

-INQUIRY HEARING-

APPLICATION by the Toronto Catholic District School Board for Approval to Expropriate Lands for the purpose of acquiring in its jurisdiction a school site in the City of Toronto ancillary and necessary to the expansion of St. Joseph's Morrow Park Catholic Secondary School Site and works ancillary thereto.

AND IN THE MATTER OF a hearing fixed for April 29 and 30, and May 5, 2015 at the hour of 9:30 a.m. in the forenoon at Victory Verbatim, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, ON M5K 1H6.

FINDINGS AND RECOMMENDATIONS

INQUIRY OFFICER:

David R. Vine, Q.C.

368-121 Richmond St. West

Toronto, ON

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416-863-9341

IN THE MATTER OF THE EXPROPRIATIONS ACT

IN THE MATTER OF an application by Toronto Catholic District School Board for approval to expropriate lands for the purpose of acquiring in the jurisdiction a school site in the City of Toronto ancillary and necessary to the expansion of St. Joseph's Morrow Park Catholic Secondary School Site and works ancillary thereto.

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INQUIRY HEARING

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**Representing 21 Owners
(List of owners attached)**

STEPHEN D'AGOSTINO
DANITZA KOEV
Thomson Rogers
3100-390 Bay Street
Toronto, ON M5H 1W2
Tel: 416-868-3100
Fax: 416-868-3134

Unrepresented Owners

DONG QING DENG & BIN GU
3348A Bayview Ave.
Toronto, ON M2M 3R9

FINDING & RECOMMENDATIONS

A summary of the evidence and arguments advanced by both parties follows the finding and recommendations. Also, more detailed notes of the proceedings are available upon request.

It is recommended and I find that the taking of the land herein is not fair, sound and reasonably necessary, in the achievement of the objectives of the Expropriating Authority, which are primarily to replace St. Joseph Morrow Park Secondary School and to respond to projected increases in student enrolment.

I find that the Toronto Catholic District School had from May, 2007 (the date when the Sisters of St. Joseph sold the property on which St. Joseph Morrow Park Secondary School stands to Tyndale University College and Seminary) to date, to find a suitable site for St. Joseph's Morrow Park School. As the Counsel for the Toronto Catholic District School Board informed the inquiry, the TCDSB spent 7-8 years examining alternative sites. The board examined 19 sites, which were narrowed down to three and ultimately those three were eliminated. Time is now of the essence because the lease between Tyndale University College and St. Joseph Morrow Park expires on June 30, 2015 and the TCDSB is negotiating an extension to June, 2018.

In July, 2014, the TCDSB presented a plan (entered as Exhibit #9) to the community which showed a 3-storey school structure and left the townhouses intact. That design incorporated underground parking, a full-sized field hockey field, a sprint track and soccer field (3-metres short of regulation). That option is still pending appeal at the Municipal Board.

I am in agreement that the issue of fairness to owners is not the question before the inquiry. However, the original plan did take them into consideration.

Counsel for the Toronto Catholic District School Board presented evidence and witnesses supporting the site at the northwest corner of Cummer Avenue and Bayview Avenue and supporting the expropriation of land, to provide a replacement for St. Joseph Morrow Park and to allow for expansion in the future. Counsel argued that none of the three site options were suitable, primarily because they did not accommodate growth. It is troubling that none of the three main sites considered over the time period were compared against the Cummer site, also that accommodating growth was not a consideration in those sites.

Because the application for variance was refused, the TCDSB turned to a two-storey building with a larger footprint option (see Exhibit #7). Both plans are for a single-gender secondary school to accommodate approximately 800 students and to allow for an additional 300 pupil places in the future.

The Board argued that the taking of lands is necessary to provide two means of access and egress, a lower structure with room for expansion, a larger playing field, green space and also to allow for more visibility with frontage on two main arterial roads, it also allows the building to become a focal point for the community. I do not agree that a school necessarily requires frontage on two main arteries to be a focal point in the community.

Both the two- and three-storey plans offer the same access to public transportation, parking and allowance for growth. The three-storey site has a soccer pitch that is three metres narrower than regulation, which I do not consider a serious difference.

The drawing on Exhibit #9 shows one road off Cummer accessing the site. The plan also shows an existing two-way laneway running behind the townhouses from Cummer Avenue to Ruth Avenue along the eastern edge of the school property. There is also an access lane marked "For Service Vehicles Only" off Bayview. I suggest the residents of the townhouses enter discussions with the TSDSB for shared use of the laneway and service vehicle entrance. That would allow two points of entry from Cummer Avenue, one from Bayview Avenue and one from Ruth Avenue. It would allow for flow-through traffic for drop-offs, buses and garbage trucks. It's a sacrifice the townhouse owners may consider in lieu of losing their homes.

I also do not find the demographic predictions for this neighbourhood convincing. The numbers in general are valid, however, there is no way of knowing how many of the families moving into the area will be Catholic School supporters, how many will have secondary school aged daughters and how many of those will wish to attend a single-gender school. Also, the current enrolment at St. Joseph's Morrow Park is 500+. The new school is using 800 pupil places as the replacement number. In fact, the school has to rebuild its enrolment to reach that number.

I recommend that the board continue with its appeal for the minor variance and that the townhouse owners support the appeal, and find a way to work with the TCDSB to make the smaller site work.

In the discussion of alternatives, three expert witnesses testified that the Cummer site was the preferred site. Counsel for the TCDSB said none of the other sites previously considered, allowed for expansion. St. Leonard's is not large enough and would require expropriation. It fronts on only one main road. Blessed Trinity also requires expropriation and two years in planning. The site is currently occupied by an elementary school. The Board looked at combining the existing school with a new St. Joseph's, but funding for a new elementary school was refused. Because of the sloping topography of the land, there is no room for expansion. At the Brebeuf site, there is not enough room for another secondary school. The neighbouring elementary school is already over capacity. There is also limited road access.

I agree with counsel for the owners that this report must deal with alternatives. Since all of the above alternatives are flawed, the best alternative appears to be the one on the smaller Cummer

site. It is also the one that has the best chance of completion within the time deadline. I agree with counsel for the owners that the board should have provided a representative to answer questions. The board at one time felt the smaller site at Cummer was workable. I believe that option is still suitable and less disruptive to the neighbourhood.

Counsel for the TCDSB said the process has been in the public domain since June, 2013, and that the public has had ample opportunity to express concerns and opinions.

St. Joseph's is a specialty school. It is gender-specific and does not have a defined catchment area. Students have historically come from all over the city and surroundings, including Scarborough and York. There is no evidence that the predicted population growth correctly estimates the number of Catholic girls who will want to attend a gender-specific secondary school. I feel the plan for a larger area is unnecessary and unreasonable in the achievement of its objectives, and that those objectives can be met without the taking of the townhouse properties.

If the board decides to proceed with the expropriation, I recommend that it offer to extend the vacancy date by another year for owners needing more time to relocate.

I also recommend to the approving authority that the owners who requested the inquiry be paid \$200.00 per unit by the expropriating authority.

It is clear from the evidence called that the taking of the above-noted lands is not fair, sound and reasonably necessary in light of other viable alternatives.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATE AT TORONTO THIS 9 DAY OF JUNE, 2015

A handwritten signature in black ink, appearing to read 'David R. Vine', written over a horizontal line.

David R. Vine, Q.C.
Inquiry Officer

PURPOSE

The purpose of this expropriation by the Toronto Catholic District School Board is to acquire the lands necessary for the replacement of St. Joseph's Morrow Park Secondary School.

The Toronto Catholic District School Board has applied for approval to expropriate all right, title and interest in 26 townhomes located on the west side of Bayview Avenue between Cummer Avenue and Ruth Avenue.

(3338R Bayview Avenue)

12580-0001 (LT) being Toronto Common Elements Condominium Plan No. 1580 and its appurtenant common interest being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3336A Bayview Avenue)

10024-0354 (LT) being Part of Lot 1 on Plan 4180 designated as Parts 1 and 19 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3336B Bayview Avenue)

10024-0355 (LT) being Part of Lot 1 on Plan 4180 designated as Parts 2 and 20 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3336C Bayview Avenue)

10024-0356 (LT) being Part of Lot 1 on Plan 4180 designated as Parts 3 and 21 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3336D Bayview Avenue)

10024-0357 (LT) being Part of Lots 1 and 2 on Plan 4180 designated as Parts 4 and 22 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3338A Bayview Avenue)

10024-0358 (LT) being Part of Lot 2 on Plan 4180 designated as Parts 5 and 23 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3338B Bayview Avenue)

10024-0359 (LT) being Part of Lot 2 on Plan 4180 designated as Parts 6 and 24 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3338C Bayview Avenue)

10024-0360 (LT) being Part of Lot 2 on Plan 4180 designated as Parts 7 and 25 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3338D Bayview Avenue)

10024-0361 (LT) being Part of Lots 2 and 3 on Plan 4180 designated as Parts 8 and 26 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3340A Bayview Avenue)

10024-0362 (LT) being Part of Lots 2 and 3 on Plan 4180 designated as Parts 9 and 27 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3340B Bayview Avenue)

10024-0363 (LT) being Part of Lot 3 on Plan 4180 designated as Parts 10 and 28 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3340C Bayview Avenue)

10024-0364 (LT) being Part of Lot 3 on Plan 4180 designated as Parts 11 and 29 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3340D Bayview Avenue)

10024-0365 (LT) being Part of Lot 3 on Plan 4180 designated as Parts 12 and 30 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

(3348R Bayview Avenue)

10024-0187 (LT) being Part of Lot 9 on Plan 4180 North York designated as Parts 24, 25 and 79 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984433

(3348Q Bayview Avenue)

10024-0188 (LT) being Part of Lot 9 on Plan 4180 North York designated as Parts 23, 26, 77 and 78 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984432

(3348P Bayview Avenue)

10024-0189 (LT) being Part of Lots 8 and 9 on Plan 4180 North York designated as Parts 22, 27, 75 and 76 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984431

(3348O Bayview Avenue)

10024-0190 (LT) being Part of Lots 8 and 9 on Plan 4180 North York designated as Parts 21, 28, 73 and 74 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984430

(3348N Bayview Avenue)

10024-0191 (LT) being Part of Lot 8 on Plan 4180 North York designated as Parts 20, 29, 71 and 72 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984429

(3348M Bayview Avenue)

10024-0192 (LT) being Part of Lot 8 on Plan 4180 North York designated as Parts 18, 19, 30, 69 and 70 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984428

(3348L Bayview Avenue)

10024-0193 (LT) being Part of Lots 7 and 8 on Plan 4180 North York designated as Parts 16, 17, 31, 67 and 68 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984427

(3348K Bayview Avenue)

10024-0194 (LT) being Part of Lot 7 on Plan 4180 North York designated as Parts 15, 32, 65 and 66 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984426

(3348J Bayview Avenue)

10024-0195 (LT) being Part of Lot 7 on Plan 4180 North York designated as Parts 14, 33, 63 and 64 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984425

(3348I Bayview Avenue)

10024-0196 (LT) being Part of Lots 6 and 7 on Plan 4180 North York designated as Parts 13, 34, 61 and 62 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984424

(3348H Bayview Avenue)

10024-0197 (LT) being Part of Lots 6 and 7 on Plan 4180 North York designated as Parts 12, 35, 59 and 60 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984423

(3348G Bayview Avenue)

10024-0198 (LT) being Part of Lot 6 on Plan 4180 North York designated as Parts 10, 11, 36, 57 and 58 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984422

(3348F Bayview Avenue)

10024-0199 (LT) being Part of Lots 5 and 6 on Plan 4180 North York designated as Parts 8, 9, 37, 55 and 56 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984421

(3348E Bayview Avenue)

10024-0200 (LT) being Part of Lots 5 and 6 on Plan 4180 North York designated as Parts 7, 38, 53 and 54 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984420

(3348D Bayview Avenue)

10024-0201 (LT) being Part of Lot 5 on Plan 4180 North York designated as Parts 6, 39, 51 and 52 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984419

(3348C Bayview Avenue)

10024-0202 (LT) being Part of Lots 4 and 5 on Plan 4180 North York designated as Parts 5, 40, 49 and 50 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984418

(3348B Bayview Avenue)

10024-0203 (LT) being Part of Lots 4 and 5 on Plan 4180 North York designated as Parts 4, 41, 47 and 48 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984417

(3348A Bayview Avenue)

10024-0204 (LT) being Part of Lot 4 on Plan 4180 North York designated as Parts 1, 2, 3, 42, 44, 45 and 46 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984416

(3342R Bayview Avenue)

10024-0205 (LT) being Part of Lot 4 on Plan 4180 North York designated as Part 43 on Plan 64R-15130, City of Toronto

REQUEST FOR ADJOURNMENT

(Notes from the Hearing of Necessity are attached hereto)

Prior to the start of proceedings Mr. D'Agostino requested an adjournment, due to the fact that he was still waiting for responses from his requests under the Freedom of Information Act. Mr. D'Agostino said the information requested was related to the Board's decision to abandon other alternative sites for St. Joseph's Morrow Park Secondary School. Mr. D'Agostino referred to several cases which he entered as Exhibit #2.

Mr. Waque reminded the inquiry officer that the rules of civil procedure do not apply to Hearings of Necessity, and that the Board had gone above and beyond as far as providing disclosure. Mr. Waque said that the process to date had been transparent, that the application for a minor variance in order to build a three-storey building on the site was a matter of public record. Mr. Waque cited cases regarding disclosure and requests under the Freedom of Information Act. Mr. Waque said the Board is moving quickly to provide a school for students at St. Joseph's Morrow Park because the building is currently being leased and the lease is being renegotiated to end in June of 2018.

Mr. D'Agostino said that no one from the Board had responded to his requests for information, nor is any member of the Board scheduled to testify at this hearing. Mr. D'Agostino said there is no report on how the Board came to the decision to select the Cummer Street site.

Mr. Vine asked about the length of delay being requested.

Mr. D'Agostino said he would be prepared within 3 (three) weeks of receiving the requested documents.

Mr. Waque said that Mr. D'Agostino was asking for an indefinite delay.

Mr. Vine said he was satisfied by the arguments put forward, and that the request by owners for documents is based on the preposition that the documents exist. As far as the Act, Mr. Vine said the hearing should go forward.

EVIDENCE CALLED BY THE TORONTO CATHOLIC DISTRICT SCHOOL BOARD

(Notes from the Hearing of Necessity are attached hereto)

Mr. Stephen Waque representing the Toronto Catholic District School Board presented 8 (eight) Exhibits (Exhibit List attached hereto), and called 3 (three) witnesses in support of the application by the TCDSB for approval to expropriate the lands in question.

TESTIMONY OF CYNTHIA CLARKE

Ms. Clarke is a financial analyst and economic consultant who has worked with school boards to help them determine where school should be placed, based on population profiles and costing strategies. She was accepted as an expert witness.

Ms. Clarke explained that the lease between St. Joseph's and Tyndale University College & Seminary is set to expire in June, 2015, but that negotiations are underway to extend the lease to June, 2018.

Ms. Clarke described the expected areas of development, particularly along the Yonge/Sheppard corridor, and that 20,000 new housing units are expected within the next 15 (fifteen) years.

Ms. Clarke said that the replacement for St. Joseph's would have to accommodate 800 students from the current school, plus 600 more from expected development.

Ms. Clarke described the funding process for new schools and the use of EDC monies to acquire property. She said that the TCDSB purchased the Cummer site from the TDSB. It is a 4.9 acre property.

Ms. Clarke discussed the various options considered by the Board. She said that Brebeuf College is an all-boys school and that adding a girls' school, would make it co-ed. Also there is only one access point from Steeles. She said St. Leonard's is currently being used as an adult education facility, and is situated too far from the growth development area. She said Blessed

Trinity would require expropriation of 8 (eight) properties because the site is not large enough for the proposed K-12 school. The site is also not on level ground.

Ms. Clarke said the Cummer site was the best choice because it allowed for expansion, sat on a corner and allowed for two points of entry and egress. She said the taking is fair, sound and reasonably necessary.

QUESTIONING OF MS. CLARKE BY MR. D'AGOSTINO

Mr. D'Agostino asked about the elementary school sitting adjacent to the Brebeuf site. Ms. Clarke said it was a TDSB school. She said the Brebeuf site could accommodate underground parking.

Mr. D'Agostino asked about the location of St. Leonard's. Ms. Clarke said it was geographically central to the area from which St. Joseph's draws students. She said St. Joseph's students come from a much larger area. She said that historically families in the Yonge corridor have sent their children to private schools, but with more condominiums being built the demographic is expected to change. She said in terms of parent priorities, if they can't send their children to private schools, the second choice might be single-gender schools.

Ms. Clarke said that school boards are expecting an influx of elementary aged children to enter the school system. These are the grandchildren of baby boomers.

Mr. D'Agostino reviewed the options of Brebeuf, St. Leonard's and Blessed Trinity.

Ms. Clarke said the Cummer site was not considered at the time, because the property hadn't been purchased.

Ms. Clarke said there was no defined catchment area for schools (other than for JK) and that students could go to the school of their choosing. She said there were no options for Catholic girls in North York.

Mr. D'Agostino questioned the requirements for new development in high growth areas, and how many of the families coming into the area would desire a single-gender school for their daughters.

Ms. Clarke said there were no other options other than going to a TDSB secondary school.

Mr. D'Agostino questioned the cost of acquiring the townhouses.

Ms. Clarke said the cost for the 30 townhouses was estimated at \$26.9m - \$28m. This did not include demolition or construction costs.

RE-EXAMINATION OF MS. CLARKE BY MR. WAQUE

Mr. Waque asked about the enrolment at St. Agnes (next to Brebeuf).

Ms. Clarke said enrolment was increasing and had exceeded capacity at the time of the study, so it was not considered. She said the Tyndale site was ruled out because it was not available as a long term option. She said that in 2012 the Ministry indicated it would not provide funding for a joint school proposal rebuilding Blessed Trinity for St. Joseph Morrow Park and Blessed Trinity together as JK-12 school.

TESTIMONY OF COSTAS CATSAROS

Mr. Costas Catsaros is an architect with 15 (fifteen) years' experience working in the educational field. He was accepted as an expert witness.

Mr. Catsaros discussed the original design for the Cummer site which included a three-storey building, underground parking of 93 stalls, and single access to the site. He said the Board sought a variance from the Committee of Adjustment because the height of 13.32 metres exceeded the bylaw of 9.5 metres. The variance was rejected and that led to the design for a two-storey building. That design allowed for an addition to house 300 student places at a future date. The design also allowed for two access roads (from Bayview and Cummer). It has a regulation soccer pitch that accommodates a field hockey pitch, running track and sprint track.

Mr. Catsaros said the acquisition of the townhouse lands gives the school greater presence and makes it an anchor point for the community.

Mr. Catsaros said the Board hoped to apply for approvals by August 2015. It would take a year to develop final drawings. By late next summer (2016) request for tenders would go out and by September 2016, construction would start. It would take two-years to build the school, making it ready for occupancy in the late spring of 2018. He said the timeline is compressed and ambitious.

Mr. Waque asked whether taking the townhouse lands was required.

Mr. Catsaros said it was.

QUESTIONING OF MR. CATSAROS BY MR. D'AGOSTINO

Mr. D'Agostino asked about Mr. Catsaros' involvement in site selection.

Mr. Catsaros said he'd only looked at the Blessed Trinity option in 2012.

Mr. Waque said that the Blessed Trinity option did not proceed because of lack of funding.

Mr. D'Agostino said there was no funding for the elementary school. He then asked whether, if the variance appeal was approved, were there any other impediments to the plan.

Mr. Catsaros said there were compromises, and that he had advised the Board that the site was not suitably sized for the project, but that he would work around it.

Mr. D'Agostino questioned the exterior appearance of the planned building, and its fit visually with the neighbourhood.

Mr. Catsaros said it was of a different character, but it should stand out.

Mr. D'Agostino went through the various sites and their suitability. These included an option for the joint-use of Blessed Trinity and St. Joseph's, with and without expropriation and with and without underground parking.

Mr. Catsaros said the smaller Cummer site had an under-sized soccer field and track.

RE-EXAMINATION OF MR. CATSAROS BY MR. WAQUE

Mr. Waque asked whether any of the options allowed for a 300 pupil growth.

Mr. Catsaros said they did not. He also said that the current design met or exceeded the template for student loading and pupil place ratios.

TESTIMONY OF PAUL STAGL

Mr. Paul Stagl is an urban planner with 40+ years' experience. He was accepted as an expert witness.

Mr. Stagl said the Yonge-Sheppard corridor is an area of growth identified by the City of Toronto. These areas are identified for community infrastructure planning. He said North York was expected to grow by 40,000 units.

Mr. Waque asked about the process involved in the Cummer site.

Mr. Stagl said the application went through two revisions, and then it went to the Committee of Adjustment. He said the Board held three public meetings about the site. He said a number of issues raised by the community, including concerns about parking, traffic, access, loading, servicing; all having to do with the size and layout of the property and adequate access to it by school buses, parents, garbage trucks.

Mr. Waque asked about the plan that was refused variance.

Mr. Stagl said it wasn't so much the height of the building, as entry and egress points. The solution required a larger area. The smaller site did not allow for traffic permeability, that particularly garbage trucks need to move in a forward motion. He said the larger site allows for easier use by large and small vehicles and bicycles. It orients the building toward the corner and addresses issues of safety and privacy. It also offers a larger playing field and running track. It also has better parking.

Mr. Waque asked about access from Ruth Avenue and Algo Court.

Mr. Stagl said Ruth is not signalized and access from these smaller streets was dismissed by the city because residents were upset by the prospect of more traffic.

Mr. Waque asked about the alternative sites.

Mr. Stagl said Blessed Trinity would require expropriation. It's less accessible. It's not on a corner and it only has one point of access. He said St. Leonard's faces similar challenges. It sits on a corner, but requires expropriation. It is further from the growth area. Brebeuf would have to double-up to accept St. Joseph's. That means an expanded site. The transit is not as good.

Mr. Stagl summarized his views saying the expanded plan is fair, sound and reasonably necessary. It addresses provincial interests regarding public facilities. It is consistent with the city's approved plan. It deals with all the issues raised at the site plan level. The expanded area is reasonable. The original site left concerns, which the larger site addresses including traffic, access and growth. All the Board and municipal issues are addressed.

QUESTIONING OF MR. STAGL BY MR. D'AGOSTINO

Mr. D'Agostino asked whether the Board could still proceed with the three-storey site.

Mr. Stagl said he wasn't recommending against the three-storey proposal, but rather recommending that the expanded site provides a solution.

Mr. D'Agostino asked about the city considering a widening of Cummer and whether that is a viable option for the smaller site.

Mr. Stagl said it might address queuing problems but garbage trucks and buses would still have a problem. He said the Board has discovered there is no solution other than providing a larger site.

Mr. D'Agostino said there was no way of knowing what portion of the new growth area would be separate school supporters. He also asked about the convenience of the Cummer site.

Mr. Stagl said transit is already there and it's more suitable for bicycles.

Mr. D'Agostino asked about residential intensification.

Mr. Stagl said the larger site would result in a diminished residential intensification, but greater community facilities, and it introduces greater land use impact.

Mr. Stagl said the land where the townhouses stand is zoned residential and specifically it is zoned for townhouses only. So there would need to be a revision of the zoning. He said the Cummer site is still the best option. Any other site would have to start from scratch.

Mr. D'Agostino discussed the definition of neighbourhoods and how new development should fit existing neighbourhoods.

Mr. Stagl said the same test does not apply to homes as public buildings. The school can and should be prominent. The official plan means "compatible with" not "same as" neighbourhood.

RE-EXAMINATION OF MR. STAGL BY MR. WAQUE

Mr. Waque asked Mr. Stagl to read from the official plan.

Mr. Stagl read "schools, places of worship .. schools are an integral part of a neighbourhood .. schools will be designed to offer amenities to the community."

END OF EVIDENCE FROM TORONTO CATHOLIC DISTRICT SCHOOL BOARD

Mr. Vine asked whether any unrepresented owners were present who wished to speak.

Ms. Marissa Luchico came forward. She said she was the owner of 3348L Bayview Avenue and that she was present to lend her support to her neighbours.

Dong Qing Deng and Bin Gu, the owners of 3348A Bayview Avenue requested the hearing of necessity, but they were not present during the proceedings and did not submit evidence.

EVIDENCE CALLED BY THE OWNERS REQUESTING THE HEARING

(Notes from the Hearing of Necessity are attached hereto)

TESTIMONY OF FIONA FU

Ms. Fiona Fu is the sole owner of 3348C Bayview Avenue, where she resides with her elderly parents. She said she went to St. Joseph Morrow Park and Blessed Trinity schools. She offered photographs of the community explaining the convenience of the location. She said one of her parents, who lives with her, has a terminal illness and is currently close to medical appointments. She said the taking of lands is unfair and unreasonable and unjust. She said she loves the neighbourhood and wants to raise her children there.

QUESTIONING OF MS. FU BY MR. WAQUE

Mr. Waque asked whether it would be of assistance for her family to stay for an extended period of time.

Ms. Fu answered that she wanted to stay in the neighbourhood. She said of the four owners who had sold, one was downsizing, one was renting and another was bullied.

RE-EXAMINATION OF MS. FU BY MS. KOEV

Ms. Koev asked whether Ms. Fu was willing to relocate.

Ms. Fu said relocating would be very costly

TESTIMONY OF MS. MAHTAB MIRMoeZI

Ms. Mirmoezi and her husband own 3336C Bayview Avenue, where they reside with their son. She said it took her family a long time to find their perfect home. She said the townhouse has three bedrooms, and a three car garage, which is rare for townhouses. She said her son is close to school, and that her in-laws are also nearby and they both rely on Ms. Mirmoezi and help her with the care of their grandson. Ms. Mirmoezi also helps her in-laws because they don't speak English. She said she hadn't been able to find much information on the Cummer site. She said the family had renovated intending to stay for a long time. She said the taking wasn't fair because it's where she lives and it's the first house she's owned in Canada.

QUESTIONING OF MS. MIRMoeZI BY MR. WAQUE

Mr. Waque said that there was a considerable amount of information online about the school site. He asked whether Ms. Mirmoezi had attended any of the public meetings.

Ms. Miroezi said she had attended two of the three meetings.

NO RE-EXAMINATION OF MS. MIRMOEZI BY MS. KOEV

TESTIMONY OF MS. STELLA PUI PUI LEE

Ms. Lee and her husband own 338C Bayview Avenue and reside there with their son, daughter and mother-in-law. She said it took her family two years to find their home. She said it was ideal because it had four bedrooms, each with its own bathroom. She said the neighbourhood is handy for her 85 year-old mother-in-law who can still walk around and do chores. Ms. Lee said she is the Secretary on the condominium board (for the 12 units linked together). She said the first time she realized her home was at risk was at a meeting in July 2013, when the school board presented two options for St. Joseph Morrow Park. She said she was shocked to see that one of options showed the townhouses gone. She said the taking is not fair, sound and reasonably necessary. She said she's a homeowner and doesn't think it's fair to 30 families.

NO QUESTIONING OF MS. LEE BY MR. WAQUE

TESTIMONY OF MR. STEVEN WHITE

Mr. White and his wife own 2228A Bayview Avenue and reside there with their daughter. He said he grew up in the neighbourhood and purchased his home because of the familiarity and convenience of the location. He said it was one of the few places that accepts large dogs. He said the townhouse is a perfect fit for his family. He said he never considered selling to the school board, and doesn't understand why the board didn't stick with option A (which leaves the townhouses). He said the stress of the looming expropriation has taken a toll on his wife. She now suffers from anxiety and panic attacks. She also has recently been diagnosed with a brain tumor and needs extensive treatment and hospital visits. Mr. White said he doesn't even want to consider a move, and that his wife is his primary concern.

QUESTIONING OF MR. WHITE BY MR. WAQUE

Mr. Waque asked whether Mr. White had contributed to the Committee of Adjustment application, had he attended meetings or made submissions.

Mr. White said he had not been able to attend the meetings.

NO RE-EXAMINATION OF MR. WHITE BY MS. KOEV**TESTIMONY OF MS. ANNMEZA SZETO**

Ms. Szeto owns and resides at 3348H Bayview Avenue. She said the location is central and close to amenities. She said she first learned about the possible expropriation at the first meeting when the board displayed Option A and Option B. She said of the 30 affected owners only four have chosen to sell. The remaining 26 want to stay. She said their homes are unique and can't be replaced in the same neighbourhood. She said the board has said that the option of leaving the townhouses makes the site too small for a secondary school, but in fact during a search of the internet she found that 11 (eleven) secondary schools sit on five acres or less and at least 16 (sixteen) sit on 4 (four) acres or less. She discussed the costs involved in some of the rejected sites. She said it's not fair to expropriate when there are other options available. She said to go forward with the larger site on Cummer means re-starting the clock. Going forward with the smaller site would be quicker.

QUESTIONING OF MS.SZETO BY MR. WAQUE

Mr. Waque questioned Ms. Szeto's attendance at the Committee of Adjustment. He said she opposed the minor variance.

Ms. Szeto said at the time she had concerns about the traffic.

Mr. Waque asked whether the owners had considered hiring their own experts, such as planners.

Ms. Szeto said they were homeowners and couldn't afford to hire experts.

RE-EXAMINATION OF MS. SZETO BY MR. D'AGOSTINO

Ms. Szeto described a letter written by then Councillor Mike Delgrande in which he says "the property is too small and the board is undertaking an expropriation plan to acquire more land."

Mr. Waque objected to the question

Mr. D'Agostino said the inquiry was not bound by the rules of evidence.

Ms. Szeto said a traffic engineer had told her the traffic issues into the smaller site could be resolved.

END OF EVIDENCE FROM OWNERS

FINAL SUBMISSION BY TORONTO CATHOLIC DISTRICT SCHOOL BOARD

Mr. Waque said the present journey began in 2007 when the Sisters of St. Joseph sold their land. At that time the Board began searching for a new home of St. Joseph Morrow Park. The Board's first choice was not to expropriate, and that expropriation is not done with enthusiasm, rather out of necessity. He said the Board acquired the Cummer site in 2013. He said the Board considered 19 sites which were narrowed down to three (St. Leonard's, Blessed Trinity, Brebeuf).

Mr. Waque said the first design at the Cummer site (with a 3-storey building) raised concerns about access. The 2-storey plan adds 1.42 acres providing 6.2 acres and allows for growth.

Mr. Waque said the grounds for the taking were to accommodate growth, to relocate St. Joseph Morrow Park. He cited *Grey (County) Hydro Corridor Committee v. Ontario (Minister of Energy)* 12 L.C.R. 193, in which Mr. Justice Grange said "The inquiry officer has no right to look into the merits of those objectives. His jurisdiction is solely to determine whether the taking of the land is "fair, sound and reasonably necessary" in the achievement thereof."

Mr. Waque said the Cummer site is close to the growth centre, and the only way to accommodate growth is to expand St. Joseph Morrow Park. It's the only Catholic girls' school in North York. He said Ms. Clarke noted that it's impossible to expand in developed areas without

expropriation. He said most of the evidence relied on 7 years of work done by the Board. He said the first drawings didn't address growth. When the three-storey option was rejected, it became obvious more land was required.

Mr. Waque said the Board held public meetings. He said the Board still needs site plan approval and that the widening of Cummer is necessary one way or another, but more importantly, the site requires two points of access. He said the expanded site and building design exceeds standards of efficiency and will become a community hub. It's the type of facility that the official plan endorses.

Mr. Waque said it comes down to the consideration of alternatives, and the extent of alternatives in this situation is unusually large. He said three witnesses explained why the Cummer site was the preferred site. He said the sites at St. Leonard, Blessed Trinity and Brebeuf did not accommodate growth. St. Leonard's would require expropriation and fronts on only one main arterial road. Blessed Trinity is also not expropriation-free. It would require two years in planning and is not unoccupied. The Board would have to build another elementary school to replace it. Brebeuf has no vacant land available. The neighbouring St. Agnes is already over-capacity and it has limited road access.

Mr. Waque said the Board's process has been substantive and thoughtful. The owners' book offers 43 tabs which include materials from the public domain. There have been five separate elements of public process. He said the inquiry has heard from owners regarding the fairness of expropriation, but that question is not before the inquiry. That question was decided when the school board was given the right of expropriation. The fact that schools can take land is already decided. He said the board is willing to make one unusual proposal, that the board is willing to let owners stay up to one year, if moving is difficult.

Mr. Waque said the board must accommodate growth. It must proceed with the acquisition of additional land and the witnesses showed the taking is reasonably necessary.

FINAL SUBMISSION BY THE OWNERS

Mr. D'Agostino said there is a viable option without expropriation. There are a number of viable options. The objective of the school board is to obtain a school site for the replacement of St. Joseph Morrow Park and that requires the examination of alternatives.

Mr. D'Agostino said the board actually approved the site at Blessed Trinity in 2010. He said the board has chosen not to have representatives present to provide answers. The board has chosen to withhold evidence. He said the appeal of the decision on the minor variance has been adjourned. If time is of the essence, he asked why was the two-storey option was not pursued. The board at one time said the smaller site was workable.

Mr. D'Agostino said St. Joseph's is a specialty school. It's gender specific and does not have a catchment area. It draws from a wide area. He said the population growth numbers cannot predict how many families could be separate school supporters and how many girls would choose to go to a single-gender school.

Mr. D'Agostino cited *Karn v. Hydro* which says "to ascribe any meaning whatever to this section and particularly the words 'fair, sound and reasonably necessary', it must follow that the inquiry includes the issue of alternative routes."

Mr. D'Agostino said at no time did the board test the other alternatives against Cummer.

Mr. D'Agostino said in 2010 the board considered Blessed Trinity to be the best site. It had the benefits of location (Bayview & Finch) and it was better suited to the students who attend St. Joseph. He said St. Leonard is the most geo-centric, and it's close to transit. He said that the Brebeuf option is troubling, because the expert witnesses were not involved in the school analysis and when a group of parents opposed moving St Joseph to the site, it was taken off the table. The Tyndale site is also troubling because the board has the option of expropriating that land. It can stop the clock through expropriation.

Mr. D'Agostino said, given the options, the taking is not fair, sound and reasonably necessary. The board has not been forthcoming with information. The experts could not speak to the process. The board's objectives can be achieved without expropriation. This is not a last resort.

There is still a decision pending on the appeal of the application for a minor variance. The board cannot rely on growth numbers that do not apply to this school. Economically, the other sites are cheaper than Cummer. The Cummer project without expropriation will cost \$21m, with expropriation it becomes \$53m. It is far and away the most expensive option.

Mr. D'Agostino said the driving force for the board is to relocate St Joseph's. The townhouse owners ought not to pay the price because the board couldn't act soon enough. The board has the ability to stop the clock. He said the board could force Tyndale to negotiate

Mr. D'Agostino asked that the inquiry officer recommend to the approving authority that all owners who are party to the inquiry be paid \$200.00 for costs.

RESPONSE BY TORONTO CATHOLIC DISTRICT SCHOOL BOARD

Mr. Waque said that between the Notice of Grounds and the Notice of Application for Hearing of Necessity, the phrase "expansion" was added. He said the issue of expansion was not examined at Holy Trinity and St. Leonard. He said regarding Freedom of Information, the board will have its own response. He said the other sites are only of academic interest. The Cummer site is the only one that makes accommodation for growth. He said considering the Tyndale site is not practical. The school only uses 25% of the property. The chapel is only available five days a year. Expropriation is not a practical option. Ms. Clarke said the growth expectation is 665 students and 300 would be girls.

Mr. Waque said the board has acted reasonably. It has come to expropriation as a last result. It's a situation that's taken 7-8 years to come to this point.

END OF EVIDENCE AND ARGUEMENTS

NOTICE OF GROUNDS

NOTICE IS HEREBY GIVEN that the Toronto Catholic District School Board (the "Board") intends to rely on the following grounds:

1. The lands to be taken are required for or in connection with the following objectives:
 - (a) to respond to increased and projected increases in student enrolment;
 - (b) to implement the Board school site criteria, policies and procedures;
 - (c) to implement Board Education Development Charges ("EDC") By-Law No. 178;
 - (d) to provide for an area allowing design flexibility including, but not limited to, placement of portables, construction of new buildings and demolition and/or reconstruction of existing buildings;
 - (e) to construct a two storey school building for single gender enrolment;
 - (f) to construct playing fields and green spaces;
 - (g) to construct an underground parking facility;
 - (h) to provide road frontage with access to an arterial road and public transit;
 - (i) to construct a hard surface play area; and
 - (j) to commence construction by 2016 or as soon as possible.

2. The required lands achieve the above objectives, including minimizing costs. In that connection:
- (a) The Board's lease of the existing St. Joseph's Morrow Park Secondary School at 3377 Bayview Avenue will expire June 30, 2015 and is under review to extend to June 30, 2018 at which time no further extensions are available (the "Leased Site").
 - (b) The Board acquired 5.04 acres in 2013 west of the subject properties from the Toronto District School Board ("New Site") to replace the Leased Site;
 - (c) the New Site is significantly undersized and falls below both the Board standard for secondary school sites and the EDC guideline of 1.2 acres per 100 pupils;
 - (d) enrolment at the Leased Site exceeds capacity with no room for expansion or placement of portables;
 - (e) the New Site lies within the catchment area of the Leased Site and is centrally located for planned growth and with expansion can accommodate a growing area population;
 - (f) the New Site is in a catchment area that requires additional facilities and new locations have proven difficult to obtain;
 - (g) there are few alternative opportunities to acquire large parcels without the expropriation and displacement of numerous homeowners by assembling single family homes;
 - (h) to assemble other lands involves complexity, cost and delay;
 - (i) a minor variance application to construct a 3 storey school building on the New Site was refused;
 - (j) alternative sites were considered at 211 Steeles Avenue East and 100 Ravel Road, however these were not viable;
 - (k) acquiring the subject properties together with the New Site provides sufficient area for a two storey building and associated hard surface play areas, playing fields and green areas;
 - (l) acquisition of the Bayview Avenue frontage allows direct access off Bayview and improved site circulation and thus has less traffic impacts on the neighbourhood;
 - (m) acquisition of the Bayview Avenue frontage allows the school site to function more effectively as a community hub offering community access to its indoor gym and theatre facilities and outdoor open space and playing field facilities;
 - (n) site size requirements have been reduced by providing for underground parking which also reduces the impact of use of the site on the neighbourhood;

- (o) overall the acquisition of land in the City of Toronto for new or expanded school sites is proving extremely difficult;
- (p) the inclusion of this site complies with the criteria and policies of the Board with respect to site area and associated amenities;
- (q) construction is expected to start in 2016, therefore, possession of the required land must be attained by late 2015 or as soon as possible; and
- (r) funding through Education Development Charges is already in place to acquire this site.

IN THE MATTER OF THE *EXPROPRIATIONS ACT*

IN THE MATTER OF an Application by the Toronto Catholic District School Board
For Approval to Expropriate Lands for the purpose of acquiring in its jurisdiction a school site in the City of Toronto ancillary and necessary to the expansion of St. Joseph's Morrow Park Catholic Secondary School Site and works ancillary thereto.

AND IN THE MATTER OF a hearing fixed for April 29 and 30 and May 5, 2015 at the hour of 9:30 a.m. in the forenoon at Victory Verbatim, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario M5K 1H6.

**CLOSING SUBMISSIONS
OF THE TORONTO CATHOLIC DISTRICT SCHOOL BOARD
ON THE HEARING OF NECESSITY
FOR
ST. JOSEPH'S MORROW PARK CATHOLIC SECONDARY SCHOOL**

May 5, 2015

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**Lawyer for Toronto Catholic District
School Board**

Background

1. Toronto Catholic District School Board acquired 500 Cummer Avenue, North York ("Cummer Site") from Toronto District School Board on March 28, 2013. Currently the Board leases a portion of 3377 Bayview Avenue ("Leased Site") from Tyndale University College & Seminary for the purposes of a girls secondary school known as St. Joseph's Morrow Park ("SJMP"). The lease is expiring June 30, 2015, however, is under negotiation to be extended to June 30, 2018 without any further options to renew the lease.

Board Productions, Exhibit 3, Tab 74(c)
Board Productions, Exhibit 3, Tabs 2 and 3

2. Prior to the acquisition of the Cummer Site the Board looked at alternative locations to replace the 800 pupil place leased facility. Around March 25, 2009 the Board had considered as many as 19 options for the replacement the Leased Site. By January 27, 2010 the Board had narrowed this down to 5 options at 3 sites. The alternative locations looked at were St. Leonard, Blessed Trinity and Brebeuf College which for various reasons such as size, funding, pupil spacing and gender enrolment were not suitable replacement sites.

Owner Document Book, Exhibit 8, Tab 27, Page 5 (15 pages in)
Owner Document Book, Exhibit 8, Tab 13, Page 9
Owner Document Book, Exhibit 8, Tab 18, Page 9

3. The Board proposed to construct a 3 storey facility on the Cummer Site with underground parking, a sports field and a single access from Cummer Avenue. In order to construct the 3 storey facility a minor variance would be required from the City of Toronto. On October 17, 2014 the Board made an Application to the Committee of Adjustment for a minor variance to allow the construction of the 3 storey facility. The Committee decision refused the application. The decision has been appealed by the Board and is currently pending.

Board Productions, Exhibit 3, Tab 26
Board Productions, Exhibit 3, Tab 30
Board Productions, Exhibit 3, Tabs 32 and 33

4. The Board proposal for the 3-storey facility on the Cummer Site was also met with concerns that impeded Site Plan Approval, besides the height, regarding access, playing fields, vehicle storage and queuing (PUDO), garbage pick up by City staff and school bus access, the community and other commenting agencies.

Evidence of Paul Stagl, Witness for the Board
Exhibit 12

Board Productions, Exhibit 3, Tab 31 (a) to (m)

5. As a result of the challenges to construct the replacement facility and to accommodate growth, the Board commenced expropriation proceedings to acquire 1.42 acres comprising a remnant parcel, 26 townhouses and appurtenant rights of way (the "Townhouses") to expand the Cummer Site to a total area of 6.40 acres. The Board proposes to construct a 2 storey girls only facility on the expanded site with associated amenities (playing field, two access points and underground parking) thereby alleviating the Board from seeking approval for a minor variance for height and improving the site to provide for solutions to the concerns brought forward by City staff, the community and commenting agencies and thus, assuring Site Plan Approval. Further, the Board's other objective of accommodating growth can be met on the expanded site.

Exhibit 1, Tab C

Exhibit 7

Proposed Taking

6. The Board proposes to expropriate 26 townhouses located on the west side of Bayview Avenue between Cummer Avenue and Ruth Avenue. The townhouses lie adjacent to the east limit of the Cummer Site. Of the 26 townhouses, remnant parcel and appurtenant rights of way, 22 townhouse owners requested an inquiry into whether the proposed taking is fair, sound and reasonably defensible to achieve the objectives of the expropriating authority. The remaining 4 townhouse owners did not request an inquiry. The owners of 3348A Bayview Avenue did not participate in the inquiry despite having requested the inquiry.

Exhibit 7

Exhibit 1, Tab CC and DD

Leased Site

7. Currently the Board leases a portion of 3377 Bayview Avenue which is owned by Tyndale University College & Seminary for St. Joseph's Morrow Park Catholic Secondary School. The school is for girls only from Grade 9 to 12. The lease expires June 30, 2015. A lease extension is under negotiation between Tyndale and the Board to extend the lease to June 30, 2018. The proposed extended lease provides for an increase in rent, reduced use of exclusive space and no further extensions to the lease. The Board is required to relocate the school.

Board Productions, Exhibit 3, Tabs 2 and 3

8. The Notice of Grounds make it clear that the School Board's objectives in pursuing the Application for Approval to Expropriate are two-fold. First, there is the accommodation of growth. Second, there is the continuance of the long-standing objective of relocating St. Joseph's Morrow Park Catholic Secondary School from its existing location, where it is subject to a time limit. This cannot be further extended. Neither objective is open to review at the Hearing of Necessity.

Notice of Grounds, Exhibit 1, Tab GG

9. As was made clear by Mr. Justice Grange in *Grey (County) Hydro Corridor Committee v. Ontario (Minister of Energy)* 12 L.C.R. 193:

The issue seems to me to revolve around the words at the end of the subsection, viz. "the objectives of the expropriating authority". The inquiry officer has no right to look into the merits of those objectives. His jurisdiction is solely to determine whether the taking of the land is "fair, sound and reasonably necessary" in the achievement thereof.

Grey v. Ontario, 12 L.C.R. 193 at para. 4 – Tab 2, Brief of Cases.

Growth Objective

10. The School Board did not choose growth. Growth by way of intensification is mandated by the Province through a number of policies, including the Growth Plan, which identifies the Yonge Street Corridor, approximately 2 kilometres away from the subject lands as an Urban Growth Centre. To accommodate high school girls not enrolled in specialty arts programs in North York, including pupils generated from the Urban Growth Centre, the only option available to the Board is to accommodate that growth at a relocated site for St. Joseph's Morrow Park School. It has no other high school site available.

**Growth Plan, Exhibit 3, Tab 38, page 65
EDC Background Study, Exhibit 2, Tab 9, page 93**

11. The land that the Board seeks to acquire through expropriation (1.4 acres) is less than the amount of land (3.1 acres) for which Education Development Charges have been collected for the purposes of supporting the purchaser expropriation of the land to accommodate growth.

Background Study, Exhibit 2, Tab 9, page 93

12. As demonstrated by the evidence of Cynthia Clarke, in a built up urban community like the City of Toronto, it is virtually impossible to meet the goal of accommodating growth without the use of the power of expropriation, particularly, when there is a time limit on achieving that goal.

Evidence of Cynthia Clarke, Witness for the Board

13. As Ms. Clarke noted, only 3 of the 19 property acquisition goals as established in the background study to the Education Development Charges Chart By-Law have been met without the use, up to now, of the power of expropriation.

Evidence of Cynthia Clarke, Witness for the Board

14. A large portion of the evidence before the Inquiry Officer focused on the attempts for the last 7 years to find a replacement site for St. Joseph's Morrow Park Catholic Secondary School and the consideration of alternative sites for replacement only. None of that evidence assists the Inquiry Officer as to how other sites might accommodate growth.

The Variance Application

15. The Variance Application represented an attempt by the Board prior to its establishment of accommodating growth as an objective for this expropriation. However, it demonstrates that even without the need to meet the objective of accommodating growth, it is necessary to expropriate the Townhouse Lands in order to proceed with the St. Joseph's Morrow Park relocation project.
16. There was no disagreement in the evidence before the Inquiry Officer that the refusal of the Committee of Adjustment to allow a 3-storey high school building meant that in order to accommodate a 2-storey high school building, the Townhouse Lands would have to be acquired

Minor Variance Application

17. The Board made public presentations on June 19, 2013 and on July 8, 2014 thereby presenting conceptual site plans on the Cummer Site and including the Townhouses. At the first presentation the facility included a 3 storey building, surface parking and a sports field. The second presentation included a 3 storey building, underground parking and a sports field. On October 17, 2014, a Minor Variance Application was made to the

Committee of Adjustment for minor variances to By-Law 7625 for building height and front yard landscaping to permit a 3 storey building on the Cummer Site.

Board Productions, Exhibit 3, Tabs 21, 22 and 26 (a) to (g)

18. The minor variance was refused. The minor variance was not supported by many members of the community including residents of the Bayview-Woods Steeles community and the owners of 3338C Bayview Avenue, a party to this inquiry. Parties to this inquiry did not provide any support to the Minor Variance Application and in one case spoke against the application due to concerns of deficiencies regarding access.

Board Productions, Exhibit 3, Tabs 30, 31(d) and (k)
Evidence of Steve White, Witness for Property Owners
Evidence of Annmeza Szeto, Witness for Property Owners

19. The minor variance refusal has been appealed by the Board, but the matter is adjourned. Because of site plan issues, however, future appeal of the variance will not advance the project, even if it were successful.

Site Plan Approval Issues

20. In addition to the inability to achieve a minor variance, the School Board's attempt to fit the relocation project onto the 500 Cummer Site without the Townhouse Lands was bound to fail to achieve Site Plan Approval.
21. As Mr. Stagl outlined carefully in his evidence, the City of Toronto raised a large number of issues with the Site Plan Application separate and apart from the issue of the height of the high school building, so that even if the Minor Variance was later achieved, Site Plan Approval could not be achieved.

22. These deficiencies are as follows:

1. Traffic and pedestrian access
2. Onsite parking
3. Service vehicles
4. Visual access
5. Adjacent property considerations
6. Garbage pickup
7. Pick up and drop off (loading)
8. Size of sports field

Evidence of Paul Stagl, Witness for the Board
Exhibit 12

23. One of the principal issues with respect to Site Plan Approval had to do with traffic circulation. There was a suggestion in the Owner's evidence, that the traffic circulation issue could be resolved by a widening on Cummer Avenue. The widening on Cummer Avenue would be necessary irrespective of whether there was a development on the 500 Cummer Lands, with or without the Townhouse Lands. More important were questions of access to Bayview and an internal circulation road through the site and promoting traffic to flow from Bayview to Cummer, which is only possible if the Townhouse Lands are acquired.
24. Access to the 3 storey site was only from Cummer Avenue. Residents in the neighbourhood and the City were against access from Ruth Avenue and Algo Court as these are local roads. (City Transportation staff seemed to support this option, but there is no evidence that City Planning supported it.) There is no signalized intersection at Ruth and Bayview Avenue and traffic infiltration into the neighbourhood would result. Accordingly, Mr. Stagl explained that the City prefers access be from an arterial road like Cummer Avenue. Additional access from Bayview Avenue provides for improved site circulation for staff vehicles, busses, student pick up and drop off, loading and service vehicles. Garbage trucks can service the site without having to back up to exit which is much safer.

Evidence of Paul Stagl, Witness for the Board

25. Parking on site was designed underground to save on site space and avoid additional land takings to the west on Algo Court. The cost of underground parking is significant and is being designed for the first time at a secondary school for the Board. This is designed to reduce the land required. The design of the 2 storey building above grade is also very efficient. As Mr. Catsaros testified, the result is a building which is more efficient than the standard set by an expert panel.

Exhibit 4, Tab 25(b)

26. Pick up and drop off areas for cars and buses is improved as there is more space designed for traffic circulation. Access points from Cummer Avenue and Bayview Avenue are designed for two-way traffic.

Evidence of Costas Catsaros, Witness for the Board

27. Visual access is important in terms of safety and recognizability in the community. The building is intended to be offset from the corner of Cummer Avenue and Bayview Avenue with landscape features. Public buildings are scrutinized more for safety. Public buildings open to the street are well received especially when there is a community use

taking place. Public access to the school, gym, theatre and cafeteria facilities would be encouraged and facilitated by this corner location.

Evidence of Paul Stagl, Witness for the Board
Evidence of Costas Catsaros, Witness for the Board

28. Adjacent property owners had concerns with the 3 storey site plan in terms of traffic, height, shadowing, privacy, off-site parking, queuing on streets, noise, building size out of character in neighbourhood, transit capacity, spending of public money and enrolment capacity.

Board Productions, Exhibit 3, Tab 31 (a) to (f), (j), (k), (m)
Evidence of Annmeza Szeto, Witness for Property Owners

29. The 2 storey site plan on the expanded site is expected to alleviate the concerns of these residents. The proposed site will front two major arterial roads at Cummer Avenue and Bayview Avenue both of which are supported by public transit. Transit accessibility is improved through four combined means of access for vehicles, pedestrians and cyclists which is fully supported by Provincial Policy. Funding of the school is provided through educational development charges paid by developers, not the public.

Evidence of Paul Stagl, Witness for the Board
Board Productions, Exhibit 3, Tab 37 (a) and (b)
Board Productions, Exhibit 3, Tabs 9 and 14

School Program Objectives

30. The acquisition of the Townhouse Lands provides for physical education and sports aspects of the school program to be met. Without the Townhouse Lands being acquired, a sports track and usable sprint track cannot be provided. Additionally, the acquisition of the Townhouse Lands permits a larger soccer pitch as well as maintaining the ability to provide for a playing field for field hockey. No challenge was made in the evidence to the value of these school programs or the fact that is demonstrated by Mr. Catsaros that including the Townhouse Lands in the site area allowed these facilities to be developed.

Evidence of Costas Catsaros, Witness for the Board
Evidence of Paul Stagl, Witness for the Board
Exhibit 7

Consideration of Alternatives

31. It is admitted that the consideration of alternatives is an appropriate part of the inquiry before the Inquiry Officer.

32. In this hearing, the Inquiry Officer heard from three independent expert witnesses about the site search and all 3 witnesses agreed that the preferred site was the site proposed by the Board before the Inquiry Officer. The Inquiry Officer also heard from 5 lay witnesses, some of whom referred to portions of the record in which other sites had been commented on by Board staff at various stages in the process.
33. First, it must be said that the record shows that the Board did a thorough and ongoing review of site alternatives, starting with a review of 19 possible sites. Cherry-picking old reports to find comments on the preference for one site or another has limited evidentiary value because:
- (1) Almost all of those comments did not consider the current proposed site because it was not available earlier in the process;
- And,
- (2) None of the comparative comments consider the objective of accommodating growth.

St. Leonard

34. This site has an area of 5.11 acres, essentially the same size as the Cummer Site, at the corner of Leslie Street and Ravel Road in North York. The site is bounded to the north and east by single family residential properties. The site is closed as an elementary school and serves an adult learning centre for English as a second language program.

**Owner Document Book, Exhibit 8, Tab 23, Page 8
Evidence of Cynthia Clarke, Witness for the Board**

35. The site is not a viable alternative to replace SJMP for the following reasons:
1. An expanded site would be required to construct a similar 2 storey facility thereby requiring the expropriation of residential properties.
 2. The planning process to construct the facility would be required to start from the beginning causing considerable delay in constructing the facility before the proposed extended lease expires.
 3. The site is farther away from the North York growth centre as defined in the Provincial Growth Plan that will feed enrolment of SJMP.
 4. The site fronts a major arterial road and a local road, rather than being on the corner of a major arterial and minor arterial road.
 5. The site does not have the same east-west transit service as the Cummer Site.
 6. The site does not qualify for funding through Educational Development Charges (EDC) to construct the facility.
 7. The site does not have space for growth.

Evidence of Cynthia Clarke, Witness for the Board

**Evidence of Paul Stagl, Witness for the Board
Owner Document Book, Exhibit 8, Tab 18, Page 188, Item 9(ii)**

Blessed Trinity

36. This site has an area of 4.95 acres, essentially the same size as the Cummer Site, on the east side of Bayview Avenue just north of Finch Avenue in North York. The site is bounded to the north and south by residential high-rise buildings and to the east by single family residential properties.

**Owner Document Book, Exhibit 8, Tab 23, Page 10
Board Productions, Exhibit 3, Tab 5A**

37. The site is not a viable alternative to replace SJMP for the following reasons:

1. An expanded site would be required to construct a similar 2 storey facility thereby requiring the expropriation of residential properties to the east.
2. The planning process to construct the facility would be required to start from the beginning causing considerable delay in constructing the facility before the proposed extended lease expires.
3. The site was proposed to construct a joint facility for elementary and secondary uses, however, Ministry funding for the elementary school was not approved.
4. The site is not a corner lot making points of access on a single arterial road.
5. The site does not have the same east-west transit service as the Cummer Site.
6. This site is not at a signalized intersection.
7. The site is challenged by sloping topography in the rear in terms of constructing a sports field.
8. The site could only be expanded to 6.1 acres for both joint uses.
9. A site for secondary use only would require the dispersal of current elementary school pupils.
10. The site does not have space for growth.

**Evidence of Cynthia Clarke, Witness for the Board
Evidence of Paul Stagl, Witness for the Board
Exhibit 11
Owner Document Book, Exhibit 8, Tab 30**

Brebeuf College

38. The site is not a viable alternative to replace SJMP for the following reasons:

1. This site is an all boys secondary school and is not intended to become a co-ed facility.
2. This site does not have the capacity to add 800 pupil places.

3. This site does not have enough area to construct a new facility for 800 PP without removing the playing field.
4. The site of St. Agnes elementary school beside this site is already over capacity and will likely be expanded as an elementary school, rather than made available for secondary school use.
5. The site is not permeable in terms of traffic.
6. The site does not have space for growth.

**Evidence of Cynthia Clarke, Witness for the Board
Evidence of Paul Stagl, Witness for the Board
Board Productions, Exhibit 3, Tab 9, Page 93**

Public Process

39. The most important part of public process is this Hearing of Necessity. In presenting the need for the acquisition, the Board exceeded the minimum statutory requirements with respect to disclosure. Further, the lengthy document book prepared by the Owners demonstrates that ample additional information was available in the public domain, particularly, on the Board's website concerning relevant matters, including the search for alternative locations.

Exhibit 8, Tabs 1 to 43

40. Immediately prior to the Hearing of Necessity, there was a public hearing in the form of a Minor Variance Application, which as described below, fully exposed the issues with relying on the site without the Townhouse Lands included. Even some of the Townhouse Owners themselves, as highlighted below, objected to the project proceeding highlighting the need for a larger site. As the productions of the School Board indicates, the Minor Variance Application was well attended and led to both disclosure of the Board's plans and documented public response to it.

Exhibit 4, Tabs 24(a) to (g) and Tabs 27, 28, 29, 30 and 31 Tabs (a) to (m)

41. Prior to the Hearing of Necessity, the Board held a number of public meetings to discuss the options for the subject site. As the Owner's evidence highlighted, the option of expropriation was discussed at public meetings as early as June of 2013, when Concept A and Concept B were discussed.

Exhibit 8, Tab 40; Exhibit 4, Tab 21

42. In fact, the Board held a second public meeting in July of 2013, to respond to public requests for additional disclosure.

Exhibit 4, Tab 22

43. While the objective of addressing its growth requirements through expropriation is new, with the Notice of Application for Approval to Expropriate, there is ample public process with respect to the growth issue and the need to expand to acquire new land to facilitate both the relocation of St. Joseph's Morrow Park School and to accommodate growth. This is demonstrated through the public process that surrounded the passage of the Development Charges By-Law and the detailed references to St. Joseph's Morrow Park Catholic Secondary School and the cost of acquiring the Townhouse Lands is explicitly set out in the Education Development Charge Background Study, in the references

Exhibit 3, Tabs 9 to 15

Exhibit 3, Tab 9, page 93 and page 61.

The Test for the Inquiry Officer

44. The evidence of the Owners focussed on the question of fairness from their perspective. As one of the witnesses succinctly put it in answer to the question as to whether or not the taking was fair "forcing someone out, the acquisition by expropriation, is never fair". The essence of expropriation is compulsory taking, or taking without the consent of the owner. Instinctively, the Owner always feels that this is not fair. If the Owner's feelings in this regard were the test for fair, sound and reasonably necessary, then every time an owner objected to a compulsory taking, the test would not be met.
45. Rather than focus on each word in the test, the approach approved by the Courts is to focus on the overall test of whether the expropriation is reasonably defensible. As confirmed by Mr. Justice Cory as he then was in re: *Parkins and The Queen*, in reference to the fair, sound and reasonably necessary test:

"I agree that it is pointless to analyze each adjective. The test suggested by Mr. Morden, that is to say, having regard to the objectives of the expropriating authority is this expropriation reasonably defensible, is in my opinion one that can and should be considered and applied by an inquiry officer."

Parkins and The Queen, 13 L.C.R. 306 at 315, confirmed by the Court of Appeal in *Parkins v. R*, 14 L.C.R. 327.

Case Brief Tab 6

Other Concerns of the Owners

46. While most of the Owners' concerns can be addressed by way of compensation to assist them in relocating, the Board notes that there are some cases of extenuating circumstances with respect to the difficulty in relocation. Because the Board can defer demolition of the Townhouses during the remaining planning and development process, the Board indicates to the Inquiry Officer its intention to accommodate Owners who wish

to remain on site as long as possible. Conceivably, possession could be extended for up to a year to accommodate those Owners who would be challenged by a quick relocation effort. If the Inquiry Officer recommends approval for the expropriation, the report made by staff to the Board will recommend offering an opportunity for extended possession after the Expropriation Plan is filed if requested by the Owners.

Summary

47. The Board needs to replace an 800 pupil place secondary school due to the expiry of a lease on the existing school site while planning for growth to accommodate 1100 pupil places. The proposed taking of the Townhouses will expand the Cummer Site owned by the Board. It is centrally located in an area recognized for intensification in the Provincial Growth Plan. The site is located in an area where development is planned for 20,000 new housing units.

Evidence of Paul Stagl, Witness for the Board Evidence of Cynthia Clarke, Witness for the Board

48. Alternatives were considered by the Board and determined not to be viable for reasons of inadequate size, access, transit and funding. All of these alternatives were considered prior to the Cummer Site being available for purchase by the Board. Once acquired the Board had a viable alternative and designed a 3 storey facility. Due to the height of the building the Board made an application for a minor variance which was refused. Notwithstanding the refusal, there were other concerns with the site plan regarding traffic circulation, safety, use by service vehicles, access and pick up and drop off. Acquiring the Townhouses is expected to alleviate these other concerns as well as allowing the Board to construct a 2 storey facility thereby not needing a minor variance approval. Further, the expanded site provides for growth.
49. The proposed 2 storey facility includes amenities like a gym, theatre and sports field and track which are amenities that can be used by the public thereby enhancing the community and conforms with City policy.

Exhibit 13

50. The public was engaged throughout the process and have commented, mostly opposing the 3 storey site plan. City staff have commented as well. Their concerns can be resolved by the expanded site. The Board produced 3 expert witnesses who each identified the various deficiencies with the alternative sites and providing supporting evidence for the proposed taking of the Townhouses. The parties who requested this inquiry have not provided any evidence from expert witnesses who can support their opposition to the proposed taking or respond to the Board's expert witnesses.

51. For these reasons the Board submits that the proposed taking is fair, sound and reasonably defensible in achieving the objectives of the expropriating authority.

Respectfully submitted,

A handwritten signature in black ink, consisting of a horizontal line with a small upward curve at the right end.

Stephen F. Waqué

**IN THE MATTER OF THE EXPROPRIATIONS
ACT**

IN THE MATTER OF an Application by the Toronto Catholic District School Board for Approval to Expropriate Lands for the purpose of acquiring in its jurisdiction a school site in the City of Toronto ancillary and necessary to the expansion of St. Joseph's Morrow Park Catholic Secondary School Site and works ancillary thereto.

AND IN THE MATTER OF a hearing fixed for April 29 and 30 and May 5, 2015 at the hour of 9:30 a.m. in the forenoon at Victory Verbatim, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario M5K 1H6.

**CLOSING SUBMISSIONS
OF THE TORONTO CATHOLIC
DISTRICT SCHOOL BOARD
ON THE HEARING OF NECESSITY
FOR
ST. JOSEPH'S MORROW PARK
CATHOLIC SECONDARY**

**BORDEN LADNER GERVAIS LLP
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Toronto, ON M5H 3Y4**

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ADDITIONAL CLOSING SUBMISSIONS

The submissions were as follows:

1. The scope of discovery is established by the *Expropriations Act* itself: read Section 7(3).
2. The Board exceeded those requirements and produced 4 volumes in hard copy of productions.
3. The Owners gather another large volume of materials from the Board web site and other public sources.
4. There has been 5 substantive public processes around this matter:
 - (a) The EDC By-law process;
 - (b) The numerous Board meetings concerning the replacement site from 2009 forward;
 - (c) The non-statutory public meetings in July and August, 2013;
 - (d) The Minor Variance public hearing;
 - (e) This Hearing of Necessity.
5. The Cases are Clear: the Inquiry cannot be impugned on issues of production if the Statute is followed: *Ball Vs Hydro*, Tab 4, Case Brief, page 9, Para 33.
6. The specific issue of waiting for an FOI search has been considered in the *Bezie* case at Tab 8, page 3; the *Davis Drive* case at Tab 11, page 6; and the *York District School Board* case at Tab 13, page 2. In each case, the motion to adjourn has been refused.
7. The motion was properly refused here and a Hearing as contemplated by the *Act* was conducted.

IN THE MATTER OF THE EXPROPRIATIONS ACT

IN THE MATTER OF an application by Toronto Catholic District School Board for approval to expropriate lands for the purpose of acquiring in its jurisdiction a school site in the city of Toronto ancillary and necessary to the expansion of St. Joseph's Morrow Park Catholic Secondary School Site and works ancillary thereto.

AND IN THE MATTER OF a hearing fixed for April 29 and 30 and May 5, 2015 at the hour of 9:30 a.m. in the forenoon at Victory Verbatim, Ernst & Young Tower, 222 Bay Street, Suite 900, Toronto, Ontario, M5K 1H6, Phone No. 416-360-6117.

OUTLINE OF SUBMISSIONS OF THE OWNERS

May 5, 2015

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Solicitor for the Toronto Catholic
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OUTLINE OF SUBMISSIONS OF THE OWNERS

1. If there is a viable option that meets the Toronto Catholic District School Board's ("Board") objectives without the need to expropriate, it cannot be said that the proposed expropriation is "fair, sound and reasonably necessary" in accordance with Subsection 7(5) of the *Expropriation Act*, R.S.O. 1990, c. E. 26 ("Act").

2. It is evident from the record that there are a number of viable options available to the Board that would enable it to achieve its stated objective "to acquire a school site ancillary and necessary to the expansion of St. Joseph's Morrow Park CSS ("SJMP")" without the need to expropriate any land.

3. During various stages of the accommodation review process, the Board has deemed each of the following to be suitable options for the achievement of its objectives:

- Blessed Trinity;
- St. Leonard;
- Brebeuf / St. Agnes; and
- the current SJMP site.

4. The Board chose Blessed Trinity as a replacement site in June of 2010. None of these options require expropriation. Notwithstanding, the Board has chosen not to provide the Inquiry Officer with relevant evidence related to these other options. In fact, the Board has acted swiftly (and without the consent of the majority of owners requesting this hearing) to secure a hearing date for this inquiry that precedes the statutory deadline to respond to two Freedom of Information requests (made March 24, and April 9, 2015) seeking information from the Board pertaining to the above-noted options.

5. To date, the Board has not responded to either request for information despite a letter sent to Mr. Waqué by Thomson, Rogers on April 15, 2015, notifying him of the Freedom of Information requests and demanding a response to those requests before the commencement of this inquiry. Where the Board, and its counsel, so choose to withhold relevant evidence from the hearing officer and the affected owners related to alternative options that do not require expropriation, it cannot be said that the taking is fair, sound, or reasonably necessary.

6. Additionally, there is a pending OMB hearing that will determine whether the Board is able to develop a 3-story school on the 500 Cummer Avenue site based on a site plan that also does not require expropriation. An appeal of the Committee of Adjustment's rejection of the three-story building was scheduled to commence at the Ontario Municipal Board ("OMB hearing") on May 6, 2015. The Board has successfully moved to adjourn the OMB hearing but has not abandoned it.

7. If timing is truly a critical concern for the Board, it is unclear why it would adjourn the OMB hearing. The Board has already completed substantial work in terms of its site plan approval application and zoning variances of a school site plan on 500 Cummer Avenue that does not require expropriation. As evidenced by the Board's planner, Mr. Stagl, the Board and City have gone through a number of submissions in this regard. As stated by Annmeza Szeto ("Ms. Szeto"), the City appears to be open to approving the application subject to some minor modifications that address traffic concerns. It would therefore have been more prudent for the Board to adjourn this hearing and pursue a decision at the OMB, where a more balanced outcome that accounts for all party interests could have been obtained.

8. For these reasons and the reasons that follow, it is not fair, sound, or reasonably necessary for the Board to displace the 33 owners ("Owners") and their families from their one-of-a-kind homes ("Subject Lands") identified in attached Schedule A in order to achieve its objective.

A. The Board's objective is not limited to a particular school site; rather, its objective includes the consideration of any school site in the City of Toronto

9. Subsection 7(5) of the Act, requires an inquiry officer to inquire into whether the taking of the lands of an owner or of more than one owner of the same lands is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

10. The Board's objective is clearly stated in the Notice of Application for Approval to Expropriate Land, dated February 4, 2015, which states that it proposes to expropriate the subject lands "for the purpose of acquiring in its jurisdiction a school site in the City of Toronto ancillary and necessary to the expansion of St. Joseph's Morrow Park Catholic Secondary School site and works ancillary thereto." Counsel for the Board has attempted to limit the scope of this objective in paragraph 1 of the Notice of Grounds.

11. Notwithstanding, in accordance with subsection 7(6) of the Act, the inquiry officer is only required to opine on the merits of the application for approval.

12. Therefore, the only objective that we ought to be concerned with for the purposes of this hearing is the objective outlined in application for approval; namely, the Board's acquisition of a school site in the City of Toronto ancillary and necessary to the expansion of SJMP.

B. Alternative Options Must Be Considered

13. The Court of Appeal has stated that in order to ascribe any meaning to s.7(5) of the Act "and particularly the words 'fair, sound and reasonably necessary,' it must follow

that the inquiry includes the issue of alternative routes. To eliminate this question from the inquiry would almost negate the inquiry." See attached TAB 1: *Karn v. Ontario Hydro*, 1977 CarswellOnt 1090, 11 L.C.R. 1 (O.C.A.) at para. 7.

14. Evidence of alternative designs or options intended to implement the objectives of the expropriating authority is relevant to the inquiry; particularly where those alternatives would reduce the scope of the taking. See attached TAB 2: Waque 10-38 citing *Crozier v. Ontario (Minister of Transportation)*, an unreported decision heard December 4, 5, and 7, 2000.

C. There are a number of alternative sites, which are preferable to the 500 Cummer Avenue site and would meet the Board's objectives without the need to expropriate any lands.

i. Blessed Trinity site (3205 Bayview Avenue):

- Board, through consultation with community, has considered a range of options with respect to utilization of site for achievement of its stated objectives without the need to expropriate. For example, see Exhibit 8, Tab 24, lower page 34, where options include:
 1. A new SJMP secondary school at site, with closure of existing elementary school at site and:
 - a. Redirection of students to neighboring schools; or,
 - b. Blessed Trinity students redirected to expanded St. Gabriel; or,
 2. A new JK-12 secondary school at site with:
 - a. Co-ed elementary school and grades 9-12 female single gender secondary school; or
 - b. JK-12 female single gender secondary school with elementary boys redirected to proximate schools.
- On June 16, 2010, the Board approved a recommendation that (subsequent to Ministry approval and financial capacity) the Director of Education proceed with the design and construction of a JK-12 school facility on the site to include an 800 pupil-place all-girls secondary school to accommodate the SJMP school population, and that there be a 285 pupil place co-ed elementary replacement for Blessed Trinity (see Ex. 8, Tab 27, Page 5). The Board continued to be committed to this option through 2011 and early 2012, as evidence by Ex. 8, Tab 30 and Ex. 11.

- The site is located near the intersection of Bayview Avenue and Finch Avenue, with superior access to frequent transit service and the hydro corridor (for those riding bikes to school) compared to Cummer site;
- This is the second-most geocentric option; egocentricity being one of the factors considered by the Board when considering possible school sites for SJMP. The first-most geocentric option being St. Leonard;
- The site is equally proximate to the Yonge Street growth corridor as the Cummer site, but is closer to the Sheppard / Yonge intersection, which is the busiest and most critical growth area in North York.
- A shortage of funding for redevelopment of the elementary school appears to be the only reason why this project did not go ahead as the Ministry approved funding for the secondary school (SJMP) portion of the project (see Ex. 8, Tab 30) because the Board chose not to bring an informed witness from the Board refused to answer our FOI request there is no evidence to support the contention that the secondary school only portion with elementary students disbursed would not be the most viable option for the relocation of SJMP;
- By Ms. Clarke's own admission, the enrollment numbers at Blessed Trinity are declining and expected to continue declining to as low as 118 pupils in 2018 (see Tab 9, Page 85, Line 87 of Exhibit 3 for exact numbers). This suggests that it would be fairly easy to retain a number of the female pupils at SJMP (Blessed Trinity location) and disperse the rest of the student population to neighboring schools – a far more effective solution than having to permanently displace the Owners from their homes;
- The FIT study, dated May 22, 2012, overseen by the Board's architect, identifies site as viable without need for expropriation.

ii. St. Leonard site (near Finch and Leslie):

- Most geo-centric site with respect to existing SJMP student population (Ex. 8, Tab 14, bottom p. 20);
- Chosen by the Board's Staff as the preferred site in March 2009 for being "superior in all assessments" including for being the least costly option, and for prospect of development being completed in the shortest time (see Ex. 8, Tab 14, bottom p. 17);
- As stated by Fiona Fu ("Ms. Fu"), owner and former SJMP student, this site is preferable to the 500 Cummer site because of its greater proximity to more frequent transit along Finch Avenue; the Old

Cummer Go station (with parking); and access to public services such as the Cummer Park Community Centre and Toronto Public Library;

- Additionally, this site is better able to handle the traffic generated by the new school because the site is located on the northbound side of Leslie Street, and so would not contribute to Highway 401 congestion going south, as is the case with the Cummer site.

iii. Brebeuf / St. Agnes site (211 Steele Avenue East):

- This site was identified and considered as an option by the Board on the bases that it has a lower construction cost attached to it. The large site and the fact that the site did not require a formal accommodation review were also considered as advantages of the site (see Ex. 8, Tab 14, bottom p. 17).
- The site also features easy access to more frequent transit services along Steeles Avenue than the 500 Cummer site provides.
- Notably, it appears that the site was ultimately abandoned by the Board because of significant local concerns expressed by the St. Agnes and Brebeuf communities (see Ex. 8, Tab 18, bottom p. 188). It is entirely unfair for the Board to heed the concerns of that community over the concerns of the Owners in this hearing.

iv. Tyndale / Current SJMP site (3379 Bayview Avenue):

- Based on communications and reports from the Board, remaining on the current SJMP premises was considered a viable option (see Tabs 9 and 13 of Exhibit 8). None of the Board's witnesses could speak to why this site ceased being a longterm option;
- As stated by Ms. Fu, the site is preferable for its unique and iconic character, location near Steeles Avenue (where frequent transit service is easily accessible), and the privacy created by the surrounding open space;
- The site has previously been able to comfortably accommodate a larger enrollment number than currently exists. As such, it is not evident from the record why the Board has not pursued this option more intently. At the very least, the Board ought to expropriate the area currently housing SJMP as a temporary easement until a suitable replacement has been found.

15. Given all 4 of the above-outlined options, displacing 33 homeowners and their families cannot be considered fair, sound and reasonably necessary. Clearly it is possible for the Board to acquire a school site that achieves the Board's objectives without the need to demolish 30 highly desirable townhomes.

16. Any opinion regarding the merits of the application for approval ought to account for the fact that the Board did not produce any witnesses that were qualified to speak to the alternative options. Specifically, none of the Board's witnesses:

- were part of accommodation review process that considered above alternatives in detail;
- could speak to why the Blessed Trinity, St. Leonard, Brebeuf / St. Agnes, and Tyndale sites were ultimately rejected or advise whether the 500 Cummer site was considered in relation to those alternatives.

17. Based on the evidence produced by the Board, none of the alternative options appear to have played any role in the decision making process that led the Board's conclusion that an expanded 500 Cummer site, which includes expropriation, was reasonably necessary in order to achieve its stated objective.

D. Even if the SJMP expansion were to be built on the 500 Cummer Avenue site, the Board's objectives can be achieved without the need to expropriate.

- i. The Board has failed to adduce any actual evidence to support the level of expansion that has been proposed**

18. As stated by Board Trustee John Del Grande in Exhibit 15, "we can absolutely build and make work what we need on the property we own ... expropriation is a very last resort [...] I am not in favour of removing residents for the mere sake of a sports field."

19. Notwithstanding Del Grande's assurances, the Board is currently proposing an 1100 pupil school site, with the development of an 800 pupil school that has a 300 pupil addition capacity;

20. No evidence has been adduced to sufficiently justify the need for space beyond 800 pupils and no timeframe has been provided for when the construction of a 300 addition would commence or when it would actually be needed;

21. According to the Board's architect, he has consistently been asked to design a school site with up to 800 pupils;

22. It is inappropriate to rely on the expected growth along the Yonge / Sheppard and Yonge / Finch growth centers as a basis for increased enrollment numbers at SJMP because, as Ms. Clarke states, the pupils attending SJMP come from across the City; not just one specific area. This is primarily due to the fact that SJMP is a single gendered school and is not bound by a specific catchment area. Proximity to new housing is

therefore irrelevant for the purposes of determining projected enrollment numbers at SJMP;

23. Ms. Clarke admits that there are "tremendous variables" in the calculation of enrollment numbers. She also admits that there is "no legislated bridge" between the Education Development Charges By-law and the Board's decision on how to accommodate or allocate pupils. Ms. Clarke further admits that the additional 669 pupils she projected as a result of expected growth along the Yonge corridor will not necessarily end up at SJMP.

E. Contrary to paragraph 2 of the Notice of Grounds, the proposed taking amounts to the most expensive option for the purposes of achieving the Board's stated objective. As such, the proposal to expropriate is founded on unsound financial practices and is not reasonably defensible.

24. At paragraph 2 of the Notice of Grounds, it is stated that one of the objectives med by the acquisition of the Subject Lands is "minimizing costs."

25. According to the evidence adduced by Ms. Szeto, the proposed project on the Cummer site is the most expensive option (*see Charts estimating cost of developing school on various alternative sites at Ex. 8, Tab 14, bottom p. 88, and Tab 18, bottom p. 193*).

26. In summary:

Option	Board's Estimated Cost (Range)	Comments
Blessed Trinity Site (SJMP only; former Blessed Trinity Students consolidated w/ St. Gabriel)	\$16,872,227 - \$21,918,484	*Based on 2010 amounts.
Blessed Trinity Site (SJMP combined with Elementary School)	\$26,835,656	* Based on 2009 amounts.
Blessed Trinity Site (SJMP only)	\$20,780,000	* Based on Exhibit 11, architect drawings Option 5(a) dated May 2012
St. Leonard Site (SJMP only)	\$23,194,151 - \$23,389,246	*Based on 2009/10 amounts.
Tyndale Site (Temporary Easement)	N/A	- Range between current and expected cost of annual rent to 2018: \$456,170 - \$600,000 annually.
Brebeuf / St. Agnes Site (Co-located secondary / elementary)	\$23,389,246	*Based on 2009 amounts.

Brebeuf / St. Agnes Site (SJMP only)	\$23,620,396 – \$30,833,492	* Based on 2009 amounts vary depending on where elementary population relocated.
500 Cummer Site (no expropriation)	\$21,507,575	*Calculated at \$205 per sq. ft. in today's dollar amount for a total of 104,915 sq. ft. (evidence of Board's architect)
500 Cummer Site (with expropriation)	\$21,788,630 + cost of townhouse acquisition + cost of underground parking	Total = Over \$53 million

F. It is unfair to force the Owners out of their homes due to the Board's failure to secure a suitable school site in a timely fashion.

27. It is evident that the main driving force behind this expropriation is the need to for the Board to secure a space for SJMP before its current lease with Tyndale expires. This consideration cannot and ought not to be deemed as sufficient for the purposes of the "reasonably necessary" test;

28. Owners should not have to pay the price for Board's poor management practices; particularly when other viable options are still available;

29. As evidenced by all of the Owners' testimonies, they would suffer significant non-compensable losses if they were forced to leave their homes. None of the Owners are interested in selling their homes for a variety of reasons, including but not limited to the unique size of the townhouses, the particular location of the homes (such their proximity to Sunnybrook and to family members), the quality of the neighborhood, and the need to stay put for health reasons.

30. As a result, the better solution for the Board's time constraint would be to temporarily expropriate easement representing area of current SJMP site until in order to allow sufficient time to find a suitable location for the school site and/or to obtain any requisite municipal approvals for development of a school where no expropriation is required.

31. The owners request maximum amount of costs in accordance with the Act.

SCHEDULE "A"

LIST OF THOMSON, ROGERS CLIENTS AND THEIR RESPECTIVE LANDS

No. of House-holds	Owner(s) / Title Holder(s)	Municipal Address & Legal Description of Lands Being Expropriated in the City of Toronto
1.	Fiona Miao Fu	3348 Bayview Avenue – Unit C 10024-0202 (LT) being Part of Lots 4 and 5 on Plan 4180 North York designated as Parts 5, 40, 49 and 50 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984418
2.	Anity Tsun-Min Chang Liao	3348 Bayview Avenue – Unit E 10024-0200 (LT) being Part of Lots 5 and 6 on Plan 4180 North York designated as Parts 7, 38, 53 and 54 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984420
3.	Annmeza Szeto, and James Szeto	3348 Bayview Avenue – Unit H 10024-0197 (LT) being Part of Lots 6 and 7 on Plan 4180 North York designated as Parts 12, 35, 59 and 60 on Plan 64R-15130, City Of Toronto, subject to and together with easements as in TB984423

4.	Mary Joseph Chakkalackal	3348 Bayview Avenue – Unit J 10024-0195 (LT) being Part of Lot 7 On Plan 4180 North York designated as Parts 14, 33, 63 and 64 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984425
5.	Flora Yi Man Ken, and Joe Lau Tai Ip	3348 Bayview Avenue – Unit N 10024-0191 (LT) being Part of Lot 8 on Plan 4180 North York designated as Parts 20, 29, 71 and 72 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984429
6.	Lai Fun Brenda Chan	3348 Bayview Avenue – Unit O 10024-0190 (LT) being Part of Lots 8 and 9 on Plan 4180 North York designated as Parts 21, 28, 73 and 74 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984430
7.	Leung Hang David Lee, and Yuk Yee Jeanne Chiu	3348 Bayview Avenue – Unit R 10024-0187 (LT) being Part of Lot 9 on Plan 4180 North York designated as Parts 24, 25 and 79 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984433

8.	Shu-Shin Shen	<p>3340 Bayview Avenue – Unit B</p> <p>10024-0363 (LT) being Part of Lot 3 on Plan 4180 designated as Parts 10 and 28 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto.</p>
9.	Hui Ling Liu, and Xiang Ping Zhang	<p>3340 Bayview Avenue – Unit C</p> <p>10024-0364 (LT) being Part of Lot 3 on Plan 4180 designated as Parts 11 and 29 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part-Of Lots 1, 2 and 3, on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto</p>
10.	Yuan Peng Zhao, and Chun Lan Luo	<p>3340 Bayview Avenue – Unit D</p> <p>10024-0365 (LT) being Part of Lot 3 on Plan 4180 designated as Parts 12 and 30 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto</p>

11.	Kathleen Shinn, and Steven White	3338 Bayview Avenue – Unit A 10024-0358 (LT) being Part of Lot 2 on Plan 4180 designated as Parts 5 and 23 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto
12.	Jiani Xi, and Xiaoyan Zhou	3338 Bayview Avenue – Unit B 10024-0358 (LT) being Part of Lot 2 on Plan 4180 designated as Parts 6 and 24 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 of Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto
13.	Stella Pui Pui Lee, and Philip Wing-Chan Lee	3338 Bayview Avenue – Unit C 10024-0360 (LT) being Part of Lot 2 on Plan 4180 designated as Parts 7 and 25 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto

14.	Vinay Verma, and Purti Papneja	3338 Bayview Avenue – Unit D 10024-0361 (LT) being Part of Lots 2 and 3 on Plan 4180 designated as Parts 8 and 26 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto
15.	Dae Seong Park, and Chanae Suck	3336 Bayview Avenue – Unit A 10024-0354 (LT) being Part of Lot 1 on Plan 4180 designated as Parts 1 and 19 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto
16.	Jianhua Zhang	3336 Bayview Avenue – Unit B 10024-0355 (LT) being Part of Lot 1 on Plan 4180 designated as Parts 2 and 20 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT357427, City of Toronto

17.	Mahtab Mirmoezi, and Shahin Shokatpour Torab	3336 Bayview Avenue – Unit C 10024-0356 (LT) being Part of Lot 1 on Plan 4180 designated as Parts 3 and 21 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration.No. AT397427, City of Toronto
18.	Navid Mehrasa	3336 Bayview Avenue – Unit D 10024-0357 (LT) being Part of Lots 1 and 2 on Plan 4180 designated as Parts 4 and 22 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto
19.	Mark Lin	3348 Bayview Avenue – Unit Q 10024-0188 (LT) being Part of Lot 9 on Plan 4180 North York designated as Parts 23,26, 77 and 78 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984432
20.	Ademola Laoye and Adekemi Laoye	3348 Bayview Avenue – Unit G 10024-0198 (LT) being Part of Lot 6 on Plan 4180 North York designated as Parts 10, 11, 36, 57 and 58 on Plan 64R-15130, City of Toronto, subject to and together with easements as in TB984422

21.	Yue Zhao	<p>3340 Bayview Avenue – Unit A</p> <p>10024-0362 (LT) being Part of Lots 2 and 3 of Plan 4180 designated as Parts 9 and 27 on Plan 66R-20483, City of Toronto together with an undivided common interest in Toronto Common Elements Condominium Corporation No. 1580 being Part of Lots 1, 2 and 3 on Plan 4180 designated as Parts 13, 14, 15, 16, 17, 18, 31, 32 & 33 on Plan 66R-20483 as in Declaration No. AT397427, City of Toronto</p>
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