Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: April 17, 2025 **CASE NO(S).:** OLT-23-000726

PROCEEDING COMMENCED UNDER the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended and in the matter of an Arbitration

Claimant:	2090396 Ontario Limited
Respondent:	Regional Municipality of York
Description:	Determination of compensation
Subject:	Market Value, Disturbance Damages and/or Injurious Affection
Property Address/Description:	1500 Centre Street, Vaughan
Municipality:	Regional Municipality of York
OLT Case No.:	OLT-23-000726
OLT File No.:	OLT-23-000726
OLT Case Name:	2090396 Ontario Limited v. Regional Municipality of York

Heard: January 13 to 24, 2025, by Video Hearing

APPEARANCES:

Parties	**Counsel**
2090396 Ontario Limited ("Claimant")	Mark R. Flowers Andrew Valela
Regional Municipality of York ("Region")	Michael Grant Lou Fortini

DECISION DELIVERED BY JEAN-PIERRE BLAIS AND FINAL ORDER OF THE TRIBUNAL

INTRODUCTION

Link to the Final Order

[1] The Claimant brings a claim of compensation arising from the expropriation by the Region of portions of the property located on the northeast corner of the intersection of Centre Street and Dufferin Street in the City of Vaughan ("City"), known municipally as 1500 Centre Street ("Subject Property") pursuant to the *Expropriation Act*, R.S.O. 1990, c. E.26 ("Act"). The Claimant is the sole owner of the Subject Property. It was vacant and unimproved at the time of expropriation and remains so today.

[2] Through the registration of Expropriation Plan YR2275226 ("Expropriation Plan") on April 7, 2015, the Region expropriated:

a. A fee simple interest in the southern portion of the Subject Property along the north side of Centre Street, with a depth of approximately 9.5 metres and an area of 437.7 square metres (4711.4 square feet), designated as Part 2 on the Expropriation Plan; and,
b. A five-year temporary easement over Part 1 on the Expropriation Plan comprising 53.6 square metres (577 square feet).

[3] The purpose of the expropriation is to accommodate road improvements that enabled the construction of a bus rapid transit ("BRT") system, called the vivaNEXT rapidway, within a dedicated right-of-way in the centre of the travelled portion of Centre Street. The Parties specifically agree that the purpose of the expropriation of the Subject Property "was for implementing road and intersection improvements along Highway 7, Centre Street and Bathurst Street, including associated local roads, and to

provide designated lands for the vivaNEXT transit system and works ancillary thereto" ("Scheme")[1].

[4] The taking of the fee simple interest reduces the size of the Subject Property by approximately 24% by reducing the original area from 1805 to 1367 square metres.

[5] In addition to interest and costs, the Claimant seeks an Order of compensation as follows:

a. $857,493, representing the market value of the fee simple interest, based on a rate of $182 per square foot;
b. $1,502,067, representing damages for injurious affection to the market value of the remainder portion of the Subject Property; and,
c. $45,095, representing the market value of the temporary interest expropriated by the Region as a temporary easement.

[6] The Parties agree that the valuation date is May 1, 2015 ("Valuation Date").

POSITION OF PARTIES

[7] The Claimant submits that the highest and best use of the Subject Property, absent the expropriation, was a 12-storey mixed-use residential/commercial development ("Pre-Expropriation Concept"). The Pre-Expropriation Concept, sometimes referred to at the Hearing as 'Development Concept 1', envisages a building with 121 units, a density of 6.19 FSI, a gross floor area of 11,754 square metres, a gross buildable area on the ground floor of 1204 square metres, commercial space at grade, and a parallelogram-built form.

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[1] Agreed Statement of Facts, paragraph 4.

[8] The Claimant advances that its Pre-Expropriation Concept is reasonably probable use of the land based on the four established criteria considered sequentially:

1) legal permissibility;
2) physical possibility;
3) financial feasibility; and
4) maximum profitability.

[9] Conversely, the Region submits that the highest and best use of the Subject Property, both before and after expropriation, is the same, namely a low-rise commercial development. This use is set out in the architectural drawings prepared by its expert in architecture and design, which was informed by the expert evidence of the Region's expert in land use planning. The Region argues that the Pre-Expropriation Concept was not reasonably probable use as the Claimant failed to establish that the four criteria have been met. Amongst other things, the Region argues that the highest and best use in a pre-expropriation scenario cannot be the Pre-Expropriation Concept because:

1) the screening out of the Scheme requires the elimination from consideration of all land planning and urban design policies that were "influenced by" the Scheme; and,
2) the conveyancing of any amount of land through dedication to the Region, as a condition of site plan approval, would make the Pre-Expropriation Concept unconstructible.

[10] With respect to compensation, the Region contends that fair market value proposed by the Claimant is excessive. Given its position that the highest and best use of the Subject Property, both before and after expropriation, are the same, the Region maintains that there are no damages giving rise to a claim for injurious affection.

[11] The Region's ultimate position with respect to compensation is that the Claimant is entitled to:

a. $376,920, representing the market value of the fee simple interest, based on a rate of $80 per square foot;
b. $12,348, representing the market value of the temporary easement; and,
c. Costs and interests in accordance with the Act.

[12] The Parties agree on the following points:

a. The amount awarded by the Tribunal ought to be reduced by an amount of $295,100, which is the amount paid by the Region to the Claimant in July 2016 under section 25(1)(b) of the Act;
b. The highest and best use of the Subject Property **after** expropriation is a low-rise commercial development; and,
c. The market value of the Subject Property, assuming a low-rise commercial development, is $80 per square foot.

EVIDENCE

[13] The Tribunal heard and considered the evidence of the following individuals:

a. Antonio (Tony) Volpentesta, a partner with Bousfields Inc., who was retained by the Claimant and was qualified by the Tribunal to provide expert opinion evidence in land use planning;
b. Richard Witt, a principal with BDP Quadrangle, who was retained by the Claimant and was qualified by the Tribunal to provide expert opinion evidence in architecture and urban design;
c. Alexander Fleming, an associate with C.F. Crozier & Associates Inc., who was retained by the Claimant and was qualified by the Tribunal to provide expert opinion evidence in transportation planning and engineering;

d. Mark Conway and Matthew Bennett[2], both partners with N. Barry Lyon Consultants Limited, who were retained by the Claimant and were qualified by the Tribunal to provide expert opinion evidence in real estate analysis and development feasibility;
e. Larry Bedford, a principal with Larry Bedford & Associates Ltd., who was retained by the Claimant and was qualified by the Tribunal to provide expert opinion evidence in real estate appraisal;
f. Calvin Mollett, a Program Manager of Development Engineering at the Region, who testified for the Region as a non-expert factual witness;
g. Nick McDonald, President of Meridian Planning Consultants, who was retained by the Region and was qualified by the Tribunal to provide expert opinion evidence in land use planning;
h. Joshua de Boer, a professional engineer with Paradigm Transportation Solutions Limited, who was retained by the Region and was qualified by the Tribunal to provide expert opinion evidence in transportation planning and engineering;
i. Rod Rowbotham, CEO and President at Onespace Unlimited Inc., who was retained by the Region and was qualified by the Tribunal to provide expert opinion evidence in architecture;
j. Craig Ferguson, Principal at Parcel Economics Inc., who was retained by the Region and was qualified to provide expert opinion evidence in land economy and development feasibility; and,
k. Gus Dal Colle, a Partner with Antec Appraisal Group, who was retained by the Region and was qualified by the Tribunal to provide expert opinion evidence in real estate appraisal.

[14] The Tribunal also considered an Agreed Statement of Facts dated January 13, 2025, which also included Agreed Statements of Fact from the expert witnesses in the

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[2] Messrs. Conway and Bennett testified as a panel, subject to a protocol agreed to by the Parties.

areas of appraisal, land use planning, traffic and transportation, and real estate market/development feasibility.

[15] At the request of the Region, the Tribunal conducted a site visit of the Subject Property on January 8, 2025, accompanied by Counsel for both Parties.

ISSUES

[16] The issues in this proceeding are as follows:

a. Was the Claimant's Pre-Expropriation Concept a reasonably probable use of the land? Specifically, did the Claimant's Pre-Expropriation Concept meet the criteria of:
    i. Legal permissibility?
    ii. Physical possibility?
    iii. Financial feasibility?
    iv. Maximum profitability?
b. What impact, if any, does screening out of the Scheme have on the claim?
c. What impact, if any, does potential land dedication have on the claim?
d. Considering the reasonably probable use of the land, what compensation is to be awarded?

ANALYSIS

[17] The aim of the Act is to grant full and fair compensation to the person whose land has been expropriated. The taking of land by an expropriating authority triggers the right to compensation, with the presumption that if land is expropriated, full and fair compensation should be paid.[3]

[18] The Tribunal must undertake its analysis in two fundamental steps.[4] First, the Tribunal must determine the highest and best use of the Subject Property at the time of expropriation. Second, the Tribunal must fix the compensation to be awarded to the Claimant based on such use.

WAS THE CLAIMANT'S PRE-EXPROPRIATION CONCEPT REASONABLY PROBABLE USE OF THE LAND?

[19] It is not in dispute that the highest and best use of a property is defined as the reasonably probable use of land, and that the four established criteria – legal permissibility, physical possibility, financial feasibility, and maximum profitability – must be satisfied and considered sequentially.[5]

(i) Legal Permissibility

[20] When considering the test of legal permissibility, the Tribunal must not only consider those uses which are permitted as of right under the applicable zoning, but also uses which might be permitted if a zoning or policy change were granted. However,

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3 *Toronto Area Transit Operating Authority v. Dell Holdings Ltd*. [1997] 1 SCR 32, paragraphs 22 and 33.

4 *Farlinger Developments Ltd. V. East York (Borough),* 1975 CanLII 587 (ONCA), page 62.

5 *1353837 Ontario Inc. v. City of Stratford*, 2022 ONSC 6347 (Div. Ct.), paragraph 21.

it must be demonstrated that a zoning or policy change is more likely than not. The potential change must be more than possible; it must be probable. As the Ontario Court of Appeal stated there must be "a reasonable expectation that such rezoning will take place."[6]

[21] The Claimant admits the Subject Property had a commercial zoning as of the Valuation Date. The Subject Property was zoned C6 (Highway Commercial Zone) by the City under By-law No. 1-88, consolidated as of January 1, 2012. This designation permitted the following uses:

- Automobile gas bar;
- Automobile service station;
- Car agency rental;
- Car wash;
- Eating establishment, convenience eating establishment, and take-out eating establishment, provided such uses are operated in conjunction with an automobile service station;
- Hotel/motel; and,
- Public garage.

[22] As of the Valuation Date, the Subject Property was subject to the policies of the Vaughan Official Plan Amendments 210 and 672 ("OPA 210" and "OPA 672" respectively). The City had proposed to designate the Subject Property "Community Mixed-Use" by Schedule 13 of the Vaughan Official Plan 2010 ("VOP 2010"). However, this designation was not in effect as that designation was under a site-specific appeal before the Ontario Municipal Board ("OMB").

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6 *Farlinger Developments Ltd. V. East York (Borough),* 1975 CanLII 587 (ONCA), page 64.

[23] Thus, residential uses were not permitted under the City's zoning, nor were such uses contemplated pursuant to OPAs 210 and 672. Accordingly, an amendment to the City's Official Plan ("OP"), a zoning by-law amendment ("ZBA") and a site plan application would have been required to develop the Subject Property in the form contemplated in the Pre-Expropriation Concept.

[24] The Claimant submits, however, that permission for a residential use would reasonably be expected given the policies in place at the Valuation Date. Mr. Volpentesta testifies that the relevant provincial planning policy context at the time of the expropriation supported the development of a mid-rise mixed-use building. His opinion relies on Provincial Policy Statement 2014 ("PPS 2014") and the Growth Plan for the Greater Horseshoe 2006 ("Growth Plan 2006") which he opines support densification, efficient land use and intensification, particularly in areas well served by public transit. In particular, he is of the opinion that the Subject Property was in an Intensification Area and along an Intensification Corridor, as set out in Growth Plan 2006, and intensification should be directed to such areas.[7]

[25] The OP in effect at the Regional level on the Valuation Date was the 2010 Regional Official Plan ("ROP 2010"). Mr. Volpentesta testifies the following with respect to the ROP 2010:

a. The portion of Centre Street abutting the Subject Property is designated as a Regional Corridor on Map 1 of the ROP 2010, and therefore should be the primary location for the most intensive and the greatest mix of development in the Region[8];
b. The Subject Property has excellent access to frequent transit as of the Valuation Date as it was served by York Region Transit ("YRT") Route 77,

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7 Policy 2.2.3(7) and 2.2.5(1) of the Growth Plan 2006.

8 Policies 5.4.1 and 5.4.28, ROP 2010.

Highway 7, YRT Route 105 and Viva Purple, a BRT operating in mixed traffic;

[26] The OP for the City in effect at the Valuation Date was the VOP 2010. Mr. Volpentesta testifies the following with respect to the VOP 2010:

a. The Subject Property is identified as being a Regional Intensification Corridor on Schedule 1 of the VOP 2010, thus identifying it as a location for the most intensive and greatest mix of development for the City[9]; and,
b. The Subject Property is located along two Regional Arterial Roads under Schedule 9 of the VOP 2010.

[27] Mr. Volpentesta relies further on the Thornhill Centre Street Area Land Use Plan adopted by the City in 2013 ("Thornhill Plan") which in his view reflects the evolving context of the Centre Street Corridor.[10] Under this Plan, properties on the corner of Centre Street and Dufferin Street would be defined with more intense development and high quality architecture, would serve as landmarks or gateway entry point, and feature the tallest buildings. Similarly, he notes that the 2013 Centre Street Urban Design Guidelines ("2013 UDGs"), applicable to the Centre Street Corridor, encouraged higher density, mixed-use development at the intersection.

[28] Given Mr. Volpentesta's land use planning opinion, Mr. Witt, the Claimant's architecture and design expert, advances the Pre-Expropriation Concept which aligned with the setback, stepback, and separation distances set out in the Thornhill Plan. Mr. Witt testifies that the Pre-Expropriation Concept represents a realistic and appropriate development proposal from a built form and urban design perspective.

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9 Policy 2.2.5.11, VOP 2010.

10 Policy 12.10.2.1(t), Thornhill Plan.

[29] Based on the policy documents in force at the Date of Valuation, as well as the emerging policy context, Mr. Volpentesta's professional opinion is that the mid-rise mixed-use building proposed by Mr. Witt would be appropriate on the Subject Property at the time of expropriation and that obtaining necessary approvals would have been reasonably probable.

Screening Out the Scheme

[30] On the issue of legal permissibility, the Region argues that screening out the Scheme should result in the elimination of planning policies relied upon by Mr. Volpentesta as those policies were "influenced by" the Scheme.[11]

[31] In determining the market value of land, section 14(4)(b) of the Act directs the Tribunal not to take account of any increase or decrease in the value of the land "resulting from" the Scheme under which the land was expropriated. This is commonly referred to as "screening out the Scheme."

[32] The Region states as follows in its Written Closing Submission, dated February 28, 2025:

> Screening out of the Scheme requires the elimination from consideration of all land use planning and urban design policies, and the increased density or "urban" built form that they justify, that were influenced by the imminent development of the dedicated lane bus rapid transit system in the vicinity of the Subject Property as at the Valuation Date.[12] [Emphasis added]

[33] For the Region, the Tribunal should not rely on planning documents relied upon by the Claimant, including specific designations, plans, policies, and guidelines. Accordingly, for the Region, screening out the Scheme requires the elimination from

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[11] The Region also argues that the screening out of the Scheme for other purposes. This will be dealt with below *seriatim*.

[12] Region's Written Closing Submission, February 28, 2025, paragraph 27.

consideration of all land use planning and urban design policies, and the increased density or urban built form that they justify, that were “influenced by” the imminent development of the BRT system in dedicated lanes in the vicinity of the Subject Property on the Valuation Date.

[34] The Region submits that the Scheme began influencing the City’s and the Region’s land use planning and urban design policies in or around August 2005 at the latest, *i.e.*, approximately 10 years before the expropriation, when the Region published the Environmental Assessment Report which identified the portion of Centre Street that abuts the Subject Property “as part of the ‘preferred alignment’ of the Scheme”.[13] The Region, based on the evidence of Mr. McDonald, submits that the designation of Centre Street as a rapid transit corridor generally, and as a Regional Corridor under the ROP 2010, was directly “influenced by” the Scheme. Furthermore, the Region argues that the Tribunal must also ignore policies in the ROP 2010 that rely directly on that designation, as well as the following policies that also rely directly on that designation including:

a. The Region’s 2006 Transit-Oriented Development Guidelines;
b. The designation of Centre Street as a Primary Intensification Corridor, a Regional Transportation Corridor (Schedule 1) and a Regional Rapid Transit Corridor (Schedule 10) in the VOP 2010;
c. The designation of Centre Street as a Regional Intensification Corridor in the 2014 consolidation of the VOP 2010;
d. The Thornhill Plan;
e. The City’s 2013 UDGs; and,
f. The City’s Centre Street Streetscape Plan 2013 (“Streetscape Plan”).

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[13] Region’s Written Closing Submission, February 28, 2025, paragraph 28. This appears to contradict the findings in *413464 Ontario Limited v. Windsor (City),* 2023 CarswellOnt 4857, at paragraph 44(p).

[35] The Claimant acknowledges that its evidence relies on these policy documents in support of its position that the highest and best use of the Subject Property before expropriation is the mid-sized mixed-use development concept. The Claimant submits, however, that the Region misapprehended the legal test that determines whether a regulation's effect on property value should be ignored and argues that the test is not premised on whether the regulation is "influenced by" the Scheme.[14]

[36] The Tribunal agrees with the Claimant that the Region is misinterpreting the test with respect to screening-out the Scheme, and consequently presents a substantial overreach on the correct approach to be taken.

[37] The Supreme Court of Canada has established that the test to decide whether a regulation had an effect on land value and should be ignored is "whether the enactment was made with a view to the expropriation or, conversely, [whether it] was an independent enactment".[15] Although the decision in *Lynch* related to legislation in force in a Province other than Ontario, the reasoning behind the Court's ruling is applicable to the case at hand. Indeed, the decision of the Ontario Court of Appeal in *Windsor (City) v. Paciorka Leasehold Limited*, rendered pursuant to the Act, equally supports the position of the Claimant.[16]

[38] The Tribunal is not persuaded that the designations, policies, and policy documents relied upon by the Claimant, including those listed above, were made with a view to the expropriation. There is no clearly established connection or direct relationship between the Scheme and those designations, policies, and policy

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14 Written Submission of the Claimant, February 28, 2025, paragraph 36.

15 *St.John's (City) v. Lynch* 2024 SCC 17 (CanLII), at paragraph 46. See also *Pointe Gourde Quarrying and Transport Co. v. Sub-Intendent of Crown Lands*, [1947] A.C. 565 (P.C.).

16 2012 CanLII 431 (ONCA), paragraph 27.

documents (especially the designation of Centre Street as a rapid transit corridor generally and as a Regional Corridor under the ROP 2010).

[39] First, the ROP 2010 does not expressly stipulate that Regional Corridors must have a BRT with dedicated lanes. On the Valuation Date, there was already a BRT running on Centre Street in the form of the Viva Purple route, which circulated in mixed traffic. It was classified as a BRT. A reference to rapid transit in the ROP 2010 is a reference to transit that existed on the Valuation Date.

[40] Second, the Tribunal agrees with the Claimant when it states in its Reply Written Submissions that "the Region [has not] cited any legal authority which indicates that any planning or urban design policies which are "influenced by" the Scheme should be ignored in assessing the market value of expropriated property."[17] The Tribunal notes that the Region steadfastly uses the phrase "influenced by" throughout its oral and written arguments.

[41] Third, the ROP 2010 and the VOP 2010 are policy documents that were required at the relevant time under section 16 of the *Planning Act*.[18] They have Region-wide and City-wide scope. Thus, they are general in scope and do not target specific properties and corridors. They were made with a view towards managing overall growth at the level of the Region and the City rather than for the purpose of expropriation. Those policy documents are independent enactments that fall short of satisfying the test in the *Lynch* and *Paciorka* decisions. Speaking for the Court, Martin J. wrote that "if a land use restriction is enacted as part of a city-wide or province-wide policy, or does not target specific properties, that may indicate that the restriction is an independent enactment."[19]

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17 Claimant's Reply Written Submissions, paragraph 10.

18 Unless otherwise indicated, all references in this Decision to the Planning Act is a reference to historical version of that legislation as it existed at the time of the expropriation. See Joint Document Brief, Volume 6.

19 *St. John's City v. Lynch*, 2024 SCC 17 (CanLII), paragraph 55.

[42] Fourth, while Mr. Volpentesta speculated that there might have been a connection between the Scheme and the designation of Centre Street as a Rapid Transit Corridor in the Region's 2009 Transportation Master Plan ("Master Plan"), the Tribunal finds his evidence to be mere conjecture. The Master Plan was adopted six years before the expropriation. There is a considerable evidentiary gap to create a clear and genuine line of causation or connection, expressed unambiguously, in a policy document adopted by the Region or the City, with the Scheme. The link between the designations, the policies, and the policy documents the Regions wishes to screen out are far too tenuous, oblique, and remote to warrant the conclusion pressed by the Region.

[43] The Tribunal notes that the explicit goal of the Thornhill Plan was to improve the Centre Street Corridor, shown on Map 12.10.A, as an attractive, pedestrian-friendly, and transit supportive corridor through the application of a comprehensive, coordinated, and integrated approach. Map 12.10.A illustrates, without further explanation or definition, a rapidway station on Centre Street, at the corner of Dufferin Street. It would appear from concurrent documents, such as UDGs or the Streetscape Plan, that these three City-adopted documents refer to a BRT in dedicated lanes (hereinafter the "Three Documents"). Mr. Volpentesta agrees that these Three Documents were "influenced by" the Scheme.

[44] However, as noted above, the fact that a document may have been "influenced by" a Scheme does not mean that they should be screened out. Those Three Documents "neither contemplated nor required the taking".[20] The Tribunal agrees with Mr. Flowers, Counsel for the Claimant, who states: "[t]he law is clear that there must be a more direct relationship between the enactment and the subsequent expropriation,

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20 *St. John's City v. Lynch*, 2024 SCC 17 (CanLII), paragraph 52.

and something more than mere “influence” is required”.[21] The transit-supportive vision in these Three Documents could have been implemented without the expropriation of the Subject Property. Centre Street was already a transit-supported corridor due to the presence of the VIVA Purple BRT. A BRT in dedicated lanes may have been constructed without the expropriation of the Subject Property.

[45] Accordingly, the Tribunal finds that, as a factual determination, the land use policies in place on the Valuation Date, which are relied upon by Mr. Volpentesta to support the Pre-Expropriation Concept, need not be screened out for the purpose of determining compensation. This is especially true for the upper-tier policy documents such as the PPS 2014, the Growth Plan 2006, and the ROP 2010.

[46] In any event, even if the Region was hypothetically successful in its screening out argument, including with respect to the Three Documents, the Tribunal finds that there is otherwise policy support for Mr. Volpentesta’s conclusions for the following reasons:

a. Under Policy 5.4.2 of the York Region OP 1994, Centre Street was already identified as an Urban Corridor in Map 5 which provided support for the use of the Subject Property for a mid-rise mixed-use development independently of the subsequent Regional Corridor designation in the ROP 2010;
b. On cross-examination, Mr. McDonald testified that it would be a reasonable conclusion that the Subject Property would still be identified as a Primary Intensification Corridor in Schedule 1 of the VOP 2010;
c. Pursuant to the VOP 2010, Primary Intensification Corridors fall within the meaning of an Intensification Area. Such Intensification Areas were key to residential intensification and places to accommodate intensification in the

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21 Reply Written Submissions of the Claimant, paragraph 11.

form of mid-rise development under both the VOP 2010 [22] and the Growth Plan 2006[23]; and,

d. The level of service of the Viva Purple BRT which existed at the Valuation Date would have met the definition of higher order transit in the Growth Plan 2006.

[47] Thus, under that alternative hypothesis, obtaining permission for a mid-rise mixed-use development would also have been reasonably probable under those policies. Simply put, the Tribunal finds that the Region's screening out argument cannot erase other pre-expropriation policy objectives which favoured intensification and urbanization in transit-supported areas like the Subject Property.

Region's other Principal Arguments on Legal Permissibility

[48] Based on Mr. Volpentesta's land use planning opinion, Mr. Witt, the Claimant's expert witness in architecture and urban design, proposes the Pre-Expropriation Concept. The Region argues that Mr. Witt's concept would not have received planning permission for three principal reasons:

1) the Subject Property is too small to accommodate Mr. Witt's design concept due to land dedication;
2) the design concept fails to provide a landscaping strip; and
3) the design concept raises insurmountable transportation issues.

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22 VOP 2010, Policies 2.2.5 and 2.2.1.1

23 Exhibit 1, Joint Document Book, Volume 2, page 348, definition of « Intensification Area".

Land Dedication

[49] Throughout the proceeding, the Region argues that the Subject Property was small, indeed too small, to accommodate the Claimant's Pre-Expropriation Concept, particularly when one considers that a land dedication would have been required, in its view, in the development approval process. The Region asserts that the construction of the Pre-Expropriation Concept would not have been possible because, as a condition of approval of a site plan application, the Region would have required and obtained conveyancing from both Dufferin Street and Centre Street for the purposes of road widening, as well as a daylight triangle at the northeast corner of the intersection. This conveyancing, commonly known as land dedication, could have amounted, in its submission, to 30% of the area of the Subject Property prior to expropriation.

[50] The Region also asserts that the land dedication would have been consistent with the PPS 2014 and would have conformed with the Growth Plan 2006 due to policies requiring the Region to ensure the rollout of transportation infrastructure.

[51] Sections 41(8) and 41(9) of the *Planning Act*, as it existed at the time of the expropriation, provides that, as a condition of site plan approval, a municipality may require the owner of the land to convey part of the land to the municipality to the satisfaction of and at no expense to the municipality for the purpose of road widening **provided two conditions are met, namely**:

a) the highway to be widened is shown on or described in the OP as a highway to be widened; and
b) the extent of the proposed widening is shown and described in the OP**.**

[52] For the Tribunal, it follows that a land dedication could not be achieved against the wishes of a developer unless the requested dedication falls within the four corners of what is permitted under the land use planning legislation. There is no free rein. The extent of the proposed widening must be "shown and described" in a municipality's OP.

Indeed, under sections 41(12) and 41(12.1) of the *Planning Act*, the landowner/developer can "refer" a requirement imposed as a condition of approval to the OMB, the predecessor of the Tribunal, for a final decision.

[53] Land dedication is an extraordinary power conferred on municipalities to take land for free. Thus, it should be interpreted strictly, applied narrowly, and construed in favour of the landowner in cases of doubt. The Region's own ROP 2010 states that land dedications must be "in accordance with the Planning Act."[24]

[54] It is apparent to the Tribunal that the public policy consideration underpinning section 41 *Planning Act* is to allow individuals or entities, acting prudently, knowledgably, and for self-interest, to know the scope and extent of their rights. It is simply the rule of law in action.

[55] Although a municipality may seek to obtain land dedication, and a claimant has the overall burden of establishing the reasonably probable use of land, based on the four established criteria, namely legal permissibility, physical possibility, financial feasibility, and maximum profitability, a municipality cannot simply make an assertion, in a compensation proceeding following an expropriation, that it would be entitled to a land dedication without establishing that such a dedication is in line with the relevant OP and that the OP is in line with the applicable land planning legislation.

[56] Map 12 of the ROP 2010 identifies the regional planned street width for both Dufferin Street and Centre Street as being "up to 45 metres". Policy 7.2.47 of the ROP 2010 underscores that Map 12 represents the <u>maximum</u> street widths required and includes <u>all elements</u> in the right-of-way, namely "vehicle lanes, turning lanes, intersections, sidewalks, bicycle lanes, high-occupancy vehicle lanes, public transit lanes and transit facilities […] boulevards, landscaping and public streetscape

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[24] Region Official Plan, 2010, Policy 7.2.49.

enhancements". The street width is not the same as the travelled or constructed portion of the roadway.

[57] The Claimant argues that the use of the word "may" at Policy 7.2.49(a) of the ROP 2010 rather than "shall", indicates that dedications are not compulsory. Moreover, for the Claimant, the use of the phrase "required as a result of" in that same Policy, indicates that each development proposal must be assessed based on whether "the development itself triggers the need for additional land." Specifically, Policy 7.2.49(a) requires that a nexus be established "to new growth and development, changes in use that generate significant traffic volumes or additions that substantially increase the size or usability of buildings or structures." The Tribunal agrees that this is a reasonable and appropriate interpretation of the ROP 2010.

Land Dedication along Centre Street

[58] With respect to Centre Street, the Region submits that the Centre Street right-of-way was 37.5 to 38.5 metres wide at the relevant portions of that Street. The Region argues that the Subject Property's lot lines were 14.9 to 15.2 metres from the "centre line of construction." Mr. Mollet, the Region's factual witness, testifies that the reference point from which dedications are measured, is the "centre line of construction" and that, if the maximum planned right-of-way is 45 metres, then the owner has to convey lands to meet half of that planned maximum, *i.e.,* 22.5 metres, regardless of the total width of the right-of-way.

[59] The Region argues that "any development of the Subject Property, a vacant parcel at the Valuation Date […] would have clearly constituted 'new growth and development'" and asserts that improvements to the boulevards between the travelled

portion of Centre Street and the lot lines of the Subject Property would have been required because of the development. [25]

[60] The Tribunal finds, however, that the Region's assertion is not supported by the evidence that the Claimant's Pre-Expropriation Concept required any road widening. From the cross-examination of Mr. Mollett, as well as from his Witness Statement, Mr. Mollett had not assessed whether road widening was required. Instead, for him, "it is pretty obvious that a widening would be required".[26] Although he testifies that the existing boulevards would not have been of sufficient width "to even service the pedestrians generated by this particular development", he admits on cross-examination that it was an existing situation at the time of the expropriation.[27]

[61] Mr. Mollet further concedes on cross-examination that the phrase "centre line of construction" does not appear anywhere in the ROP 2010 including in Policy 7.2.49. Mr. McDonald, the Region's land use planning expert, agreed with this conclusion.

[62] While Mr. Mollett testifies that in the field of road design engineering or from the perspective of a road designer, the "centre line of the street" would be understood to mean "centre line of construction." The Tribunal rejects his views on this point. First, the Tribunal notes that Mr. Mollett was a factual witness and was not qualified to provide expert opinion evidence on any subject. His status should not be inadvertently elevated. Second, Mr. Rowbotham, one of the Region's expert witnesses, testifies that he understands the applicable point of reference for a road widening dedication to be the centre line of the full right-of-way. Third, the addition of phrase "centre line of construction" to the Region's new OP in 2022 bolsters the interpretation that, at the

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25 Written Closing Submissions of the Respondent, February 28, 2025, paragraphs 59 and 60.

26 Transcript, January 20, 2025, pages 39-40.

27 Transcript, January 20, 2025, page 40.

Valuation Date, the centre line of the right-of-way was not the centre line of construction.

[63] Consequently, a significant doubt is cast on the Region's evidence, presented by Mr. Mollett, on the question of land dedication as it relies on this erroneous reference to a "centre line of construction." Moreover, the "centre line of construction" is not shown and described in the ROP 2010, as legislatively required under section 41(9) of the *Planning Act*. Based on the evidence in this case, the Region's dedication requirements are ambiguous and unintelligible.

[64] The Tribunal also finds that that it would be reasonably probable that the Region would not have been successful to obtain the land dedication it claims it could have obtained, without compensation, along Centre Street, and would unlikely have prevailed if the matter had been debated before the OMB pursuant to section 41(12) of the *Planning Act*, for the following reasons:

a. The use of "may" and "up to" in the ROP 2010 indicates that the Region need not take the maximum amount of land, without compensation;
b. Nothing in the PPS 2014 requires a full 45-metre right-of-way, *i.e.,* a right-of-way of less than that width would still achieve consistency with the policies in that Statement;
c. Nothing in the Growth Plan 2006 or the VOP 2010 requires a 45-metre right-of-way, *i.e.,* a right-of-way of less than that width would still achieve conformity with the policies in the Growth Plan 2006 and the VOP 2010;
d. The 2013 UDGs depict that a desired streetscape can be designed with a right-of-way of 28 metres, and still accommodate generous boulevards and landscaping, as well as sidewalks and bike lanes;

e. Mr. Mollett admitted that in 2015, other than the Scheme, the Region had not identified any future planned infrastructure project that would have required additional land[28];

f. The Region has provided little, if any, evidence that the widening would have been "**required** as a result of" the Claimant's proposed hypothetical development, which is a precondition to require land dedication under Policy 7.2.49(a) of the ROP 2010; and,

g. The evidence of Mr. de Boer is that the proposed development would only result in a 1% increase in traffic volume which suggests that no widening would be required.

[65] Even if Mr. Mollett would have been the person who reviewed all development applications in 2015, this does not give him license to successfully request land dedications that go beyond what is permitted in law, especially given the significant economic consequences for a proponent of a development. Mr. McDonald testifies that an excessive land dedication request might even scuttle a proposed development.[29] The approach the Region appears to take with respect to dedication is disclosed in Mr. McDonald's evidence in chief when he testifies:

> […] the amount of land affected by dedication is not a consideration [for the Region]. Having said that, and to be fair, there may be conservations that are held, you know, through a development application review process, that do take into account, but the starting point of the Region is always to take the maximum, wherever possible. […] there may be conversations that result in less land being taken, but we are not dealing with a development application here, we are in the abstract. And it would be very speculative. So, all I can say is that the Region's position is always to start with the maximum amount they can take, because they are under pressure to deliver for their taxpayers […][30] [Emphasis added]

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28 See also Witness Statement of Calvin Mollett, paragraph 16.

29 Transcript, January 20, 2025, pages 154 to 156.

30 Transcript, January 20, 2025, page 153.

[66] This is troubling for the Tribunal, as the Region should not be seeking to take the maximum dedication outside what is permitted under the legal framework. Nothing in the legislation dictates that an expropriated landowner should have their economic interests negatively affected so that the general taxpayer base could benefit. The Tribunal agrees with Counsel for the Claimant that "it would be unfair for the sole burden of what the Region is acknowledging is a public benefit that benefits the broader residents of the Region of York, for that burden to fall solely on the owner of one particular property […] the owner of 1500 Centre Street."[31]

[67] Mr. Mollett's evidence is also troubling because he admitted that there were criteria that the Region relies upon to determine if a reduced area for land dedication is warranted. The Tribunal is not persuaded that these criteria are "shown or described" in the ROP 2010, as required under the planning legislation, and appear to be based solely on his discretion or on the discretion of other City staff or officials.[32] By contrast, the ROP 2010 provides some exceptions related to such things as historic buildings or archeological features.

[68] In this case, a reference to the OMB would have been likely as the Region's evidence establishes that it would seek a maximum land dedication representing 30% of the area of the Subject Property prior to expropriation, which is greater than the area that it expropriated. The hypothetical land dedication would likely have completely frustrated the proposed development and would highly likely have given rise to a reference to the OMB, which the Tribunal finds would likely have been successfully litigated by the Claimant.

[69] The Tribunal is also not persuaded by the Region's argument that it had successfully obtained land dedications in the vicinity of the Subject Property, particularly

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31 Written Submissions of the Claimant, February 28, 2025, paragraph 25.

32 Witness Statement of Calvin Mollett, paragraphs 15 and 26.

at 1450 Centre Street and 7803-7815 Moneypenny Place. The relevant site plan agreements related to pure land use planning matters and were not in the context of an expropriation proceeding. Thus, they are not particularly probative. In a land planning context, a developer must consider many complex points in its discussion with a municipality. Agreeing to a land dedication that otherwise might not strictly align with the legal framework for land dedications may be part of the *quid pro quo* negotiations with municipalities to achieve other outcomes which may very well be more valuable to the developer.

[70] In its final Written Submission, the Region suddenly invited the Tribunal to determine, in the alternative, that the Region would have been entitled to dedications of a lesser area than the maximum.[33] The Tribunal rejects this approach as if flies in the face of the evidence and submissions of the Region throughout the proceeding which was predicated on a maximum land dedication.[34] Counsel for the Region insisted in his closing oral arguments that the Region's consistent practice is to request maximum width. No Party explored, during the evidentiary stage, the impact of a lesser land dedication of the Subject Property along Centre Street on the Pre-Expropriation Concept because this was simply not the position advanced by the Region. The Tribunal agrees with the Claimant's assertion that the Region and the Region's witnesses treated this as an "all or nothing" issue. The evidence proffered by the Region leaves the Tribunal with no probative evidence to assess whether a lesser land dedication, of unspecified size, would have had an impact on the criteria of legal permissibility specifically, and the reasonable probability of the Claimant's submitted highest and best use generally. The Tribunal cannot just speculate on the size of this

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[33] Written Closing Submissions of the Respondent, February 28, 2025, paragraph 68.

[34] Opening Statement of the Region, Transcript, January 13, 2025, page 52; see also reference to 29.76% in Witness Statement of Mr. McDonald, November 11, 2024, paragraph 94; and Witness Statement of Calvin Mollett, paragraph 26.

lesser dedication nor its impact on the Claimant's Pre-Expropriation Concept on such matters as physical possibility, financial feasibility, unit size, and construction costs.

[71] The cases of *Amaranth* and *Naidal*, both advanced by the Region, are also not persuasive.[35]

[72] In the *Amaranth* case, not only did the relevant OP specify a set 30-metre road allowance (*i.e.,* not "up to" as the case at hand), there was evidence before the OMB, advanced by the municipal authorities, that road improvements were likely needed and the applicant offered no counter evidence. In this case, evidence of future needs was lacking. The Region admits that it did not have a defined, formal infrastructure project planned for Centre Street other than the Scheme.[36] Mr. Mollett confirms that in 2015 the Region had not identified any future projects requiring right-of-way improvements. The issue is not the degree of precision expected for an alleged future need or when that demonstrated need would be built or executed through a future infrastructure project. In the present case, there is a complete lack of any future project.

[73] The *Naidal* case, described by Vice Chair Taylor as an "unusual" expropriation case, is distinguishable as the extent of the land dedication was clearly shown and described in the relevant OP. Whilst land dedications may be a normal aspect of land development, they must occur with the limits of the planning legislation and the relevant OP.

[74] For all these reasons and based on the evidence presented by both Parties in this proceeding, the Tribunal finds that it is reasonably probable that the Region would not ultimately have been successful in requiring a land dedication along Centre Street.

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35 *2147102 Ontario Inc. Amaranth (Township),* 2018 CarswellOnt 2491 (OMB*); Naidal Incorporated v. Owen Sound*, 2017 CanLII 66334 (ON LPAT).

36 Reply Submission of the Region, March 14, 2025, paragraph 16.

Land Dedication for a Daylight Triangle

[75] The Region submits that it was entitled to request additional dedications for a daylight triangle (sometimes also referred to as a sight triangle). Mr. Mollet testifies that the Region would have requested a dedication of 15 metre by 15 metre daylight triangle measured from the widened limits of those two streets.

[76] The evidence before the Tribunal establishes that the site already had a daylight triangle before expropriation. Moreover, Mr. Fleming, on cross-examination by the Region, confirms that the Pre-Expropriation Concept would have no effect on that existing daylight triangle, and it would continue to serve its purpose relating to safety.

[77] The Tribunal agrees with the Claimant and finds that there is no requirement "shown or described" in the ROP 2010 which is legislatively required under the *Planning Act*. There are references to daylight or sight triangle in the ROP 2010. Policy 7.2.47 states that additional widths may be required for elements such as sight triangles. However, no dimensions are shown nor are there methods described to calculate the probable dimensions, as is required under the planning legislation. The ROP 2010 is thus significantly deficient on matters of daylight triangles with respect to the statutory requirement.

[78] The case of *2097500 Ontario Limited, v. Vaughan (City),* advanced by the Region, is not binding, not persuasive, and completely unuseful.[37] This decision does not stand for any proposition with respect to light triangles as the issue was not litigated, but merely included in a condition of approval. The fact that the Region must rely on a nearly nine-year-old decision, which is not on point, suggests to the Tribunal that the

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[37] 2016 CarswellOnt 5599 (OMB).

Region was unable to find a better decision to support its position with respect to daylight triangles.

[79] For these reasons, the Tribunal finds that it is reasonably probable that the Region would not have been successful in requiring a larger daylight triangle.

Land Dedication along Dufferin Street

[80] With respect to Dufferin Street, the Claimant submits that the portion of that street adjacent to the Subject Property has a width more than 50 metres, which exceeded the planned maximum width of up to 45 metres in the ROP 2010. Thus, the Claimant argues that there could be no conveyance/land dedication on any portion of the Subject Property along Dufferin Street, without compensation. The Tribunal agrees and so finds. This is regardless of how the land dedication would be calculated and measured, *i.e.,* whether one uses centre line of construction or the centre of the right-of-way.

[81] The Tribunal finds that it is reasonably probable that the Region would not have been successful in requiring a land dedication along Dufferin Street.

Landscaping Buffer

[82] Mr. Volpentesta's and Mr. Witt's professional opinion is that the Pre-Expropriation Concept accommodates all the required setback, stepback, and separation distances.

[83] Mr. Rowbotham's evidence raises concerns that the Claimant's Pre-Expropriation Concept failed to provide a landscape buffer adjacent to the drive aisle at the north boundary of the Subject Property. However, he is unable to point to any guideline or by-law that required such a buffer.

[84] The Tribunal finds that the City's Zoning By-law No. 1-88 does not contain such a requirement, and the 2013 UDGs only contemplate such a buffer, solely as guidelines, between a new development area and an existing low-rise residential neighbourhood. The neighbouring property to the Subject Property is a commercial plaza, and not a residential neighbourhood.

Transportation Sub-Issues

[85] Three transportation sub-issues are discussed in this proceeding: (1) parking supply; (2) access to and egress from the Subject Property under Pre-Expropriation Concept; and (3) internal waste collection and loading.

Parking

[86] The Pre-Expropriation Concept contemplates 142 parking spaces on four underground levels. Specifically, it provides that there would be one parking space per unit and a further 0.17 spaces per unit for visitor and commercial parking combined.

[87] With respect to parking, both the Claimant's and the Region's experts in transportation engineering agree that the supply of spaces would have satisfied the City through a development application.

[88] The Tribunal finds that the parking component of the Pre-Expropriation Concept would not reasonably prevent a development application from being approved by the City through a site plan application process. It would have been appropriate and approvable.

Right-in/ Right-out Access

[89] Vehicular access to the development under the Pre-Expropriation Concept would be by a right-in/right-out private driveway to and from Dufferin Street, at the rear of the building.

[90] The transportation experts for the Parties disagree with respect to the permissibility of the proposed access to and egress from the site under the Pre-Expropriation Concept. Mr. Fleming, testifying for the Claimant, is of the opinion that a single right-in/right-out configuration via Dufferin Street would have been appropriate and supported by the City as part of a development application. Mr. de Boer, testifying for the Region, disagrees.

[91] First, Mr. de Boer, when considering the York Region Access Guidelines for Regional Roads (“Access Guidelines”), opines that the proposed access did not meet the four metrics under which access was assessed prior to the expropriation. Specifically, he underscores that the access point has less than the 70-metre corner distance clearance recommended in the Access Guidelines. Second, Mr. de Boer raises concerns related to additional traffic volume and an increase in U-turns along Dufferin Street.

[92] The Tribunal finds the professional opinion of Mr. Fleming to be more persuasive than the opinion of Mr. de Boer. The Access Guidelines are solely *guidelines*, are not by-laws, and must not be read as an absolute prescription. In any event, the language of Access Guidelines themselves account for circumstances when no other reasonable access could be accommodated. At 40 metres from the intersection, the proposed access is located as far away from the intersection as possible. The Tribunal is not persuaded that cross access between the Subject Property and the neighbouring commercial plaza would have been available and further notes that Mr. Rowbotham testified that he had not seen instances of shared access between a retail plaza and a residential use. Indeed, it is telling that Mr. Rowbotham’s plans, both in the low-rise and

mid-rise configurations, also depict a right-in/right out access at the northwest corner of the Subject Property.

[93] Moreover, Mr. de Boer acknowledged, under cross-examination, that the uses under the C6 zoning, which existed as of right under the pre-expropriation zoning, included automobile uses and eating establishment uses operating in conjunction with automobile uses. In addition, the Region's pre-expropriation highest and best use, namely a low-rise commercial development, would have required a similar access configuration, as illustrated on Mr. Rowbotham's alternative plans for a low-rise commercial development. The Tribunal finds that these uses would have generated vehicular movement that are not insignificant compared to the Claimant's Pre-Expropriation Concept.

[94] In the Tribunal's view, the practical reality of the Subject Property means that, in all likelihood, the location of the right-in/right-out access would have benefited from an exemption under the Access Guidelines. Moreover, Policy 7.2.53 of the ROP 2010 explicitly states that "exceptions may be made". With respect to Mr. de Boer's alleged safety concerns of having an access 40 metres from the intersection, the Tribunal notes that Mr. de Boer admitted on cross-examination that the additional traffic volume would represent less than a 1% addition to the traffic volume. Thus, the Tribunal is not persuaded that undue safety or operational problems exist.

[95] With respect to alleged safety concerns flowing from the increased number of mid-block U-turns along Dufferin Street due to the right-in/right-out configuration, the Tribunal reiterates that Mr. de Boer admitted on cross-examination that the additional traffic volume would represent less than a 1% addition to the volumes prior to expropriation. U-turns are legal movements unless specifically prohibited. Even if mid-block U-turns could hypothetically and eventually have been prohibited by appropriate authorities (which was not the case at the time of the expropriation), a driver intending to travel south on Dufferin Street after exiting the Subject Property (through a right turn in a northerly direction) could complete a legal U-turn at the signalized intersection of

Dufferin Street and Beverley Glen Boulevard. Indeed, this is precisely what this Member did, safely, following the site visit on January 8, 2025.

[96] The Tribunal is also putting less weight on the Region's data from the 2024 traffic study because the Region's witness failed to share the information in a timely manner. The data counts for the intersection of Dufferin Street and Beverley Glen Boulevard were collected in October 2024 and compiled on December 12, 2024. Yet, Mr. de Boer only communicated this new data to Mr. Fleming once the Hearing had begun; this despite having communicated with Mr. Fleming before the Hearing and having met with him during the earlier expert meeting (which was required under the Tribunal's Procedural Order). No explanation for this shortfall is advanced by Mr. de Boer except in answer to an inappropriate leading question by Counsel for the Region on re-examination.[38]

[97] Accordingly, the Tribunal finds that the right-in/right-out access to and egress from the Subject Property under the Pre-Expropriation Concept would not reasonably prevent a development application from being approved through a site plan application process. The configuration would have been appropriate, and approval would have been reasonably probable.

Internal Waste Collection and Loading

[98] Mr. Fleming testifies that the Pre-Expropriation Concept could accommodate internal waste collection and loading. On-site waste management and loading is integrated into the building through that same private driveway referred to above.

[99] The vehicle turning diagrams put forward by the Claimant clearly demonstrate to the Tribunal how a waste collection vehicle and other service trucks could enter and exit

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[38] Transcripts, January 20, 2025, page 200.

the Subject Property by a six-metre-wide driveway in a forward motion. This is so whether the vehicle was entering the loading space on the Subject Property in a forward motion or in reverse. The contrary position of Mr. Rowbotham is not supported by the evidence as established by Mr. Fleming's reply evidence. The Tribunal prefers the evidence of Mr. Fleming on this point.

Region's Secondary Arguments on Legal Permissibility

[100] The Region makes other arguments which merit being addressed by the Tribunal.

[101] First, the Region argues that the Subject Property was situated in an area that was exclusively low-rise and suburban in nature and would have remained so without the Scheme. For the Region, the Subject Property is in a neighbourhood that lacked any significant density and any building over two storeys in height at the time of expropriation.

[102] Whilst there is no evidence before the Tribunal of any redevelopment application submitted before the Valuation Date by neighbouring owners seeking to implement mixed-use developments in the vicinity of the Subject Property, it is telling that City planning staff had recommended in June 2017 an amendment to the VOP 2010 which would have designated the Subject Property as mid-rise mixed-use with a maximum height of 12 storeys. This was because of planning studies that had been ongoing since 2013, well before the date of Valuation, when the City commenced the Dufferin Street and Centre Street Intersection Study. In the end, the City did not accept the recommendation in 2017, likely due to pressure from community groups. The Region submits that the Tribunal ought not rely on the Study in determining legal permissibility due to the Scheme's influence on that Study, a conclusion the Tribunal has rejected above. Nevertheless, the Tribunal notes that the Study and the planning staff recommendation provide a directional *indicium* towards urban built forms in the relevant vicinity.

[103] Second, the Region also argues that development applications required to implement the Pre-Expropriation Concept would have faced vigorous opposition from community organizations. The Tribunal gives little weight to this argument. In making a decision on a development application, City Council should consider the statutory requirements of the *Planning Act* such as sections 2 and 3, and not the intensity of political pressure from community groups. It certainly would have been the test applied by the Tribunal or its predecessor, as a statutory review body with a jurisdiction set out in legislation, even if such groups swayed an elected municipal Council. The Tribunal is persuaded by the legal correctness of an argument and not its intensity.

[104] Finally, the Region also objects to the use of certain cases approved by the Tribunal or its predecessor. The Tribunal underscores that it comes to its conclusions in this Decision without having relied on three decisions offered by the Claimant in support of its position. They were issued well after the Valuation Date.[39]

(ii) Physical Possibility

[105] The second criteria relating to the reasonably probable use of land is the matter of physical possibility.

[106] The Region submits that the Tribunal must consider whether the proposed use is realistically approvable and constructible. It argues that, considering the Subject Property's dimensions, attributes, constraints, and limitations, the Pre-Expropriation Concept is not reasonably possible.

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[39] *1150 Centre Street GP Inc. v. Vaughan (City),* July 4, 2023 (OLT) (relating to 1150 Centre Street); *Dufcen Construction Inc. v. Vaughan (City),* July 20,2021 (LPAT) (relating to 7850 Dufferin Street); *Duca v. Vaughan (City)*, (OLT), June 3, 2021 (relating to the Centre Street Corridor).

[107] First, the Region argues that that the pre-expropriation of land fails to take into account a land dedication for the rights-of-way on Centre Street and Dufferin Street, as well as for the 15 metre by 15 metre daylight triangle. This second line of argument need not be discussed further here considering the Tribunal's conclusions on land dedication set out above in this Decision. Mr. Witt need not have made adjustments for land dedication as no such dedication would have been reasonably probable based on the evidence considered by the Tribunal in this proceeding.

[108] Second, the Region submits that the high-level concept plan advanced by the Claimant only supports that the Claimant's proposed use is possible and not probable. Clearly, the concept plans of Mr. Witt are not at the level of detail that one would normally associate with an application for a building permit. However, this proceeding is not considering an application for a building permit. What Mr. Witt prepared were conceptual plans for a hypothetical building that will never be built because of the Region's expropriation of the Subject Property. If this were a real development, the concept plan would be refined through an iterative process.

[109] For the Tribunal, Mr. Witt's conceptual plans are sufficient for the purpose of the present proceeding. They are as detailed as the conceptual plans submitted by Mr. Rowbotham. Mr. Witt testifies on cross-examination that their conceptual nature did not prevent him from expressing a professional opinion. The Region cites no legal authority that stands for the proposition that (a) a landowner in compensation claim proceeding following an expropriation must present building plans with the level of detail it asserts are required, and (b) that it would be reasonable for a prudent and knowledgeable purchaser to obtain plans at that level of detail before acquiring a property. If the conceptual plans of Mr. Witt and Mr. Rowbotham are sufficient for them to express a professional opinion, they are sufficient for the Tribunal to make factual findings and determinations, and to reach conclusions.

[110] The Region argues that Mr. Rowbotham identified three deficiencies which, in his opinion, require alteration to the built form design. As the Tribunal concludes above in

this Decision, the deficiencies raised by Mr. Rowbotham with respect to design standards for waste collection and landscaping strip were not persuasive. With respect to foundation walls and shoring, the Tribunal prefers the opinion of Mr. Witt that this matter was resolvable and not significant.

[111] The Tribunal is not concerned that the concept plan would be subject to revisions, refinements, and adjustments as it has not been demonstrated to the Tribunal, through the evidence of all Parties, that the Claimant's concept plans are so flawed as not to be realistically approvable and constructible. Indeed, the evidence, when properly weighed and assessed, is very much to the contrary.

[112] Once the Region's argument with respect to land dedication falls away, the Region's objections are not consequential. The Tribunal agrees with the Claimant, particularly based on the evidence of Mr. Witt who has extensive experience designing mid-rise mixed-use buildings, including along Centre Street. In his professional opinion the Claimant's Pre-Expropriation Concept was feasible. By contrast, through cross-examination, it was amply demonstrated that Mr. Rowbotham's proposed multi-storey development concept did not satisfy the standards in the Thornhill Plan, particularly with respect to setbacks, stepbacks, and building separation distances.[40] This seriously casts doubts on the reliability of his opinion evidence with respect to the buildability of the Claimant's Pre-Expropriation Concept.

[113] Accordingly, for the reasons set forth above, the Tribunal finds that the use of the Subject Property in a pre-expropriation scenario as a mid-rise mixed-use development is physically possible.

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[40] Transcript, January 22, 2025, pages 100-108.

(iii) Financial Feasibility

[114] On the issue of the reasonably probable use of the Subject Property, the Tribunal must also turn its mind to financial feasibility. Here the Tribunal must be persuaded that the proposed use of the Subject Property is likely to produce a positive financial benefit.

[115] The relevant experts agree that a suitable return on investment to a developer (and their lenders) is 15% of gross revenue **or** 20% of total development costs.[41] Thus, a real estate development investment would only be financially unfeasible if both thresholds are not met.

[116] Based on the evidence of Messrs. Conway and Bennett, the Claimant submits that it has met the financial feasibility threshold.

[117] Mr. Conway opines that the Subject Property would have been well suited for mid-rise mixed-use development at the time of expropriation given ready access to highways, transit, retail and commercial services, schools, parks, employment centres and hospitals. Mr. Conway testifies that in 2015 there was a growing demand for new condominium apartments in the City. In his view, this demand was driven by the shrinking supply of low-rise homes, the increased price of those homes when available, and the increased investor interest in condominium units. He also points out that the changing lifestyle of the purchasing public, including first-time home buyers who were choosing condominiums over low-rise homes and so-called “empty nesters” who had a similar preference. His opinion is independently bolstered by the Spring 2015 *Housing Market Outlook for the Greater Toronto Area*, prepared by the Canadian Mortgage and Housing Corporation.

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41 Agreed Statement of Facts, Appendix D, paragraph C(i).

[118] Mr. Conway further opines that an average index sale price of $500 to $550 per square foot would have been achievable for a unit in the Claimant's Pre-Expropriation Concept. Using eight comparable condominium developments, Mr. Conway explains that he applied a weighted average approach and concludes that a $535 per square foot would have been appropriate. He uses these to evaluate unit mix, unit size, absorption, and pricing. In his professional opinion, a smaller and less populated development would have been attractive to buyers, as would a development which avoided expensive amenities such as a swimming pool. Such amenities would have a negative impact on on-going maintenance fees and would attract an upward pressure on the condominium reserve fund for capital costs.

[119] Mr. Bennett, Mr. Conway's co-panelist, explains that the formula for determining profitability can be summarized thus: (sales revenue) – (construction costs) = (residual value). He opines that the Pre-Expropriation Concept would have achieved a return on revenue of about 21% and a return on costs of about 26%, which are above the thresholds agreed upon by the relevant experts of 15% or 20%, respectively. This is based on his detailed *pro forma* analysis.

[120] The Region maintains that the Pre-Expropriation Concept is not financially feasible for three reasons. First, the Pre-Expropriation Concept is influenced by the Scheme. Second, it reiterates that the Pre-Expropriation Concept is not constructible because it presumes a net buildable area which, it submits, is not realistic based on their land dedication argument. Third, based on the evidence of Mr. Ferguson, the *pro forma* does not demonstrate that the Pre-Expropriation Concept is financially feasible.

[121] The Region's first and second line of arguments need not be considered further here. As indicated above, these lines of argument are not held to be successful by the Tribunal. Given these two non-financial findings, there is no reason for making revisions to the *pro forma* analysis on that basis. Mr. Bennett's *pro forma* analysis can be relied upon by the Tribunal subject to Mr. Ferguson's concerns and evidence.

[122] Mr. Ferguson testifies for the Region and is critical of the Claimant's *pro forma* analysis for four reasons: (1) there was much less growth in the price of new high-rise units; (2) Mr. Conway's weighted average estimated sales price is too high; (3) the estimates for hard construction costs are understated; and (4) the cost of the land is inappropriately not deducted from the Claimant's analysis.

Price Trend Lines

[123] Mr. Ferguson critiques Figure 5 in Mr. Conway's report, entitled *Market and Financial Analysis, Pre- and Post-Expropriation 1500 Centre Street, Vaughan* ("NBLC Report"). He claims that there was less growth in the price of high-rise condominium units. The Tribunal accepts Mr. Conway's evidence that Mr. Ferguson is misinterpreting Figure 5 in his evidence. Mr. Conway explains that Figure 5 does not show the trend of high-rise pricing on per square foot basis. Instead, it shows the trend in the final overall average unit price. He clarifies that condominium units were getting smaller (*i.e.,* fewer square feet) therefore masking that the per square foot price was increasing. On cross-examination, Mr. Ferguson admits he had no reason to disagree with Mr. Conway. Indeed, all relevant experts agree that the market conditions in the City showed signs of demand for new condominium units.[42]

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[42] Agreed Statement of Facts, Appendix D, paragraph B (ii).

Likely Sales Price

[124] Mr. Ferguson accepts Mr. Conway's eight comparison projects and did not provide any of his own. While these comparable developments are adequate, the Region nevertheless argues that there are significant differences with these comparable developments, including their relative size and the fact that they are part of multi-phase development projects. Mr. Ferguson opines that a more realistic sales price would be in the range of $475 to $500 square foot, which would significantly reduce expected profit, and thus financial feasibility of the development.

[125] On this issue, the Tribunal prefers the evidence of Mr. Conway over the evidence of Mr. Ferguson. Mr. Conway has extensive experience with real estate market analyses and had specific personal experience in the Region and in the City. By contrast, Mr. Ferguson has done comparatively few real estate market analyses, and even fewer in the City. Moreover, Mr. Ferguson acknowledges that at $500 per square foot, using the *pro forma ceteris paribus*, the returns would still be in the acceptable range of 16.9% for the return on revenue or 20.3% for the return on costs.

Construction Costs

[126] The Region claims that Mr. Bennett's construction cost estimates are "grossly understated" and that, if an appropriate cost was to be used, the expected profits would be significantly reduced. This in turn would challenge the financial feasibility of the Pre-Expropriation Concept.

[127] The relevant experts agreed that the Altus Group 2015 Construction Cost Guide ("AC Guide") provides a reasonable estimate of potential hard construction costs at the time of expropriation, and that the determination of the appropriate hard construction

costs “can be based on the range identified” in the AC Guide.[43] The NBLC Report uses the low-end of the range for medium quality construction costs in the AC Guide or $185 per square foot. Mr. Ferguson challenges the use of that range and opines that a more appropriate estimate of the construction costs for purpose of the *pro forma* calculation should have been $210 per square foot, *i.e.,* the mid-point of the medium quality construction in the AC Guide.

[128] The Tribunal finds that the range used in the NBLC report is appropriate. Whilst the relevant experts agreed that the AC Guide is an appropriate basis to estimate construction costs at the relevant time, it also appears to the Tribunal that the application of that Guide requires a great deal of professional judgment. Even the architectural experts agreed that “high quality” is a subjective term. Specifically, the Tribunal accepts Mr. Bennett’s evidence that the selected amount would allow a developer to deliver a high-quality building in an economic way. He notes that there is a distinction between quality of construction and the level of finish. Thus, for him, to build a good quality construction, a developer can use high quality materials in some respects and make economical choices in in other respects. Moreover, the proposed development would not include elaborate and expensive amenities that are associated with luxury or large-scale buildings. Finishes are expected to be good but not luxury.

[129] The Region argues that the Thornhill Plan, which requires the use of high-quality architectural materials for the Subject Property, means that the higher construction costs in the AC Guide are more appropriate. Such a logical leap is tenuous at best and certainly not clear. Indeed, it would have been surprising for a municipality to set in a planning policy an aspirational goal for buildings to be at anything less than “quality” or “attractive.” That does not imply the need to expend certain amounts for construction. The position of the Region is even more surprising as Counsel for the Region otherwise

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43 Agreed Statement of Facts, Appendix D, paragraph A (ii) and (iii).

advocates that the Thornhill Plan must be ignored because it was “influenced by” the Scheme.

[130] The Tribunal finds that Mr. Bennett’s evidence on the cost of construction was unshaken on cross-examination.

Cost of Land

[131] In his evidence Mr. Ferguson notes that the *pro forma* fails to consider the cost of the land in the calculation of the return on investment. He notes that land costs are included among the soft construction costs in the AC Guide and finds further support in the Appraisal Institute Guidance.

[132] However, Mr. Ferguson admits that if one deducted $3.5 million for land value, consistent with Mr. Bedford’s estimated value of the Subject Property at the Valuation Date, a 15.6 % return on revenue would be achieved, which is still in the acceptable range. Although the return on costs would be 18.5%, which is below the 20% threshold, the Tribunal underscores that the relevant experts agree that only one of the benchmarks needs to be met.

[133] Consequently, the Tribunal finds that financial feasibility analysis is not “seriously flawed and unreliable,” as the Region submits, and that the Claimant has discharged its evidentiary burden to establish that proposed use of the Subject Property in the form of the Pre-Expropriation Concept is likely to have produced a positive financial benefit. The Tribunal notes that the *pro forma* includes significant amounts in contingencies, and other variables may have positive or negative effects. It is not rigid as argued by the Region. However, retrospective financial analysis of a hypothetical development is more akin to an art than a science, using considerable professional judgment. The Tribunal prefers the evidence of Mr. Conway and Mr. Bennett, the latter being the only expert before the Tribunal with specialized expertise in *pro forma* financial feasibility analysis.

(iv) Maximum Profitability

[134] Finally, on the matter of reasonably probable use of the land, the Tribunal must consider the fourth criteria, maximum profitability, sequentially after having considered the other three criteria.

[135] The Claimant submits that, having met the criteria of legal permissibility, physical possibility and financial feasibility, the use of the Subject Property for mid-rise mixed-use development is the maximally productive use. The Claimant admits that a low-rise commercial use could also be profitable. However, it underscores that such a use is not the maximally profitable use in the pre-expropriation conditions. Thus, such a use cannot be the highest and best use. The Claimant points out that the land value rate for a low-rise commercial land use was agreed to by the Parties as being $80 per square foot. By contrast, as discussed further below, Mr. Bedford opines in his appraisal conclusions that the land value for a mid-rise mix-use in the pre-expropriation scenario should be set at $182 per square foot.

[136] The Region does not address the fourth criteria other than to submit that the Claimant had failed to establish the Pre-Expropriation Concept is legally permissible, physically possible, and financially feasible. Based on the “three legs of the stool” analogy referred to by Vice-Chair Jacob in the *Stratford* decision[44], the Region submits that the Claimant has failed to establish that its Pre-Expropriation Concept is the highest and best use of the Subject Property in the absence of the expropriation. The Region presses the Tribunal to find that a one-storey commercial development is the highest and best use in a pre-expropriation scenario, based on Mr. Rowbotham’s concept, which it submitted was legally permissible, physically possible, and financially feasible.

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[44] *1353837 Ontario Inc. v. City of Stratford*, 2021 CanLII 101820 (ONLT), paragraph 97.

[137] Given its analysis in the above sections, the Tribunal agrees with the Claimant and finds that the use of the Subject Property in a pre-expropriation scenario as a mid-rise mixed-use development is the maximally productive use.

Conclusion on Reasonable Probable Use

[138] Having considered the four criteria, the Tribunal finds that the Claimant's Pre-Expropriation Concept is a reasonably probable use.

[139] Although residential use was not permitted as of right on the Valuation Date on the Subject Property, the Tribunal finds that the use of the Subject Property consistent with the Pre-Expropriation Concept was likely to be permitted because of zoning and policy changes that were likely to be approved. On cross-examination, the Region's land use planning expert witness acknowledged that around the time of expropriation, the area surrounding the Subject Property was transitioning from a suburban to an urban built form. The Region attempts to have the Tribunal disregard its witness' evidence on this point based on its overall argument on screening out of the Scheme, *i.e.,* the Scheme, and nothing else, is the reason for Centre Street's evolution. Given the Tribunal's conclusion on the Region's screening out argument, the Tribunal cannot ignore Mr. McDonald's evidence. His evidence and Mr. Volpentesta's evidence align and drives to the conclusion that Centre Street was evolving from a suburban to an urban nature.

[140] The Tribunal further finds, based on the above and relying particularly on Mr. Volpentesta's and Mr. Witt's expert professional opinions, that there is a reasonable expectation that the zoning and other related policy changes would have been obtained to permit the development of the Claimant's Pre-Expropriation Concept.

[141] The Region's arguments with respect to screening out the Scheme and land dedication are unsuccessful.

[142] On the criteria of physical possibility, the architectural and design professional opinion of Mr. Witt is to be preferred over Mr. Rowbotham. Mr. Witt was the Vice-Chair of the City's Urban Design Review Panel and had extensive experience designing mid-rise mixed-use buildings.

[143] With respect to financial feasibility, the evidence of Messrs. Conway and Bennett is to be preferred over the evidence of Mr. Ferguson. The Tribunal finds that the Claimant's proposed use of the Subject Property is likely to produce a positive financial benefit within the range for a suitable return on investment agreed to by the experts on both sides.

[144] Finally, the use of the Subject Property in a pre-expropriation scenario as a mid-rise mixed-use development is the maximally productive use.

WHAT COMPENSATION IS TO BE AWARDED?

Claim for Fee Simple Taking

[145] Section 14(1) of the Act defines the market value of land expropriated as the amount that the land might be expected to realize if sold on the open market by a willing seller, acting prudently, knowledgeably, and for self-interest, to a willing buyer. One must thus assume a hypothetical transaction contemplating disposition of lands on the Valuation Date.

[146] The Region submits that the Claimant's experts appear to have approached the issue of market value of the Subject Property from the perspective of an owner/developer. For the Region, the Claimant's witnesses do not analyze the hypothetical transaction from the appropriate perspective or vantage point for assessing both the Subject Property's development potential and for its valuation.

[147] Conversely, the Claimant argues that the Region ignored the perspective of the "willing seller" throughout the proceeding, focusing only on the perspective of the buyer. The Claimant maintains it completed a reasonable and ordinary due diligence, supported by a team of experienced consultants.

[148] Fortunately, the Tribunal has the benefit of evidence of many witnesses, qualified to provide expert opinion evidence, in an objective and non-partisan way. Although their opinions are in conflict at times, they all seek to be of assistance to the Tribunal. Given this extensive evidentiary record, the Tribunal can consider and make findings properly on the market value on the expropriated lands based on the hypothesis of a sale on the open market by a willing seller, acting prudently, knowledgeably and for self-interest, to a willing buyer, acting similarly. Both perspectives are before the Tribunal. Specifically, the Tribunal finds that Messrs. Conway and Bennett also reflected a purchaser's perspective, including through the sale of the Subject Property to an independent developer. Similarly, Mr. Bedford applies the appropriate test.

[149] Based on the evidence of Mr. Bedford, including his *Retrospective Narrative Appraisal Report*, the Claimant advances that land value for the fee simple taking should be set at a rate of $182 per square foot (for a total of $857,493). To arrive at this conclusion, Mr. Bedford relies on the evidence of Messrs. Volpentesta, Witt, Conway, and Bennett to conclude separately that the highest and best use of the land is a 12-storey mixed-use development. He then explores the appropriate value of the land based on that use. First, he identifies what he opines are, based on his professional judgment, six appropriate comparable properties at the relevant time. Second, he applies adjustments to each of those comparable properties based on such factors as relative size of the property, location, proximity to highways and the Vaughan Metropolitan Centre, zoning, planning status, and planning process timelines.

[150] The Region submits, in its Written Submissions of February 28, 2025, that the proposed value of the Subject Property based on Mr. Bedford's appraisal report is flawed and overstated and should either be disregarded entirely or heavily discounted.

The Region did not Reply to Claimant's position on this issue set out at paragraphs 76 to 93 of the Claimant's Written Submissions of February 28, 2025.

[151] One of the key arguments advanced by the Region, in their Written Submissions of February 28, 2025, relates to their position with respect to screening out of the Scheme discussed and dismissed by the Tribunal above in this Decision.

[152] In any event, with respect to comparable developments nos. 1 and 6, Mr. Bedford testifies that, in his professional opinion, even if those comparable developments were excluded – as argued by the Region due to screening out of the Scheme – there is not a significant impact on his valuation opinion. In addition, Mr. Bedford is of the opinion that the VivaNext BRT would not have a significant positive influence on value as a perspective purchaser would care more about access to highways in comparison to having access to a BRT in dedicated lanes. That opinion is shared by Mr. Conway from a real estate market perspective.

[153] On the question of valuation of the fee simple interest, the Tribunal prefers the evidence of Mr. Bedford, who has over 50 years of real estate appraisal experience.

[154] By contrast, Mr. Dal Colle's evidence was less reliable. First, he advances opinions in his oral evidence that contradict evidence contained in his written Witness Statement (comparable developments nos. 1, 2, 3 and 5). Second, in his oral evidence, he takes positions that are not contained in his written Witness Statement (comparable development no. 1). Third, several of his opinions are undermined during cross-examination when he admits that his factual assumptions were incorrect with respect to distance to other value-relevant locations (*e.g.,* distance of comparable sites to the Vaughan Metropolitan Centre and future subway stations on the Yonge North Subway extension) (comparable developments nos. 1, 3 and 4). Similarly, erroneous factual assumptions are underscored during his cross-examination with respect to land use planning timelines (comparable development no. 1) and the inauguration of future subway stations (comparable developments nos. 2 and 5). Fourth, he admits that he

had not done his own research on the planning status of Mr. Bedford's comparable developments (comparable developments nos. 4 and 6). Fifth, he opines that adjustments were warranted for interim use of property (*i.e.,* motels and car dealerships) but acknowledges on cross-examination that this was based on mere assumptions of positive cash flow without an actual factual investigation of off-setting costs (comparable developments nos. 2, 3 and 4). Sixth, although Mr. Dal Colle believes Mr. Beford's land rate was "significantly overstated", he does not present other comparable sales and provides no precise numerical adjustments to Mr. Bedford's comparable developments. Clearly, the Region cannot merely assert that required adjustments are "substantial" without any specific evidence in support of that conclusion.

[155] Accordingly, the Tribunal finds that Mr. Bedford's figure of $182 per square foot is appropriate, noting that it is the only figure properly before the Tribunal. There is no need for the Tribunal to consider the alternative adjustment of up to 5% (*i.e.,* up to $175 per square foot) advanced by the Claimant in their Reply Written Submissions of March 14, 2025. Based on the evidence presented by all Parties, this discounted adjustment is not warranted.

Claim for Injurious Affection

[156] The Claimant asserts that it is entitled to $1,502,067, representing damages for injurious affection to the market value of the remainder portion of the Subject Property. The reduction in size of the Subject Property by 24%, because of the expropriation, makes it unsuitable for a mid-rise mixed-use development after expropriation. The Claimant submits that the change in the highest and best use of the Subject Property before expropriation and after expropriation gives rise to a claim for injurious affection. There is a significant difference in land value between mid-rise mixed-use lands and low-rise commercial lands.

[157] The Parties agree that the highest and best use of the Subject Property in the post-expropriation scenario is a low-rise commercial development and that the reasonable value for that use of the remnant parcel is $80 per square foot.

[158] However, the Region posits that the pre-expropriation highest and best use is also low rise-commercial development. Consequently, in its submission, as the pre- and post-expropriation development scenarios are the same, no injurious affection has occurred.

[159] Given that the Tribunal finds that the highest and best use of the Subject Property before expropriation is a mid-rise mixed-use development, as advanced by the Claimant, the Tribunal also finds that the Subject Property was injuriously affected because of the expropriation. The damages are equal to the difference in land value between the highest and best use of the Subject Property before and after expropriation. Due to the physical constraints of the Subject Property, the Claimant would have been unable to move the footprint of the mid-rise mixed-use development to another part of the remnant parcel. Instead, the post-expropriation highest and best use completely changes.

[160] The Tribunal finds that the injurious affection is valued at $1,502,067, *i.e.,* the difference between $182 per square foot land value at the Valuation Date for a mid-rise mixed-use development (based on Mr. Bedford's evidence discussed above in this Decision) and $80 per square foot at the Valuation Date (agreed to by the Parties).

Claim for Temporary Easement

[161] Temporary easements are typically valued on the same basis as a lease or land rental.

[162] The Claimant submits that it is entitled to $45,095, representing the market value of the interest expropriated by the Region as a temporary easement for 577 square feet.

Mr. Bedford testifies that the value should be based on an 8% rental rate for the five-year easement. Mr. Bedford opines that a 2 or 3% premium was justified due to the serious impact of the easement. He admits, however, that this was an unusual approach and not a standard practice.

[163] The Region argues that the premium is unprecedented, inappropriate, and unjustified, and amounted to a claim for disturbance damages when no such claim is made. Mr. Dal Colle opines that an appropriate rental rate is 5.35%. The Region also questions Mr. Bedford's escalation factor and protection for future inflation. The Region advances that the compensation should equal the following: (the area of land) x (the unit value of the land) x (the annual rental rate) x (the duration of the easement).

[164] Although the form of temporary easement is extensive and covered temporary interest "under, over along and upon" Part 1 on the Expropriation Plan, and constitutes more than a standard access easement, the Tribunal agrees with the Region and finds that the amount sought by the Claimant is excessive. The Tribunal is not persuaded by Mr. Bedford's proposed approach. The Tribunal finds that the fair market value of the temporary easement is $12,348 [577 square feet x $80 per square foot x 5.35% rental rate x 5 years].

Conclusion on Compensation

[165] Based on the above, the Tribunal finds that the highest and best use of the Subject Property absent expropriation is a 12-storey mixed-use development, and thus further concludes as follows:

a. The market value of the fee simple interest, based on a rate of $182 per square foot, is $857,493;
b. The damages for injurious affection to the market value of the remainder portion of the Subject Property is $1,502,067; and,

c. The market value of the temporary interest expropriated by the Region as a temporary easement is $12,348.

INTEREST

[166] The Parties agree that interest is payable on the compensation to be set by the Tribunal, as well as on the amount of $295,100 advanced in July 2016, calculated pursuant to section 25 of the Act.

COSTS

[167] The Claimant indicates that it is seeking costs pursuant to the Act. The Parties are hopeful that they could come to an agreement with respect to costs but requested that the Member remain seized if the Parties cannot agree on costs. This is consistent with Rule 26.26 of the Tribunal's *Rules of Practice and Procedure*.

ORDER

[168] **THE TRIBUNAL ORDERS THAT**:

a. The Regional Municipality of York ("Region") must compensate 2090396 Ontario Limited ("Claimant"), the sole owner of the property at 1500 Centre Street in the City of Vaughan, in the amount of:
   i. **$857,493** in market value for the taking of the fees simple interest in the property;
   ii. **$1,502,067** in damages for injurious affection; and,
   iii. **$12,348** for the market value of the temporary interest expropriated through a five-year easement;
   iv. **LESS $295,100**, an amount previously advanced to the Claimant in July 2016 under section 25 of the *Expropriation Act*, R.S.O. 1990, c. E.26 ("Act").

b. The Region must pay interest to the Claimant in accordance with section 33 of the Act, calculated from **June 5, 2015,** including on the amount advanced pursuant to section 25 of the Act.

c. The Member will remain seized for the purpose of resolving the issue of costs.

d. If the Parties are unable to resolve the issue of costs within **60 days** of the issuance of this Decision, the Tribunal remains available to assist them, and, in that event, directs (i) the Claimant to serve and file written submissions addressing costs within **75 days** after the issuance of this decision; (ii) the Region to serve and file written submissions in response within **15 days** thereafter; and, (iii) the Claimant to serve and file a written reply to the Region's response **10 days** thereafter. The material to be filed are to comply with Rule 26.23 of the Tribunal's *Rules of Practice and Procedure*. If the Parties can resolve the issue of costs, they are directed to provide the Tribunal with a written status update to that effect no later than **65 days** following the issuance of this Decision.

Jean-Pierre Blais

JEAN-PIERRE BLAIS
MEMBER