

**IN THE MATTER OF THE *EXPROPRIATION ACT*, BEING
CHAPTER E-13 OF THE REVISED STATUTES OF
ALBERTA, 2000 AND AMENDMENTS THERETO;**

**AND IN THE MATTER OF THE INTENDED
EXPROPRIATION BY THE CITY OF EDMONTON, OF:**

**PLAN 1820AX
BLOCK 5
LOT 2
EXCEPTING THEREOUT ALL COAL.**

AND IN THE MATTER of the Notice of Objection to the said
intended expropriation filed by Michael Wild and John Villanyi.

AND IN THE MATTER of an Inquiry in respect thereof pursuant
to the provisions of the said Act by Larry P. Carr, Q.C. as Inquiry
Officer appointed to conduct the said Inquiry by the Minister of
Justice and Attorney-General for the Province of Alberta, as
represented by the Executive Director, Civil Law.

REPORT OF THE INQUIRY OFFICER

BEFORE: LARRY P. CARR, Q.C.,

HELD AT: City of Edmonton, Law Branch
9th Floor of Chancery Hall
3 Sir Winston Churchill Square
Edmonton, Alberta
T5J 2C3

HELD ON: Wednesday, June 16, 2004 and Thursday, June 17, 2004

APPEARING FOR: THE CITY OF EDMONTON (the "Expropriating Authority")
Mr. Douglas S. Debrinski
Barrister & Solicitor, The City of Edmonton Law Branch
9th Floor Chancery Hall, Sir Winston Churchill Square, Edmonton, Alberta,
T5J 2C3

APPEARING FOR: MICHAEL WILD and JOHN VILLANYI (the "Landowners")
Mr. Donald P. Mallon, Q.C.
Prowse Chowne LLP, Barristers & Solicitors,
#100, 10328-81 Avenue, Edmonton, Alberta, T6E 1X2

TABLE OF CONTENTS

I	PURPOSE AND INITIATING PROCEDURES	3
II	SUMMARY OF EVIDENCE ADDUCED AT THE HEARING	4
	A) EXHIBITS	4
	B) WITNESSES	8
	Witnesses on behalf of the Expropriating Authority	8
	Witnesses for the Landowners	15
III	ARGUMENTS ADVANCES ON BEHALF OF THE PARTIES	21
	A) City of Edmonton	21
	B) Submissions by Counsel for the Landowners	23
	C) Rebuttal Submissions by the City	24
	D) Further Rebuttal by Counsel for the Landowners	25
IV	VIEW OF THE EXPROPRIATION LANDS	25
V	INQUIRY OFFICER'S FINDINGS OF FACT	25
VI	OPINION AND REASONS	27

I PURPOSE AND INITIATING PROCEDURES

This is an intended expropriation by the City of Edmonton of the following Lands:

**PLAN 1820AX
BLOCK 5LOT 2
EXCEPTING THEREOUT ALL COAL**

(hereinafter referred to after the "Lands"), from the Landowners as registered owners thereof.

A Notice of Intention to Expropriate dated the 16th day of March 2004 was registered against the Lands on the 20th of March 2004. The Landowners, by their Solicitor Donald P. Mallon, Q.C., served a Notice of Objection to the Expropriation dated the 4th day of May 2004 on the City of Edmonton on the same day.

The Notice of Intention to Expropriate states that:

"The work of purpose for which the interest in the Lands is required is to eliminate safety issues relating to vehicular crossing of the Mill Creek Ravine trail and for consolidation with surrounding park land and fulfilment of the City's Ribbon of Green principle of establishing continuous river valley trails."

The Minister of Justice and Attorney General for the Province of Alberta, as represented by R. Neil Dunne, Q.C., Executive Director, Civil Law, did on the 10th day of May 2004, appoint Larry P. Carr, Q.C., as the Inquiry Officer, to conduct an inquiry with respect to the intended Expropriation of the Lands pursuant to and in accordance with the provisions of the said *Act* and the regulations made thereunder.

R. Neil Dunne, Q.C., Executive Director, Civil Law, a designate of the Deputy Minister of Justice and Deputy Attorney General, by Extension Order dated the 25th day of May 2004, pursuant to section 23(1)(b) of the *Expropriation Act*, extended by 30 days the time within which the Inquiry Officer had to make his report with respect to the intended Expropriation.

R. Neil Dunne, Q.C., Executive Director, Civil Law, a designate of the Deputy Minister of Justice and Deputy Attorney General, also granted an Extension Order extending by 30 days the time for registration at the Land Titles Office of the Certificate of Approval by the Expropriating Authority pursuant to the *Expropriation Act*. This Order was registered at the Land Titles Office against the Expropriation Lands on May 26, 2004.

The Inquiry Officer served a Notice of Inquiry on the Solicitor for the City and the Solicitor for the Landowners, giving notice of an inquiry hearing with respect to the Notice of Objection filed by the Landowners, to be held at the City of Edmonton Law Branch, 9th Floor, Chancery Hall, 3 Sir

Winston Churchill Square, Edmonton, Alberta, commencing at 10:00 a.m. on Wednesday, June 16, 2004. Each party was requested in the Notice of Inquiry to file with the Inquiry Officer and with each other a written brief of their respective case, together with all maps, plans, studies and documents and any other materials intended to be presented in evidence at the inquiry. Briefs were filed with the Inquiry Officer by the Solicitor for the Expropriating Authority and by the Solicitor for the Landowners.

The Inquiry hearing proceeded at the appointed time and place on June 16, 2004 and concluded at the same location on June 17, 2004. Counsel for the City and counsel for the Landowners each advised the Inquiry Officer that there were no preliminary matters to be dealt with.

II SUMMARY OF EVIDENCE ADDUCED AT THE HEARING

A) EXHIBITS

Exhibit 1 - City Documents, Volume I, consisting of:

1. Copy of City Bylaw number 7188, as passed February 6, 1985;
2. Copy of "Ribbon of Green" concept plan;
3. Copy of Ribbon of Green master plan dated December 1992;
4. Article 540. (A) Metropolitan Recreation Zone, of the City Zoning Bylaw;
5. Aerial photograph of Mill Creek Ravine, showing the location of residences within the Ravine;
6. Aerial photograph of the area surrounding the Lands with survey marking superimposed thereon identifying the Lands; and,
7. Aerial photograph of area surrounding the Lands showing superimposed thereon survey lines identifying the Lands and topographical lines indicating elevation.

Exhibit 2 - City Documents, Volume II, consisting of:

1. Letter received November 5, 1997 from William Rama respecting sale of subject property;
2. November 5, 1997 City of Edmonton internal circulation re purchase of subject property;

3. November 14, 1997 e-mail from Dean Wray (Community Services, Parks) confirming interest to purchase subject property;
4. November 17, 1997 letter to William Rama confirming interest in acquiring subject property;
5. November 28, 1997 letter from William Rama to City re purchase price;
6. January 13, 1998 e-mail from Dean Wray (Community Services, Parks) confirming internal purchase order to acquire subject property;
7. January 12, 1998 letter to William Rama confirming offer to purchase subject property;
8. March 5, 1998 internal City e-mails re sale of subject property to Rama daughter and Dean Wray's comments re safety concerns and alternatives to acquire subject property;
9. March 10, 1998 letter from William Rama confirming intention to sell subject property to Laureen Rama;
10. July 24, 1998 Encroachment Agreement between City of Edmonton and Laureen Rama re subject property;
11. January 5, 1999 Caveat with attached Right of First Refusal dated July 24, 1998 re subject property;
- 12.. January 12, 1999 Caveat with attached Access Easement Agreement dated July 24, 1998;
13. Alberta Land Titles Certificate confirming transfer of subject property to Laureen Rama August 8, 1998 and registration of City of Edmonton Caveat re Right of First Refusal;
14. July 7, 2003 memo to file re contact by Martin Ignasiak, solicitor for Laureen Rama, re potential sale of property to City and request for appraisal;
15. Internal City requisition dated August 5/7, 2003 for appraisal of subject property;
16. August 20, 2003 appraisal of subject property;
17. September 9, 2003 internal City e-mail re inquiry by Rama solicitor regarding an appraisal;
18. September 29, 2003 letter to Rama solicitor re acquisition of subject property;
19. October 1, 2003 listing of subject property by Rama with specific reference to City's Right of First Refusal;

20. October 17, 2003 letter from Rama Solicitors serving notice of offer and invoking City's Right of First Refusal;
21. November 12, 2003 Internal Purchase request with justification for acquisition being protection of ravine and safety concerns with respect to trail;
22. November 14, 2003 letter from City to Rama solicitor confirming intention to exercise Right of First Refusal with attached Standard Land Acquisition Agreement;
23. November 18, 2003 letter from Rama solicitor disputing exercise of Right of First Refusal and intention to sell the property to Mr. Wild;
24. November 18, 2003 letter to Rama solicitor confirming City's intention to exercise Right of First Refusal;
25. November 21, 2003 letter from Rama solicitor disputing Right of First Refusal and affirming intention to sell to Wild;
26. November 24, 2003 letter to Rama solicitor confirming City's desire to exercise Right of First Refusal and acquire subject property;
27. November 25, 2003 letter from Rama solicitor disputing Right of First Refusal and reiterating intention to sell to Wild;
28. November 27, 2003 letter to Rama solicitor re Right of First Refusal;
29. November 27, 2003 internal City e-mail confirming authorization to proceed with expropriation of subject property;
30. December 4, 2003 Memorandum from General Manager, Community Services to City Manager confirming approval to initiate immediate expropriation of subject property;
31. December 3, 2003 letter from City Law Branch to Rama solicitor notifying of City's intention to initiate expropriation with request to immediately notify Mr. Wild of City's intention to avoid unnecessary financial or time costs by Wild and reiterating City's willingness to acquire the property pursuant to Right of First Refusal;
32. December 7, 2003 letter from Rama solicitor confirming that a copy of the December 3, 2003 letter was forwarded to Mr. Wild;
33. December 11, 2003 letter from City Law Branch reiterating City's intention to proceed with expropriation, emphasizing notice was for benefit of Mr. Wild, and tendering payment of \$305,000 along with acquisition agreement;
34. January 6, 2004 letter from Law Branch to Rama solicitor and January 6, 2004 reply confirming sale of subject property to Wild;

35. Land Title confirming transfer of Lands to Wild on December 30, 2003;
36. January 27, 2004 Transportation & Public Works Committee Minutes with attached report seeking authorizing resolution to expropriate subject property with transcribed notes of Mr. Wild's submissions acknowledging awareness of City's intention to expropriate prior to proceeding with purchase;
37. February 3, 2004 City Council Minutes with attached authorizing resolution to proceed with expropriation;
38. February 5, 2004 Edmonton Sun article reporting Wild admitted being aware of City's intention to expropriate prior to proceeding to purchase property;
39. Notice of Intention to Expropriate dated March 16, 2004;
40. Certified Copy of Title confirming registration of Notice of Intention;
41. Copies of Notice of Intention published in March 30 & April 7, 2004 Edmonton Journal;
42. Affidavit of Service with copy of envelope addressed to Wild returned unclaimed;
43. Affidavit of personal service on Wild & Villanyi;
44. May 4, 2004 letter from Prowse Chowne with Notice of Objection;
45. May 7, 2004 letter from Law Branch to Alberta Justice;
46. May 10, 2004 letter from Alberta Justice with Appointment of Larry P. Carr as Inquiry Officer;
47. May 12, 2004 letter from Mr. Carr confirming appointment;
48. May 13, 2004 letter from Prowse Chowne requesting Extension Order and May 21, 2004 letter from Mr. Carr confirming request for Extension Order;
49. May 26, 2004 correspondence from Mr. Carr with attached Extension Order; confirmation of registration of Extension Order; and,
50. Notice of Inquiry for June 16 & 17, 2004.

Exhibit 3 - Sketch identified at "overlay tab 6", together with six photographs marked A through F.

Exhibit 4 - Offer to purchase and agreement for sale dated the 4th day of December, 2003.

Exhibit 5 - Copy of pages 2, 3 and 4 of a fax sent by Fraser Milner Casgrain under date December 8, 2003 to R. Wallis.

Exhibit 6 - Computer disk entitled "Vehicle Crossing Photos".

Exhibit 7 - Brief of Prowse Chowne LLP addressed to the Inquiry Officer dated June 11, 2004.

Exhibit 8 - Copy of extract from the Manual of Geometric Standards of the Transportation Association of Canada.

Exhibit 9 - Copy of plan for "PT William Avenue, PT 11th Avenue North".

Exhibit 10 - Brief of the City of Edmonton.

B) WITNESSES

Witnesses on behalf of the Expropriating Authority

1. Ms. Terry Irene Herbert

After being duly sworn, Ms. Herbert indicated that she is employed as a property agent with the Acquisitions and Appraisal section of the Real Estate Department of the City of Edmonton. As such, her job is to negotiate the acquisition of property for the City of Edmonton.

Ms. Herbert stated that she had been involved in negotiations for the acquisition of the Lands since 2003, and that she had access to the City's files providing information on negotiations to acquire the Lands in the 1990. The witness testified that in 1997, William Rama acting on behalf of his mother who was then the registered owner of the Lands, invited offers from the City for the purpose of selling same (Exhibit 2.1). The City Community Services Department indicated an interest in purchasing the Lands as it crossed the main Mill Creek trail, and funding was available. Discussions with the Rama family progressed, but before finalization, the Rama family indicated that a daughter had expressed an interest in purchasing the Lands.

Ms. Herbert stated that the City wanted to treat the family with extra care and concern, but had a safety concern as physical access to the Lands was across parkland and the Mill Creek trail; further, a double-parking stall in front of the property was carved out of parkland. Out of concern for the family, the City decided not to pursue its legal rights but to enter into Encroachment, Access and Right of First Refusal agreements to permit continued use of parkland by the registered owner, but giving the City a right of first refusal with respect to any *bona fide* third party offer for the Lands. That right of first refusal was registered on title by way of caveat.

Ms. Herbert testified that in July 2003, the City was approached by lawyers acting on behalf of the Rama family, stating that the family wished to sell the Lands and asking if the City was interested. As the Community Services Department was still interested in the property and funding was available, the City agreed to pay for the cost of an appraisal. That appraisal, at Exhibit 2.16, indicated a value of \$270,000.00 as of August 20, 2003.

While negotiations were still ongoing, lawyers for Laureen Rama, the then registered owner of the Lands, gave to the City on October 17, 2003 notice of an accepted agreement of purchase and sale for the Lands at \$305,000.00, giving the City a period of 30 days to exercise its right of first refusal.

The witness testified that the Community Services Department was notified of the notice and by Memorandum of Approval signed November 13, 2003, Community Services confirmed that funding was available and authorized the purchase of the Lands "for consolidation with abutting ravine holdings to protect ravine/eliminate private vehicle crossing on main spine trail". The Justification Report attached to this Memorandum indicated:

"Once purchased the City intends to demolish the residential property and restore the site to natural similar surrounding Mill Creek Ravine lands. The house access is currently across parkland, including required vehicle movements along a section of main spine Mill Creek Ravine trail. Removing the house is encouraged for reasons of safety in addition to ensuring the protection of the river valley from redevelopment pressures if the house remained" (Exhibit 2.21).

By letter (Exhibit 2.22) dated November 14, 2003 to the Solicitors for Laureen Rama, the City stated "Please consider this letter the written notice under clause 3 of the Right of First Refusal Agreement, dated July 24, 1998." There was attached the City's Standard Land Acquisition Agreement with a request that it be signed by the registered owner and returned to the City.

Ms. Herbert testified that the City then received a letter (Exhibit 2.23) from the registered owner's lawyer dated November 18th, stating "your correspondence constitutes a counteroffer which does not meet the terms of the Right of First Refusal." Following an exchange of correspondence and the threat of legal action by the Solicitor for the registered owner, the City discharged its caveat with respect to the Right of First Refusal, but it delivered to the said Solicitors at the same time on November 27, 2003, a letter (Exhibit 2.28) stating that the discharge with being given without prejudice and that the City reserved its rights granted under the Right of First Refusal. By letter dated December 3rd (Exhibit 2.31) addressed to the Solicitors for the registered owner, the City advised that it intended to acquire the Lands by expropriation, and requested that the Solicitors for the purchasers be so advised. There was additional correspondence between the City and the Solicitors for the registered owner, but the matter was not resolved, and the Lands were actually registered in the name of the Landowners on December 30, 2003.

The witness then reviewed the internal procedures which took place within the City, including a Transportation and Public Works Committee hearing on January 27, 2004, at which one of the

Landowners, Michael Wild, was questioned and made representations to the Committee. The report of the Committee to City Council recommended that expropriation of the Lands be authorized, noting that:

“vehicle and pedestrian access to the site crosses parkland and the main spine of the Mill Creek Ravine trail, which causes a safety issue. City ownership of the site would eliminate the safety issue as all site improvements would be demolished and the site would be restored to natural lands similar to the surrounding Mill Creek Ravine lands.”

Ms. Herbert testified that City Council authorized the expropriation at its meeting on February 3, 2004, as shown in an extract of the Minutes of Council in Exhibit 2.37.

As counsel for the Landowners agreed that all procedural matters leading up this hearing had been duly complied with, counsel for the City stated that he would not produce evidence in that respect.

In cross-examination by Mr. Mallon, Ms. Herbert reviewed some of her qualifications and experience and expanded on her testimony with respect to the procedures and the exchange of correspondence with the Solicitor for Laureen Rama with respect to the Right of First Refusal.

On further questioning by Mr. Mallon, the witness intimated that the decision to proceed to acquire the property by expropriation was based upon the opinion of the City’s legal department that, as stated in Exhibit 2.30, “the City’s potential to successfully defend its rights under the Right of First Refusal, is, in the circumstances, is unlikely, ...”.

On further questioning by Mr. Mallon, Ms. Herbert indicated that she has personally and infrequently used the Mill Creek Ravine trail in the vicinity of the Lands for rollerblading, running and biking and that she knows the intersection very well.

On further questioning by Mr. Mallon, the witness testified that:

- although its plans may have changed, the City had no present plans to expropriate the Lands because it had a right of first refusal;
- there are two other private houses in the Mill Creek Ravine located at approximately 87th Avenue, and the City has no present plans to acquire those properties through expropriation, although the City does have long term plans to acquire those properties.

Questioned about the drive from the house on the Lands and its crossing with the Mill Creek multi use trail, the witness produced Exhibit 3 showing that the multi-use trail runs along side the access to the Lands and the intersection with the multi-use trail is not at right angle, but rather on the diagonal. Photographs taken of the area show a red post in the middle of the trail before its intersection with the roadway providing access to the Lands, as well as rumble strips in the southerly approach to the intersection and a yield sign in the northerly approach to the intersection. Sight lines to the roadway and any approaching traffic as well as to the front of the house are partially obstructed by vegetation, all as shown on the Exhibit 3 photographs.

The witness further testified that the Mill Creek Ravine trail crosses 76th Avenue where there are pedestrian cross lights operated by push button, as well as the Mill Creek Road leading to the swimming pool parking lot where there are stop signs as well as a pedestrian crosswalk.

In re-examination by Mr. Debrinski, Ms. Herbert stated that while there are a number of other crossings of the Mill Creek Ravine trail, there are no motor vehicle crossings other than at 76 Avenue, Mill Creek Pool, and in the vicinity of the Expropriation Lands.

Ms. Herbert also testified there were ongoing discussions with the Landowners to acquire the Lands and perhaps even effect an exchange.

2. Mr. Dean Wray

After being duly sworn, Mr. Dean Wray testified that he is employed by the City as a planner in the Community Services Department; he has worked for the City for 23 years and has been in his present position for the last nine years, as one of two planners for the River Valley.

The witness testified that in March 1998, when approached by Ms. Herbert with respect to the potential purchase of the property, the Community Services Department was interested in purchasing the Lands because its concern that use of the property encroached on parkland, specifically with respect to an unauthorized access that had been blazed through the bush to the property and a double parking stall next to the property that was on parkland; the first concern of his department at that time was to protect and preserve the River Valley.

Mr. Wray stated that when it became clear that the owner's granddaughter wanted to purchase the Lands, the City did not want to come across as heavy handed but wanted to find a way to ultimately purchase this property; accordingly there was given to the registered owner an Encroachment Agreement and an Access Easement, in exchange for Right of First Refusal.

Referring the Exhibit 2.15, Mr. Wray indicated that his department authorized an appraisal of the Lands in 2003 in order to negotiate the purchase of the Lands "for consolidation with abutting ravine holdings to protect ravine/eliminate private vehicles crossing on main trail construction"; he added that this was in accordance with the long-standing intent and direction of the City to acquire River Valley properties and stand-alone properties for consolidation and tidying up the River Valley. The same description of the project was contained in the Internal Purchase Request at Exhibit 2.21 approving the funding of \$305,000.00 to purchase the Lands.

Referring to the report from the Transportation and Public Works Committee recommending expropriation, found at Exhibit 2.36, Mr. Wray commented that it was intended to make it very clear to the Landowners that the City was willing to resort to expropriation to complete the purchase of the Lands. He cited the reasons for the acquisition as being;

- in keeping with the Ribbon of Green principles of a continuous River Valley trail;

- this is a stand-alone property located in the middle of the Ravine, not out of the Ravine like other residential developments;
- vehicle and pedestrian access to the site cross the main spine of the trail and there is safety issue with the vehicular crossing and the lack of wide open clean sight lines; the acquisition would permit the department to demolish the house and restore the Lands to “naturalized parkland”.

In further testimony, Mr. Wray stated that the City prefers private purchases to the use of expropriation as a means of acquisition and that the last expropriation with which his department was involved was in 1992; the usual mode of acquisition is on an opportunity basis, as the City only owns approximately 4500 hectares of the total 7400 hectares that represents the River Valley and Ravine system. He stated that these isolated parcels, such as the Expropriation Lands, came into being along time ago, before adoption of the Ribbon of Green policy by the City.

Referring the Exhibit 1.5, Mr. Wray explained that this was an aerial photograph of the lower Mill Creek, showing four remaining properties inside the ravine that the City has an interest in acquiring and is actively pursuing.

Questioned as to the need to acquire the Expropriation Lands, Mr. Ray testified that:

- the Lands are located immediately next to the main spine trail and the vehicular access is a problem and a nuisance;
- the Lands are a stand-alone property, a non-fit which just doesn't belong there;
- access to the Lands is almost through an “S” movement across the trail, and there are sight line issues, preventing someone using the trail from seeing a vehicle until they are virtually on the site, as shown on the pictures, Exhibit 3;
- the intersection between the access to the Lands and the trail is on a slope, making it more difficult for cyclists and rollerbladers to stop;
- the roadway leading to the house on the Lands is also on a slope, and while the house can be seen, the nose of a car would have to be out across the trail before it can be seen;
- cars parked in the double parking stall will normally have to back out across the trail, which is less safe than moving forward; additionally, the driver backing up would not have good sidelines;
- people using the trail for cross-country skiing, rollerblading, running in the River Valley Trails are lulled into a sense of security and are not concentrating on the dangers of the trail and unexpected conditions; both recognizing a problem and reaction time are slower.

Asked to comment on Bylaw # 7188 (Exhibit 1-1), being the North Saskatchewan River Valley Area Redevelopment Plan Bylaw, Mr. Wray stated that this was a Bylaw which tried to deal with all River Valley lands in the City of Edmonton, being defined as all lands below the top of the bank. Those lands are by and large located in parkland and some four thousand six hundred (4,600) hectares are operated by the Community Services Branch of the City. The Bylaw basically indicates that the River Valley and Ravine System is to be left largely in its natural state.

As to the Ribbon of Green documents, they are not Bylaws, but they are Council approved documents going a bit further than the Bylaws to specify types of development the citizens of Edmonton might want to see in the River Valley.

He stated that Section 1.3 of the Bylaw is very specific in stating that the purpose of the plan is to protect the North Saskatchewan River Valley and Ravine System as part of Edmonton's valuable open space heritage. Section 1.2 states that "Council also directed that the residential communities of South Rosedale and South Cloverdale should remain as residential communities within this plan area and that Centretown, Lavigne, and West Rosedale should remain as residential areas". Mr. Wray stated that by implication, all other areas not designated as residential communities are intended for recreational use. Mr. Wray stated that the Expropriation Lands do not form part of any of those identified residential communities, but are part of the Mill Creek Ravine, located probably a thousand (1,000) feet away from "Centretown" and more than that away from "Cloverdale".

Mr. Wray stated that one of the goals of the Area Redevelopment Plan (as stated in Section 2.3.3 of the Bylaw) is to provide a pedestrian movement network and other non-motorized vehicular networks . . . throughout the plan area", with pedestrian and vehicular access in designated staging areas such as the Mill Creek Pool parking lot. Further Section 3.2.10 of the Bylaw states "it is the policy of this Plan to establish pedestrian and other non-motorized vehicular movement systems; which includes bicycles, cross-country ski trail developments and equestrian trails in selected areas; as primary modes of movement along and through the River Valley". Section 3.2.12 states that it is the policy to restrict vehicular penetration through recreational and park areas.

The witness stated that the Expropriation Lands do not fit this description of the goals as it is not a major facility but rather a stand-alone residence which creates a safety issue.

Referring to the Ribbon of Green documents (Exhibits 1-2 and 1-3), Mr. Wray stated that the first was a concept plan created and approved by Council in about 1990 while the second was the application of those concepts in some very basic principles including a main spine trail connecting the whole River Valley together and identifying nodes of more intensive use developments in a limited number of areas. Specifically, at page 53, the master plan states that "wherever possible, the natural vegetation should be enhanced through landscaping, naturalization and restoration programs". Mr. Wray stated that it is in accordance with this policy that most stand alone-properties which are acquired by the department are restored back to the natural.

Asked to comment on the Lovatt Report attached as Tab 4 of the Landowners Brief (Exhibit 7), Mr. Wray stated that he has great difficulty accepting the statement in that report that the Area Redevelopment Plan Bylaw intent is to control residential development in the plan area as opposed to eliminating it. He stated that it is the policy of his department to consolidate recreational development by eliminating residential development.

As to the statement in the Lovatt Report that expropriation is not a contemplated means of acquiring properties, Mr. Wray stated that he would challenge anybody to find a City document which states specifically that land is to be expropriated, as expropriation is a last ditch effort and is not part of a planning document. He added that expropriation is provided for under Section 644 (1) of the *Municipal Government Act* which permits a municipality to commence proceedings to acquire land.

Asked to comment on the reference in the Lovatt Report to the Jane Jacobs Planning Principle of reducing crime and promoting safe urban environments by encouraging people to live and recreate in the same place, Mr. Wray stated that that would apply in an urban setting, but it doesn't apply in the River Valley which, although located in an urban area, is not an urban area; in fact, the purpose of the River Valley is to create a non-urban experience inside the bounds of the City. It is part of the allure of the natural area to have the unknown and accordingly a development just does not work there.

In cross-examination by Mr. Mallon, Mr. Wray agreed that there is no reference to expropriation in the Ribbon of Green concept plan, Ribbon of Green master plan or in Bylaw 7188, but added that it is the right of every municipality to expropriate to accomplish its objectives.

Upon further questioning by Mr. Mallon, Mr. Wray stated that

- the City's largest natural park in an urban area in North America is threatened by the residential development on the Expropriation Lands;
- access to the Expropriation Lands breaks up the park trail in a way which was not intended by the Bylaw and the residential use compromises an area which is meant to be natural, although the house is part of a community which was initially planned in 1913 and which predates the Area Redevelopment Bylaw and Ribbon of Green plan;
- the Expropriation Lands are located in the central area referred to in the Bylaw, and while residential use is permitted, the Bylaw identifies very specifically in Section 1.2 Rosedale and Cloverdale as the residential areas to be retained;
- the City has no plans to forcibly acquire other residences located in the Mill Creek Ravine but does have a plan to acquire them on an opportunity basis;
- it is permissible within the guidelines of the Ribbon of Green master plan, as set out in page 46 of Exhibit 1-3, to have frequent vehicular service access to a Class 1 multipurpose trail, such as the trail in the vicinity of the Expropriation Lands;
- as stated in Figure 9 on page 47 of the master plan it is appropriate to have information signage, directional signage, regulatory signage, bollards, warning strips, speed bumps, gates and bike baffles on multi use trails, and the City is not making full use of those circulation control elements;

- the absolute safety control would be the removal of the house, which would permit the elimination of all other safety elements and the Landowners would be fairly compensated for the loss of their Land;
- there are number of other means of achieving safety, both by better warning and control devices on the trail and by control and warning devices on the roadway;
- the City had no plans to deal with safety concerns if the property had remained in the hands of the Rama family, subject to the Right of First Refusal, nor did the City do anything to improve the safety of the intersection since the granting of the Right of First Refusal in 1997.

Questioned by Mr. Mallon with respect to the provisions of Bylaw 7188, Mr. Wray testified that the residential development on the Expropriation Lands existed at the time the Bylaw was passed, and would be included in the policy stated at Section 3.7.1 “to recognize existing residential development” and at section 3.7.2 that additional residential lots will not be created except in the central area; he added that the sections were best read in conjunction with section 2.8 which directs that certain residential communities should remain. While a residential use of the Expropriation Lands is permitted, there is no direction in the Bylaw that it should remain.

Questioned as to the vehicular access to the Expropriation Lands on a daily basis, Mr. Wray testified that “2 to 4 on an individual day could very well be right” although that could reach up to 20 on any given day; however, the witness admitted that he did not have any direct knowledge and that there have not been any traffic counts.

With respect to the number of formal accesses and intersections on the Mill Creek Ravine Trail between 76 Avenue and the Expropriation Lands, Mr. Wray agreed that those would number in the vicinity of 20, some of which would be used by service and maintenance vehicles.

The witness stated that he did not know of any vehicular/bicycle or pedestrian/vehicular incidents located at the intersection of the trail and the roadway in the vicinity of the Expropriation Lands.

Summarizing his evidence, Mr. Wray stated that the City’s concern “is to preserve the River Valley, to naturalize it, to get rid of use that is inappropriate in this location and to get rid of a concern about safety along the trail whether or not we’ve had an accident and beyond that, we’ve got some drainage concerns”.

Witnesses for the Landowners

3. Mr. Michael John Villanyi Wild

After being duly affirmed, Mr. Wild stated that he was 36 years old and that he is self-employed, running a little design firm for web and print, working out of his home, and that he is an avid mountain biker, climber, camper, runner and cross-country skier. He stated that he purchased the Lands approximately December 15, 2003 with his father John Villanyi. He lives on the Expropriation Lands but his father does not.

Mr. Wild stated that he first looked at the property in August of 2003 and that at the time he made an offer he understood that the City had a Right of First Refusal, meaning that if the City did not match his offer within 30 days he would acquire the property. Although his offer was unconditional, he did need to sell his house to pay for the purchase. He did enter into a contract to sell his house, dated December 4, 2003, filed as Exhibit 4. He testified that his lawyer received a letter from the vendor's lawyers dated December 7, 2003 stating that he was now obligated to purchase the Lands in accordance with his offer; accompanying that letter was a letter from the City also dated December 7th outlining what the City might do. Both letters were tabled as Exhibit 5.

With respect to his business, Mr. Wild testified that he works out of his home and that most of his work is done through e-mail and through files sent electronically, with perhaps 1 visitor per month. He also has roommates and the Mill Creek Trail would be crossed 2 to 4 times per day by a vehicle that would include not just his roommates, but also garbagemen, utilities coming to check meters and mailmen. Mr Wild stated that the previous owner, Laureen Rama, had told him about helping people who knocked on her door asking for help, reporting fires and acts of vandalism in the ravine and giving directions. Since taking over possession, he has had similar incidents, helping three stray dogs, one lost lady asking to use the phone and the police investigating reports of gun shots which he thought were firecrackers.

He stated that in the first 2 months in the new house, he worked full time renovating the property, painting, fixing cracks in the walls, taking down a wall on the second floor, enlarging the window in the master bedroom, replacing water lines and drain lines and renovating the bathroom on the main floor. Mr Wild confirmed that attended a meeting of the Transportation and Public Works Committee on June 27, 2004, where it was indicated that the City did not have the intention of expropriating the other two properties located in the Mill Creek Ravine.

Mr. Wild then produced a computer disk (Exhibit 6) containing photos which he took of the trail and the roadway accessing his property on the previous day. He then proceeded to describe each of the pictures, indicating that his house was accessed from a turn-around at the bottom 93 Avenue through a street which also gives access to the back alley of another house located on 93 Avenue. There are 3 No Exit signs for vehicular traffic. Other pictures show the orange pole in the middle of the trail, the Yield sign, a vehicle parked in the double parking stall and the location of the paths. He indicated that from the double parking stall, he would typically back into his own driveway then drive forward across the trail.

The witness further testified that the road leading to his house is plowed and sanded by the City in the winter almost immediately after every snowfall.

In cross-examination by Mr. Debrinski, Mr. Wild confirmed that his agreement to purchase the Expropriation Lands required that the vendor obtain confirmation from the City that the City did not wish to purchase the property, but that no such confirmation was ever received; he stated that the lawyers for the vendor had provided information saying that the City had not met the requirements of the Right of First Refusal.

Mr. Wild testified having received a copy of the December 7 letter (Exhibit 5) addressed to his lawyer by the vendor's lawyers, attaching a copy of a letter dated December 3 from the City to the vendor's lawyers. He stated that he was told by his lawyers that the City was unlikely to proceed with the expropriation because the City had no real need for the property.

With respect to the Offer to Purchase Mr. Wild's existing property in Windsor Park, Mr. Wild stated that he himself had prepared that offer and that the purchaser was an acquaintance which he had met a year and a half ago. That transaction was actually completed May 1, 2004.

Questioned about the number of vehicular accesses to the Expropriations Lands on a daily basis, Mr. Wild testified that he and his roommates do not leave the property every day and that often the nature of the travel is by bus or bicycle.

Questioned as to his knowledge of the intended expropriation before purchasing the property, Mr. Wild stated that he had been made aware but had been told by his lawyer that he was bound to complete the purchase of the property that the City would likely not care to select to expropriate, that he wanted the property and that City had removed its Caveat of First Right of Refusal. In addition, he had made arrangements to sell his property and had taken out bridge financing.

The witness further testified that he had been advised that the City was willing to purchase the Expropriation Lands from him, but he had refused as he was happy with his bargain and did not wish to sell the property. Nonetheless, he had with Ms. Terry Herbert of the City and has looked at other trade properties with her; he stated that he did tell Ms. Herbert that if a particular lot in the Lavigne area was made available, he would agree to move.

4. Mr. Loyd Hudson Morash

After being duly sworn, Mr. Morash stated that he is a Transportation Engineer and that a resume of his qualifications, education and membership was found under tab 3 of Exhibit 7. He graduated from the University of Calgary with a Bachelor of Science degree in 1969 and a Master Science degree in 1973. He has been involved with the City of Calgary in transportation planning and operations for 12 or 13 years and for the last 15 years has worked in the private sector.

Mr. Morash referred to a document entitled "Transportation Review", dated June 8, 2004, shown as Exhibit 7-2, which he prepared in relation to this expropriation.

Reviewing this report, Mr. Morash testified that:

- there is a residential home located on the Expropriation Lands sitting adjacent to a multi-use pathway running north-south, on the west side of the property; access to the Lands is through a turn-around cul-de-sac on 93 Avenue, crossing the multi-use path;
- the roadway leading to the Lands is a "destination opportunity" that would probably only be enjoyed by either the resident owner or a frequent visitor, and there are signs on the roadway advising that there is a bike crossing ahead;

- if one is approaching the Expropriation Lands heading north on the trail, there is an advisory sign containing a small yield sign providing the user with notification of an impending crossing; heading south from the opposite direction there are no signs, but there are raised asphalt rumble strips which are painted yellow;
- there are other vehicle crossings on the multi-use pathway, namely one at the Mill Creek pool providing access to a couple of hundred parking stalls, and another at 76th Avenue which is intersected by approximately 6100 vehicles per day according to data supplied by the City's Transportation Department;
- there are a number of ways that safety could be improved at the intersection of the pathway and the roadway in the vicinity of the Expropriation Lands, such as installing stop signs on both the east and west side of the pathway for vehicular traffic approaching the pathway, and there could additionally be stop signs on the pathway itself. Further, some of the foliage could be removed, particularly on the southwest corner, to improve sight lines.

In cross-examination by Mr. Debrinski, Mr. Morash admitted that he had not been involved with parks and trails while employed by the City of Calgary, nor did he have direct experience with the design and construction of roadways which were the responsibility of another department; his occupation was manager of Traffic Operation and Senior Transportation Planning Coordinator.

Mr. Debrinski then produced and showed to the witness a document entitled "Transportation Association of Canada Manual of Geometric Designs Standards" (Exhibit 8) and questioned Mr. Morash extensively about minimum stopping sight distances and brake reaction distances as set out in that documents, including the effects of grades on the roadways as well as the effects of sight distances. The witness stated that all those criteria did not apply to this particular intersection, which is not a typical roadway intersection, but that other criteria found in the same technical manual had a direct bearing and application to a multi-use pathway system. He stated that he assumed that, as this intersection had been in existence for quite a few years, all necessary design criteria had been met, but his report indicates that there are other remedial measures that could be taken to advise people of an impending crossing

In further questioning by Mr. Debrinski, Mr. Morash indicated that:

- perpendicular intersections are safer because of better visibility and manoeuvrability of vehicles; the actual intersection of the pathway and roadway in the present circumstance is probably close to a 40 or 45-degree angle;
- the existence of foliage and the sharp angle make it difficult for a driver of a south bound motor vehicle to see a southbound cyclist approaching the intersection on the pathway; however there is signage advising of a bike crossing and normal users of the roadway would be conscious enough to look to the left;
- southbound traffic on the roadway has good visibility of cyclists heading north on the pathway;

- users of the pathway heading north face a smaller than regular yield sign and have fairly good visibility, although they would not have any sight line to vehicles on the roadway heading north to the Expropriation Lands;
- heading south on the pathway, cyclists or rollerbladers would run across the rumble strip and would likely be travelling at a slower pace.

Asked about his comments on Mr. Wray's earlier evidence that users of the trail may be lulled into a false sense of security or a sense that you really don't have to be aware, Mr. Morash testified that he found it inconsistent that if the City has a concern with safety, then the City could cut the grass and remove the foliage and improve the signage and take other remedial measures short of ripping out the house to improve the situation.

5. Olga Mary Lovatt

After being duly sworn, Ms. Lovatt stated that she was a professional planner and that she was a principal of Lovatt Planning Consultants Inc. Her full profile is found as Exhibit 7-5, indicating that she holds a Bachelor of Arts in Urban Geography from the University of Alberta and that she has full accreditation with the Canadian Institute of Planners. She has been a planning consultant for some 20 years primarily in the City of Edmonton. The witness stated that she authored a letter dated June 9, 2004 with respect to this expropriation, shown as Exhibit 7-4. In preparation for the opinions expressed in that letter, she looked at the City's Municipal Development Plan, the City's Zoning Bylaws, Bylaw 12800, the North Saskatchewan River Valley Area Redevelopment Plan bylaw 7188, and the Ribbon of Green Master Plan as well as the Ribbon of Green Concept Plan.

The witness stated that the following were her main observations:

- the Expropriation Lands are zoned (A) Metropolitan Recreation, and a residential dwelling is a permitted use within that zoning;
- the Expropriation Lands come within the ambit of section 2.8.1 of the North Saskatchewan River Valley Area Redevelopment Plan which recognizes and permits the continued use of existing residential development within the planned area; the Area Redevelopment Plan contains no policies which support the taking or expropriation of existing residential lots. Section 3.2.7 of the policy restricts the development of additional residential lots (except in the central area) but provides further continuation of existing residential uses;
- the Area Redevelopment Plan considers residential and parkland uses to be compatible with one another;
- the basic principles set out in the Ribbon of Green Concept Plan, as applied in the Master Plan, provide for the protection of natural areas to ensure the existence of native vegetation and wildlife communities; however, this would not apply to the Expropriation Lands which are already developed and do not have native vegetation;

- another principle set out in the Ribbon of Green Plans is for trails to provide continuous access through the Valley, but the trail already exists in the vicinity of the Expropriation Lands and the expropriation of the Lands is not required for the continuity of that trail;
- another principle of the Ribbon of Green Plan is to increase awareness of natural and human history; in the present situation the subject lot is really part of the human history of the Valley, having been registered in 1913 and abutting the Edmonton Yukon Pacific Railway Right of Way, and accordingly retention of the Lands in their present state is in conformity with this principle;
- the dwelling on the Lands is well maintained, attractive, does not detract with the environment, and has existed in harmony with the trail for many years;
- the existing dwelling not only adds diversity to the Valley but it also supports the safe cities urban design principle, and fosters the prevention of crime by allowing for greater safety in the Valley.

In cross-examination by Mr. Debrinski, Ms. Lovatt specified that the railway and the houses referred to on Exhibit 9 no longer exist except for a house on Lot 2. On further questioning by Mr. Debrinski, Ms. Lovatt stated that:

- the Ribbon of Green Principle is to preserve an existing natural environment, making it very clear that existing dwellings are to remain in place;
- the residential dwelling located on the Expropriation Lands is not isolated because it is the end of a road and just shortly beyond the end of the road they are houses all the way along the road, although it is removed from those houses;
- the plan aims at enhancing existing natural vegetation through landscaping, naturalization and restoration programs, not replacing an existing development;
- the Ribbon of Green Policy is to control future residential development and to recognize existing residential development;
- the intent of the plan was to allow existing residential uses to continue to remain because it is not possible to acquire them through an environmental reserve dedication as contemplated in the plan;
- the residential policies set out in the plan are meant to temper other inconsistent policies such as restricting vehicular penetration, and it's not reasonable in order to achieve some of the policies of the plan to actually take a residential owner's lands;
- a continuous trail does not mean a trail which does not have any intersections, but one that provides continuous access;

- the existing dwelling has a diversity and supports the principle of safety in a City because it makes it safer for people to use the trail;
- the objectives of the City are not compromised by the continuing existence of the dwelling on the Expropriation Lands.

III ARGUMENTS ADVANCES ON BEHALF OF THE PARTIES

A) City of Edmonton

Mr. Debrinski, on behalf of the City, stated that the City's position is outlined in his written brief (Exhibit 10) and argued that:

1. Under the *Expropriation Act* it is not permissible to dispute the right of an expropriating authority to have recourse to expropriation in any proceedings; what is to be determined by the Inquiry Officer is whether the taking is fair, sound and reasonably necessary in the achievement of the objectives of the Expropriating Authority.
2. As stated in the *R. v. Parkins*, the burden of proof of the Expropriating Authority is lower than the burden of proof in civil litigation and can be summed up as whether or not the expropriation is reasonably defensible; there is no real inconsistency between that case and cases cited by counsel for the Landowners.
3. The Supreme Court of Canada in *Nanaimo v. Rascal Trucking* decided that, in the judicial review of municipal decisions, elected councillors are in the best position to balance competing interests and select what they believe is in the best interest of the community as a whole.
4. In the present proceedings, the objectives of the City are set out in the North Saskatchewan River Valley bylaw as well as the two North Saskatchewan River Valley Ribbon of Green plans, whose fundamental and underlying purpose is to recognize that the River Valley system is a heritage for all citizens of Edmonton and for future generations.
5. Where, as in this case, the approved plans have a number of competing and conflicting policies, Council for the City has to make a choice to determine what is paramount.
6. It is policy of the City Bylaw, as set out in section 3.2.10 and 3.2.12, to establish pedestrian and other non-motorized vehicle movement systems as a primary modes of movement through the River Valley, and as set out in section 2.12.2 restrict traffic penetration into and through recreational and park areas.
7. The intended expropriation is consistent with that bylaw in that it would serve to eliminate traffic safety concerns that relates to users of the trail and to restore the area where the house presently sits to its natural state.

8. The evidence is uncontradicted that, going back to 1997, the City has wanted to acquire this residence for the River Valley system, Mr. Wray having identified the safety concerns relating to its existence in the documentation made contemporaneously with the negotiations with the previous owner.
9. It was with those objectives in mind, to eliminate the trail crossing and eliminate safety concern, and restore the property to its natural state, that the City approved the purchase of the Lands from the previous owner in 2003.
10. The intended expropriation was brought to the attention of the Landowners before they completed their purchase.
11. The refusal of the previous owner to give effect to the Right of First Refusal and the decision by the Landowners to purchase the property notwithstanding the City's desire to exercise its Right of First Refusal, made it necessary for the City to proceed with the expropriation in order to achieve its objectives.
12. In looking at the concept of fairness, it is not a question of whether the owners think that the expropriation is fair or whether the expropriation is fair to the owners, but rather whether the municipality is acting in a fair and sound manner in meeting its objectives.
13. It is not inconsistent for the City to expropriate one property and not others; the City is being consistent in acquiring these properties on an opportunity basis, in a sensitive manner.
14. The intended expropriation is not unsound when looking at the overall philosophy that the underlying River Valley and Ravine system is intended for recreational use and to be in a natural state.
15. It is not proper when interpreting a bylaw, as suggested by Ms. Lovatt, to take one passage out of that bylaw in isolation and to say that it trumps and overrides every other policy; in fact, considering the underlying philosophy of the plan, it is to promote recreational use and to limit the effects of residential use.
16. Despite the evidence of Mr. Morash, the pictures of the configuration of the trail show clearly that existing sight lines do not permit identification of a vehicle coming down the roadway and do not permit drivers on the roadway to see users of the trail.
17. On the issue of costs, the Landowners should be denied their costs because they completed the purchase notwithstanding the express intention of the City to expropriate the Lands, which intention was clearly communicated to the Landowners before they completed their purchase. Even after the purchase was completed the City offered to the Landowners to reimburse them their costs.

B) Submissions by Counsel for the Landowners

Mr. Mallon in his summation reviewed some highlights of the evidence and argued that:

1. The purpose of this hearing is to determine whether in this particular case, it is fair, sound and reasonably necessary for the City to expropriate the Lands in carrying out the objectives of the City as stated in its Notice of Intention to Expropriate.
2. It is not necessary to change the test from the phrase chosen by the legislature to “reasonably defensible”; the test remains that the expropriation must be fair, the expropriation must be sound, and it must be reasonably necessary in the achievement of the Expropriating Authority objectives.
3. The objectives of the City, as stated in the Notice of Intention to Expropriate are twofold: 1) to eliminate safety issues relating to vehicular access in the Mill Creek Ravine, and 2) to consolidate the Expropriation Lands with remaining surrounding parklands in fulfilment of the City’s Ribbon of Green Principle of establishing continuous River Valley trails.
4. From a safety point of view, Mr. Morash’s evidence is clear that safety issues are really insignificant, as the evidence is that there may be two to four cars per day, most of which consists of knowledgeable traffic routed to the property, and there are no reported or known incidents that have occurred at that particular intersection.
5. The Transport Association of Canada standards are not applicable to this situation of low speed vehicular and non-vehicular traffic, as opposed to a public vehicular intersection addressed by those standards.
6. As stated by Mr. Morash, if safety is a concern there are a number of means to improve safety at the intersection short of expropriating the Lands.
7. As stated by Mr. Wray, the City wants to take this property for other reasons and was willing to continue the existing use of the property so long as it had a Right of First Refusal.
8. With respect to the City’s second objective of consolidating surrounding parkland and the fulfilment of the City’s Ribbon of Green principle of establishing continuous River Valley trails, Mr. Wray agreed that the park trail was no less continuous because of the existence of the Expropriation Lands.
9. Ms. Lovatt went through an analysis of the Ribbon of Green principles to demonstrate very clearly and graphically that none of those principles requires, dictates or otherwise even suggests that the taking of the Expropriation Lands is necessary in order to fulfill those principles.

10. As stated by Mr. Wray, expropriation should only be used as a last resort; there is no urgency or critical requirement to expropriate the Lands and the City should continue to purchase Lands for the intended purpose on an opportunity basis.
11. There isn't a balancing of the rights of the Landowners as opposed to the public interest in this expropriation; Mr. Wray's attitude is that the expropriation serves the City's objectives and the Landowners are protected because they get compensation.
12. This expropriation is not fair because of the inconsistencies in the application of the City's policies to the Expropriation Lands as opposed to other parcels that are equally as deep into the River Valley, yet those other properties are to be acquired on a opportunity basis only.
13. The proposed taking is not sound because planning documents contemplate the continued existence of residential developments and the proposed taking does not take into account the benefits of the presence of this house and residence to park users, police, firefighters and others using the Mill Creek Ravine.
14. During the course of the Hearing, a number of other objectives were stated by the City, but if the City were relying on other objectives, they should have been stated in the Notice of Intention to Expropriate.
15. The City failed to exercise its Right of First Refusal and when that right was lost, the Landowners had no choice but to complete their purchase in accordance with their Agreement of Purchase and Sale; in addition, by the time the Landowners were advised that the City intended to initiate Expropriation Proceedings, they were committed to sell their existing property and now the City wants to penalize the Landowners for having followed through on their contractual obligations.

C) Rebuttal Submissions by the City

1. In rebuttal, Mr. Debrinski indicated that the City's objectives, as set out in the Notice of Intention to Expropriate are (a) to eliminate safety issues relating to vehicular crossing in the Mill Creek Ravine Trail, (b) consolidation with surrounding parkland, and (c) fulfilment of the City's Ribbon of Green principle of establishing continuous River Valley trails. All three objectives must be given separate and distinct meanings.
2. There is nothing in any planning documents or in any legislation which states that an Expropriating Authority can only expropriate if there is an urgent need. Nor is there any legislation which says that before an Expropriating Authority can expropriate it must exhaust all other alternatives but the *Expropriation Act* states is that the intended expropriation has to be fair, sound and reasonably necessary in the achievement of the objectives of the Expropriating Authority.
3. The evidence is that the Landowners did not receive advice that the City had waived its Right of First Refusal, as referred to in Section 10 of the Agreement of Purchase and Sale, and

accordingly, the Landowners were not under any obligation to waive that clause or to complete the transaction.

D) Further Rebuttal by Counsel for the Landowners

1. In further rebuttal, Mr. Mallon stated that Mr. Wray, in looking at the issue of consolidation, justified the City's actions through the Ribbon of Green principles as set out in the master plan and concept plan, but none of those plans contemplates expropriation of Lands, as stated by Ms. Lovatt.
2. On a question of urgency, there are no pressing safety issues at this time nor is there a pressing need for the taking of this property.

IV VIEW OF THE EXPROPRIATION LANDS

As indicated at the Hearing, the Inquiry Officer attended at the site of the Expropriation Lands and surrounding areas for a view in order to become more familiar with the site.

V INQUIRY OFFICER'S FINDINGS OF FACT

1. The Expropriation Lands were the subject matter of a Right of First Refusal and were subject to a caveat with respect to such Right of First Refusal, in favour of the City.
2. By notice to the City dated and delivered on October 17, 2003, the then registered owner of the Lands through its lawyers advised of the receipt of a third party offer, giving to the City a right to purchase the property in accordance with its Right of First Refusal.
3. The City delivered a discharge of its caveat against the Lands to the Solicitors for the then registered owner on or about November 27, 2003 and the transfer of the Lands to the Landowners was completed by registration of a transfer on December 30, 2003.
4. Before completion of the purchase, the Landowners had received a copy of a notice from the City indicating it intended to expropriate the Lands.
5. The City's Transportation and Public Works Committee held a hearing on January 27, 2004, at which Michael Wild, one of the Landowners, made representations; the Committee recommended to City Council that expropriation of the Lands be authorized, noting that vehicle and pedestrian access to the Lands crosses the main spine of the Mill Creek Ravine trail, causing a safety issue.
6. The objectives of the City, as set out in the Notice of Intention to Expropriate, are:
 - a. to eliminate safety issues related to vehicular crossing of the Mill Creek Ravine Trail;

- b. for consolidation with surrounding parkland; and,
 - c. fulfilment of the City's River of Green Principle of establishing continuous River Valley Trails.
7. It is the uncontroverted evidence of Ms. Terry Herbert, Property Agent for the City, that the decision to request expropriation of the Lands was taken after the City's Right of First Refusal was thwarted, and that there are no present plans to acquire through expropriation two other private residences located in the Mill Creek Ravine.
 8. Access to the Lands is through a private roadway located on City owned land, parallelling and crossing the Mill Creek River Valley Trail at an angle over a distance of some 20 to 30 metres, leading to a double parking stall also located on City owned parkland.
 9. The configuration of the trail is such that existing sight lines do not permit users of the trail to see a vehicle coming down the roadway and do not permit drivers on the roadway to see users of the trail, in each case before entering or being a few metres from the entrance to the intersection.
 10. The crossing of the River Valley trail by the private roadway creates some safety issues which are minimized by a "bike trail" sign on the road way, a yield sign and a bollard on the trail heading north, and rumble strips and a bollard on the trail heading south; both the roadway and the trail are on a slope, and there is no report of any accident having taken place at that intersection.
 11. City Council has approved Bylaw 7188, being the River Valley Redevelopment Bylaw, and has approved the Ribbon of Green policies and principles pursuant to that bylaw; those documents specifically permit the continued use of residential properties in the River Valley, identify specific residential communities which are to remain, and encourage the enhancement of natural vegetation in the River Valley through landscaping, naturalization and restoration programs.
 12. It is the uncontroverted evidence of Mr. Dean Wray, planner with the City's Community Services Department, that the Ribbon of Green master plan provides that it is appropriate to have informational signage, directional signage, regulatory signage, bollards, warning strips, speed bumps, gates and bike baffles on multi-use trails, and the City is not making full use of those circulation control elements; there are no control devices on the roadway and the only warning device is a "bicycle path" sign.
 13. The number of daily crossings of the pathway by vehicles is two to four on average.
 14. Acquisition of the Lands and removal of the house located thereon would permit the elimination of the roadway crossing of the River Valley trail and would remove a "nuisance"; the house and property are well-maintained and are not in themselves a nuisance.

15. The Ribbon of Green Principles contemplate that existing residential uses may continue, although the overall purpose of the principles is to enhance natural vegetation through landscaping, naturalization, and restoration programs.
16. The policy to provide a continuous trail refers to an uninterrupted trail, not a trail which is crossed by vehicular and other intersections.

VI OPINION AND REASONS

1. The question before me as the Inquiry Office is whether the intended expropriation by the Expropriating Authority is fair, sound and reasonably necessary for the achievement of the objectives of the Expropriating Authority. This is the only finding and recommendation that I can make under the *Expropriation Act*.
2. In this case, the objective of the Expropriating Authority, as set out in the Notice of Intention to Expropriate is threefold:
 - a. to eliminate safety issues relating to vehicular crossing of Mill Creek Ravine Trail;
 - b. consolidation with surrounding parkland; and,
 - c. fulfilment of the City's Ribbon of Green Principle of establishing continuous River Valley Trails.
3. The City has satisfied requirements of the *Expropriation Act* and has taken all necessary steps to initiate this Inquiry as required by the Act and the regulations thereunder; the City has passed the necessary resolution authorizing this intended expropriation.
4. The City had negotiated and had obtained a Right of First Refusal from a previous owner of the Lands and was given an offer by the previous owner pursuant to the provisions of the Right of First Refusal; there was and is a disagreement between the City and the previous owner as to whether or not the City properly exercised its right to purchase under the Right of First Refusal. The question before me is not whether or not the City properly exercised its right to acquire the Lands under the Right of First Refusal. The City has chosen not to pursue its rights, if any, under the Right of First Refusal at this time, and to seek instead to acquire the Lands by expropriation.
5. The City has a policy of purchasing residential lands located in the River Valley on an "opportunity basis", meaning that the City has a policy of offering and paying fair market value for residential lands within the River Valley whenever Landowners are desirous of selling; the City also has a policy of not objecting to inter-generational transfers of properties within a family.

6. It is the clear evidence of witnesses of both the City and the Landowners that the configuration of the intersection of the River Valley Trail and the roadway leading to the Lands is such that the sight lines present a safety issue; however, those safety issues may be characterized as “minor” and the City has chosen not to implement a number of measures available to it at very little cost to minimize those safety issues. In my opinion it is not fair, sound or reasonably necessary to expropriate the Lands in order to alleviate safety concerns when there are a number of other much less costly methods of alleviating safety concerns. Moreover, the present signage has existed for a number of years and there is no indication that the City would have changed existing signage because of safety concerns if the previous owner had not chosen to sell the property.
7. There exists a continuous trail in the River Valley in the vicinity of the Lands; the continuity of the trail is not broken by the fact that the trail intersects with a private roadway. It is my opinion that it is not fair, sound or reasonably necessary to acquire the Lands in order to eliminate an intersection on the pretext to make the trail more “continuous”.
8. The other stated objective of the City in proceeding with this expropriation is “for consolidation with surrounding parkland”. There is no doubt that if the City were to acquire the Lands, they would be consolidated with surrounding parkland. However, this stated objective of the City conflicts with the provisions of City Bylaw 7188, which states, in section 3.7.1: “it is a policy of this plan to recognize existing residential development and those Lands presently districted for residential development outside the central area”. Given that statement of policy as contained in the bylaw, and given that the City is not intending to expropriate other residential lands in the community, it is my opinion, as stated by the City’s own witnesses that the City’s real objective is to acquire by expropriation lands which it failed to acquire through an existing Right of First Refusal. It is my opinion that using the expropriation process to acquire lands which the City has failed to acquire through an existing Right of First Refusal is an abusive process and is not fair or sound.
9. The City has an existing policy of acquire residential lands in the River Valley on an opportunity basis, and it is my opinion that acquiring the within Lands through expropriation is not consistent with that policy and is not fair, sound or reasonably necessary.
10. On the question of costs, given my opinion that the intended expropriation is not fair, sound or reasonably necessary, it is my opinion that all reasonable costs of the Landowners should be paid by the Expropriating Authority pursuant to section 15(10) of the *Expropriation Act*.

This report of the Inquiry Officer is made pursuant to section 16(1) of the *Expropriation Act* to the approving authority, the City of Edmonton.

DATED at the City of Edmonton, in the Province of Alberta, this 8th day of July 2004.



Larry P. Carr, Esq. Q.C.
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