

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 REGIONAL MUNICIPALITY OF WOOD BUFFALO OF:

PARCEL 1: FIRSTLY:

PLAN 616AO

BLOCK 13

LOTS 4 AND 5

EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY:

PLAN 616AO

BLOCK 13

THE WESTERLY 25 FEET THROUGHOUT OF LOT 6 DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH WESTERLY CORNER THEREOF, THENCE SOUTH EASTERLY ALONG THE NORTH EASTERLY BOUNDARY A DISTANCE OF 25 FEET, THENCE SOUTH WESTERLY AND PARALLEL TO THE NORTH WESTERLY BOUNDARY, TO ITS INTERSECTION WITH THE SOUTH WESTERLY BOUNDARY, THENCE NORTH WESTERLY ALONG THE SOUTH WESTERLY BOUNDARY A DISTANCE OF 25 FEET TO THE NORTH WESTERLY BOUNDARY, THENCE NORTH EASTERLY ALONG THE SAID BOUNDARY, THENCE NORTH EASTERLY ALONG THE SAID NORTH WESTERLY BOUNDARY TO THE POINT OF COMMENCEMENT

EXCEPTING THEREOUT ALL MINES AND MINERALS

PARCEL 2:

PLAN 616AO

BLOCK 13

LOTS 1 to 3 INCLUSIVE

EXCEPTING THEREOUT ALL MINES AND MINERALS

PARCEL 3:

FIRSTLY:

PLAN 616AO

BLOCK 13

LOT 18

EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY:

PLAN 616AO

BLOCK 13

LOT 19

EXCEPTING THEREOUT ALL MINES AND MINERALS

AND IN THE MATTER of Notices of Objection to the said intended expropriations filed by:

1. With respect to Parcel 1,
 - a. WWT HOLDINGS LTD., and
 - b. KIM R. WOLFF PROFESSIONAL CORPORATION and J. RYAN TAITINGER PROFESSIONAL CORPORATION carrying on business under the firm name and style of "WOLFF TAITINGER LLP";

2. With respect to Parcel 2,
 - a. ALBERTA FOODSERVICES INC. and
 - b. FDC BRANDS INC.; and

3. With respect to Parcel 3,
 - a. TREIT HOLDINGS 3 CORPORATION,
 - b. 1179216 ALBERTA LTD., and
 - c. KEG RESTAURANTS LTD.

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 Clara Cerninara, Barrister and Solicitor.

REPORT OF THE INQUIRY OFFICER

BEFORE:

LARRY P. CARR, Q.C.

HELD AT:

Jubilee Centre
Municipal Building (City Hall)
9909 Franklin Avenue
Fort McMurray, Alberta T9H 2K4

HELD ON:

Monday, March 4, 2013 to Thursday, March 7, 2013

APPEARING FOR:

REGIONAL MUNICIPALITY OF WOOD BUFFALO

APPEARING FOR:

SHEILA McNAUGHTAN, Q.C. and
NICK PARKER
Reynolds Mirth Richards & Farmer LLP
Barristers & Solicitors
3200 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3W8
WWT HOLDINGS LTD., and KIM R. WOLFF PROFESSIONAL CORPORATION and J. RYAN TAITINGER PROFESSIONAL CORPORATION carrying on business under the firm name and style of "WOLFF TAITINGER LLP"

These are intended expropriations by the Regional Municipality of Wood Buffalo (alternately referred to as the "Expropriating Authority" or the "Municipality") of the following lands:

PARCEL 1 FIRSTLY:

PLAN 616AO
BLOCK 13
LOTS 4 AND 5
EXCEPTING THEREOUT ALL MINES AND MINERALS

PURPOSE AND INITIATING PROCEDURES

I.

1179216 ALBERTA LTD., and KEG RESTAURANTS LTD. APPEARING FOR:

DONALD P. MALLON, Q.C.
Prowse Chowne LLP
Barristers & Solicitors
1300, 10020 - 101A Avenue
Edmonton AB T5J 3G2

JUDSON E. VIRTUE and D. AARON STEPHENSON APPEARING FOR:

Norton Rose Canada LLP
Barristers & Solicitors
400 3rd Avenue SW
Suite 3700
Calgary AB T2P 4H2

TREIT HOLDINGS 3 CORPORATION APPEARING FOR:

MICHAEL A. MARION
Borden Ladner Gervais LLP
Barristers & Solicitors
Centennial Place, East Tower
1900, 520 - 3rd Ave SW
Calgary AB T2P 0R3

ALBERTA FOODSERVICES INC. and FDC BRANDS INC APPEARING FOR:

DANIELA O'CALLAGHAN
Prowse Chowne LLP
Barristers & Solicitors
1300, 10020 - 101A Avenue
Edmonton AB T5J 3G2

PARCEL 3: FIRSTLY:
 PLAN 616AO
 BLOCK 13
 LOT 18
 EXCEPTING THEREOUT ALL MINES AND MINERALS

ALBERTA FOODSERVICES INC. and FDC BRANDS INC. have an interest in the said lands as Lessees and as holders of a right of first refusal by way of Caveats registered against the said lands.

(the said lands being herein referred to as the "A&W Lands")

PARCEL 2:
 PLAN 616AO
 BLOCK 13
 LOTS 1 to 3 INCLUSIVE
 EXCEPTING THEREOUT ALL MINES AND MINERALS

WWT HOLDINGS LTD. is the registered owner of the said lands and KIM R. WOLFF PROFESSIONAL CORPORATION and J. RYAN TAITINGER PROFESSIONAL CORPORATION ("Wolff Taitinger LLP") have registered a lease interest in the said lands by way of Caveat.

(the said lands being herein sometimes referred to as the "WWT Lands")

PLAN 616AO
 BLOCK 13
 THE WESTERLY 25 FEET THROUGHOUT OF LOT 6 DESCRIBED AS FOLLOWS:
 COMMENCING AT THE NORTH WESTERLY CORNER THEREOF, THENCE SOUTH EASTERLY ALONG THE NORTH WESTERLY BOUNDARY A DISTANCE OF 25 FEET, THENCE SOUTH WESTERLY AND PARALLEL TO THE NORTH WESTERLY BOUNDARY TO ITS INTERSECTION WITH THE SOUTH WESTERLY BOUNDARY, THENCE NORTH WESTERLY ALONG THE SOUTH WESTERLY BOUNDARY A DISTANCE OF 25 FEET TO THE NORTH WESTERLY BOUNDARY, THENCE NORTH EASTERLY ALONG THE SAID BOUNDARY, THENCE NORTH EASTERLY TO THE POINT OF COMMENCEMENT
 EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY:

SECONDLY:

PLAN 616AO
BLOCK 13
LOT 19

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the said lands being herein referred to as the "KEG Parking Lands")

The said lands are registered in the name of **TREIT HOLDINGS 3 CORPORATION**, and **1179216 ALBERTA LTD.** and **KEG RESTAURANTS LTD.** have a leasehold interest in the said lands registered by way of Caveat.

The registered owners and the owners of leasehold interest are sometimes individually referred to as an "Owner" and collectively as the "Owners".

The WWT Lands, A&W Lands, and KEG Parking Lands are sometimes herein collectively referred to as the "Expropriation Lands".

Notices of Intention to Expropriate, dated December 12, 2012, were registered against the Expropriation Lands on December 17, 2012.

Notices of Objection to the said Intended Expropriations were filed:

(a) With respect to the WWT Lands, by **WWT HOLDINGS LTD.** and **WOLFF TAITINGER LLP**, by their solicitor Donald P. Mallon, Q.C. of Prowse Chowne LLP, on January 7, 2013;

(b) With respect to the A&W Lands, by **ALBERTA FOODSERVICES INC.** and **FDC BRANDS INC.** by their solicitors Michael A. Marion and Sharon E. Borgland of Borden Ladner Gervais LLP, on January 11, 2013; and

(c) With respect to the KEG Parking Lands, by **TREIT HOLDINGS 3 CORPORATION** by their solicitor Judson Virtue of Norton Rose Canada, on January 9, 2013, and by **1179216 ALBERTA LTD.** and **KEG RESTAURANTS LTD.** by their solicitor Donald P. Mallon, Q.C. of Prowse Chowne LLP, on January 7, 2013.

The Notices of Intention to Expropriate stated that:

"2. The nature of the interest in the land to be expropriated is: Fee Simple, together with all rights, titles, and interest in and to the lands of all owners and persons with interest in or possession or occupation of the lands and all interest of any kind."
"3. The work or purpose for which the interest in the land is required is: Construction of a sports and entertainment facility."

The Minister of Justice and Attorney-General for the Province of Alberta, as represented by Clara Cerninara, Barrister and Solicitor, Legal Services, pursuant to and in accordance with the provisions of the Expropriation Lands Inquiry Act and Regulations thereunder, appointed on January 17, 2013, Larry P. Carr, Q.C. as the Inquiry Officer to conduct an Inquiry with respect to the intended expropriation of the Expropriation Lands pursuant to and in accordance with the provisions of the said Act and Regulations made thereunder.

By Order dated the 1st day of February, 2013, Clara Cerninara, Barrister and Solicitor, Legal Services,

being satisfied that it was just and equitable to do so, extended by 30 days the time for Larry P. Carr, Q.C. to make his report with respect to the said intended expropriations.

Each party was requested in the Notice of Inquiry to file with the Inquiry Officer and each of them with the others, a written brief of their respective case, together with all maps, plans, studies and documents, and any other material intended to be presented in evidence at the Inquiry. A brief was filed with the Inquiry Officer by the Expropriating Authority, and by each of the solicitors for the Owners.

The Inquiry proceeded at the said time and place.

Preliminary Matters

As a preliminary matter, Ms. McNaughtan, counsel for the Expropriating Authority, noted that in their brief, some of the counsel for the Owners questioned the legality and the validity of these expropriation proceedings, based upon noncompliance with the provisions of the *Municipal Government Act*, and requested whether this would be an issue in these proceedings. In reply, the Inquiry Officer stated that compliance with the *Municipal Government Act* and other legislation may be an issue as noncompliance with such legislation may go to the issue of fairness.

II. SUMMARY OF EVIDENCE ADDUCED AT THE HEARING

A. Exhibits

Exhibit 1 Brief of the Regional Municipality of Wood Buffalo dated February 25, 2013, with the following documents attached thereto:

- TAB 1 – Draft Fort McMurray Arena Block Test Fit dated 2012 09 21, prepared by IBI Group.
- TAB 2 – City Centre Area Redevelopment Plan – Bylaw No. 12/003 dated February 2012.
- TAB 3 – Arena Location Planning, prepared by PWC.
- TAB 4 – Request for Interest – Master Developer for Regional Events Centre and Entertainment District – QU2591.
- TAB 5 – Regional Municipality of Wood Buffalo Municipal Development Plan, By-Law No. 11/027 dated October 2011.
- TAB 6 – City Centre Redevelopment Sports and Entertainment Arena Presentation dated February – March 2013.
- TAB 7 – Aerial Photo showing Sports and Entertainment Site Outline.
- TAB 8 – Letter from Reynolds Mirth Richards & Farmer to Michael Marion dated February 20, 2013.
- TAB 9 – Regional Municipality of Wood Buffalo Council Report, meeting date of January 22, 2013 – 2013 Denture Borrowing for New and Previously Approved Capital Projects.

TAB 10 – City Centre Action Program – Catalyst Projects – Administrative Briefing dated May 15, 2012.

TAB 11 – Letter from Bob Campbell Professional Corporation to Marcel Ulliac with Regional Municipality of Wood Buffalo dated October 4, 2012.

TAB 12 – Application for Order Confirming Sale filed by Demianstschuk Milley Burke & Hoffinger LLP in Court of Queen's Bench, Calgary on April 16, 2012, and Affidavit of Abby Steinburg filed by Demianstschuk Leguier Burke & Hoffinger LLP in Court of Queen's Bench, Calgary on April 16, 2012.

TAB 13 – Correspondence stating that the Personal Resumes Section was omitted by the Regional Municipality of Wood Buffalo, and Request for Interest - Master Developer for Regional Events Centre and Entertainment District – QU2591 – dated April 9, 2011, prepared by Integrated Team Solutions (ITS).

TAB 14 – Correspondence stating that page 82 to the end of the document has been omitted by the Regional Municipality of Wood Buffalo, and Response to Request for Interest for Master Developer for Regional Events Centre and Entertainment District – QU2591 – dated April 29, 2011, prepared by The Global-WAM Consortium.

TAB 15 – Original Response to Request for Interest for Regional Events Centre and Entertainment District - submitted by Forum Equity Partners Inc. dated April 25, 2011.

TAB 16 – Correspondence stating that page 13 – 24 and 98 to the end of the document has been omitted by the Regional Municipality of Wood Buffalo, and Response to Request for Interest for Master Developer for Regional Events Centre and Entertainment District – RFI No. QU2591 dated April 27, 2011, submitted by Clearwater Consortium.

Exhibit 2

Brief of Prowse Chowne LLP dated February 25, 2013 with the following documents attached thereto:

TAB 1 – Lease Agreement between 569036 Alberta Ltd. and 771065 Alberta Ltd. dated September 1, 1998.

TAB 2 – Caveat Forbidding Registration – claiming interests in the "Lands" - signed by Keg Restaurants Ltd. on November 25, 1998, an Affidavit in Support of Caveat - signed by Stuart F. Blyth, Barrister and Solicitor dated November 25, 1998, Non Disturbance Agreement between Royal Bank of Canada, 771065 Alberta Ltd. and Keg Restaurants Ltd. dated October 1, 1998, and Landlord's Agreement between 569036 Alberta Ltd., 771065 Alberta Ltd., and Keg Restaurants Ltd. dated October 1, 1998.

TAB 3 – Lease Extension and Amendment Agreement between The Nomad Inn Inc. and 771065 Alberta Ltd. dated January 1, 2004.

TAB 4 - Lease Extension and Amendment Agreement between The Nomad Inn Inc. and 1179216 Alberta Ltd. dated January 1, 2009.

TAB 5 – Letter from 1179216 Alberta Ltd. to Ami C. Thorsteinson, CEO of Temple Real Estate Investment Trust and Robert Leppsky with Regional Operations Manager for Western Canada with Artific Hotels & Resorts – Lease Renewal and Proposal for Expansion of Leases Premises for Nomad Inn Inc. dated October 25, 2012.

TAB 6 – Excerpt of letter to Robert Leoppky with Atifitc Hotels and Resorts - confirmation of 1179216 Alberta Ltd. entering into a Lease Renewal with Nomad Inn Inc. dated September 6, 2012, and letter from Temple Real Estate Investment Trust to Kevin Person of 1179216 Alberta Ltd. – Lease Renewal and Expansion of the Keg Restaurant at the Nomad Inn dated October 22, 2012.

TAB 7 – Letter from Andrea B. Chrenek of Lewis & Chrenek LLP to Arni C. Thorsteinson and Atifitc Hotels and Resorts re Lease Renewal and Proposal for Expansion of Lease Premises – Nomad Motor Inn.

TAB 8 – Notice of Intention to Expropriate by Regional Municipality of Wood Buffalo dated December 12, 2012.

TAB 9 – Notice of Objection to Expropriation submitted by Keg Restaurants Inc. dated January 7, 2013.

TAB 10 - Notice of Objection to Expropriation submitted by 771065 Alberta Ltd. dated January 7, 2013.

TAB 11 – Corporate Search for 1179216 Alberta Ltd. from Alberta Corporate Registry by Prowse & Chowne LLP dated February 22, 2013.

TAB 12 – 30 photographs of the Nomad Inn, the Keg Restaurant, the Keg Parking Lands, and surrounding area.

Exhibit 3

Brief of Borden Ladner Gervais LLP dated February 25, 2013 with the following documents attached thereto:

TAB A – Commercial Lease Agreement between Canko Group Ltd. and The Fulmer Development Corporation & ALBERTA FOODSERVICES INC. dated April 23, 2003, Affidavit of Yuri Fulmer verifying corporate signing authority for The Fulmer Development Corporation dated April 28, 2003, and Affidavit of Execution – J. Ryan Taitinger dated April 28, 2003.

TAB B – Draft Fort McMurray Kinsmen Club – Major Performance Arena Feasibility Analysis and Business Plan, prepared by Randall Conrad and Associates Ltd. in association with Barr Ryder Architects and Planners, dated November 6, 2006.

TAB C – Lower Townsite Area Redevelopment Plan – Regional Municipality of Wood Buffalo – By-Law No. 09/016, dated May 29, 2006.

TAB D – Letter from Borden Ladner Gervais to Sheila McNaughtan, Q.C. with Reynolds Mirth Richards & Farmer LLP – Proposed Expropriation of Plan 616AO, Block 13, Lot 1 to 3 dated February 15, 2013.

TAB E – Correspondence stating that page 13 – 24 and 98 to the end of the document Request for Interest for Master Developer for Regional Events Centre and Entertainment District – RFI No. QU2591 dated April 27, 2011, submitted by Clearwater Consortium.

TAB F – Correspondence stating that page 82 to the end of the document has been omitted by the Regional Municipality of Wood Buffalo, and Response to Request for Interest for Master Developer for Regional Events Centre and Entertainment District – QU2591 – dated April 29, 2011, prepared by The Global-WAM Consortium.

TAB G - Correspondence stating that the Personal Resumes Section was omitted by the

Regional Municipality of Wood Buffalo, and Request for Interest - Master Developer for Regional Events Centre and Entertainment District – QU2591 – dated April 9, 2011, prepared by Integrated Team Solutions (ITS).

TAB H – Regional Municipality of Wood Buffalo – City Land Use By-Law.

TAB I – Unapproved Minutes of Meeting of the Council of the Regional Municipality of Wood Buffalo held on Tuesday, February 12, 2013.

TAB J - City Centre Action Program – Catalyst Projects – Administrative Briefing dated May 15, 2012.

TAB K - Approved Minutes of Meeting of the Council of the Regional Municipality of Wood Buffalo held on Tuesday, November 27, 2013.

TAB L - Notice of Intention to Expropriate submitted by Regional Municipality of Wood Buffalo dated December 12, 2012.

TAB M – Letter from Sheila McNaughtan, Q.C. with Reynolds Mirth Richards & Farmer LLP to Alberta Foodservices Inc. – Proposed Expropriation of Plan 616AO, Block 13, Lot 1 to 3 from Canko Group Ltd. dated December 18, 2012.

TAB N – Regional Municipality of Wood Buffalo – 2013 Proposed Budget & Financial Plan.

TAB O – Email from Sheila McNaughtan, Q.C. with Reynolds Mirth Richards & Farmer LLP to Daniela O’Callaghan with Prowse Chowne LLP, Michael Marion, and Jud Virtue with Norton Rose Canada – Regional Municipality of Wood Buffalo Expropriations – Inquiry Hearings dated February 15, 2013.

TAB P - Letter from Sheila McNaughtan, Q.C. with Reynolds Mirth Richards & Farmer LLP to Don Mallon with Prowse Chowne LLP, Jud Virtue with Norton Rose Canada, and Mike Marion with Borden Ladner Gervais LLP - Regional Municipality of Wood Buffalo Expropriations dated February 25, 2013.

TAB Q - Letter from Sheila McNaughtan, Q.C. with Reynolds Mirth Richards & Farmer LLP to Sharon Borgland with Borden Ladner Gervais LLP - Expropriation of Plan 616AO, Block 13, Lot 1 to 3 dated January 23, 2013.

TAB R - Approved Minutes of Meeting of the Council of the Regional Municipality of Wood Buffalo held on Tuesday, July 10, 2012.

TAB S - Minutes of Meeting of the Council of the Regional Municipality of Wood Buffalo held on Tuesday, December 11, 2012.

TAB T – Letter from Bob Campbell Professional Corporation to Marcel Ulliac – Canko Group Ltd. dated October 4, 2012.

TAB U - Letter from Sheila McNaughtan, Q.C. with Reynolds Mirth Richards & Farmer LLP to Alberta Foodservices Inc. – Proposed Expropriation of Plan 616AO, Block 13, Lot 1 to 3 dated November 16, 2012, and Engaging Residents: Guidelines for Public Participation – Planning & Development – Regional Municipality of Wood Buffalo – dated September 2006, version 1.1, prepared by Strategic Planning and Policy Division - Regional Municipality of Wood Buffalo.

TAB I – *Expropriation Act* of the Province of Alberta – Revised Statutes of Alberta 2000, Chapter E-13, current as of October 1, 2011.

TAB 2 – Case Law – Toronto Area Transit Opening Authority v. Dell Holdings Ltd. – Supreme Court of Canada – October 9 1996/January 30 1997.

TAB 3 – Case Law – Parkins v. The Queen In Right of Ontario et al. – Ontario Court of Appeal – April 27, 1978.

TAB 4 – Report of Inquiry Officer – Intended Expropriation by the Town of Westlock, Alberta held on Tuesday, June 19, 2001, prepared by Rex M. Nielson, ESQ, dated June 28, 2001.

TAB 5 - Report of Inquiry Officer – Intended Expropriation by Her Majesty the Queen in Right of the Province of Alberta as represented by the Minister of Transportation – held in Mayerthorpe, Alberta on Friday, May 31, 2002, prepared by Rex M. Nielson, ESQ, dated June 3, 2002.

TAB 6 - Report of Inquiry Officer – Intended Expropriation by the City of Calgary, Alberta – held in the Provincial Court of Alberta, Calgary Courts Centre on Thursday, January 24, 2008 and Friday, January 25, 2008, prepared by Rex M. Nielson, ESQ, dated January 31, 2008.

TAB 7 - Report of Inquiry Officer – Intended Expropriation by the City of Calgary, Alberta – held in the Provincial Court of Alberta, Calgary on Tuesday, May 3, 2005, prepared by Rex M. Nielson, ESQ, dated May 9, 2005.

TAB 8 – Case Law – Karn et al. and Ontario Hydro et al. – Ontario Court of Appeal – June 14, 1977.

TAB 9 – Land Compensation Report – Cardston Municipal Hospital District No. 5 – K.J. Boyd, Chairman, J.C. Molaro, and H.M. Ostrom – dated September 23, 1975.

TAB 10 - Report of Inquiry Officer – Intended Expropriation by the City of Edmonton, Alberta of Plan 1820AX, Block 5, Lot 2 excepting thereout all coal. – Notice of Objection filed by Michael Wild and John Villanyi – held in the Provincial Court of Alberta, Edmonton on Wednesday, June 16, 2004 and Thursday, June 17, 2004, prepared by Larry P. Carr, Q.C. dated July 8, 2004.

TAB 11 – Report of Judicial Committee of the Privy Council – Campbell et al. v. Municipal Council of Sydney and Hughes Motor Service, Limited v. Municipal Council of Sydney dated December 5, 1924.

TAB 12 - Report of Inquiry Officer – Intended Expropriation by Her Majesty the Queen in Right of the Province of Alberta as represented by the Minister of Infrastructure – held at the John J. Bowlen Building on Tuesday, February 10 to Thursday, February 12, 2004, prepared by Larry P. Carr, Q.C. dated March 4, 2004.

TAB 13 - - Report of Inquiry Officer – Intended Expropriation by the City of Calgary, Alberta of Plan 6563HU, Block 13, Lot 19 excepting thereout all mines and minerals – held in the Provincial Court of Alberta, Calgary on Wednesday, April 26, 2006, prepared by Rex M. Nielson, ESQ, dated May 16, 2006.

Exhibit 4

Brief of Norton Rose Canada LLP dated February 25, 2013 with the following documents attached thereto:

TAB 1 - Case Law – Dell Holdings Ltd. v. Toronto Area Transit Operating Authority – Supreme Court of Canada – heard on October 9, 1996 – Judgment dated January 30 1997.

TAB 2 – Case Law – Teubner v. Ontario (Minister of Highways) – Ontario Court of Appeal – Judgment dated March 10, 1965.

TAB 3 – Case Law – R v. Lee – Exchequer Court of Canada – Judgment dated March 6, 1917.

TAB 4 – Alberta Government Services, Land Titles Office – Document Registration No. 122414643 – Notice of Intention to Expropriate by Regional Municipality of Wood Buffalo dated December 12, 2012, and Alberta Government Services, Land Titles Office – Document Registration No. 122414642 – Notice of Intention to Expropriate by Regional Municipality of Wood Buffalo dated December 12, 2012.

TAB 5 – City Centre Area Redevelopment Plan – By-Law 12/003 dated February 2012.

TAB 6 – Aerial Photo of Nomad Hotel and surrounding area (Google Map Maker).

TAB 7 – Draft Fort McMurray Arena Block Test Fit for City Centre McMurray Entity dated 2012 09 21, prepared by IBI Group.

TAB 8 – Request for Interest – Master Developer for Performance Centre and Entertainment District – Regional Municipality of Wood Buffalo.

TAB 9 – Correspondence stating that pages 82 to the end of the document have been omitted, and Regional Municipality of Wood Buffalo – Response to Request for Interest – Master Developer for Regional Events Centre and Entertainment District – QU2591 dated April 29, 2011, prepared by The Global-WAM Consortium.

TAB 10 – Correspondence stating that pages 13 to 24 and 98 to the end of document have been omitted, and Regional Municipality of Wood Buffalo – Regional Events Centre and Entertainment District – RFI No. QU2591, prepared by Clearwater Consortium.

TAB 11 – Excerpt from the *Expropriation Act* of the Province of Alberta – Part 1: Procedure of Expropriation – Section 8 of the Act – Notice of intention to expropriate taken from the Alberta Current to Gazette Volume 109:2 dated January 31, 2013 and Excerpt from the *Expropriation Act* of the Province of Alberta – Part 1: Procedure of Expropriation – Section 15 of the Act – Hearing by inquiry officer taken from the Alberta Current to Gazette Volume 109:2 dated January 31.

TAB 12 – Excerpt from the *Municipal Government Act* of the Province of Alberta – Part 3: Special Municipal Powers and Limits on Municipal Powers – Division 1: Expropriation – Section 14 of the Act – Expropriation Powers taken from the Alberta Current to Gazette Volume 109:2 dated January 31 and excerpt from the *Municipal Government Act* of the Province of Alberta – Part 17: Planning and Development – Division 4: Statutory Plans – Area Redevelopment Plans – Section 635 of the Act – Plan Contents taken from the Alberta Current to Gazette Volume 109:2 dated January 31.

TAB 13 – Case Law – City of Victoria v. Mackay – Supreme Court of Canada – Judgment dated May 14, 1918.

TAB 14 – Report of the Inquiry Officer – Intended Expropriation by the City of Edmonton, Alberta – Notice of Objection filed by William Sokil and Russell Sokil – held in the Provincial Court of Alberta, Edmonton on Thursday, May 14, 1987 and Friday, May 15, 1987, prepared by James L. Lewis, ESQ., Q.C. dated June 2, 1987.

TAB 15 – Aerial Photo of Proposed Extent of Sports & Entertainment Complex Site.

Expropriation Documents

TAB 1 – Notice of Intention to Expropriate submitted by Regional Municipality of Wood Buffalo dated December 12, 2012.

TAB 2 – True Copy of Notice of Objection to Expropriation of WWT Holdings Ltd. submitted by Donald P. Mallon, Q.C. with Prowse Chowne LLP dated January 7, 2013.

TAB 3 - True Copy of Notice of Objection to Expropriation of Kim R. Wolff Professional Corporation, J. Ryan Taitinger Professional Corporation, and Wolff Taitinger LLP submitted by Donald P. Mallon, Q.C. with Prowse Chowne LLP dated January 7, 2013.

Registered Documents

TAB 4 – Land Title Certificate – Linc No. 0021 023 213 – Short Legal Description: 616AO; 13; 4-6 – Title No. 173C233 dated January 2, 2013.

TAB 5 – Lease Extension Agreement between WWT Holdings Ltd. and Total E&P Canada Ltd. dated March 9, 2011.

TAB 6 – Blank

TAB 7 – Corporate Search for WWT Holdings Inc. from Alberta Corporate Registry by Prowse & Chowne LLP dated February 21, 2013.

Correspondence Documents

TAB 8 – Offer to Purchase between WWT Holdings Ltd. and Regional Municipality of Wood Buffalo signed and initialed only by Marcel Ulliac, Director of Land Administration for the Regional Municipality of Wood Buffalo, dated June 20, 2012.

TAB 9 – Letter to Marcel Ulliac, Director of Land Administration for the Regional Municipality of Wood Buffalo from WWT Holdings Ltd. – purchase from WWT Holdings Ltd. of Plan 616AO, Block 13, Lots 4, 5 and Part of Lot 6 dated July 4, 2012.

TAB 10 – Letter to Katherine Morianos, Municipal Solicitor for the Regional Municipality of Wood Buffalo from WWT Holdings Ltd. - purchase from WWT Holdings Ltd. of Plan 616AO, Block 13, Lots 4, 5 and Part of Lot 6 dated August 13, 2012.

TAB 11 – Letter to WWT Holdings Ltd. from Reynolds Mirth Richards & Farmer LLP – Regional Municipality of Wood Buffalo purchase from WWT Holdings Ltd. dated September 21, 2012.

TAB 12 – E-mail to emirth@rmtf.com from J. Ryan Taitinger, Q.C. – Expropriating Authority negotiations with WWT Holdings Ltd. dated September 24, 2012 at 9:39 a.m.

TAB 13 – E-mail reply to J. Ryan Taitinger, Q.C. with Wolff Taitinger LLP from E. Mirth, Q.C. with Reynolds Mirth Richards & Farmer LLP - Expropriating Authority negotiations with WWT Holdings Ltd. dated September 24, 2012 at 9:55 a.m.

TAB 14 – E-Mail reply to E. Mirth, Q.C. with Reynolds Mirth Richards & Farmer LLP from J. Ryan Taitinger, Q.C. with Wolff Taitinger LLP - Expropriating Authority negotiations with WWT Holdings Ltd. dated September 24, 2012 at 11:04 a.m.

TAB 15 – Email to E. Mirth, Q.C. with Reynolds Mirth Richards & Farmer LLP from J. Ryan Taitinger, Q.C. with Wolff Taitinger LLP - Expropriating Authority negotiations with WWT Holdings Ltd. dated October 3, 2012 at 10:07 a.m.

TAB 16 – Letter to J. Ryan Taitinger, Q.C. with Wolff Taitinger LLP for WWT Holdings Ltd. from E. Mirth, Q.C. with Reynolds Mirth Richards & Farmer LLP – Regional Municipality of Wood Buffalo purchase from WWT Holdings Ltd. dated October 4, 2012.

Expert Documents

TAB 17 – Key Personnel Information of James Johansen, provided by Scheffer Andrew Ltd. Planners and Engineers.

TAB 18 – Letter to Daniela O' Callaghan with Prowse Chowne LLP from James Johansen, P. Eng. and Sandra Penner, Eng. with Scheffer Andrew Ltd. Planners and Engineers – Expropriation of Plan 616AO, Block 13, Lot 18 and Plan 616AO, Block 13, Lot 19 from The Keg Restaurants Ltd. and Plan 616AO, Block 13, Lots 4 and 5 and Plan 616AO, Block 13, Lot 6 from Wolff Taitinger LLP for Fort McMurray Downtown Arena and Entertainment Complex by the Regional Municipality of Wood Buffalo (Expropriating Authority) dated February 27, 2013.

TAB 19 – Regional Municipality of Wood Buffalo Council Report – Meeting date of November 27, 2012 – Expropriations – Road Extensions, and Sports Entertainment Complex.

TAB 20 – Unapproved Minutes of a Meeting of the Council of the Regional Municipality of Wood Buffalo held on Tuesday, November 27, 2012.

TAB 21 – Regional Municipality of Wood Buffalo – 2013 Capital Budget dated December 11, 2012.

TAB 22 – Draft No. 3 – Fort McMurray Kinsmen Club – Major Performance Arena Feasibility Analysis and Business Plan, dated July 19, 2007, prepared by Randall Conrad and Associate Ltd. in association with Barr Ryder Architects and Planners.

TAB 23 – Regional Municipality of Wood Buffalo – City Centre Land Use By-Law.

TAB 24 – Traffic Impact Assessment Guidelines dated January 2011, prepared by the Regional Municipality of Wood Buffalo, Engineering Department.

TAB 25 – Letter to Michael Marion with Borden Ladner Gervais from Sheila McNaughtan, Q.C. with Reynolds Mirth, Richards & Farmer LLP – Regional Municipality of Wood Buffalo Proposed Expropriation, dated February 20, 2013.

TAB 26 – E-mail to Daniela O'Callaghan with Prowse Chowne LLP, Michael Marion with Borden Ladner Gervais, Jud Virtue with Norton Rose Canada, and carbon copy to Kathrine "Bee" Morianos with the Regional Municipality of Wood Buffalo from Sheila McNaughtan, Q.C. of Reynolds Mirth Richards & Farmer LLP – Expropriation Inquiry Hearing, dated February 15, 2013 at 1:27 p.m.

TAB 27 – Printout of the City of Fort Murray, Alberta's Flood Hazard Identification Map, provided by Alberta Environment and Sustainable Resource Development.

Exhibit 7 Alternate Sites Overlay-Central Business District Figure 5, and Alternate Sites Overlay Figure 6, Lower Town Site, as prepared by Scheffer Andrew Ltd.

Exhibit 8 Regional Municipality of Wood Buffalo Request for Proposal QU2609 closing May 12, 2011.

Exhibit 9 Goal 6 – Working Together, excerpt (pages 142-167)

Exhibit 10 Three photographs showing delivery truck at the rear of the Keg Restaurant

Exhibit 11 Three overlays showing parking stalls for the Nomad Hotel

Exhibit 12 Exchange of emails dated November 26, 2012, between Karen Gilmore of FDC Capital Partners Inc. and Sheila McNaughtan of Reynolds Mirth Richards & Farmer LLP, with attached letters from Sheila McNaughtan dated November 26 and November 16, 2012

B. Witnesses

Witness on Behalf of the Expropriating Authority

I. Mr. Ronald Taylor

After being duly sworn, Mr. Taylor stated that he was Senior Vice President, Development Services, with Arcurus Realty Corporation and that, as such, he had been retained by the Municipality, in June/July 2011, to act as Executive Director with respect to the implementation of the Municipality's Municipal Development Plan. As such, it is his responsibility to put in place the necessary planning, human, and other resources as well as the provision of budgets and scheduling with respect thereto.

Mr. Taylor said that he had been involved in the Real Estate sector for 30 years and had worked on many large scale mixed use City Centre redevelopments in Toronto, New York, San Francisco, London, Barcelona and as well, Burlington and Thunder Bay, Ontario, Calgary, and Victoria.

Referring to Tab 6 of Exhibit 1, Mr. Taylor gave a presentation of the events to date and his work relating to the redevelopment of lands in downtown Fort McMurray with respect to the development of a sports and entertainment arena. Mr. Taylor stated that the plan was to create a new liveable community for the people who will support the growth brought about by the development of the oil sands, referring to change in demographics as more workers relocate to the area. He cited a Price Waterhouse Coopers 2012 study showing a potential quintupling of workers and required office space in the next 10-15 years, with a similar increase in residential development. The witness testified that in order to accommodate this growth, the Municipality has approved a 10-strategy action plan, one of which is the redevelopment of the City Centre. It is with this in mind that the Expropriating Authority assembled a team of in-house experts and outside consultants to develop the City Centre Area Development Plan ("CCARP"), under the direction of Ron Taylor as lead consultant. The CCARP plan was adopted by Municipal Council in February 2012. The Expropriating Authority quickly followed with the approval of the City Centre land use bylaw in April 2012, acknowledging that amendments would be required.

As part of CCARP, the Expropriating Authority adopted a number of catalyst projects to kick start the development, affirm the Municipality's commitment to building the City Centre and establish confidence with investors and developers. Some of these projects, which are currently underway,

include the Airport expansion to be completed in 2014, highway improvements, water and waste system expansion and sustainable infrastructure upgrades (which are now complete in the downtown area). Coming projects are improvements to the transit system and tripling the roads in the city grid over the next 10 years, the elimination of surface parking in the downtown area and construction of the Prairie Loop Boulevard to give better access to the riverfront. The witness cited a number of policies of the Expropriating Authority, as set out in various documents, including:

- the Municipal Development Plan 2011 which speaks of the promotion of public events and festivals to increase exposure to arts and culture, access for major attractions, the hosting of large national and international events, and the promotion of activities for social interaction;
 - the Municipal Strategic Plan 2012-2016 which speaks of the revitalization of the City Centre through the development of an entertainment district/performance arena and increased economic development opportunities including commercial and retail space; and
 - CCARP 2012 which speaks of the development of major new facilities to encourage social, cultural, art, and sporting activities, social interaction, and encouragement of mixed use complexes to provide a high level of convenience and amenity.
- Specifically, the witness referred to the following policies and actions contained in the CCARP:

- 5.3.2.1 the establishment of Franklin Avenue as a transportation corridor for all modes of transportation, the establishment of mixed use commercial and residential facilities at bus transfer points along Franklin Avenue, and a focus on developments around transit nodes;
- 5.3.2.10 developing MacDonald Avenue as a major retail and entertainment corridor, creating pedestrian friendly street scape, and ensuring building designs that complement the uses and character of the street;
- 5.4.1 encouraging a wide range of cultural and entertainment shopping and dining facilities and hotels in the downtown within easy walking distance, and facilitating the development of new public attractions downtown, including an arena to accommodate major sports and entertainment events;
- 5.5.1 a concentration of retail uses along Franklin and MacDonald Avenues and Main Street and the development of an arena in close proximity as an anchor for retail and entertainment uses;
- 5.5.1.3 encouraging more intensive development west of Hardin Street through infilling of vacant lots and redevelopment of underutilized sites; and
- 5.5.1.9 allowing for intensive mixed use in the retail and entertainment corridor along MacDonald Avenue.

Referring to the benefits of a sports and entertainment arena, Mr. Taylor specified that such a facility would facilitate the opportunity for year round sports events and entertainment, would energize the urban core and serve as an anchor for retail and entertainment activities, would support arts and cultural programs and public events and festivals, and would integrate with pedestrian and public transportation to create a pedestrian-friendly neighbourhood. The arena itself may include an NHL size bowl with fixed seating for 7,000 to 8,000 spectators, additional concert seating on the floor, club seating in corporate boxes, restaurants and sports bar, meeting rooms, street level retail, hotel and hospitality facilities, commercial office spaces, and facilities for other special events.

As to the location of the arena, it should provide connectivity with adjacent land, enough opportunities for commercial/hotels/retails and entertainment developments, high accessibility through the Franklin Avenue transit way, and adequate lands to accommodate the program. The witness did indicate that parking is a major issue as it is forecast that one in four people will drive and there needs to be a drop-off zone as well as parking remote from the facility so that people walk by retail facilities and restaurants and make use of parking in closer buildings during non-business hours, evenings and weekends.

The witness indicated that a request for expressions of interest from potential developers was issued in March 2011 and out of seven Respondents, Price Waterhouse Coopers had shortlisted four proponents for the request for proposal to be issued upon the completion of land assembly in the spring of 2013. It was stressed by some of the Respondents and by PriceWaterhouseCoopers, that to have a successful RFP, it would be desirable to have identified and purchased the lands to be used prior to the release of the RFP. He indicated that the site is to be fully acquired by the end of 2013 to allow for demolition and remediation in order to permit a construction start in early 2014.

With respect to the Specific location of the arena, Mr. Taylor testified that the CCARP did not recommend any specific site, in order not to prejudice the acquisition of lands by Expropriating Authority. The stated criteria included that the site must be accessible by public transit, located on MacDonald Avenue and in the central business district. He stated that in fact, three sites would potentially fill the criteria set out in CCARP. In order to make sure that the arena would fit in a city block, IBI Group Inc., Architects, was requested to prepare a "block test fit", showing how the arena and other facilities could be made to fit in a city block, and he referred to the plan shown after Page 39 of Tab 6, Exhibit 1 as such a plan, showing an arena, the existing Nomad Hotel, and a mixed use tower could all fit in one block. Referring to the test fit sketch, he indicated that the City was not proposing to acquire Area No. 5, which would remain available to service Building No. 1, being the Nomad Hotel. He further indicated that the access ramp to parking underneath the Nomad Hotel would be accessed through a lane which would also be shared with the arena. Mr. Taylor also stated that MacDonald Avenue may from time to time have to be closed for two to three hours to permit the staging of events, stating that this might affect access to the Nomad Hotel. He indicated that the sketch did not show significant drop-off areas for the arena, which would have to be worked out. He referred to Page 60 of Tab 2 of Exhibit 1, showing a potential streetscape of Franklin Avenue.

Referring to the "request for interest" shown as Tab 4 of Exhibit 1, he stated that this document, which preceded his engagement by the City, was released early in order to qualify proponents, and was based upon the proponents being responsible to acquire the appropriate lands. He stated that the proponents found it difficult to reply to the RFI without a specific location having being identified.

Questioned by Ms. McNaughtan as why the City was rushing to acquire these sites, he testified that the CCARP proposal in order to cease an opportunity and respond to major interest shown in the redevelopment, at a time when the demand for construction services in the country is low. As to whether the Expropriating Authority could wait to acquire the lands, Mr. Taylor replied that the proponents need to know of the proposed site in order to assure certainty in their responses.

With respect to parking for the facility, Mr. Taylor testified that CCARP contemplates on-street parking wherever possible and eliminates surface parking lots, with a requirement for above and below ground parking structures.

A question as to the risk of the arena project not proceeding, the witness testified that this was not a concern as Council has already approved a budget for acquisition and remediation of the lands in 2013 and as Council for Expropriating Authority is committing to moving forward with this plan. He further

stated that while one consultant has suggested a start of construction in 2015, Expropriating Authority's objective is to start construction in 2014.

Referring to Expropriating Authority's 2013 proposed capital budget as shown at Page 121 of Schedule 3, Tab N, Mr. Taylor confirmed that a preconstruction budget had been approved for the sports and entertainment area, which includes the costs of selection a proponent for the project and finalizing the plan in 2013, as well as doing demolition and remediation work in 2013 in order to allow for the start of construction in 2014. With that in mind, the objective is to have possession of the required properties by the end of 2013, and possibly obtain titles before then. He stated that it is for this purpose that the within Expropriations were authorized by the Municipality's council at its meeting on November 27, 2012, as referred to Item 11 of the Minutes of a meeting of council, shown at Tab K. Asked to comment on the statement that there are "no suitable alternate sites" Mr. Taylor testified that the selected site is the best site as other sites would involve street closings, the loss of convenient transit along Franklin Avenue, the loss of MacDonald Avenue as an event street, as well as the straddling of Main Street. In addition, referring to the aerial photograph shown at Tab 7 of Exhibit 1, he indicated that the city block located immediately to the west of the selected site has higher density developments than the selected site and accordingly would not be suitable.

The witness admitted that there were difficulties locating the arena in the business district, but he indicated that there was less disruption on the selected site, and the selected site clearly meets the priorities of the Expropriating Authority.

As to the roll of the Master Developer to be selected, Mr. Taylor testified that the project was a Municipal amenity and that the best way to deliver it is to engage people experienced in designing and building this type of project. It is intended that the facility will be built on a land leased from the Municipality, and will at some point in time revert to the Municipality.

Questioned about negotiations with the Owners affected by the Expropriation, Mr. Taylor testified that:

- he once met with Mr. Wolff or Mr. Taitinger along with Mr. Glen Laubenstein, the Municipality's Chief Administrative Officer, but that most contacts had been through the Land Acquisition Department.
- he had personally met with Mr. Arni Thorsteinson with respect to the taking of KEG Parking Lands, indicating to him that alternate access to the parking under the Nomad Hotel would be provided, and
- the Land Administration Department had been involved in discussions with the Landlord of WWT Lands, but not with representatives of the A&W tenant.

Referring to the 2012 Alberta Government Flood Hazard Map for downtown Fort McMurray, which indicates potential overland flow reaching the Expropriation lands, Mr. Taylor testified that all buildings on the selected site would be above the 40 year flood level, acknowledging that parking may be below such level, that there had been no significant flooding in the area since connections have been made to Victoria Island, and that it has planned to build a dyke at the 40 year flood level and to provide sandbags at the 100 year flood level.

Asked about the assessment of traffic impact relating to the project, Mr. Taylor stated that no studies had been made, but that such studies would follow the selection of a proponent for the construction of the project and more definite plans. He added that IBI Group Architects Inc. had done some work and addressed some issues in that respect for this facility.

Referring to the land use bylaw, Mr. Taylor acknowledged that it had been passed by council on a rush basis, knowing that it would have to be amended to eliminate inconsistencies. One such inconsistency

which was corrected by later amendment was a requirement that any development on the selected site would have a minimum of 40% of its floor plate devoted to commercial development.

As to funding for the arena, Mr. Taylor testified that the only funding approved was for planning and early construction (including demolition and remediation as part of the 2013 approved expenditures); he added that he had no reason to believe that the 2014 expenditures would be approved in the November 2013 budget. He further indicated that the selected Master Developer who would be participating in the developments costs, and would subsequent benefit from the projects revenues.

Questioned as to other Municipal lands which could be used for the project and referring to the sketch shown as Exhibit 6, Mr. Taylor testified that the criteria adopted by Expropriating Authority does not support the construction of the facility on any lands owned by the City.

Asked to comment specifically on the Scheffer Andrew Ltd. Report shown at Tab 18 of Exhibit 5, prepared by James A. Johansen, P.Eng, Mr. Taylor testified:

a) With respect to the "findings" set out in the introductory words of Article 4,

- the Expropriating Authority considered all of the factors referred to and followed very sound principles and guidelines in selecting the site;

- the start of construction of the arena is to be agreed to with the developer to be selected in late 2013, with construction to start in 2014 (and not 2015 as stated);

- the Expropriating Authority is in the process of determining a proponent, recognizing that it does not have the experience to determine some of the issues referred to; and

- it is in the interest of all concerned that the location of the site be determined by the Expropriating Authority before requesting proposals.

b) With respect to the City Centre Land Use Bylaw referred to in Article 4.1,

- there will be on-street parking wherever possible;

- there will be no room for surface parking lots in the City Centre, which is designated as a high density area and surface parking is to be replaced by in-building parking consistent with needs; and

- the Chamber of Commerce has recognized that presently, many cars are parked in the City Centre for long term parking, not for the purpose of frequenting local business, and has suggested that meter parking should be introduced.

c) With respect to Article 4.2.2, CCARP contains more information than a general planning document, and was in fact followed up by a land use bylaw in order to help owners plan. While it may be better to have an arena located out of the City on a highway, that was determined not to meet the objectives of the Municipality to help rebuild and redevelop the downtown area.

d) With respect to servicing and technical challenges referred to in Article 4.3.5, Franklin Avenue has been designed as a major servicing corridor, and currently has services able to serve a city of 50,000 people and to build 10 arenas; further, any issues that may arise will be dealt with by the proponents' experts.

- e) With respect to alternate sites as referred to Article 5, none of them meet the criteria established by Expropriating Authority. In particular,
 - any lands located next to Highway 63 are unsuitable considering projective future expansions of the said Highway;
 - the site of the current Provincial Building is uneconomical;
 - the three city blocks located north of Franklin Avenue would require traffic to cross Franklin Avenue and would be ineffective; and
 - the site south of Franklin Avenue between Morrison and Richard Streets would require the closing of MacDonald Avenue, and there are currently building applications outstanding for highrise developments in that area.

Cross-Examination

1. Donald P. Mallon, Q.C.

Mr. Mallon stated that he was representing 1179216 Alberta Ltd. and Keg Restaurants Ltd., respectively Franchisor and Franchisee, operating as tenants of Treit Holdings 3 Corporation.

In cross-examination by Mr. Mallon, Mr. Taylor testified that,

- referring to the aerial photograph shown at Tab 7, Exhibit 1, the yellow line outlines the area of the lands required for the arena facility, but he did not know the distance between the lands to be expropriated and the west wall of the Nomad Hotel/Keg Restaurant facility, indicating that he would provide a specific drawing and that Expropriating Authority would work with the owners to provide proper access to parking and other facilities on their site;
- he was experienced with Expropriation procedures, having expropriated lands for projects in San Francisco, Mexico City, and Fort Erie, Ontario, but never in Alberta, and he recognized that Expropriation is a mechanism of last resort, to be used within the parameters of transparency, making sure that all affected parties who have land on the site are provided with the same information at the same time. It is important to take the least land required for a project and the Expropriating Authority must negotiate with the Owners in good faith;
- referring to the e-mail from counsel for Expropriating Authority dated February 15, 2013, addressed to counsel for the Owners, Expropriating Authority was looking at various sites concurrently with the development of CCARP, and the recommended criteria was approved by counsel for the Municipality at CIL at its meeting on February 14, 2012;

- in determining a suitable site, Expropriating Authority worked with Fort McMurray lawyer, Robert Campbell to do costs comparisons, and the current site was identified by the consulting team and staff within the Municipality in October/November 2011, as an accumulation of six months of work;
- no Parking Analysis or Traffic Impact Analysis has yet been completed, but it is planned that parking in local commercial buildings will be available at night and that the City will build parking garages on a phased basis for additional space as required, the Expropriating Authority being committed to make adequate parking available within three blocks of the facility;
- while no Site Specific Servicing Analysis has been made, servicing is available through the Franklin Avenue corridor;
- the Expropriating Authority has agreed with the owner of the Nomad Hotel that the 23 parking stalls located on KEG Parking Lands will be replaced on a permanent basis, but this has not been discussed with the owners of the Keg;
- the Expropriating Authority will provide adequate parking facilities for the development and to replace the angled parking on Franklin Avenue as well as the parking which will be displaced by bus lanes and bus stops;
- the concept plan shown on Page 1 of Tab 1, Exhibit 1 shows an 8,000 seat arena, which will be driven by the type of hockey team and the type of concerts and entertainment anticipated; however the teams and anchor tenants are to be determined by the successful proponent;
- the preliminary concept plan does not show any site facilities for tour buses, production vehicles, artist buses, or media vehicles, nor is it contemplated that streets will be closed off for every event;
- parking for the mixed use complex shown as No. 3 on the concept plan (Page 1 Tab 1, Exhibit 1) would be underground and access would be shared with the Nomad Hotel;
- the objective is to have the mixed use building construction at the same time as the arena, but that would depend on the proponent;
- construction of the project would be through an experienced contractor of the selected proponent for the design, build, and operation of the project;
- no geotechnical work or environmental assessments have been done, and these would be the responsibility of the successful proponent;

- the existing land use bylaw requires one-half parking space per hotel room as well as one parking space for each 100 square meters of leased space, and the 23 parking spaces located on KEG Parking Lands are not required for the Hotel and its tenants to meet the prescribed parking requirements;
- the request for proposal will be used to find a consortium composed of a developer, facilities manager, contractor, hotel manager, etc.;
- the north side of the Restaurant;
- lane allowing sufficient radius for turning trucks to reach the ramp to the Hotel on respect to the Block Test Fit, he recognized that arrangements have to be made for a there was no need to take the business and parking of the Nomad Hotel. With the first offer to purchase KEG Parking Lands was made in late 2012, after service of the Notice of Expropriation, as it was always intended to replace the parking and respect to the Block Test Fit, he recognized that arrangements have to be made for a the first offer to purchase KEG Parking Lands was made in late 2012, after service of the Notice of Expropriation, as it was always intended to replace the parking and
- he has had discussions with Mr. Arni Thorsteinson since the site was first identified, and that the first meeting was held with Mr. Thorsteinson alone at the Marriott Hotel over breakfast;
- Treit Holdings 3 Corporation is the owner of the Nomad Hotel;

In Cross-Examination by Mr. Virtue, Mr. Taylor testified that,

Mr. Virtue stated that he was representing Treit Holdings 3 Corporation.

Judson Virtue

2.

- referring to Page 142 of the Municipal Development Plan (Exhibit 9), the Municipality was bound to be transparent in accordance with the good governance principles and was required to provide reliable and accurate information to the community, as was done in public meetings organized by the Chamber of Commerce and by the Urban Development Institute.
- he was aware of tenants for various Parcels and recognized that tenants were stakeholders, and as such they were entitled to attend public meetings;
- referring to Page 17 of Exhibit 8, being the request for proposal dated May 12, 2011, he was responsible to guide the team to ensure good practices and methodologies are employed in the development of a plan and in the acquisition of lands; as such, he worked closely as lead advisor for the development of CCARP and the land use bylaws and in discussions with Owners, noting that he personally was only approaching registered owners;
- access to the ramp for the Nomad Hotel parking and to the mixed use building and the Keg Restaurant, but no discussions have been held with respect to the terms of the easement;

- Mr. Thorsteinson has indicated that he would like to have an additional 68 parking spaces and he (Mr. Taylor), has offered to provide those at market rates;
- Franklin Street is a designated transportation corridor with dedicated bus route and is a requirement for the facility; stops will coincide with cross-streets;
- although partially mentioned and not identified for a specific site, it is absolutely clear in CCARP that an arena is contemplated in the downtown zone, and that was absolutely clear in the input received from the public and stakeholders;
- his recollection is that he made it clear to Mr. Armi Thorsteinson that the mixed use portion of the concept plan would include a hotel, and Mr. Thorsteinson was also aware of this as part of one of the ownership consortiums.

3. Daniela O'Callaghan

- Ms. O'Callaghan stated that she was representing WWT Holdings Ltd. as well as Wolff Taitinger LLP.
- In cross-examination by Ms. O'Callaghan, Mr. Taylor testified that, the arena is a large project estimated cost over \$100,000,000.00, to be partially funded by public funds;
- public consultations were held in relation to CCARP, which did refer to a sport and entertainment facility, but no direct meeting was held on the topic of the arena alone;
- the arena is referred to in CCARP approximately 6-9 times as one of hundreds of catalyst projects and is one of the 13 catalyst projects which Council decided to focus on;
- CCARP is a policy document containing a higher level detail than normal, and it was closely followed by a land use bylaw;
- CCARP was approved in February 2012;

- there was a meeting on September 10, 2012 with representatives of WWT Holdings Ltd. and Wolff Taitinger LLP over lunch at the Longshot Restaurant, with Glen Laubenstein, Chief Administrative Officer for Expropriating Authority at which he (Mr. Taylor) explained what was being done with the City Centre Plans;

- Mr. Laubenstein promised that he would provide a more detailed response to the August 13th letter and Wolff Taitinger LLP was advised of certain information on a confidential basis;

- the official response was provided in a letter dated October 4, 2012, from the Expropriating Authority, which, while referring to catalyst projects, did not refer to

the arena specifically although he (Mr. Taylor) thought that Wolff Taitinger had been told about the arena verbally.

4. Michael A. Marion

Mr. Marion stated that he was representing ALBERTA FOODSERVICES INC. and FDC Brands Inc. (operating as A&W)

In cross-examination by Mr. Marion, Mr. Taylor testified that,

- he readied himself for this hearing by informing himself from some municipal employees and he believes that all correspondence has been produced;

- he was retained by Expropriating Authority, as a representative of Arcurus Realty Corporation, in a Personal Services Contract to act as lead advisor and acting Executive Director for the Municipality on the redevelopment;

- he has a contract which is renewable annually on the anniversary date in May or June;

- his is not personally associated with any proponent although he sold his interest three years ago with one proponent with whom he has been involved for 15 years, as a result of which he would not be voting on the acceptance of any proposal;

- when he was first retained by Expropriating Authority, it was intended that the construction would be completed by the fall of 2013, as contemplated in the request for expressions of interest, but the completion date has slipped by two, maybe three years;

- referring to the City Centre Action Program dated May 15, 2012, appearing at Tab J of Exhibit 3, he (Mr. Taylor) delivered that presentation *in camera* to Council, and at that time, as shown on Page 37, the completion date scheduled had slipped two years to 2015;

- Expropriating Authority started assembling land and negotiating with Owners after the site was identified in the February 2012 approval of CCARP;

- the consultant group probably came to the recommendation of this site for the arena in July 2011, but they did not speak to the Owners before of CCARP, as that would have been absolutely inappropriate. A presentation was made to Council on November 27, 2012, and at that time Expropriation of the remaining required lands was approved, with the intention of providing construction in late 2103 or early 2014;

- detailed planning will be made only in mid-2013, after the lands have been secured and the Request For Proposal issued;

- it is now forecast that with the beginning of construction 2014, the arena would be ready for opening in 2016, which is another year of slippage;
- while actual demolition and remediation of the required lands may be a fast process, the preliminary work requires testing permits and impact studies which could take several months;
- it is expected that construction will begin 2014 because of the interest of proponents, the community, and Council;
- as shown in the schedule to the Minutes of Council Meeting held on December 11, 2012, the Municipality's capital plan forecasts that funds will be required for the project in 2015 as it is anticipated that 2014 the required funds will be expended by the selected proponent of the design build project;
- it is absolutely correct that construction of the project is contingent upon suitable financing and being obtained by the design build project;
- referring to Page 7 of Exhibit 3, Tab 1, the Franklin Square Arena Project was completed on schedule in the Fall of 2013,
- referring to page 17 of Tab 1, Exhibit 3, the Civic Centre Project was scheduled to commence in 2013 and be completed in 2015 but the schedule has slipped to 2016 because of extensive public consultations with respect to the bridge to MacDonald Island;
- Expropriating Authority Council approved a Debenure Bylaw approximately a week ago for the financing of the acquisition, demolition, and remediation of land for the arena;
- referring to Exhibit 1, Tab 9, Attachment 13, showing the Amortization Schedule for preconstruction of the Sports and Entertainment Arena, no funding is in place beyond 2013, although Council is aware of future requirements; there is also anticipated Federal and Provincial funding for the project, but the project is not contingent upon such funding;
- Council has not yet set a policy for alternate capital financing which will be required from Expropriating Authority as part of the P-3 financing, but the policy is due by the end of March 2013 and will then be released to the proponents; there is a reasonable expectation that the alternate capital financing will be completed;
- it is correct to assume that the reconfiguration of Highway 63 will affect the site as shown as preliminary plans prepared by the Province; the redevelopment of lands within 300 meters of the Highway is subject to Provincial approval, and the Province already knows of this project, although no formal approval has been given (if required);

- although CCARP has not referred to the specifics of the arena, a reading of CCARP indicates criteria which can only be referring to the selected site and block of lands;
- referring to Map 7, Existing Transit Network, found in the Lower Townsite Area Redevelopment Plan of May 2009, at Tab C of Exhibit 3, the subsequent transportation Master Plan has adopted this route with Franklin Street as the main corridor, although the location of the stops has been varied;
- the Clearwater Consortium Proposed Site referred to in Exhibit 7 of Schedule 3 would not work because it is intersected by a proposed road, has inadequate parking, no public transit access, and lacks opportunities for synergies with other businesses;
- the Global-WAM Site Consortium suggested a site outside of the City, which would not meet the objectives of Expropriating Authority;
- the current site was identified by the group in the summer of 2011 and the criteria for the site was adopted in CCARP in February 2012;
- a document prepared by a lawyer, Robert Campbell, shown at Tab P, Exhibit 3, at the request of Municipal Council was useful in providing assistance for the acquisition of the lands for the arena;
- prior to the adoption of CCARP, there is no official communication with any Owners, in order not to be head of Council decision and in order not to cause any increase in the prices of intended lands;
- FDC was not advised that its lands may be required before the adoption of CCARP; he (Mr. Taylor) does not know whether or not FDC was advised prior to the approval of the Expropriation by Expropriating Authority counsel in November 2012. CCARP was widely distributed and FDC would have had to find and look at the draft regional plan in order to determine that its lands were required; they were not advised directly in order not to drive up prices;
- pursuant to the Land Use Bylaw, shown at Tab H of Exhibit 3, the selected site, as shown in Appendix 1, was identified as a "primary office area", and "recreational commercial", use, which included a "spectator sports facility" was a permitted use which was allowed, as shown on P13, on a discretionary basis in most areas of the downtown, as a discretionary use;
- one of the amendments to the land use bylaw was changing the zoning of the selected arena site to primary office employment area, and contemplate mixed use facilities, as shown on Page 46 of the City Centre Land Use Bylaw adopted on February 12, 2013 (Tab I, Schedule 3);
- similarly, amendment 88 at Page 44, amended the required parking for the arena to zero parking spaces;

- the intention is for the RMBW to always provide required parking in the downtown area, as people will not otherwise come back to the downtown, but that required parking maybe provided by on-suite parking and other parking structures, owned either by private enterprise or by the Expropriating Authority;

- it is anticipated that the maximum that people will walk is three blocks and accordingly sufficient parking or public transit must be provided within that area; it is assumed that people will walk not walk three blocks but will use transit on very cold days;

- it is absolutely correct that there can be no detailed planning until a program has been established for the area;

- with respect to the A&W Lands, those lands were identified as being required within a few months after approval of CCARP in February 2012;

- he (Mr. Taylor) is not aware of any alternate sites proposed to A&W and is not aware whether or not the Land Acquisition Department had any discussion with the tenants, although they were aware that A&W did have a leasehold interest and had rights of first refusal;

- the Expropriating Authority will help A&W find an alternate location;

- he (Mr. Taylor) did not know whether the letter from lawyers for Expropriating Authority to ALBERTA FOODSERVICES INC. dated November 16, 2012, was the first contact by Expropriating Authority with the tenant;

- he (Mr. Taylor) made a courtesy call to Arni Thorsteinson before Expropriation proceedings were approved by the Municipal Council, but he does not know whether the people in the team, assigned to different owners, made similar calls;

- the November 16th letter to ALBERTA FOODSERVICES INC. indicates that Expropriating Authority did reach out to tenants, and he (Mr. Taylor) would have preferred an earlier notice;

- other risk of factors with respect to the completion and timing of the project include the election in the fall of this year, the approval of financing for the construction, the selection of a proponent for the project, the issue of an RFP once the land has been assembled, a change in the council members, his own consulting agreement, and further studies which have to be in place in order to support the project.

Re-Examination

Ms. McNaughtan, on behalf the Expropriating Authority re-examined the witness on matters arising. Mr. Taylor stated that:

- he has not been able to determine the distance in meters between the Nomad Hotel and the boundary of the lands to be expropriated;

- there are 23 parking stalls on the KEG Parking Lands which are being expropriated and there are 8 stalls remaining on Lot 17 which is not being expropriated;

- the date of the meeting which he had with Arni Thorsteinson, the representative of Treit Holdings 3 Corporation to advise them of the intended expropriation was November 26, 2012, but he doesn't know the date of his first conversation with Arni;

- the number of parking spots required for the Nomad Hotel pursuant to the land use bylaw is 82; deleting 23 stalls located on KEG Parking Lands and making full use of the stalls in the basement of the Nomad Hotel would leave the Nomad property with 90 available stalls.

Re-Direct

In re-direct by Mr. Marion, Mr. Taylor testified that:

- public meetings had been held with respect to the amendments to the Land Use Bylaw adopted in February 2013;

- the *Public Highway Act* requires approval of projects within a certain distance of the Highway, but he does not know whether any such Provincial Highway Permit has yet been acquired with respect to this project;

- it will be difficult to get proper response to the RFP proposals without the acquisition of the lands.

Witnesses on Behalf of the Owners

1. Mr. James Johansen

Mr. Mallon, counsel for 1179216 Alberta Ltd. and Keg Restaurants Ltd., called as his first witness, Mr. James Johansen.

After being duly sworn, Mr. Johansen was qualified as an expert witness in Civil Engineering and Project Management for civil construction projects, based upon his extensive experience as shown on Tab 17 of Exhibit 5, referring to his report dated February 27, 2013, found at Tab 18 of Exhibit 5, Mr. Johansen stated that he had reviewed documents provided to him by counsel for Keg Restaurants Ltd., Wolff Taitinger LLP, and WWT Holdings Ltd., as well as on-line documents, all as listed on Page 2 of his report, and that he had performed a site visit on February 21 and 22, 2013. He indicated that he spoke also with Mr. Rick Kirschner, City Centre Development Officer. The witness testified that the conclusions reached, as set out in Item 6 on Page 14 of his report are that:

i. there is not enough technical information to qualify whether or not the site is good or bad;

ii. he did not see any consideration for other sites;

iii. it seems that the site was selected solely in reliance upon the CCARP document;

iv. there seems to be a disconnect between the timing and the land requirements and the expropriation, based upon information provided, seems to be premature

- an RFP should contain preliminary engineering, servicing and parking reports to support the site;
- proponents can be expected to conduct a detailed studies of the proposed structures, at a higher level than the Municipality;
- proponents should be provided with information about access for vehicles, transit, water, sewer, storm sewer, electricity, gas and telecommunications;
- he stated that in the present situation, other than the testimony of Mr. Taylor that there good and adequate services, there is no supporting evidence;
- question about parking and traffic studies, Mr. Johansen stated that these should be conducted as part of a site selection, although he understands that the City will pay to each proponent the sum of \$200,000.00 in order to effect such studies;
- Mr. Johansen confirmed that upon reading CCARP, he was able to determine that the arena was to be constructed either on or within a block of the site actually approved by council, and he agreed that the block immediately west already contains more commercial buildings and higher density uses;
- Although he has not reviewed the Block Test Fit, Mr. Johansen indicated that he is concerned that more lands than shown would be required for an arena;
- he was glad to note that the site selective was not located in a floodway;
- with respect to the timing of the acquisition of lands for a project, Mr. Johansen confirmed

With respect to Requests For Proposal, the witness stated that in his opinion;

In cross-examination by Ms. McNaughtan, Mr. Johansen stated that his sole task was to look at engineering and servicing issues, and that this task was later expanded to look at alternate sites. However, he found no evidence that alternate sites were look at, and there were technical analysis in any of the studies. The witness admitted to having no experience in building or operating arenas or in request for proposals concerning arenas. He did however agree that arenas are a municipal purpose, that Master Builder Agreements are normal and that the proposal location in the central business district is a good location.

Cross-Examination

The witness testified that the selection of a proper site would normally entail a comparison of several sites with respect to such things as the availability of water, sewer services, gas provisions, electrical power, transportation impact, and in this particular situation, availability of parking. With respect to the IBI Block Fit Test, he stated that it would be desirable to consider provisions for loading docks, crowd management, and vehicle access.

He testified that the conclusions in favour of the selection of the site were unsupported and specifically did not address the criteria use for the IBI Fit Test to determine whether the proposed area of land is adequate. There is no evidence of municipal planning needs.

In addition, in reviewing the documentation, he did not see any site specific information such as availability of potable water, sanitary sewers, and parking requirements.

that lands must be assembled by the municipality before proceeding with an RFP in order to manage the potential risk of an unreasonable owner and in order to permit a proponent to write a proposal specific to the site;

Mr. Johansen conceded that his comment that the arena could be located anywhere ignored CCARP and the multifaceted approach which must be taken in determining the site. He also conceded that he has not evaluated any of the alternative sites in the area and agreed that they all contained some negatives.

2. Mr. Kevin Person

After being duly sworn, Mr. Person stated that he was one of the owners of 1179216 Alberta Ltd. which operates the Keg Steakhouse, pursuant to the terms of the Lease dated 1998, as Tab 1 of Exhibit 2, shown at Tab 11 of Exhibit 2, 771065 Alberta Ltd. as Landlord, and 771065 Alberta Ltd. as Tenant. He confirmed that, as shown at Tab 11 of Exhibit 2, 771065 Alberta Ltd. was amalgamated and became 1179216 Alberta Ltd. on July 1, 2005. The Lease was for a term of 10 years with a 5-year renewal option. Effective January 1, 2004, as shown at Tab 3 of Exhibit 2, the term of the Lease was extended to December 31, 2008, together with a further 5-year renewal option commencing January 1, 2009. The witness identified at Tab 5 a copy of non-binding letter of intent signed by the parties and agreed to October 26, 2012, with respect to a 4500 square feet extension to the premises and a term expiring in 2028, adding that the Tenant had signed a formal Lease Renewal and delivered it to the Landlord for its execution

Mr. Person testified that he had been an owner of a heating and cooling business which he operated, started in 1987 and which was sold, effective December 31, 2012. He was also involved in a number of other businesses, both in Grand Prairie and in Fort McMurray, most in the food and beverage business, and including the Nomad Hotel which he purchased in 1985. He testified that he has now sold all other businesses, with the exception only of the Keg Restaurant.

Mr. Person testified that while he still resides in Grand Prairie, he spends approximately one week per month in Fort McMurray and that he makes all major decisions with respect to the operation of the Keg and he is involved on a daily basis through a general manager.

He described the Keg as a franchise that gives back to the community, including \$25,000.00 for local playground and \$40,000.00 to big brothers and sisters, and that employs 65 to 80 persons in the community.

He further testified that he held a food a beverage franchise at the arena in Grand Prairie for a period of 10 years and that he operated a Pub and Restaurant some eight blocks away from the arena at the same time. His evidence was that the Pub and Restaurant lost sales during events at the arena.

He testified that some of the major challenges in running the Keg Restaurant related to availability of parking, access to the back service door and entrances, and staffing, including safety for employees which must be escorted to their vehicles at night.

With respect to the impact of the proposed arena, Mr. Person testified that with temperatures of minus 30 degrees to minus 40 degrees, parking in the immediate vicinity of the Restaurant, and not three blocks away, is required. He is also concerned about utilities issues, stating that he has been subjected to power block outs of five minutes to five hours a couple of times per month during the summer. He is further concerned of not being able to achieve a 2-3 times turnover at night with the presence of an arena and difficulties of parking.

Referring to the Test Fit Concept Plan at Tab 1 of Exhibit 1, he indicated that deliveries to the Restaurant are currently form the back door located on the west side of Building No. 1, and that the taking of KEG Parking Lands would eliminate access to required delivery trucks. In addition, the Expropriation of the KEG Parking Lands would eliminate access to the down ramp to the parking garage located on the north side of the Restaurant, from which ramp deliveries of beer are made to the basement of the Restaurant. Further the taking of KEG Parking Lands would eliminate 23 parking stalls located immediately west of the Restaurant as well as eliminating access to the parking for 10 vehicles on remaining lands shown as No. 5 on the Concept Site Plan. Referring to the aerial photograph shown as Tab 7 of Exhibit 1, he indicated that access to the garbage and grease containers for the Restaurant would also disappear and a new site would have to be found. Mr. Person also referred to the photograph shown at Tab 12 of Exhibit 2, as well as three photographs produced as Exhibit 10, showing the difficulties created by the taking of the KEG Parking Lands.

Referring to Article 3.01 of the original Lease found at Tab 1 of Exhibit 2, Mr. Person indicated that it was the responsibility of the Landlord to provide reasonable and adequate parking for the Restaurant, which at that time was interpreted as 68 parking stalls, some of which are now being eliminated by the proposed taking of the KEG Parking Lands.

Mr. Person testified that he first heard of the intended Expropriation upon receipt of the Notice of Expropriation shortly before Christmas in December of 2012. Until that time, he had been negotiating for a new Lease, with the expectation of adding 4,500 square feet to the 7,000 square feet already occupied by the Restaurant. He testified that had he known of the proposed Expropriation, he may not have sold his heating and cooling business and would not have negotiated for another 4,500 square feet of space for the Restaurant, stating that without adequate parking, there is no way that the Restaurant business can survive.

Cross-Examination

In cross-examination by Mr. Parker, Mr. Person testified that:

- the Landlord has complied with the obligation contain in Article 3.01 of the Lease, shown at Tab, Exhibit 1 to "use his best efforts to provide reasonable and adequate parking for the customers of the Tenant" which he understood to mean 68 parking stalls;
- pursuant to that same Article 3.01, the Landlord is "not obliged to provide any parking whatsoever for vehicles owned and operated by the Tenant or their employees, but in fact, the Landlord has never stopped vehicles owned by the Tenant or their employees from parking in the available parking. Further, the Landlord has never assigned specific parking stalls to the Tenant or their employees, as permitted under Article 3.02;

- Restaurant guests always park as close as they can and that may have included parking in Lots 20, 21 and 22 owned by Expropriating Authority before it was fenced up;
- he would have appreciated having been advised of the intended taking of KEG Parking Lands earlier, as he was making plans for the expansion of the Restaurant and was in the process of selling his other businesses in order to concentrate on the business of the Restaurant;

- parking for the Restaurant could be satisfactorily replaced by the Expropriating Authority but he would like to know where;
- in his opinion, there is no difference whether a restaurant and pub are located two or eight

blocks away from an arena, a major arena will negatively affect the business because people will be at the arena during the event; he did conceit however that there could be increased business before and after the event, depending on the time of the event;

- he is not convinced that an arena will put more people on the street after the event or increase safety;

- it is his understanding that the Landlord has had successful negotiations to obtain a development permit for the expansion of the Restaurant, depending upon securing an additional 28 parking spots, but he is not sure where this additional parking is to be located; the majority of the Restaurant's 65-80 employees take a taxi to work or are dropped off and parking is not an issue for them;

- The Keg has no storage in the basement of the Nomad Hotel other than a walk-in cooler, 12 feet wide which could be located in space designated for parking;

- parking for the Restaurant and a parking garage located close to the Restaurant could meet the Restaurant's needs;

- with respect to the parking overlays shown on Exhibit 11, he believes that some of his customers do park in the areas marked as "24 stalls" and "34 stalls" located across MacDonald Avenue, but the 16 underground stalls in the Nomad Hotel are not available to his customers;

- his guess is that Restaurant customers would prefer heated underground parking under the Hotel if it was available.

3. Ms. Andrea Janzen

After being duly sworn, Ms. Janzen testified that she has been Director of Real Estate, reporting to the President of Keg Restaurants Ltd., in charge of corporate and franchise locations in Canada and the US. Of the 106 Keg locations in Canada, 50% are franchised and 50% are corporate owned and operated. Referring to Tab 2 of Exhibit 2, Ms. Janzen indicated Keg Restaurants Ltd. as Franchisor had entered into a Non-disturbance Agreement with the mortgage lender registered against the premises, wherein the mortgage lender agreed that upon exercising its security against the premises, it would recognize as valid the Lease of the Restaurant facility and Keg Restaurants Ltd. would have the right to step into the shoes of the Franchisee.

The witness stated that her main criteria in evaluating Restaurant sites are "food in – garbage out" meaning that there must be unfettered access to the space required to bring food into the site and to get rid of garbage. With respect to parking, in the case of suburban Restaurants, which this is, she would expect the availability of 125 parking stalls, unfettered by the demands of co-tenants.

With respect to the present Restaurant, while the guidelines are not strictly met, Kevin Person has proven to be a strong Franchisee and has obtained sufficient parking over time. She expects that the loss of that parking would bring a drop of 30-40% in the business of the Restaurant. She also testified that she expects the construction phase of the project to last three years and that there is a good chance that the Restaurant will not survive for that length of time.

Cross-Examination

In cross-examination by Mr. Parker, Ms. Janzen stated that she has experience with Restaurants near sports complexes, for example in Calgary, but she has never heard of adjusting hours of operations on game day. Additionally, valet parking has not proven successful in the Keg's experience.

With question on the unfettered access for garbage and grease containers, the witness stated that closer is preferable but the additional distance has worked in the present circumstances. She further confirmed that her forecast of a 30-40% reduction in business is based on a long term reduction and adjacent surface parking, pointing that if alternate adjacent replacement parking is provided, there would be no effect on long term sales. She added that alternate parking across MacDonald Avenue may be sufficient depending on the proper identification of the parking and demarcation of the bus lanes.

In cross-examination by Mr. Mallon, Ms. Jansen testified that the Keg had been approached to locate a restaurant near the proposed new arena in downtown Edmonton and had indicated that they were not interested.

4. Mr. Armi Thorsteinson

Mr. Judson Virtue, representing Treit Holdings 3 Corporation, stated that he would call three witnesses, the first of whom was Mr. Thorsteinson.

After being duly sworn, Mr. Thorsteinson stated that he has been a Real Estate Executor for over 30 year and that he is currently Chief Executive Officer of Temple Hotels Inc., a corporation listed on the Toronto Stock Exchange which has seven hotels in Fort McMurray and 25 hotels in Canada. Treit Holdings 3 Corporation is a bare trustee, holding title to the Nomad Hotel for Temple Hotels Inc. He stated that Temple Hotels Inc. has no employees but has retained Atlitic Hotels Inc. to manage its 25 hotels. Atlitic Hotels Inc. is an arms-length company.

Including the Temple hotels, Atlitic Hotels Inc. is a professional manager of 60 hotels and Mr. Jean Marc Guillemot is their area manager in charge of Fort McMurray.

Referring to Tab 7 of Exhibit 1, he indicated that the Nomad Hotel is located south east corner of the city block selected for the arena, being Lots 14 to 17 as shown on Tab K of Exhibit 3. Lots 18 and 19, being expropriated, are currently used as Nomad parking lots. Mr. Thorsteinson testified that he was familiar with the project as he was involved with a consortium which submitted a proposal to Expropriating Authority in answer to its request for interest in the 2010-2011 time frame. That project included an arena and the RFI requested proponents to suggest a suitable site. His consortium submitted what is known as the Clearwater Proposal, to be constructed on lands owned by the Expropriating Authority in the northern part of Fort McMurray, closer to the Clearwater River.

The witness testified that the proponents were then advised that their submissions would be placed on hold and that a new request for proposal would be issued once a designated site had been approved. He first learned of the current selected site in the summer of 2012 through reports and speculation in the media. Mr. Thorsteinson testified that he attended a meeting at the Marriott Hotel with Mr. Ronald Taylor and Mr. Glen Laubenstein, the chief administrative officer of Expropriating Authority, in which he was advised that the site next to the Nomad Hotel had been selected for the arena, stating that he was clearly advised that the Nomad Hotel lands, including its parking lots, would not be disturbed or acquired.

The witness stated that he only found out about the intent of taking of the KEG Parking Lands when the Notice of Intent to Expropriate was received in mid-December. Had he known prior to that time, he would have advised the Keg operators and would not have negotiated with them or signed the Letter of Intent shown at Tab 5 of Exhibit 2 with respect to extending the Lease and leasing to them an additional 4,500 square feet. He further testified that he has now, in these proceedings, been provided with the concept plan, part of the Block Fit Test, but that he has not received any reports on the site, respecting infrastructure, configuration or otherwise. When examining the Test Fit Concept Plan, he realized that there was a mistuous component to the site including a hotel and office building. He was surprised about this even though he had been aware of two concepts, arena and hotel, in the 2010 proposals to be accommodated on much larger lands.

Mr. Thorsteinson stated that his company had been approved as the successful proponents with respect to a proposal call in 2011 by the airport authority for the construction of a hotel next to the airport and that he had met with representatives of Expropriating Authority with respect to that project. Mr. Thorsteinson testified that since the issue of the Notice of Expropriation, he had discussions with Expropriating Authority to try to satisfy their requirements, and a potential easement had been discussed but no agreement had been reached. There have also been discussions with respect to replacing the parking with a parking structure across McDonald Avenue. No discussions had been held with respect to any temporary parking. With respect to the extension and expansion of the Keg lease and premises, Mr. Thorsteinson indicated that Nomad has applied for a development permit, and that the next step is the development of specific design plans. However, the expropriation has thrown uncertainty into these negotiations.

Mr. Thorsteinson testified that his company purchased the Normad Hotel in 2007 and had negotiated a five year extension in 2009. Parking for the restaurant is as provided in the 1998 Lease, on a best efforts basis. The actual available parking has always been handled on a local basis.

Cross-Examination

In cross-examination by Mr. Parker, Mr. Thorsteinson testified that:

- He had met with Mr. Taylor a number of times since Mr. Taylor's appointment, on a number of different topics, and that he recalled meeting with Mr. Taylor and Mr. Laubenstein on the subject matter of the arena in late spring or early summer of 2012. Mr. Taylor never advised him of the requirement for the taking of the Keg Parking Lands and he (Mr. Thorsteinson) was taken by complete surprise on receipt of the Notice of Expropriation stating that in fact, if he had known of the requirement, he would have acted differently in his negotiations with the Keg, retained engineers with respect to access for the Hotel, and retained legal counsel with respect to the potential transfer and expropriation. In fact, Mr. Laubenstein stated that they would be excluded from land acquisition or expropriation, subject to approval by Council;
- The Nomad Hotel intends to negotiate with Expropriating Authority their requirement and has concerns which much be addressed; the granting of an easement is a possible solution, depending upon the terms.

5. Mr. Yuri Fulmer

Mr. Michael Marion, representing ALBERTA FOODSERVICES INC. and FDC BRANDS INC. called Mr. Fulmer as a witness.

Mr. Yuri Fulmer, after being duly sworn, testified that he obtained his MBA from Simon Fraser University and first bought an A&W Franchise in the lower mainland in 1997. FDC Brands Inc. and its minority partner, Alberta Food Services Inc., are the Franchisees and Leases of the three Fort McMurray A&W Restaurants.

The A&W Restaurant located on the A&W Lands, is leased from Kanko Group Ltd. on a ten year lease with a ten year option which has been exercised to April 2023. It is an irreplaceable restaurant in this community with annual revenues of 3.4 million dollars, two-thirds of which are from the drive-through operations. It provides half of the earnings of ALBERTA FOODSERVICES INC.

The witness testified that the impact of the taking is to wipe out their business and their company as ownership of three restaurants allows for synergies in marketing. It will result in 35-40 employees being displaced, and obligations to foreign workers being breached.

The witness further testified that their restaurants have been very engaging in the community, including running one of the best United Way campaigns and providing sports sponsorships for kids.

Mr. Fulmer testified that he first heard of their lands being potentially required form customers in the summer of 2012. When other local counsel Wolff Tatinger requested information, the municipality advised that they were not speaking to tenants. When they heard on November 26 that council was planning a meeting to consider expropriations on November 27, they wrote to the lawyers for the municipality to request a copy of the Notice of Meeting and to make arrangements to have someone attend the meeting, they received a written reply, shown as Exhibit 12, stating that while the meeting was an open meeting, it was not set to receive input from the public.

Mr. Fulmer indicated that he believed that the powers of expropriation were being exercised too early in the process since no financial analysis of their lands has been prepared, there had been no negotiations, there is a potential for the mayor and council to be changed in this year's election, no proponent for the project has been selected, federal and provincial funding has not been secured and, in a letter dated January 23, 2013 from the lawyers for Expropriating Authority, it is stated that their lands will not be required before December 31, 2013.

Cross-Examination

In cross-examination by Mr. Parker, Mr. Fulmer testified that:

- It never crossed his minds that their lands would be subject for re-development. He does not know if the Expropriating Authority owns any lands where drives-through are permitted;
- he would have liked to have discussions with Expropriating Authority to determine whether it is possible to work within the existing site or to find alternate sites;
- He considers that the A&W is a vital part of this community, having served the community since the early 1970s;
- There have been many attempts to open discussion with Expropriating Authority, but all requests have been refused.

6. Mr. Jean-Marc Guillemot

Mr. Aaron Stephenson, co-counsel with Mr. Justin Virtue for Treit Holdings 3 Corporation, said that their next witness would be Mr. Jean-Marc Guillemot.

Mr. Jean-Marc Guillemot, after being duly sworn, stated that he has been the Area Director in Fort McMurray for Ailiffic Hotels since October 2007.

One of the hotels which he manages is Nomad Hotel on MacDonald Avenue at the corner of Main Street. It is a 32 years old facility with 7 floors and 137 rooms, of which 85 are located in a tower and 53 above the Keg Restaurant. There is a full-time hotel staff of 29 persons. This is a "corporate hotel", serving some guests on a contractual basis. Food and beverage services in the hotel are leased out to operators such as the Keg.

With respect to parking for the hotel and referring to Exhibit 11, Mr. Guillemot stated that the hotel parking consists of two lots on the south side of MacDonald Avenue containing 24 and 34 parking stalls respectively. Sixteen underground stalls under the hotel, some of which are used from time to time for storage or maintenance equipment, 8 stalls on the north side of the Keg Restaurant reserved for hotel managers and in-and-out traffic and 23 stalls on the west side of the Keg Restaurant, located on the south side of MacDonald Avenue are not managed and are operated on a first come first serve basis, and informal arrangements have been made with Expropriating Authority that 12 stalls can be used for its employees during the day. The underground stalls are reserved for Nomad Hotel guests for an extra fee and access to the underground stalls is through a ramp located alongside the north wall of the Keg Restaurant. Delivery vehicles do not go down the ramp but do park at the top of the ramp to make their deliveries.

The witness stated that parking is a big concern with hotel guests as crews come in their trucks and other visitors rent cars because most business is conducted out of town. There is not enough parking and there is a gentleman's agreement with a nearby clothing store that their parking lot can be used after 5:00 pm and before 7:00 am. Mr. Guillemot testified that he met Mr. Ronald Taylor at a semi-public meeting at Keyano College in May 2012 or so, where Mr. Taylor was making a presentation of the downtown revitalization program. He also met him at a presentation to the Board of the Chamber of Commerce where Mr. Taylor made a presentation with respect to the new airport and the projected new airport hotel. He also heard Mr. Taylor speak at a September 23, 2012 meeting at the Radisson Hotel to discuss iconic and the catalyst of projects for the Expropriating Authority, but not identifying any specific locations.

Mr. Guillemot testified that he first saw the Block Test Fit Concept Plan showing a hotel as part of the mixed use building when he was on his cruise ship two weeks ago, at which time he had a broad discussion with respect to the project with Mr. Thorsteinson.

Cross-Examination

In cross examination by Mr. Parker, Mr. Guillemot testified that:

- he does not recall Mr. Taylor telling him personally at the Chamber meeting that the project included a mixed use building;
- of the 16 spaces for underground parking, 8 are being used for storage purposes and it is not possible for Keg clients to park underground;
- parking underground is a luxury being made available to hotel guests and has never been requested to be made available to Keg guests.

7. Messrs. Kim R. Wolff and J. Ryan Taitinger

Ms. Daniela O'Callaghan stated that she was representing WWT Holdings Ltd. and Wolff Taitinger LLP, and that she wished to present Messrs. Wolff and Taitinger as witnesses as a panel.

After both being duly sworn, Messrs. Wolff and Taitinger testified that through their respective professional corporations, they were partners in a partnership for the practice of law known as Wolff Taitinger LLP, which partnership is a tenant in the premises owned by WWT Holdings Inc., being the WWT Lands.

They are also directors and shareholders of WWT Holdings Ltd., each of them holding 25% of the issued and outstanding shares of the corporation and the other 50% being owned as to 49% by Ron Wolff and 1% by Evelyn Wolff, respectively Kim Wolff's father and mother. WWT Holdings Ltd. has owned the building since 1968 and they acquired their 50% of the shares in 2005 and moved in as tenants in 2006, occupying 5,000 square feet. Another 3,040 square feet of the building is leased to Total E&P Canada Inc.

The witnesses stated that as a result of the taking, and the low adjusted cost basis of the building, there will be a large capital gain tax payable and the owners would be deprived of the income stream which they were expecting for their retirement.

The law firm was established by Kim in 1990 and as of today, consists of the two partners, one associate and nine support staff. It is a general, mostly solicitors' practice, serving a small community. It is the second oldest firm in Fort McMurray, providing quality, affordable legal services to the community from a location which has good visibility and accessibility.

The partnership has a written Lease with the owner and their move will provide significant disruption as well as higher rental rates.

The witnesses testified that Mr. Marcel Ulliac, Director, Land Administration, made arrangements for a meeting with them on June 20, 2012, but they did not know the purpose of the meeting. Only Mr. Taitinger attended that meeting as Mr. Wolff was unavailable. Mr. Taitinger was shocked when Mr. Ulliac presented to him an Offer to Purchase from Expropriating Authority, intimating that Expropriation could be used but did not tell them the purpose of the taking.

As Ryan was away on a vacation to Russia for most of July, the partners did not address their minds to the Offer until August, at which time, on August 13, they delivered a letter to the Expropriating Authority (Exhibit 5, Tab 10), requesting further information with respect to the proposed taking. The response from the Municipality was a further meeting with Mr. Ulliac which took place on August 27. Mr. Sonny Mirth, lawyer for Expropriating Authority attended that meeting with Mr. Ulliac, but did not answer the concerns raised in the August 13th letter, stating that they were not authorized to discuss the purpose of the taking. Mr. Mirth did however suggest that selling their shares to the Municipality instead of the lands and buildings may alleviate their tax problems. Alternatives such as a land swap or a long term lease by WWT to the Expropriating Authority were suggested by Messrs. Wolff and Taitinger, but were not welcomed by Messrs. Mirth and Ulliac.

At the request of the partnership's accountant, Mr. Glen Laubenstein, Chief Administrative Officer for Expropriating Authority met with Kim Wolff and Ron Taylor for lunch on September 10th at the Longshot Restaurant. Mr. Laubenstein apologized for the lack of information and promised full transparency. Mr. Laubenstein referred to the location of the arena as the "worst kept secret" and

promised that Mr. Taylor would reply in detail to the partnership's August 13th letter, which Mr. Laubenstein and Mr. Taylor stated they had not seen.

A reply came from Mr. Mirth by unannounced fax at 8:30 am on Friday, September 21 (Exhibit 5, Tab 11), causing consternation amongst the staff which had no idea of what was happening, which fax did not address the concerns raised in the August 13th letter.

A series of communications followed as shown at Tabs 12-16 of Exhibit 5, not addressing the real issues and making no real attempts to come clean on the intended use or providing meaningful negotiations. The witnesses testified they became aware of the taking when they saw on the internet a Notice of Meeting of Council scheduled for November 27th at which expropriation of lands required for the arena was to be discussed.

Mr. Wolff testified that he had looked up CCARP after seeing a reference to CCARP and catalyst projects in the October 4th letter from Mr. Mirth. He read CCARP as well as the land use bylaws of 2012 and from his reading, determined that the designated use of their property was "commercial office use". He saw that the word arena was used in CCARP three or four times, just in general terms referring to higher density highrise commercial projects west of Hardin Street. He also noted reference to an entertainment area along MacDonald Avenue with outdoor cafes, restaurants, theaters, etc., as well as "a potential arena", "which did not click with me". He also reviewed the land use bylaw and determined that their lands were zoned for "office/professional/commercial" uses, which is what they had.

Mr. Wolff testified that he had attended some public consultations with respect to proposed changes to the Franklin Avenue corridor, referring to shared streetscape and pedestrian type of activities which he dismissed, feeling that the planners were disconnected with the community and the effects of the weather. Mr. Taitinger testified that he attended a meeting in the Future/Forward Building and tried to determine whether their existing surface parking would be grandfathered, but was not able to obtain any response.

Asked whether the intended Expropriations were fair, sound and reasonably necessary, Mr. Taitinger replied that there was no fairness in the process in that Expropriating Authority failed to answer questions about the actual project and deliberately withheld information from the Owners; there is no soundness as the arena will cause major displacements and total destruction of lucrative businesses, and as the project was not preceded by any basic preliminary studies to address a major parking problem, and the suggestion that a Master Developer will design and find a major tenant in some six months is devoid of reality. Expropriating lands for a project which may never proceed may also go to the fairness issue.

Mr. Taitinger stated that municipal representatives giving information selectively, depending on who they knew, is not fair, and that expropriating lands without having a Public Partnership policy in place, without having Federal/Provincial funding in place, without having secured a sports team, without having secured procurement, and without having evaluated other entertainment venues, is not sound. Further, there is no public transit in place, no leasing studies for commercial lease space demand, no hotel interest and no hotelier secured for the adjacent tower.

Cross-Examination

In cross-examination by Mr. Parker, Messrs. Wolff and Taitinger repeated their concerns that no sound leasing studies had been completed and that no lender would likely finance 70,000-80,000 square feet of commercial space without tenant commitments. They also repeated their concern that the Expropriating Authority would not deal with them as tenants with respect to their rental inquiries.

As the Expropriation Lands are located immediately next to the building in which the Inquiry Hearing took place, the Inquiry Officer had ample opportunity and did visit the site of the Expropriation Lands repeatedly, in order to familiarize himself with the general layout and topography of the area.

View by Inquiry Officer

III.

ARGUMENTS ADVANCED BY THE PARTIES

A. Submissions by The Expropriating Authority

Ms. McNaughtan, on behalf of the Expropriating Authority, in summation, made the following submissions:

1. The only issue for determination by the Inquiry Officer is "whether the intended expropriation is fair, sound and reasonably necessary in the achievement of the objectives of the Expropriating Authority". The stated objective is the "construction of a sports and entertainment facility", which is a municipal purpose within the scope of Section 14 of the Municipal Government Act, as admitted by Mr. James Johansen, an expert witness for one of the Owners. There is nothing in Section 14 which says that the stated objective cannot benefit other parties and specifically that the Expropriating Authority cannot sell a portion of the Expropriated Lands.
2. The construction of the proposed sports and entertainment facility on the Expropriation Lands is in accordance with the City Centre Area Development Plan which was approved by the Expropriating Authority in February 2012.

3. The objectors would like more steps and studies before proceeding with the Expropriation, but Mr. Taylor stated that the process followed is not out of the norm, and Mr. Johansen stated that there are no accepted procedures to follow in order to proceed by a request for proposals and a P-3 project.

4. Four proponents have been identified and Mr. Taylor stated that all four are likely to respond to the RFP with their concepts. Price Waterhouse Coopers and some of the proponents have submitted that it is prudent to secure the site before issuing a request for proposals so that all proponents respond on the same basis, and Mr. Johansen agreed with this process.

5. With respect to parking, it is clear that there will not be any within the arena facility and that the Municipality intends to replace any removed parking, make use of shared parking with other developers, and build a new parking structure as may be required.

6. There is no evidence that the Test Fit is in error, and despite a small encroachment on the Nomad Hotel use, and there is no intent to acquire more lands that are than are necessary.

7. Funding is in place through annual budgets as is normal for municipalities, and part of the funding will be obtained from developers. Capital plans are not budgets.

8. The Expropriations are not premature and are required to proceed with RFP's. Council has approved CCARP and this site and the fact that this is an election year is irrelevant.

9. It is recognized that an easement is required to provide access to the parking ramp and loading facilities for the Nomad Hotel, and the Nomad Hotel will retain sufficient parking to remain as a conforming use under the zoning bylaws.

10. The evidence is that council has agreed to delay possession date until December 31.

11. It is recognized that the land use bylaw passed in April 2012 was not fully in compliance with CCARP with respect to commercial uses and an amendment was passed in February 2013, making the necessary corrections.
 12. CCARP is not a plan which needs to provide specifics of land use for every site and did not provide specifics for this site such as to protect land values and provide flexibility.
 13. The Concept Plan prepared by IBI confirms feasibility of the project. The Zuk decision confirms that a plan being conceptual only does not mean that it is not sound. The evidence of Mr. Taylor is that all required services are in existence on Franklin Avenue, including electrical and fibre optics.
 14. The Expropriation is reasonably necessary as the lands are required for the facility, in accordance with the criteria approved by the Municipal Council.
 15. With respect to the issue of fairness, there is no longer a statutory duty for an Expropriating Authority to negotiate although it is recognized that some steps to negotiate are desirable. In the Calgary expropriation of Shell Canada, Inquiry Officer Nielsen indicated that "negotiations with a purchaser need not reach any particular level or stage". The evidence indicates that steps to negotiate were made with WWT Holdings Ltd, A&W, the Nomad Hotel, and the Keg Restaurant. It is clear that by October 3rd or 4th, 2012, two major owners, Canko Group Inc. and WWT had indicated that an expropriation would be necessary. There were extensive exchanges of correspondence between WWT and the Expropriating Authority as well as between A&W and the Expropriating Authority, evidencing that no agreement could be reached.
 16. There is a clear disagreement between the evidence of Mr. Taylor and Mr. Thorsteinson with respect to the required taking of Lots 18 and 19. It is clear however that there were many meetings and on-going discussions with respect to parking, as acknowledged by both parties.
 17. Part of the consideration fairness is whether the Expropriation evidences a balancing of private and public interests. In the present circumstances, it is clear that the lands are required and that the Municipality has attempted to balance all interests.
- B. Submissions by The Owners**
- Mr. Mallon, on behalf of Keg Restaurants Ltd. and 1179216 Alberta Ltd. argued that:
1. There are three main topics to be decided,
 - a) whether the site of the proposed arena should be approved;
 - b) whether Expropriation of the whole site should be approved; and
 - c) whether the Expropriation should be approved now or at a more appropriate time.
 2. The test to be applied is whether the Expropriation is fair, sound and reasonably necessary with a view to the objectives of the Expropriating Authority. Any doubts are to be resolved in favour of the Owners.
 3. The first test of fairness is procedural fairness. Prior to 1994, there was a statutory duty to negotiate with the occupier and other interest parties. While negotiations are no longer required by statute, the municipality is still required to at least attempt to negotiate with owners, in the spirit of fairness.

The argument by counsel for the Expropriating Authority that negotiating with a tenant could be construed as inducing a breach of contract is not well founded, as the *Expropriation Act* by its very nature contemplates the breach of contracts. It is clear that the Keg had an interest in the lands and that fairness required negotiations with them.

4. The evidence also shows a similar refusal to deal with other owners and tenants in a fair manner, not advising them of the intended Expropriations and refusing to negotiate with them. The explanation of Mr. Taylor that they did not want to disclose the nature of the project and influence the value of the lands is without merit, as section 45 of the *Expropriation Act* sets out quite clearly that any increase in the value of the land resulting from the Expropriation is not be taken into account in determining the compensation payable to the owner.

5. Substantively, the proposed expropriation does not meet the test of fairness, as it does not balance the interest of the owners and the Municipality.

6. Mr. Johansen's expert evidence indicates that the proposed taking is not sound because there was no proper site selection process, and there were no architects or engineering reports with respect to the site. The Fit Test did not address issues of utilities, access, parking, etc., and the taking is premature in that the lands may not be required for another two years. Mr. Taylor, on behalf of the Expropriating Authority, admitted that the RFP has not yet been issued, there is no proponent selected, there is not detail design, no geotechnical report, no parking study, no tenant study, no traffic impact assessment, no development agreement signed, and no Provincial or Federal funding secured.

7. Additionally, the taking is not reasonably necessary for the objective of the Municipality, which is stated to be the construction of a sports and entertainment facility. The evidence of the Owners is that the project would have a negative effect on the City, that other potential sites were not properly investigated, and that the concept is flawed and there may be a citizen backlash. Site selection maybe important for a successful RFP, but site acquisition is not.

8. The intended taking of lands used by the Keg is excessive and does not recognize that a portion of the said lands are required for access to the back door and to the ramp. Mr. Taylor agrees that the taking of all of the proposed lands is not required and suggest granting an easement of those lands in the vicinity of the Keg Restaurant back to the owners.

9. By way of summary, Mr. Mallon stated that there is no mandatory procedure to be followed with respect to the development of an arena, but the level of risk that the project may never be completed increases without supporting studies, and the taking may not be reasonably necessary. While the Municipality has the power to grant an easement to the Keg and Nomad Hotel owners, it also has the power not to grant such easement. Finally, the Municipality has not produced enough information to determine whether or not other sites would be more appropriate

All in all, Mr. Mallon submitted that an expropriation is an ultimate remedy to be used only as a last resort, and in the present circumstances, it is not fair, sound or reasonably necessary to expropriate the Keg Parking Lands.

Ms. O'Callaghan representing the interest of WWT Holdings Ltd. and Wolff Taitinger LLP stated that:

1. Messrs. Wolff and Taitinger did set out in their testimony why the propose taking is not fair, sound or reasonably necessary. Both Mr. Wolff and Mr. Taitinger have strong roots in the community and their interest in these lands has provided ease of access to their clients, proximity to banks, and an

expected retirement income, all of which should be taken into account and balancing interest.

2. The Expropriating Authority did not treat Messrs. Wolff and Taitinger fairly in refusing to disclose the purpose and other details of the intended Expropriation and in refusing to negotiate.
3. The intended Expropriation of the lands is not sound in that there have not been sufficient studies and there is not sufficient information, as stated by Mr. Johansen in his report to make a reasonable judgment as to which of a number of sites would be more suitable. Stating that the proponents will determine the details of the site does not provide evidence that the propose location of the arena is sound.

4. There are many variables to be determined before it can be assessed whether or not the site will be necessary for the project, and it is not necessary to acquire the site for the RFP process. Altogether, Ms. O'Callaghan stated that the intended taking is not fair, sound or reasonably necessary.

Mr. Michael Marion, representing ALBERTA FOODSERVICES INC. and FDC Brands Inc., as the tenants and operators of the A&W Drive-In, stated that the determination of whether the intended Expropriation is fair, sound and reasonably necessary is not a specific test and there are many factors and criteria to be looked at. He argued that:

1. An expropriation represents the exercise of an ultimate power, not to be used unless the Expropriating Authority can show that all elements of the test are met. It is an objective test to be met through reasonable evidence, taking into account the objective of the Expropriating Authority, which in this case is the construction of an arena.

2. The evidence is that the process of selecting a site for an arena started in July 2011, but that there was no disclosure to the owners and tenants in order to keep costs down and ensure transparency in restricting disclosure. The end result is that there is not enough objective evidence that the selected site is appropriate, that the project will ever come to fruition, or that the selective proponents will be able to achieve the intended construction, as such, the intended Expropriation is not reasonably necessary.

3. There has been no consideration given to the fact that ALBERTA FOODSERVICES INC. and FDC Brands Inc. have been good contributors to the community and that they have rights of refusal with respect to the occupied lands, and as such, there is no proper balancing of interest.

4. Specifically, as stated by Mr. Taylor, CCARP was adopted by council for the Municipality in February 2012, adopting certain criteria for the construction of an arena which had been determined without public consultation in the summer of 2011. There is supposed to be public input into area redevelopment plans (as opposed to area structure plans). As such, the process followed by the Expropriating Authority was not fair.

5. Mr. Taylor admits that the lack of public process and a rush in having the land use bylaw approved resulted in errors in the description of prescribed allowable uses with respect to the selected lands.

6. As a result of its decision not to deal with any tenants as owners, Expropriating Authority failed to properly disclose the extent of the project to them as owners, and even fail to give them notice that council would be considering the expropriation of their lands at its November 27, 2012 meeting.

7. Although, in charge of the project, Mr. Taylor indicated that he did not want to know what processes were being followed by Land Administration with respect to the negotiation and acquisition of required lands.
8. The evidence shows that counsel for the Municipality was misled in the documentation provided to support the November 27, 2012 decision to expropriate, particularly in stating that attempts at negotiations had failed when some of the tenants owners had in fact never been approached, in stating that the lands were required for the start of the project in 2013 when in fact they would not be required until at least 2014 or maybe 2015, and in not being entirely forthcoming with Council.
9. Financing for the project is projected to be based on a potential P-3 partnership, but council has yet to adopt a policy for such financing.
10. If the Expropriation is approved, there will be a very real loss to the Owners, while the project may in fact never proceed because of too many unknowns and risks. This does not represent a balancing of interest.
- Mr. Judson Virtue**, representing Treit Holdings 3 Corporation, stated that the power of expropriation is the ultimate exercise of a government power, which is to be exercised with restraint, a sense of fairness and clearly within the scope of the legislation. Mr. Virtue argued that:
 1. The stated objective of the Expropriating Authority of "construction" of a sports and entertainment facility is in fact inaccurate and may be better described as the assembly of lands for a propose private public partnership or to revitalize downtown.
 2. There has been no fairness by the Expropriating Authority in its dealings as there had been insufficient prior discussions and negotiations with the owners, insufficient public disclosures and consultation and lack of disclosure in Section 635 of the *Municipal Government Act* which states that a description of any propose acquisition of land must be disclosed in an Area Redevelopment Plan; in this respect it is clear that CCARP does not specify the location of the project with sufficient detail.
 3. The evidence of Mr. Taylor is that there was no arena specific public consultation although he states that CCARP identified and set the criteria for the propose arena.
 4. The November 27, 2012 meeting of council to approve the Expropriation did not give adequate notice to the Owners and did not allow for adequate public discussion.
 5. The Notices of Expropriation speaks of a "sports and entertainment facility", but in fact the project contemplates a mixed use facility including retail, commercial and hotel space.
 6. The discussions which took place between representatives of Expropriating Authority and Mr. Thorsteinson and Mr. Guillemot as representatives of Treit Holdings 3 Corporation were misleading, were not transparent and did not make full disclosure with the effect that the Landowner was not treated fairly.
 7. It is not sound that the Expropriation on one hand contemplate the continued existence of the Nomad Hotel and the Keg Restaurant while at the same time removing essential access for deliveries, staff and both surface and underground parking while not making adequate alternative provisions.

8. It is not necessary or fundamental that the land be acquired before the RFP is issued or before a detailed design is prepared.

Accordingly, Mr. Virtue submitted that the intended Expropriations are not fair, sound and reasonably necessary.

C. Reply by Ms. McNaughtan

In reply to the submissions of counsel for the Owners, Ms. McNaughtan argued that:

1. The Expropriating Authority has proposed an easement for shared access.
2. The Keg and Nomad facilities, as well as other facilities for the project, and accordingly does not represent and excessive taking.
3. It would be inappropriate for Expropriating Authority to take Assignments of Leases from tenants without first having negotiated or purchased the lands from the registered owners.
4. Her letter to Wolff Taitinger at Tab 12 of Exhibit 5 did not state that the November 27 meeting of council was a private meeting, but rather that the meeting was not set for as a public meeting.
5. No decision was made by Expropriating Authority with respect to the site of the propose arena in 2011; the personal opinion of Mr. Taylor at that time is irrelevant. Negotiations with Owners are not required as a precondition of expropriation; the Zamal decision stands for the proposition that negotiations may not be continuous.
6. The evidence of Mr. Taylor is important for Expropriating Authority to control the site before issuing its requests for proposals.
7. The evidence from Mr. Taylor was that it is unlikely that there would be response to their request for proposals.

IV. INQUIRY OFFICER'S FINDING OF FACTS

1. The Expropriating Authority has satisfied all of the requirements of the *Expropriation Act*, and has taken all necessary procedural steps to initiate this Inquiry as required by the Act and the regulations thereunder.
2. The Notice of Intention to Expropriate state that "the work or purpose for which the interest in the land is required is: Construction of a sports and entertainment facility;"
3. Pursuant to a request for interest with respect to a Master Developer for a Regional Events Centre and Entertainment District, the Expropriating Authority received four proposals in April 2011, four of which were shortlisted. Based upon the responses received, it was determined that the preferred course of action would be to prepare a request for proposals, to be issued to the shortlisted proponents after selection and acquisition of a specific site for the proposed sports and entertainment facility.

4. The Expropriating Authority has approved a City Centre Area Redevelopment Plan by bylaw in February 2012, identifying strategic and iconic projects for the redevelopment of downtown Fort McMurray. Criteria for the location of a sports centre and recreation facility (sometimes referred to as "Arena") were contained in CCARP.
5. As a follow-up on CCARP, the Expropriating Authority adopted the City Centre Land Use Bylaw, with Part 9 referring specifically to the City Centre Area Redevelopment Plan special area.
6. It is the evidence of Mr. Ronald Taylor, Lead Project Coordinator, that the exact location of the Arena was not be specified in CCARP so as not to unduly influence the acquisition price of the affected lands.
7. Those of the fee simple owners and tenants of the Expropriation Lands who read CCARP, testified that they did not, after reading CCARP, know of the specific intended location of the Arena.
8. Mr. Arni Thorsteinson, whose company Temple Holdings Ltd. (listed on the Toronto Stock Exchange) is the beneficial owner of the Nomad Hotel and lessor of the Keg Restaurant (through Treit Holdings 3 Corporation) is part of the shortlisted RFI consortiums, testified that he was advised on a confidential basis of the proposed site of the Arena, and that he was told that none of the Nomad Hotel lands would be required.
9. There is no evidence of any of the other fee simple owners or tenants being provided with any such confidential information until the approval of the Expropriating Authority at the council meeting on November 27, 2012.
10. Other than the offer made to WWT Holdings Ltd. as fee simple owner on June 20, 2012, none of the fee simple owners were presented with purchase offers before the issue of the Notices of Expropriation.
11. Only sparse information was made available to tenants and parties having an interest in any of the Expropriation Lands pursuant to the Expropriating Authority's stated policy, as testified by Mr. Taylor, that there would be no negotiations with such other parties until the fee simple interest had been acquired, in order not to adversely affect land values.
12. IBI Architects prepared a concept plan for the Arena block as a Test Fit, to determine whether an arena could be constructed on the selected City Block, and concluded that it could.
13. The IBI Concept Plan also shows the construction of a multi-use corporate, commercial and hotel complex on the said City Block, but it excludes, as part of the required lands, the lands occupied by the Nomad Hotel and the Keg Restaurant. The concept plan shows the Arena as occupying a large portion of the City Block.
14. The Keg Parking Lands, registered in the name of Treit Holdings 3 Corporation, are used by the Nomad Hotel and Keg Restaurant for customer parking.
15. The IBI Concept Plan makes no provision for access to the ramp leading to the underground parking of the Nomad Hotel or to the rear service door used by trucks for the delivery of supplies to the Keg Restaurant. Nor does it provide for an alternate location of the garbage and grease containers which are currently located on Lot 17 which would become part of the Arena lands.

16. The IBI Concept Plan shows the Arena as being located over the A&W Lands, whose registered fee simple owner is Canko Group Ltd. and which lands are leased to ALBERTA FOODSERVICES INC. and FDC Brands Inc., operating an A&W Restaurant.

17. The IBI Concept Plan shows the Arena as being located over the WWT Lands, whose registered fee simple owner is WWT Holdings Ltd. and which lands are leased to Wolff Taitinger LLP.

18. Although the Expropriating Authority has indicated that a shared easement could be entered into with Treit Holdings 3 Corporation to provide access to the Nomad Hotel underground garage ramp and for access to delivery trucks at the rear of the Keg Restaurant, there is no evidence of any such shared easement having been entered into or terms agreed.

19. As pointed out by James Johansen, qualified expert, there is no evidence of any transportation studies, parking studies, utilities studies, or any other studies or reports relating to the selected Arena site to establish that it is appropriate for the operation of an arena, nor is there evidence of any formal study comparing the benefits of the selected site to any alternate sites in the downtown business district.

20. There is no detailed site analysis to establish that the concept plan prepared by IBI Architects for Test Fit purposes would satisfy the operational requirements of an arena.

21. There is no Expropriating Authority policy or bylaw committing to provide adequate parking to the Arena facility; the current land use bylaw for the Arena specifies that no parking need be available for users.

22. There is no Private Public Partnership policy or bylaw adopted by the Expropriating Authority to be used in conjunction with the proposed RFP for the development of the Arena.

V. OPINION AND REASONS

1. The question before me, as the Inquiry Officer, is whether the intended expropriation by the Expropriation Authority is fair, sound, and reasonably necessary for the achievement of the objectives of the Expropriating Authority.

2. In this case, as set out in the Notices of Intention to Expropriate, the Expropriating Authority's objective is the construction of a sports and entertainment facility.

3. The Expropriating Authority has satisfied the requirements of the *Expropriation Act* and has taken all necessary steps to initiate this Inquiry as required by the Act and the regulations thereunder.

4. The construction of a sports and entertainment facility or Arena is a proper municipal purpose, entitling the Expropriating Authority to expropriate lands required for a project.

5. The Expropriating Authority did not proceed fairly with the Owners with respect to the intended Expropriations. In particular,

(a) by definition under the *Expropriation Act*, an owner is not only the registered fee simple owner, but also any other person (or corporation) which is a tenant or has an interest in the lands;

- (b) fairness includes advising the owners and other interested parties of public hearings with respect to the intended project, clearly identifying the required lands and the purpose for which the lands are required; and
- (c) fairness includes advising the owners of the intended use of the lands and providing to them sufficient information about the project and land requirements.
6. The intended taking is not sound in that:
- (a) details of the proposed project are not sufficiently advanced for the Expropriating Authority to make a reasoned decision as to the appropriateness of the project and the identification of the required lands;
- (b) there is no evidence of preliminary studies having been conducted to ascertain that adequate utilities, parking, and transportation will be available for the project;
- (c) there is no satisfactory evidence to indicate that the request for proposals will be successful, that the Expropriation Lands will be required for the actual detailed design, or that a satisfactory and reasonable Private Partnership agreement can be entered into; and
- (d) no adequate provisions have been made to provide required access to the Nomad Hotel parking ramp and for deliveries to the Keg Restaurant.
7. Contrary to the indication in the Notice of Intention to Expropriate, the immediate proposed use of the land is not for the purpose of constructing a sports and entertainment facility, but rather, as indicated by the witness for Expropriating Authority, the intention is to acquire the lands for the purpose of issuing and obtaining a proper response to a Request For Proposals; as such, there is no reasonable assurance that the project will ever proceed, and accordingly, the expropriation of the lands is not reasonably necessary at this time.
8. I am therefore of the opinion that the intended Expropriation of the Expropriation Lands by the Expropriating Authority is not fair, fair sound or reasonably necessary for the achievement of the objectives of the Expropriating Authority.
9. In coming to this conclusion, I am not unmindful of the determination which has been made by the Municipal Council that a revitalization of the downtown of Fort McMurray is required on an urgent basis and should be fast tracked, nor am I unmindful of the fact that a Private Public Partnership may be a good and sensible approach to financing this project. However, the use of Private Public Partnership to fund and maybe to accelerate the construction of a project is not a sufficient reason to deny Owners their property rights, contrary to the provisions of the *Expropriation Act*. The use of the expropriation process may still be available after all necessary studies, etc., have been completed by the successful proponent or the Municipality, and all necessary steps have been completed and approved by Council for the project to proceed.

10. I wish to thank all counsel for their cooperation and clarity in putting forth the positions of their respective clients. It is my opinion that all reasonable costs of the Owners with respect to this Inquiry should be paid for 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 Municipality.

DATED at the City of Edmonton, in the Province of Alberta, this 15th day of March, 2013.



LARRY P. CARR, Q.C.
Inquiry Officer
1296, 10665 Jasper Avenue
Edmonton, Alberta, T5J 3S9