup>th</sup> Avenue and Leslie Street appropriate in the context of the adjacent designated employment lands?

If Employment Uses:

9. Is there a need for additional employment lands in the Town?

Nine witnesses addressed the Board in three principal areas: market analysis, urban design, and land use planning. Each witness was qualified in his respective area of expertise, without challenge.

Warren Sorenson, on behalf of the Land Owners, and David Butler and Robert Lehman, on behalf of the Town and Region, respectively, provided land use planning evidence. Each is a professional planner.

Michael Elliott, a commercial real estate professional with a specific expertise in office development, Valdemar Nickel, a professional planner with a specific expertise in industrial land use development, and Thomas Martin, a professional architect and urban designer, on behalf of the Land Owners, and Michael Hannay, an architect, on behalf of the Town and Region, provided urban design evidence.

Randy Grimes, a real estate economist, Robert Feldgaier, a housing market analyst, and Mr. Elliott provided market analysis evidence within their respective field of specialization on behalf of the Land Owners. Raymond Simpson, a land economist and professional planner, provided market analysis evidence on behalf of the Town and Region.

A tenth witness, Gary Pappin, testified in connection with a settlement arrived at among the Parties during this rehearing regarding roads. Mr. Pappin was qualified on consent as an expert in transportation planning.

Finally, an eleventh witness, Tom Pechkovsky, provided affidavit evidence on behalf of the York Catholic District School Board addressing the acceptability of the conceptual location of the elementary school site identified on the Manson lands.

The balance of this decision will address each area of evidence beginning with market analysis evidence, then the urban design evidence, and finally the land use planning evidence. Following that, related evidence – that of Mr. Pappin and Mr. Pechkovsky – will be taken up. The Board's analysis and findings are then set out, followed by its Disposition.

## **Overview of Evidence**

### **Market Analysis**

The respective testimony of Messrs. Simpson, Grimes, Feldgaier, and, in part, Elliott collectively define the parameters of the market evidence.

Mr. Grimes was retained by the Land Owners, originally in 2002, to carry out an employment land needs assessment. Just as he had for this rehearing, he prepared witness statements for the 2003 and 2006 hearings, and he testified at the 2006 hearing. According to Mr. Grimes, the central issue for the 2003 and 2006 hearing, and now again in this 2009 rehearing was and is determining the appropriate land use for the Review Lands; specifically, ascertaining whether there is a need for additional

Employment lands over and above what is now designated. Accordingly, Mr. Grimes's testimony was directed only to Issue Nos. 1 and 9.

Mr. Grimes described the methods available for forecasting employment land needs: the employment forecast method and the absorption rate method. He employed the former, and when asked to explain why, he reported that is generally preferred among land economists because it facilitates a more accurate estimation of the range and complexities of input parameters and is not as potentially vulnerable, as is the latter, to relying on historical patterns. Moreover, he opined that the former is consistent with provincial Forecast Methodology Guidelines.

As directed by the Procedural Order for this rehearing, Mr. Grimes and Mr. Simpson met prior to the hearing and were able to agree on an employment forecast for Richmond Hill, a corresponding planning period for that forecast, and an inventory of existing employment land.

It is noted, parenthetically, that the Region's Official Plan does not contain population or employment forecasts for Richmond Hill. Those forecasts were deferred circa 1993, at the request of the Town, so as to allow it to continue and complete a growth management exercise it was then undertaking with the objective of determining what those forecasts should be. That exercise was never completed, thus rendering the Regional Plan devoid of such numbers. Nevertheless, Messrs. Grimes and Simpson dexterously side-stepped that vacuum for the purposes of this rehearing by agreeing to an employment forecast number for Richmond Hill – 100,600 – over a planning period extending to 2031. That planning period is consistent with provincial directives set out in the Growth Plan and with the conformity exercise work being undertaken by Region staff with respect to those directives – notwithstanding that the Growth Plan does not apply in this rehearing. Furthermore, with respect to the inventory of employment land, they agreed on both the amount of occupied land and vacant land.

Mr. Grimes walked the Board through his approach and analysis, describing the elements upon which he relied for his analysis and the means by which he calculated or determined those elements. Those elements included inventorying both occupied and vacant/undeveloped employment land; deriving an appropriate employment density; ascertaining, from population and employment forecasts, employment occurring on

and/or requiring Employment-designated lands; and, applying a frictional vacancy factor.

With respect to employment densities, Mr. Grimes reviewed work undertaken by Region staff (in 2007) and by Mr. Simpson (in 2003) as a consultant to the Region. He also reviewed his own survey work undertaken (in 2003 and updated in 2006) in connection with his original retainer. The evidence demonstrated that employment densities in Richmond Hill are among the highest in the Greater Toronto Area.

Mr. Grimes also candidly acknowledged that he applied a frictional vacancy factor and "factored up" (i.e., increased) the demand for employment land upon which he relied because he wanted to be conservative in his analysis.

Mr. Grimes testified that in his professional opinion the 100,600 job employment forecast for 2031 – upon which he and Mr. Simpson agreed and as – is very achievable on lands currently designated for Employment purposes in Richmond Hill. He further opined that no additional Employment-designated lands are needed.

Mr. Feldgaier is a housing market analyst. He was retained by the Land Owners to examine the adequacy of the future residential land supply in Richmond Hill and the implications of any identified shortfall of the future residential land supply on the need for residential uses. His evidence was directed to Issue No. 7. Moreover, for both this rehearing and the 2006 hearing, both he and Mr. Simpson produced statements of agreed upon facts.

Mr. Feldgaier addressed the adequacy of the future residential land supply by first considering the policy context for housing. He examined the 1997 PPS as well as the Region and Town Official Plans. Mr. Feldgaier concluded from that analysis that the policies all support a broadening of the mix of housing so as to increase housing choices.

Mr. Feldgaier then turned his attention to addressing residential growth projections for Richmond Hill and the available future supply of "designated and available" residential land to satisfy projected market requirements, (see, for example, Policy 1.2.1(a) of the 1997 PPS). He also applied a market contingency factor – which,

he explained, is similar in operation and effect to the frictional vacancy factor applied by Mr. Grimes.

Mr. Feldgaier testified that a continuous 10-year supply is effectively a 15-year supply according to the Project Methodology Guidelines. As a final step, then, Mr. Feldgaier compared projections with the anticipated supply to arrive at a conclusion that, in his professional opinion, the Town has an insufficient supply of designated and available land for single and semi-detached and apartment housing to satisfy the minimum 10-year requirement of Policy 1.2.1(a) of the 1997 Provincial Policy Statement, and, further, that the supply for row housing is only modestly more than 10 years.

Mr. Simpson maintains a long history of extensive involvement in growth management works undertaken by the Town and Region given his considerable experience in, among other things, developing growth forecasts and identifying lands for urban growth. Like Messrs. Grimes and Feldgaier, Mr Simpson was also involved in the 2006 hearing, and was subsequently retained by the Town and Region to provide an opinion on the Review Lands. His evidence was directed to Issue Nos. 1, 7, and 9.

For Mr. Simpson, the central issue as to the appropriate land use designation of the Review Lands is more than simply a market determination matter relating to 'need.' He was candid in his admission that the Review Lands could, from a market perspective, be used for either Employment or Residential purposes seeing as, in his opinion, Richmond Hill has a need for both types of land uses. He drew the Board's attention to a major conclusion from the Town's growth management work – specifically, an update analysis for which his firm was retained – that Richmond Hill's supply of vacant, Greenfield development land is constrained for all types of urban uses. He also took the Board to a central conclusion of the Region's Land Budget Report – that an urban boundary expansion will be required to accommodate 2031 forecasted population and employment growth in the Region.

Throughout his testimony, Mr. Simpson maintained that the principal concern with which the parties are grappling is a lack of land available for development in Richmond Hill. Supply is constrained. The Review Lands constitute the last remaining Greenfield lands in Richmond Hill for urban development. For Mr. Simpson, the

determining factor boils down to what is in the public interest, and, in his view, that would be an Employment designation on the Review Lands. He comes to this conclusion, in part, as a result of two things: from a micro-perspective, the Town's long-standing desire and intent to take advantage of the Highway 404 corridor for employment uses; and, from a macro-perspective, the direction set by the province with respect to employment forecasts and maintaining Employment lands – the latter of which largely relate to the 2005 PPS and the Growth Plan and their combined effect.

Mr. Simpson testified that the determination of a designation for the Review Lands takes on added significance because of the Lands' ability to provide for Employment land employment. A note of explanation is required here. Employment may be defined according to three categories: major office employment, (i.e., office activity jobs); population-related employment, (i.e., employment arising in response to population growth, including, for example, retail jobs); and, Employment land employment, (i.e., employment that captures what was formerly referred to as industrial, manufacturing, and commercial activities). Employment land employment requires parcels that can generally accommodate more expansive land uses so as to accommodate, for example, larger floor plates and on-site trucking movements. While the Growth Plan makes no distinction between the three categories of employment for the purposes of employment forecasts, some, like Mr. Simpson, place an emphasis on differentiating between kinds of employment.

Mr. Simpson testified to the Town's and Region's desire to have the Review Lands used for Employment land employment purposes. In his opinion, the Lands are ideally suited for such purposes given what he referred to as their locational attributes (i.e., being in the Highway No. 404 corridor).

Mr. Simpson also drew the Board's attention to several other factors he felt were important and relevant to the matters before it. First, the employment forecasts for Richmond Hill to 2031 result in an activity rate – that is, the ratio of total jobs to population – of 41%. This is lower than the *pre-Greenbelt Act* minimum target of 45% set out in the Town's Official Plan and lower than the Region rate of 53%.

Second, the Region is in the process of making significant investments in transit in areas suitable for intensification – namely, its centres and corridors. It is important

that intensification occur in those areas so as to complement those transit investments. According to Mr. Simpson, therefore, it is to those same areas that higher-density residential uses should be directed; to do otherwise would not be consistent in his opinion with the Regional policy.

Third, the value differential between Employment-designated and Residential-designated lands has led to increased pressure to convert Employment lands to other purposes. Likewise, efforts to preserve Employment lands have intensified, and Mr. Simpson emphasized the provincial response to this phenomenon as expressed in the policies of the 2005 PPS and the Growth Plan, even though neither is applicable in this rehearing.

With respect to the work undertaken by Mr. Grimes and Mr. Feldgaier, Mr. Simpson indicated that he maintained some modest concerns with elements of the approach that each employed – and this is taken up in the section of this decision setting out the Board's analysis and findings.

Mr. Elliott was retained by the Land Owners to assess whether the Review Lands possess the necessary attributes to attract and retain major office employment development. Given his 30 years' experience facilitating complex development projects and real estate investment transactions, Mr. Elliott's evidence contained elements relating to the market characteristics of major office development, (summarized here), and elements relating to design considerations in connection with major office development, (taken up in the next section of this decision). Major office employment development refers to buildings maintaining a floor area greater than 20,000 square feet which are primarily office with some ancillary retail uses.

Mr. Elliott's overall analysis integrated three components: a consideration of land attributes, or what he referred to as key success factors or conditions precedent; a strategic SWOT analysis; and, a competitive market analysis, or what he referred to as fine-tuning via comparison with a benchmark building.

Moreover, Mr. Elliott's analysis did not treat the Review Lands on a monolithic basis; that is, in a manner regarding them as all the same. Rather, he divided the lands into three distinct sub-areas: lands adjacent to Highway 404 (Parcels A1 and A2), interior lands situated in the south-east quadrant of the 19<sup>th</sup> Avenue/Leslie Street

intersection; and, interior lands situated in the north-west quadrant of the 19<sup>th</sup> Avenue/Leslie Street intersection. The Board will return to those sub-areas, particularly Parcels A1 and A2, in its analysis.

Concerning the market-related component of his work, Mr. Elliott undertook a comparative analysis to estimate whether office development on the Review Lands would attract a premium or a discount in expected rental income, using 45 Vogell Road as a surrogate. Mr. Elliott concluded that office development on the Review Lands would lease at a 30% discount over the long term, all things being equal.

In conjunction with his other analysis, summarized below, Mr. Elliott testified to his professional opinion that the Review Lands do not possess the necessary attributes to attract and retain major office development.

### Urban Design

The respective testimony of Messrs. Elliot, Nickel, Martin, and Hannay collectively define the parameters of the urban design evidence.

As noted above, Mr. Elliott assessed the Review Lands through a lens of key success factors. According to Mr. Elliott, those factors are: access; building and signage exposure; connectivity and critical mass; private amenities; and, access to relevant labour force. While he differentiated between sub-areas of the Review Lands, he ultimately concluded that the Review lands will neither attract major users of office nor investment capital, and further that they do not possess the necessary attributes to do so.

Mr. Nickel was retained by the Land Owners to assess the appropriateness and feasibility of developing the Review Lands under an Employment designation. Given his considerable experience in developing and marketing employment and industrial lands, he assessed the Review Lands according to various criteria reflective of development principles for employment land uses. Those criteria include: lot configuration and grading, exposure and connectivity, and cost to develop. Through the lens of these criteria, Mr. Nickel paid particular attention to “what users need and what

is cost feasible.” For example, lot configuration considerations relate to a site’s ability to provide a variety of lot sizes, constant grades, and rectilinear or very near rectilinear lot shapes. Connectivity and exposure considerations take into account both a site’s location within an employment node, and a node’s location within a broader context. Cost to develop considerations relate to both the ability and resultant cost to implement a planned function given a site’s physical and locational characteristics.

Mr. Nickel testified that employment (i.e., industrial-type) buildings typically require a flat site to accommodate a need for large, flat interior floors to accommodate storage racking and forklift requirements. This is consistent with Mr. Simpson’s characterization of the land needs relating to Employment land employment. Through a cross-sectional analysis, Mr. Nickel demonstrated the extent to which areas of the Review Lands would require significant regrading and other earth work given their current undulating grades. In his opinion, the cost of cutting and filling – that is, redistributing earth and soil to establish a flat grade – and the cost of providing extensive retaining wall construction to stabilize grades would render Employment development cost prohibitive on certain areas of the Review Lands.

In his professional opinion, the Review Lands can be technically developed for Employment purposes, but not to a scale or efficiency consistent with good development principles for Employment lands.

Mr. Martin was retained by the Land Owners in 2007 to develop concept plans for lands east of Tributary 2, north and south of 19<sup>th</sup> Avenue, and west of Highway 404. With respect to the Review Lands, in particular, he prepared conceptual site plans and assessed road layouts and built-form massing. He also took into consideration the matter of integrating his conceptual site plans with the three parcels east of Tributary 2 designated for Employment purposes by the 2006 decision.

Mr. Martin’s assessment of the Review Lands was guided by a number of principles, including exposure, whether to Highway 404 or to Leslie Street or 19<sup>th</sup> Avenue; avoiding isolated residential pockets; fronting residential development on to Leslie Street and/or 19<sup>th</sup> Avenue; and linking residential neighbourhoods by a collector road or trail system to create a coherent community with appropriate ancillary uses (i.e., parks, etc.).

Mr. Martin also addressed the matter of compatibility with, principally, the south-west quadrant Employment lands. He drew the Board's attention to various examples, beginning with the Barker and Headford Business Parks south of the Review Lands, where residential uses are situated adjacent to employment uses separated by an arterial or collector road. Given that there are no interface incompatibilities in those other areas between the residential uses and prestige industrial uses, and that the same type of employment uses are anticipated in the south-west quadrant lands, Mr. Martin did not envisage any incompatibilities arising between the land uses reflected on his conceptual site plans and the approved Employment lands situated opposite there from.

Mr. Martin drew comparisons between the Review Lands and the Bawden-Wood lands situated to the south, which in the 2006 decision, were designated principally for Residential purposes. He outlined how each is "impinged upon" by the Rouge River tributary system, predominantly Tributary 1, which has a similar impact upon each. The result of that comparison left Mr. Martin with the question, What does the land shape tell us about what is suitable? That question, in turn, framed his analysis with respect to ascertaining the most suitable designation for the Review Lands.

In Mr. Martin's opinion, a Residential and Mixed-use designation represents the only use of the Review Lands that can provide continuity and establish a coherent community through an integration of the natural and built (i.e., approved) environments – that is, contexts. The use of the Review Lands otherwise would result, in his opinion, in numerous inefficiencies, including odd-shaped development parcels and single-loaded roads, (i.e., development on only one side of the road). (Mr. Nickel raised similar points in his evidence.)

Mr. Hannay was retained by the Town to review the urban design aspects of the Land Owners' proposed land use plan and, more specifically, to respond to Issue No. 1 of the Issues List. It is Mr. Hannay's opinion that the Review Lands are, from an urban design perspective, well-suited for an Employment designation given their location and, what he believes are their focus, visual accessibility, and physical characteristics.

Mr. Hannay is of the view that an Employment designation on the Review Lands would, in conjunction with the south-west quadrant Employment lands, create an

opportunity for establishing an employment-themed precinct in the North Leslie Secondary Plan area focused at the intersection of Nineteenth Avenue/Leslie Street intersection. He developed a conceptual plan demonstrating one manner in which the Review Lands could be developed for Employment purposes; a plan which reflected road patterning as well as lot siting with concomitant parcel sizes.

Finally, Mr. Hannay expressed an opinion that the topography of the Review Lands is generally comparable with the topography of other developed Employment lands and Business Parks in Richmond Hill – an observation generally confirmed during a site visit in which the Board and counsel toured the Review Lands and the Beaver Creek, Barker, and Headford business parks.

### Planning

The respective testimony of Messrs. Sorenson, Butler, and Lehman collectively define the parameters of the planning evidence.

Mr. Sorenson's involvement in the North Leslie Secondary Plan area dates back to 2000 when his firm was initially retained to assist several of the Land Owners with their applications. His retainer was subsequently expanded to represent all the Land Owners in connection with this rehearing. A key component of his earlier work included working with Town planning staff to develop what became known in the 2006 hearing as the "Blended Plan" – a secondary plan document that identified both agreed-upon policies as well as those matters remaining in dispute, along with policy alternatives consistent with the different positions advanced by the parties in that hearing (2006 Blended Plan).

It is Mr. Sorenson's view that the Review Lands are better suited to a Residential and Mixed-use designation. He comes to this conclusion and professional opinion as a result of a very thorough examination of the policy context, including the 1997 PPS, the Region's Official Plan, and the Town's Official Plan; the application of his own planning knowledge and insight; and, a detailed consideration of the analysis and evidence of the other professional witnesses, including principally:

- Mr. Feldgaier's analysis and professional opinion that additional residential lands are needed;
- Mr. Grimes's analysis and professional opinion that additional employment lands are not needed;
- Mr. Elliott's analysis and professional opinion;
- Mr. Nickel's analysis and professional opinion;
- Mr. Martin's analysis and professional opinion; and,
- the fragmentation of the Review Lands by woodlots, watercourses, open space corridors, and Greenbelt designations and natural heritage areas/system associated with Tributary 1.

Mr. Sorenson's testimony also responded to Mr. Butler's and Mr. Lehman's evidence, and is taken up under the Board's analysis.

Mr. Sorenson testified that the Land Owners' scheme has full regard for the 1997 PPS, complies with the Region's Official Plan, and conforms to the general thrust of the Town's Official Plan. A Residential and Mixed-use designation is consistent with the balance of the North Leslie Secondary Plan and would not derogate from the Plan's "Environment First" focus or from the Town's objective of promoting complete communities.

He also testified that he would, under normal circumstances, regard lands proximate to a highway as a reasonable candidate for employment uses, in particular, space-intensive, vehicle-oriented industrial and business uses (i.e., Employment land employment uses). There are several factors, however, that, in Mr. Sorenson's opinion, significantly detract from this general proposition insofar as the Review Lands are concerned. Those factors relate to the respective conclusions arrived at by Mr. Grimes and Mr. Feldgaier, as well as, among other things, the fragmentation of development lands by the Greenbelt and natural heritage system, discontinuities in the land use pattern along Highway 404 in proximity to the Secondary Plan area, and the unsuitability of the Review Lands for Employment purposes as demonstrated by Mr. Nickel.

As part of his analysis, Mr. Sorenson also assessed the potential influence of the south-west quadrant Employment lands and concerns about compatibility with the designation advanced by the Land Owners. Given that those lands are anticipated to be developed with relatively light forms of industry, that such development will be required to demonstrate high performance standards, and that they will be separated

from the Review Lands by the arterial-function right-of-way for 19<sup>th</sup> Avenue and Leslie Street, any development occurring in conjunction with a Residential and Mixed-use designation on the Review Lands would not be incompatible.

Mr. Sorenson also, out of prudence, proposed alternate policies for an Employment designation in the event that the Board decided to not allow the Land Owners' appeals. Given the Board's findings, nothing more needs to be said about Mr. Sorenson's alternate policies.

In sum, Mr. Sorenson testified that in his professional opinion the fundamental characteristics of the Review Lands are inherently well-suited to a Residential and Mixed-use designation, and relatively ill-suited to an Employment designation.

Mr. Butler was retained by the Town in 2008 to support the North Leslie Secondary Plan as approved by the Board in the 2006 decision. He has considerable experience with the Richmond Hill and York Region planning contexts derived from numerous other consulting planning projects undertaken within these municipalities. In Mr. Butler's professional opinion, the 2006 decision to designate the Review lands for Employment purposes represents good planning. An Employment designation would maintain the Town's employment corridor vision, constitute the "best planning" for the Review Lands, and would be in the public interest.

Mr. Butler testified that the Town wishes to have the Review Lands designated for Employment purposes in order to satisfy targets espoused by the Region and province. He pointed out that both the Town and the Region have consistently supported employment uses along the Highway 404 corridor for over 10 years as part of the Town's growth management initiatives. The Land Owners' desire to have a Residential and Mixed-use designation apply to the Review lands represents, in his opinion, a fundamental change to the basic structure of North Leslie Secondary Plan as envisaged by the Town and would be contrary to the 1997 PPS, the Town and Region Official Plans, the principles of good planning, and the public interest.

Mr. Butler is also of the view that the Highway 404 corridor represents a strategic employment corridor in the Greater Toronto Area.

Mr. Butler testified that, because the Review Lands represent the last available lands within the Town for designation for urban industrial use, any decision on their long term designation becomes even more critical. To that end, it is Mr. Butler's opinion that the Town should not be put into a position where it cannot meet public policy objectives.

The basis for Mr. Butler's conclusion that a Residential and Mixed-use designation would be contrary to the Town's Official Plan rests, in part, in Official Plan Amendment No. 218 (OPA 218). Approved by the Minister of Municipal Affairs and Housing on March 9, 2006, OPA 218 implemented the Oak Ridges Moraine Conservation Plan and went further to establish policies relating to population and employment targets – targets that, despite being adopted, have not been incorporated into the Region's Official Plan. With respect to an employment projection, OPA 218 established 119,000 jobs as a target over the planning period to 2026 – a number that Mr. Simpson recommended against at the time while engaged as the Town's consultant.

In addition to his principal opinion, Mr. Butler also testified that in his opinion a Residential and Mixed-use designation on the Review Lands will prejudice the south-west quadrant Employment lands through the introduction of incompatible land uses, result in a mixing of residential and employment traffic on Leslie Street and on 19<sup>th</sup> Avenue, and result in compatibility challenges with the Bawden-Wood lands situated south of the Review Lands.

With respect to the south-west quadrant Employment lands, Mr. Butler testified that the designation being advanced by the Land Owners will put pressure on those lands and likely result in an application at some point in the future to redesignate those lands for non-employment purposes.

Finally, Mr. Butler expressed concern about high-rise buildings being developed on the Review Lands in the event the appeals are allowed through this rehearing and the specific threat they represent to the viability of the south-west quadrant Employment lands. Just as Mr. Sorenson sought to hedge bets on behalf of the Land Owners, so too did Mr. Butler propose alternate policies on behalf of the Town.

Like Mr. Butler, Mr. Lehman was retained by the Region in 2008 to review the issues before the Board in this rehearing. He has considerable experience in Richmond Hill, in part from his preparation of the growth management exercise leading to the

expansion of the Town's urban boundary north to Elgin Mills Road East and the implementation of the secondary plans for the area immediately south of the North Leslie Secondary Plan area. He was also involved in the 2006 hearing regarding the North Leslie Secondary Plan on behalf of a land owner with holdings on Bayview Avenue.

Mr. Lehman expressed his professional opinion that the Review Lands are more suitably designated for Employment purposes given their location in the Highway 404 corridor. He drew attention to the relationship between 400-series highways and employment lands throughout the Greater Toronto Area, suggesting that the proximity of the latter to the former is not a coincidence. According to Mr. Lehman's analysis, history demonstrates that employers prefer locating near 400-series highways.

Echoing Mr. Butler, Mr. Lehman also testified that in his opinion a Residential and Mixed-use designation on the Review Lands would raise the likelihood of an incompatibility being established with the south-west quadrant Employment lands. Uses associated with the designation sought by the Land Owners would constitute sensitive land uses under Ministry of the Environment Guidelines, and their proximity to Employment lands would, in Mr. Lehman's opinion, be contrary to the D-1 and D-6 Guidelines and would likely require substantial buffering.

Moreover, in Mr. Lehman's opinion, a Residential and Mixed-use designation on the Review Lands would function as a disincentive to employers to locate on the south-west quadrant Employment lands. Such users/uses require a degree of community with like-users/uses, along with an absence of incompatible land uses. In all likelihood, if designated for Residential and Mixed-uses purposes, the Review Lands would develop before other employment lands east of Tributary 2 thereby prejudicing the south-west quadrant Employment lands insofar as their ability to perform their planned function is concerned. Accordingly, the Review Lands are neither appropriate nor necessary for residential uses, and a Residential and Mixed-use designation would be inconsistent with the Region's Official Plan insofar as it establishes an urban structure with respect to centres and corridors.

Central to Mr. Lehman's evidence was his interpretation of the 1997 PPS. With respect to Policy 1.2.1, Mr. Lehman testified that it had application only to upper-tier

planning jurisdictions. In other words, lower-tier planning jurisdictions need not have regard to its intent. In Mr. Lehman's view, there is no obligation on the Town to maintain a 10-year supply of designated and available land for new residential development. This aspect of his evidence is fully canvassed in the Board's analysis.

Finally, Mr. Lehman also expressed an opinion that the Board should take the 2005 PPS and the Growth Plan into account in rendering a decision on a designation for the Review Lands in light of the very substantial amount of work that has been undertaken over the past three years with respect to protecting the supply of Employment lands.

#### *Related Evidence (Roads and School Site)*

Given that the evidence of Mr. Pechkovsky in relation to Issue No. 3 and the evidence of Mr. Pappin with respect to Issue No. 6 are not in dispute, both will be addressed in the following section setting out the Board's analysis.

### **Analysis and Findings**

#### *Issue No. 1*

Issue No. 1 – whether the Review Lands should be designated for Employment or for Residential and Mixed-use purposes – as an over-arching issue, was germane to the evidence of several of the witnesses; however, the respective evidence and testimony of Messrs. Simpson, Butler, Lehman, and Sorenson are specifically taken up in this analysis because it is these professionals who fulsomely engage the issue as framed.

A central theme running through the evidence of Messrs. Simpson, Butler, and Lehman was the opinion that the Review Lands should be designated for Employment purposes because that designation is reflective of the nature of the land uses the Town and Region have long-desired for the Lands given their location in the Highway 404 corridor. The immediacy of Highway 404 and the access it facilitates to other 400-

series highways; the likelihood of an interchange being constructed within the 2031 planning horizon at the 19<sup>th</sup> Avenue/Highway 404 intersection; the location of Employment-designated lands in the Beaver Creek, Headford, and Barker Business Parks, and opposite Highway 404 in Markham; all, for these three witnesses, point to an Employment designation as being the appropriate choice for the Review Lands and to any other designation(s) as being inappropriate.

A theme woven through the evidence of Mr. Simpson and Mr. Lehman was the relevance of the 2005 PPS and the Growth Plan – especially the principal thrust of each to, in part, preserve Employment lands and shelter them from initiatives to convert them to other non-employment land uses. Mr. Simpson repeatedly made reference to the effect of each, testifying that never before over his almost 40 year career has he seen the province take such an active role in establishing land use policy. A not insignificant component of his Witness Statement was dedicated to commentary on the intensification of efforts to preserve Employment lands for their intended use, (emphasis added by the Board). Mr. Lehman even went so far as to include a caveat with his signature on the agreement between the planners – their List of Items in Agreement and in Dispute directed by the Procedural Order – implying that regard should be had in these circumstances for the 2005 PPS and the Growth Plan; that their role is not, in his opinion, a matter that is appropriately an exclusive legal consideration.

The Review Lands are not Employment lands; they do not enjoy the benefit of an Employment designation or, indeed, any urban designation. To determine such designation is the sole purpose of this rehearing. The Board is not persuaded by the above line of evidence to disregard the agreement between the Parties and unanimity among counsel that the 2005 PPS and Growth Plan do not apply. Moreover, to the extent that Mr. Simpson or Mr. Lehman perceives this proceeding in some fashion as being about preserving Employment lands, that perception is mistaken. For this reason, the Board cannot ascribe any weight to the opinions of Mr. Simpson and Mr. Lehman with respect to the role and effect of the 2005 PPS and Growth Plan.

A common theme in the evidence of Mr. Butler and Mr. Lehman was the deleterious impact and prejudicial effect a Residential and Mixed-use land use scheme will visit upon the south-west Employment lands. Mr. Lehman raised the Ministry of the Environment D-1 and D-6 Guidelines and sought to demonstrate how the presence of

residential and other sensitive land uses will prejudice those Employment lands by requiring increased separation distances – perhaps as much as 300 metres. Mr. Butler echoed Mr. Lehman's attention to the effect of the Guidelines and went even further to say that an approval of the Land Owners' scheme would result in a pressure to convert the south-west quadrant Employment lands to non-employment uses. Even so, he sought to introduce policy measures to improve the interface between these designations and their related land uses, and those specific measures are taken up under several of the issues discussed below.

With respect to Mr. Butler's testimony regarding conversion pressure, the Board simply notes the operational effect of those provisions in the *Planning Act* and those policies in the Growth Plan directed precisely at that phenomenon, which Mr. Butler fairly acknowledged in cross-examination.

With respect to the interface between the Rehearing Lands and the south-west quadrant Employment lands, the Board has found it impossible – not for trying – to differentiate these circumstances from those existing in and adjacent to the Highway 404 corridor concerning the Barker and Headford Business Parks – where those Employment lands interface with residential uses on the west side of Leslie Street. First, the Board was not shown any instance of a land use conflict in those situations. Granted, the residential uses in those situations are low density, ground-oriented homes, not multi-storey residential buildings as is likely to be the case on the Review Lands. Mr. Sorenson, however, testified that externalities, where there are any, can be mitigated in situations involving multi-storey buildings because those buildings tend to rely more on internal areas for providing amenities rather than external, outdoor areas as is the case in a low-rise situation.

Second, Mr. Butler acknowledged in cross-examination the desirability of an arterial separator in such circumstances. Just as Leslie Street serves as the separator between land uses to the south, so too a role will it serve between the Review Lands and the south-west quadrant Employment lands.

Finally, the south-west quadrant Employment lands are specifically designated Employment Corridor. Mr. Sorenson testified that this designation permits the development of only high performance standard employment uses and high

performance industrial uses contained within wholly enclosed buildings. The applicable designation in the Barker and Headford Business Parks permits comparable uses, and the types of employment uses anticipated in the south-west quadrant are expected to be similar to the uses now found in these two Business Parks. In response to Mr. Lehman's and Mr. Butler's evidence regarding the D-1 and D-6 Guidelines, Mr. Sorenson comprehensively assessed the Guidelines to demonstrate that a 300 metre distance separation requirement would not be a factor and that 20 metres would be the more anticipated separation requirement. Since Leslie Street and 19<sup>th</sup> Avenue is to eventually maintain a right-of-way width of 36 metres, Mr. Sorenson opined that the lands in the south-west quadrant would likely not be prejudiced as a consequence of the Guidelines.

Mr. Butler testified that the approval of the Land Owners' scheme will result in a mixing of employment and residential traffic – that is, cars and trucks – resulting in a potentially unsafe situation. If this mixing is to occur anywhere, it will be on 19<sup>th</sup> Avenue and Leslie Street, both of which are designated as arterial roads in the Region's Official Plan. On this point, the Board notes the function of an arterial road is to convey all types of traffic.

As noted previously, Mr. Simpson and Mr. Butler testified to the Town's long-standing desire to designate lands situated in the Highway 404 corridor for Employment purposes. The Rehearing Lands, however, are separated from the southern Business Parks of the corridor by no less than two kilometres at their closest. Moreover, situated within that gap are three intervening land uses: the large cemetery situated on the south side of Elgin Mills Road East, spanning the full distance between Highway 404 and Leslie Street; the Riotin retail commercial development; and, the Bawden-Wood lands, which were designated principally for Residential purposes in the 2006 decision. That the Town maintains a desire to have the Review Lands designated for Employment purposes is understood; however, the Board finds that desire disconnected from the reality of the Review Lands, taken up below in a discussion of Mr. Sorenson's evidence, and the isolating effect of the other interrupting land uses and designations in the corridor.

At multiple points during his testimony, Mr. Simpson impressed upon the Board that its decision should not be based solely on numbers; that this is not a "numbers

game”, that its determination should be based on planning principles and not merely on the quantitative analyses and results of Mr. Grimes and Mr. Feldgaier. The Board agrees, and accordingly finds persuasive Mr. Sorenson’s testimony explicating why these particular circumstances involving the Review Lands are not normal circumstances where proximity to a highway substantiates an Employment designation.

The fragmentation of developable lands by intervening natural heritage features and the Greenbelt; discontinuities in the land use pattern along this section of Highway 404; land characteristics and other factors militating against efficient lot configuration and road patterning, and significantly higher development costs for employment uses associated therewith; all are factors that have persuaded the Board that the Review Lands are not suitable for an Employment designation despite being proximate to the Highway 404 corridor. Equally compelling was Mr. Sorenson’s opinion that the Review Lands, if designated for Employment purposes, would likely not be taken up for development within the planning period to 2031 given their shortcomings and the availability of other more attractive Employment lands in Richmond Hill.

For all of the foregoing reasons, the Board prefers the evidence of Mr. Sorenson and generally finds that the Land Owners’ scheme to be appropriate and preferable to the desires advanced by the Town and Region. The Board, however, maintains a reservation with respect to the Mixed-use designation in the Owners’ scheme and that is taken up in the following discussion regarding Issue No. 5.

Issue No. 2

Issue No. 2 – regarding the appropriateness and size of the Neighbourhood Commercial designation (NC designation) on the Manson lands – was addressed by Mr. Butler and Mr. Sorenson.

Mr. Butler testified that the size of the commercial area proposed by Manson in this rehearing is larger than what was proposed in the 2006 hearing. According to Mr. Butler, a rationale for increasing the area under an NC designation is to potentially accommodate free-standing apartment buildings up to 10 storeys in height.

Mr. Butler acknowledged that he did not have any difficulty with an NC designation in the proposed location on the Manson lands, (i.e., on the intersection); however, he proposed policy modifications for the Board to consider in the event it decides to allow the Land Owners' appeals. With his concern being the size of permitted commercial uses and the inclusion of policy permissions that would allow medium- and high-density residential uses, Mr. Butler proposed modifications to: restrict the total size of commercial uses to 60,000 square feet; to remove the permission for stand-alone apartment building; and, to replace portions of the area proposed for an NC designation with a Medium Density Residential designation. These latter modifications were proposed given Mr. Butler's opinion that residential uses will not be compatible with the south-west quadrant Employment lands.

Mr. Sorenson's evidence on this issue was that the policy approach for the NC designation stands unchanged from that set out in an agreed-upon section of the 2006 Blended Plan presented at the 2006 hearing and which has been applied to other approved lands in the North Leslie Secondary Plan area.

There is no dispute between Mr. Butler and Mr. Sorenson that an NC designation is appropriate at the intersection of two arterial roads. With respect to the size of the commercial permissions, the Town's Official Plan now includes a general policy restricting neighbourhood commercial uses to 60,000 square feet – identical to that proposed by Mr. Butler. The Town is in the process of reviewing its Official Plan. Mr. Sorenson testified that it is highly unlikely the Town would remove or modify that policy – especially now given the airing of this issue. Given that this limitation is now in effect, the Board finds nothing on this particular issue that would necessitate the introduction of a further, specific limitation on the size of permitted commercial uses into the policies of the North Leslie Secondary Plan.

The Town has recently enacted Official Plan Amendment No. 245 to introduce a series of new policies into its Official Plan that stipulate the requirements for having an application under the *Planning Act* deemed complete. Those new policies, for example, include a requirement for a full range of studies to address any potential for adverse development effects and nuisance impacts – including noise, vibration, and odour impacts, as well as others not specifically listed in the policy but which may be required nonetheless. These requirements in conjunction with the interface compatibility

considerations discussed above under Issue No. 1 lead the Board to conclude that modifications to policies regulating heights in the Review Lands are unnecessary.

Based on the foregoing analysis, the Board prefers the evidence of Mr. Sorenson and finds that the NC designation, its size, and corresponding policies are appropriate.

Issue No. 3

Mr. Pechkovsky testified on consent through an affidavit that the elementary school location conceptually shown on the Manson lands is generally acceptable and will be refined at later stages in the development process. He stated that the location complies with the School Board's "Prudent Avoidance" policy – namely, that it has been prudently located so as to avoid, among other things, natural gas and hydro corridors and the like. Being filed on consent, the Board accepts Mr. Pechkovsky's evidence and finds Issue No. 3 to be satisfactorily addressed.

Issue No. 4

Issue No. 4 – whether the inclusion of Seniors residential uses is appropriate – was addressed by Mr. Butler and Mr. Sorenson.

Mr. Butler testified that Seniors residential uses are inappropriate adjacent or in proximity to Employment lands and, further, that such a land use arrangement was never contemplated in these circumstances. In his opinion, the Review Lands represent an inappropriate location for Seniors residential uses because they are isolated; that is, they are not well-served by transit, nor are they proximate to supportive, existing community facilities including, for example, medical facilities. Given his opinion that Seniors residential uses adjacent or in proximity to Employment lands will raise potential safety issues and other land use sensitivities, thereby increasing the likelihood of incompatibility and conflict, Mr. Butler sees no reason for modifying the approved policies (Section 4.2.4.2) of the North Leslie Secondary Plan to accommodate the Land Owners' desires.

Mr. Sorenson testified that Seniors residential uses are permitted in any Residential designation, subject to certain locational requirements, all in accordance with Section 4.2.4.2 which were agreed-upon policies in the 2006 Blended Plan put before the Board in the 2006 hearing. Mr. Sorenson considers the locational requirements as constraints, and as such he has exempted areas of the Review Lands from their application so as to provide greater flexibility to accommodate this form of housing. During his initial cross-examination, Mr. Sorenson referred to those criteria as being unduly or unnecessarily restrictive. At no point during his testimony, however, did he review the criteria to demonstrate in any meaningful way why the criteria are so burdensome. Instead, during his testimony in reply, Mr. Sorenson introduced further proposed policy modifications to address the concerns raised by Mr. Butler; modifications designed to potentially provide for additional studies in accordance with Guidelines D-1 and D-6 to address land use impacts and recommend appropriate mitigation – all while maintaining an exemption from the locational criteria.

That Seniors are arguably among the more vulnerable of society points to a need for an appropriate policy response to ensure that care is exercised when making land use decisions that will directly affect their well-being. Section 4.2.4.2 in its current, unmodified form does precisely that. By exempting areas of the Review Lands from the locational criteria of Section 4.2.4.2, Mr. Sorenson has moved from what he regards as one extreme to what the Board finds is another. The modifications he proposed in response to Mr. Butler's testimony include a discretionary element that falls short of ensuring that Seniors will be adequately protected. The Board is not persuaded that the criteria identified in Policy 4.2.4.2 are unduly or unnecessarily restrictive, finding Mr. Sorenson's characterization as such curious given the central role he and his firm played in negotiating the agreed-upon policies of the 2006 Blended Plan in the first place.

The Board prefers the evidence of Mr. Butler on Issue No. 3 and finds the exemption of the Review Lands from the locational requirements set out in Policy 4.2.4.2. to be not appropriate.

Issue No. 5

Issue No. 5 – regarding the appropriateness of a Mixed-use designation including commercial and residential uses – relates to Parcels A1 and A2 since it is only these two parcels in the Review Lands upon which such a designation is proposed. (Mixed uses are also proposed on the Manson lands; however, they are done so singularly under a Commercial designation that includes policies also permitting residential uses.)

The Land Owners' scheme on Parcels A1 and A2 include policies permitting offices and one hotel as well as medium- and high-density residential uses, including Seniors residential uses. Mr. Sorenson introduced a modification during his testimony that would have the effect of subordinating medium-density residential uses to some other primary permitted use. He also testified that the size of these parcels and the separating effect of the Greenbelt and natural heritage system render these two sites suitable for relatively intensive forms of development.

Mr. Butler testified that Parcels A1 and A2 are not appropriate locations for residential land uses. He also offered an opinion that such uses are appropriately located in multi-functional centres and corridors – consistent with the Region's policy encouraging the same – where they will sustain and reinforce transit investment. To situate such uses adjacent to a highway will, in Mr. Butler's opinion, de-emphasize transit use and reinforce a less than ideal reliance on private automobile use. During his cross-examination, however, Mr. Butler acknowledged that he did not have any difficulty with office uses on either parcel or a hotel use on the northerly parcel.

In an effort to check Mr. Butler's testimony, attention was drawn to numerous examples throughout the Greater Toronto Area of residential uses adjacent to a 400-series highway. Mr. Butler's opinion about those land use decisions – that they're inappropriate or in some cases plain wrong – was also derided. The Board is not persuaded by these overtures. The planning merits of proposed development does not necessarily equate with what is already on the ground in other locations reflecting similar contextual elements. While the Region's centres and corridors policy does not preclude high-density residential development from locating in areas beyond multi-functional centres and transit-supported corridors, the reasons sustaining Mr. Butler's

opinion remain unimpeached and the Board finds them more in keeping with the public interest than rationales advanced by Mr. Sorenson on this issue.

Accordingly, the Board prefers the evidence of Mr. Butler and finds that a Mixed-use designation is inappropriate on Parcels A1 and A2 by virtue of residential uses being inappropriate. In light of this finding, a question arises as to what then is the appropriate designation for Parcels A1 and A2. The Board was presented with sufficient evidence to find that office uses are appropriate, as is a hotel use on the northerly parcel. The Board, however, is not in a position to make a final determination on a designation for Parcels A1 and A2, and will therefore withhold its Order so as to allow the Parties and counsel to confer for the purpose of identifying a designation that is consistent with the Board's findings.

/Issue No. 6

Mr. Pappin was called to testify in support of a consensus reached among the Parties during the rehearing with respect to Issue No. 6 – the appropriateness of the road pattern.

In the spirit of collaboration that brought about this limited agreement among the Parties, Mr. Pappin was led through his examination-in-chief by Ms Rosenthal notwithstanding that he was the Town's expert witness. Mr. Pappin specifically addressed Exhibit No. N81 – revised Major and Minor Collector Road policies applicable only to the Review Lands and testified that they are appropriate in his opinion.

In essence, Exhibit No. N81 provides policy text to address the matter of a connection between the east-west collector road identified on the Belmont lands and the north-south collector road shown on the Upper City lands. The Parties agreed that a connection will not be shown on the relevant schedules of the North Leslie Secondary Plan, but rather that a symbol will be included directing any reader to the appropriate policies. Further, in the event that the Review Lands are designated Employment, a symbol will be included on the relevant schedules west of Parcel A2, and in the event

that the Review Lands are designated Residential and Mixed-use, a symbol will be included between Parcels A1 and A2.

Mr. Pappin's testimony only addressed the two scenarios respectively advanced by the Parties. In fairness to Mr. Pappin, he did not address – nor by inference was he likely asked to – a scenario in which Parcels A1 and A2 would not be designated for Mixed-use (Residential and Commercial) purposes. The Board, therefore, is not in a position to make a final determination on Issue No. 6 in light of its finding with respect to Issue No. 5. While conferring on an appropriate designation for Parcels A1 and A2, the Parties and counsel are also directed to ascertain whether Mr. Pappin's testimony remains relevant in light of its finding on Issue No. 5.

Issue No. 7

Issue No. 7 – whether there is a need for residential lands in Richmond Hill – was taken up principally through the evidence of Mr. Simpson and Mr. Feldgaier. It was also taken up by Mr. Lehman through his testimony specifically regarding his interpretation of Policy 1.2.1(a) of the 1997 PPS.

The fact that Mr. Simpson acknowledged in both his Witness Statement and his oral testimony that the Review Lands could from a market perspective be used for residential purposes – given the Town's growth management work and the Region's land budgeting exercise – arguably settles this issue. Nevertheless, out of prudence, the Board will address what it finds to be the salient aspects of the evidence regarding this issue.

There is no dispute that the 20-year supply requirement set out under policy 1.1.2 of the 1997 PPS cannot be achieved with respect to either employment or residential land uses.

Mr. Simpson acknowledged that there was very little about Mr. Feldgaier's evidence with which he disagreed; however, he was judgmental of Mr. Feldgaier's approach, referring to it as having been done in a non-constrained way.

With respect to the 10-year supply requirement stipulated in Policy 1.2.1(a) of the 1997 PPS, Mr. Simpson acknowledged that it is something to consider, but opined that it is not a test generally applied in the Region. He also testified that neither it, nor the 3-year requirement, operates as a “trump card.” Mr. Simpson drew the Board’s attention to other municipalities as examples of contexts in which the test could not be met or where meeting the requirement had proven to be a challenge.

Municipalities and approval authorities – including this Board – are required to have regard to the entirety of the 1997 PPS when carrying out their decision making duties. That the 10-year supply requirement is not a test generally applied by the Region does not render the test meaningless in these circumstances or serve to release this Board from its responsibility to meet its obligation under the Policy Statement. The Board, therefore, finds that the evidence advanced through reference to the Region’s approach does not meet the requirement to have regard to the policies of the 1997 PPS. Furthermore, the decision to eschew the 10-year requirement acts as a *de facto* trump – ironically so given Mr. Simpson’s remarks – in favour of non-residential land uses.

Mr. Simpson also testified that high density residential, apartment land uses are not land constrained and could locate in regional centres and corridors, consistent with the Region’s policy to that effect. Under cross-examination, however, he readily admitted that redesignations and/or rezonings would likely be required to facilitate implementation of the policy – permissions that by virtue of being required are equally a constraint.

Mr. Feldgaier’s approach was thorough and his evidence with respect to his conclusions easily withstood cross-examination. Moreover, the Board was not made aware of any similar quantitative analysis undertaken by Mr. Simpson with respect to assessing the opportunity of using the Review Lands as a measure of having regard for the 1997 PPS.

For the reasons set out above, the Board prefers Mr. Feldgaier’s evidence and finds that there is a need for residential lands in Richmond Hill.

Turning to Mr. Lehman’s evidence with respect to the 1997 PPS, it is his opinion that the 10-year requirement of Policy 1.2.1(a) – effectively a 15-year supply given the

provincial Forecast Methodology Guidelines – simply does not apply to lower-tier municipalities like Richmond Hill. In other words, neither the Town nor any other lower-tier municipality is obligated, in his view, to maintain a 10-year supply of land for new residential development. Instead, the Policy requires the 10-year land supply to be maintained within the Housing Market Area, which is the Region. Given this interpretation of the 1997 PPS and corresponding opinion, Mr. Lehman maintains that the analysis undertaken and conclusions reached by Mr. Feldgaier are flawed.

The Board cannot countenance Mr. Lehman's interpretation for the following reasons. First, on the face of the policy text, every planning jurisdiction is required to maintain a 10-year supply. While 'planning jurisdiction' is undefined in the 1997 PPS, the Board finds that the interpretation does not give effect to a plain reading of the policy.

Second, as fundamental as this opinion is to his overall testimony, there is no record of Mr. Lehman's interpretation of Policy 1.2.1(a) in either his Witness Statement or the agreed-to List of Items In Agreement and In Dispute arising from the required meeting among planners prior to the start of the rehearing. In fact, the first time Mr. Lehman's interpretation comes to light is in his Reply Witness Statement. The Board finds it curious that he should identify so central an interpretation so late in the process.

Finally, no other professional witness, for whose evidence Policy 1.2.1(a) held relevance, shared Mr. Lehman's interpretation.

For these above reasons, the Board finds Mr. Lehman's interpretation of the 1997 PPS untenable and to be offering no sustainable basis upon which to question or reconsider its finding with respect to Mr. Feldgaier's evidence.

Issue No. 8

Issue No. 8 – whether the land uses proposed in the south-east quadrant of the 19<sup>th</sup> Avenue/Leslie Street intersection are appropriate given the adjacent lands maintaining an Employment designation – was also addressed by Mr. Butler and Mr. Sorenson.

For Mr. Sorenson, this issue concerns the two smaller-sized, Employment-designated parcels noted previously. For Mr. Butler, the issue engages these same two parcels, but not so far as to excuse or exclude being mindful of the Employment lands situated in the south-west quadrant of the intersection. The Owners are proposing a Medium/High Density Residential designation on that portion of the Review Lands fronting on 19<sup>th</sup> Avenue between these two parcels.

Given the relatively modest size of the two parcels, Mr. Sorenson testified that industrial uses such as manufacturing or warehousing would be effectively precluded. In his opinion, a range of institutional, retail, personal service, office, restaurant, and other similar uses permitted under an Employment designation would be more realistic. Furthermore, the nature of the uses anticipated under the proposed Medium/High-Density Residential designation would be fully compatible with the employment uses envisaged on the two parcels.

Mr. Butler, on the other hand, testified that land use conflicts are still possible even with these parcels being developed with commercial uses. In the event that the Board finds favour with the Land Owners' development scheme, he proposed eliminating what he called "an anomaly" by assigning an Employment designation to that portion of the Review Lands fronting on 19<sup>th</sup> Avenue between the two parcels. Doing so would result in a contiguous and continuous stretch of Employment-designated lands extending east from the intersection along the south side of 19<sup>th</sup> Avenue. Mr. Butler also recommended eliminating the High-Density Residential designation in order to restrict building heights to four storeys as a means of mitigating any potential incompatibility between these land uses – just as he proposed regarding the NC designation on the Manson lands.

Of the uses envisaged both on the two smaller Employment parcels and the Review Lands in their vicinity, the Board finds the anticipated land use relationship to be of a symbiotic nature and as such equally finds Mr. Sorenson's opinion on their inherent compatibility to be compelling and persuasive. Given the compatibility of the anticipated uses under the respective designations discussed above, the Board cannot conclude that these circumstances necessitate mitigation.

For these reasons, the Board prefers the evidence of Mr. Sorenson on Issue No. 8 and finds the land uses proposed in the south-east quadrant of the 19<sup>th</sup> Avenue/Leslie Street intersection to be appropriate.

Issue No. 9

Issue No. 9 – whether there is a need for additional Employment lands in Richmond Hill – was addressed by Mr. Grimes and Mr. Simpson.

Both Mr. Simpson and Mr. Grimes were forthright and sincere in their testimony. For Mr. Grimes, this manifested itself in a consistent approach over three hearing events spanning some eight years; and for Mr. Simpson, in repeated exhortations that the appropriate designation of the Review Lands is a matter to be determined by proper planning principles, not strictly by numbers derived as the result of a mathematical exercise. The Board has addressed this latter point.

When probed by the Board, Mr. Simpson acknowledged there were very few things about which he and Mr. Grimes disagreed. Among them, however, was Mr. Grimes's reliance on a frictional vacancy factor and his inclusion of major office employment in his estimate of employment land occupied. Mr. Simpson excluded major office employment from his estimation of employment land occupied and shunned any reliance on a frictional vacancy factor.

With respect to his reliance on a frictional vacancy factor, Mr. Grimes testified that it was included in his analysis because he wanted to be conservative and prudent. In his opinion, it is the proper thing to do.

Mr. Simpson opined that Mr. Grimes should not have included a frictional vacancy factor because the inclusion of such is now eschewed by the province as an element of what it deems an acceptable methodology for determining employment land forecasting pursuant to the Growth Plan. This criticism fails on three grounds. First, Mr. Simpson acknowledged under cross-examination that a frictional vacancy factor captures reality; that the market cannot work without vacancy. If the market cannot function without vacancies, one has to wonder why the province has eschewed their

inclusion in employment land forecasting calculations. Perhaps this explains why there is no formal or approved policy stipulating what constitutes an appropriate methodology – a fact Mr. Simpson acknowledged under cross-examination.

Second, setting aside for a moment whether the inclusion of such a factor is or is not appropriate, the actual factor included and relied upon by Mr. Grimes, (i.e., 10%) was not challenged. At no point was he taken to task for relying on a number that was unrealistic; his evidence on this point stands unimpeached.

Finally, again in cross-examination when asked about work his firm, Hemson, and his colleague, Mr. Mathew, undertook recently in Durham Region, where as part of a Growth Plan conformity exercise Mr. Mathew employed a frictional vacancy factor in determining future employment land requirements, Mr. Simpson replied that (i) it would not surprise him to see such a factor included since (ii) it is a policy of his firm to use such a factor and (iii) that they will continue to use such a factor until told otherwise – which the province is in the process of doing, (see the first reason above). In the face of these inconsistencies, the Board cannot countenance Mr. Simpson's criticisms.

For the above reasons, the Board finds Mr. Grimes's reliance on and use of a frictional vacancy factor and the number he derived for that factor to be reasonable, realistic, prudent, and appropriate.

Mr. Simpson also sought to make much of what he characterized as a margin of error between the results of his analysis and those of Mr. Grimes. For the following reasons, the Board finds nothing to turn on Mr. Simpson's characterization.

First, Mr. Simpson estimated a margin of error of 5 to 15 % between his and Mr. Grimes's results. During his cross-examination, however, Mr. Simpson admitted that his estimation of a margin of error was such that it could apply either way. Put in different terms, Mr. Simpson was not simply alleging a margin of error in one and only one direction – that Mr. Grimes's numbers could be off by 5 to 15% thus rendering the situation not as rosy as Mr. Grimes concluded it to be. Rather, his admission points to a possibility that his own assessment could be off by the same margin thus rendering the situation to be even rosier than Mr. Grimes concluded it to be. Accepted planning principles include not over-designating land for any particular use.

Second, accepting the presence of some margin of error, Mr. Grimes's inclusion of a frictional vacancy factor and other steps consistent with a more conservative approach all serve to mitigate the possibility of any deleterious consequence resulting from miscalculation or a change in circumstances.

The above reasons confirm the Board's findings with respect to Mr. Grimes's approach and analysis.

For all of the foregoing reasons, the Board prefers the evidence of Mr. Grimes and finds that Richmond Hill maintains a sufficient supply of designated Employment lands and that a need for additional Employment lands has not been proven.

### **Disposition**

Based on the totality of the foregoing analysis and findings, the appeals filed by Manson, Upper Canada, Clearpoint, and Belmont are allowed, in part, given the Board's findings with respect to Issue Nos. 4, 5, and 6. The Land Owners sought the Board's approval of Exhibits N6 (Schedule A–Land Use–North Leslie Secondary Plan) and N79A (Land Owners' Plan [policy text]) and the Board will provisionally approve those Exhibits, subject to its findings and comments regarding Issue Nos. 4, 5, and 6. The Board will withhold its Order so as to enable the Parties and counsel to confer for the purpose of producing versions of Exhibits N6 and N79A that reflect the Board's decision herein.

Finally, separate from the matter before the Board in this rehearing, the Board is cognizant of the fact that an Order implementing the balance of the 2006 decision remains outstanding. The Parties and counsel are directed to also confer on presenting a final document that reflects the totality of the of the Board's decisions concerning the North Leslie Secondary Plan.

Upon receipt of all of the foregoing, the Board will issue an Order approving the North Leslie Secondary Plan in its totality.

The Board may be spoken to if necessary.

“James R. McKenzie”

JAMES R. MCKENZIE  
VICE-CHAIR