Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

ISSUE DATE: May 12, 2016 **CASE NO(S).:** LC140038

PROCEEDING COMMENCED UNDER subsection 26(b) of the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended

Claimants:	Karen Down, Patricia Down and Donald Down
Respondent:	Ministry of Transportation
Subject:	Land Compensation
Property Address:	2940 Wilson Road North
Municipality:	City of Oshawa
OMB Case No.:	LC140038
OMB File No.:	LC140038
OMB Case Name:	Down v. Ontario (Transportation)

Heard: January 11-20, 2016 in Toronto, Ontario

APPEARANCES:

Parties	**Counsel**
Karen Down, Patricia Down, and Donald Down ("Claimants")	S. Rayman, J. Beitchman
Ministry of Transportation ("Ministry")	R. Lawson, D. Vickers

DECISION DELIVERED BY BLAIR S. TAYLOR AND ORDER OF THE BOARD

INTRODUCTION

[1] This hearing arose pursuant to a Notice of Arbitration and Statement of Claim dated August 22, 2014, filed on behalf of the Claimants under the Expropriations Act (the "Act") against the Ministry.

PURPOSE OF THE TAKING

[2] The Ministry expropriated certain lands owned by the Claimants for the construction of Highway 407 East ("407").

THE HEARING

[3] Over the course of eight days, the Board heard evidence on behalf of the Claimants from one of the owners, two land use planners, and two appraisers, and heard evidence on behalf of the Ministry from a land use planner and an appraiser.

[4] Giving expert land use planning evidence on behalf of the Claimants were Bryce Jordan and Robert Dragicevic. Giving expert appraisal evidence on behalf of the Claimants were Bob Robson, and Ken Stroud. For the Ministry, the Board heard expert land use planning evidence from Paul Britton, and expert appraisal evidence from Dan Van Houtte.

THE SUBJECT LANDS

[5] The Claimants owned the lands known municipally as 2940 Wilson Road North (the "Subject Lands") which were described as being composed of Part of Lot 7, Concession 6, in the former Township of East Whitby. The Subject Lands were rectangular in shape having an area of 72.373 acres ("a.") with approximately 2,302 feet ("ft.") of frontage onto Wilson Road North. The Subject Lands had been in the family ownership for some time, as one of the Claimants was born in the residence on the Subject Lands in 1933.

[6] Prior to the expropriation virtually all of the Subject Lands were cultivated farm lands save and except for the residence and improvements located in the southeast corner of the property and one other non-farmed area in the southwest corner of the property.

THE TAKING

[7] Of the entire 72.373 a., the Ministry required 20.962 a. as shown on Part 1 on Expropriation Plan DR1039059 (the "Expropriated Lands") being about 29% of the Subject Lands. The remaining parcel (the "Remnant Lands") has an area of 51.411 a. and remaining frontage onto Wilson Road North of about 1,646 ft. The Expropriated Lands included the residence and all of the improvements and the Remnant Lands are vacant. Thus the partial taking contained one of the Claimants' principle residence, and all of the structural improvements.

CONTEXT

[8] The Subject Lands are located generally in Northeast Oshawa. The surrounding uses are agricultural in nature, save and except for the hydro corridor which directly abuts the Subject Lands to the south.

[9] The Subject Lands are designated in the Durham Regional Official Plan ("DROP") primarily as Prime Agricultural Area with two very small and isolated pockets of Greenbelt Boundary. The Durham Regional Official Plan Amendment No. 128 ("ROPA 128") which was not in force at the time of taking, designated the Subject Lands as Prime Agricultural Area, Greenbelt Boundary, and Future Freeway. The City of Oshawa Official Plan designated the Subject Lands as Agricultural. The City of Oshawa Zoning By-law, as amended, zoned the property Agricultural Zone A.

[10] The Central Lake Ontario Conservation Authority ("CLOCA") pursuant to Ontario Regulation 42-06 has the jurisdiction to regulate portions of the Subject Lands property as there appear to be two water features on the Subject Lands: one water feature proceeding on a north/south basis, and the other proceeding on an east/west basis to the one modest area in the southwest portion of the Subject Lands that was not farmed. The water features appear to be at best intermittent as virtually all of the Subject Lands have been farmed for many years.

[11] In 2005 the Province of Ontario enacted the Provincial *Greenbelt Act*. There are two small isolated pockets on the Subject Lands that are subject to the *Greenbelt Act*: the first at the northwest corner of the Subject property and the second at the southeast corner of the Subject property. The remainder of the Subject Lands fall outside of the Greenbelt Plan.

[12] Regional Official Plan mapping of the area confirms the Subject Lands to lie beyond the existing urban boundary, outside the Oak Ridges Moraine, and generally fall outside the “fingers” of the Greenbelt Plan that extend southerly into the municipalities of Pickering, Whitby and Oshawa, thus resulting in the Subject Lands being part of the so-called “Whitebelt” lands as they are coloured on the DROP.

DECISION

[13] The Board has reviewed all the expert reports, has considered all the oral evidence of the witnesses, has reviewed and considered the oral and written submissions of counsel, and finds that it prefers the evidence of the experts for the Claimants. The Board will make an award of $1,484,094 as set out below, plus interest, and costs to be agreed upon or assessed.

BACKGROUND

[14] Seeking to acquire the Expropriated Lands, the Ministry pursuant to s. 25 of the Act, on January 26, 2012 made an offer of total compensation for all interests of $376,400, and an offer of $358,000 without prejudice to the right to seek further compensation. The latter was accepted by the Claimants.

[15] On November 2, 2011, the Ministry expropriated the 20.96 a.

[16] The parties all agree that the valuation date for the purposes of this hearing is November 20, 2011.

THE CLAIM

[17] Counsel for the Claimants outlined the following claim in the amount of $2,356,998 including the following:

A $677,575 market value of the fee simple interest

B $395,000 market value of the improvements

C $1,212,000 injurious affection to the remaining lands

D $425,000 equivalent reinstatement less any amount awarded as market value for the improvements

E $19,750 inconvenience allowance

F $4,673 disturbance damages for moving costs

G $20,000 disturbance damages for lost farm rental income

H Plus interest and costs in accordance with the Act.

THE ACT

[18] The Supreme Court of Canada has held that the expropriation of property is one of the ultimate exercises of governmental authority: see *Dell Holding Ltd v. Toronto Area Transit Operating Authority* [1997] 1 SCR 32.

[19] The Supreme Court of Canada has also confirmed that the Act is a remedial statute which is to be read in a broad and purposive manner to fulfill the statute's aim, which aim is to fully compensate an owner whose land has been expropriated (Dell Holdings *supra)*.

[20] The onus of proof rests with the party seeking the damages and the test is on the balance of probabilities.

[21] Sections 13(1), 13 (2), 14(1) to 14(3) of the Act provide the following:

> 13(1) Where land is expropriated, the expropriating authority shall pay the owner such compensation as is determined in accordance with this Act.
>
> 13(2) Where the land of an owner is expropriated, the compensation payable to the owner shall be based upon,
>
> A the market value of the land;
> B the damages attributable to disturbance;
> C damages for injurious affection; and
> D any special difficulties in relocation,
>
> but, where the market value is based upon a use of land other than the existing use, no compensation shall be paid under clause (b) for damages attributable to disturbance that would have been incurred by the owner in using the land for such other use.
>
> 14(1) The market value of land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.
>
> 14(2) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for that purpose, and the owner genuinely intends to relocate in similar premises, the market value shall be deemed to be the reasonable cost of equivalent reinstatement.
>
> 14(3) Where only part of the land of an owner is taken and such is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking.

[22] In *Re Farlinger Developments Ltd. and Borough of East York* (1976) 9 O.R. 553, the Ontario Court of Appeal said:

> In an expropriation there are really two fundamental steps. The first is to determine the highest and best use of the property expropriated, and the second is to fix the compensation to be awarded to the owner based on such use.

[23] Then the Court of Appeal addressed the highest and best use:

> From these authorities, it would seem to be established that the highest and best use must be based on something more than a possibility of rezoning. **There must be a probability or a reasonable expectation that such rezoning will take place.** It is not enough to say that the lands have the capability of rezoning. In my opinion probability connotes something higher than a 50% probability. (emphasis added)

[24] In this case the Board has heard much land use planning evidence. Such evidence is helpful and informative. But it is trite to say that this claim arises under the *Expropriations Act*, and not the *Planning Act*.

[25] Section 14(1) clearly provides that the market value of the land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.

[26] The assessment of what that amount might be can certainly be informed by land use planning evidence, but such evidence is not determinative, as it only deals with a portion of the assessment. What the land use planner cannot opine on, and what an appraiser must opine on, is the state of the market in which the matter arises.

[27] Hence the Board in such matters, places a greater weight on the appraisal evidence.

[28] Finally in this portion of the decision, the Board would note that in closing submissions, counsel for the Ministry indicated that while it continued to dispute the majority of the claims of the Claimants, the Ministry did consent to two items: firstly, moving costs pursuant to s. 18(1)(c) of the Act in the amount of $4,673.00; and secondly, disturbance damages pursuant to s. 18(1) of the Act being the 5% allowance based on the Bob Robson value of $325,000 (excluding the $100,000 for equivalent reinstatement) to the 5% allowance in the amount of $16,250.00.

[29] The Board will now consider the following issues:

a. Highest and best use before the taking

b. Highest and best use after the taking

c. The improvements

d. Injurious affection

e. Loss of rental income

f. Compensation

g. Interest

h. Costs

HIGHEST AND BEST USE BEFORE THE TAKING

[30] The Board qualified Paul Britton as an expert of land use planning who gave evidence on behalf of the Ministry. Mr. Britton, unlike Mr. Jordan and Mr. Dragicevic, does not practice in the Region of Durham and has never opined with regard to development matters in the Region of Durham.

[31] Mr. Britton indicated that at the effective date:

- The Subject Lands were designated as Prime Agricultural Area in the DROP.
- The Subject Lands were about 1.1 kilometers ("km") north of the City of Oshawa's Urban Area Boundary.
- That the Subject Lands were separated from the current Urban Area Boundary by a tributary of the Oshawa Creek, the hydro corridor being 275 meters wide, Winchester Road and some 667 a. of designated Prime Agricultural Lands that were closer to the current Urban Area Boundary.
- 22.7 a. of the Subject Lands were regulated by CLOCA.
- That the *Places to Grow Act* required the Region of Durham to undergo a conformity exercise with the Growth Plan for the Greater Golden Horseshoe, 2006 ("Growth Plan").

- Residential development on the Subject property is only possible if the Subject Lands are within the Urban Area Boundary and the Subject Lands are not within the Urban Area Boundary at the effective date.

- That the expansion of Urban Area boundaries can only occur through a comprehensive municipal review.

- The next comprehensive municipal review would likely commence in 2021.

- That the growth forecasts for the Region of Durham and Oshawa in particular were such that the Subject Lands were not required to satisfy any residential growth needs to 2031 and beyond as all of the projected population growth for Oshawa could be accommodated within the existing Urban Boundary.

- That Schedule F to the consolidated DROP dated June 5, 2008 seen on Exhibit 34 clearly indicates the preference for Future Growth areas in north Pickering, Whitby and Oshawa and that Schedule F does not include the Subject Lands within the Urban Area or as a Future Growth Area.

- That the Regional Official Plan in Policy 7.3.11 states:

  > …that where consideration of an amendment to permit additional growth beyond the limits of an Urban Area the Regional Council of Durham is to have regard to (f) the adjacent land use and where possible avoid Prime Agricultural Areas. Where it is not possible, the location of Urban boundaries will make use of natural or man-made features such as road allowances, valley lands and other natural features to mitigate conflicts between Urban and Agricultural uses.

[32] This policy, Mr. Britton indicated, would by virtue of the presence of the hydro corridor, the Oshawa Creek valley lands, and other road allowance, would result in the Urban Boundary stopping before the Subject Lands. Thus he opined that with or without the 407 highway that the likely/probable land use associated with the Subject Lands as of the effective date valuation would be for Agricultural and related Residential uses and other uses permitted by the Zoning By-law was in effect at the time.

[33] He stated in his report (Exhibit 12, page 29) the following:

> The need for future Urban Area expansions to accommodate growth beyond the year 2031 would need to be determined in the context of a future municipal comprehensive review as required by the Places to Grow – Growth Plan. Without the benefit of such a review it is both premature and difficult to provide a meaningful and informed opinion regarding the need for future settlement area expansions and in all likelihood the Subject Lands would be included in an expanded Urban Area to accommodate either population or employment growth beyond the year 2031. This opinion recognizes (in part) the robust analysis associated with a municipal comprehensive review and the fact that as of the effective day of taking, the Province had not assigned additional population and employment growth to the Region of Durham and the Region of Durham had not allocated additional growth to the City of Oshawa beyond the year 2031.

[34] He then provided his opinion as to the likely/probable land use for the Subject Lands both with and without the 407 and then stated:

> It is recognized that some may be unfamiliar with the intricacies of the Provincial Policy framework and the status of the Region's Municipal Comprehensive Review and as a result there may have been some speculative value associated with the location of the lands within the corporate limits of the City of Oshawa but outside the Greenbelt and Oak Ridges Moraine planning areas. Such lands are commonly referred to as the "Whitebelt" which in this case remain subject to the policies of the Places to Grow – Growth Plan and the Provincial Policy Statement.

[35] Dan Van Houtte, the appraiser on behalf of the Ministry in his report dated September 30, 2015 (Exhibit 15) provided his opinion with regard to the highest and best use without the 407. In so doing he examined this issue based on four tests being: Legally Permissible, Physically Possible, Financial Feasible, and Maximally Productive.

[36] With regard to Legally Permissible, he noted the Official Plan designations in the Regional Official Plan and the local Official Plan as being Prime Agricultural and zoned as being Agricultural. He also noted that the lands lie well outside the Urban Area boundary in the City of Oshawa's Official Plan.

[37] Under the heading Physically Possible, he opined that the site could adequately support physical development, that 23 of the acres are subject to CLOCA regulations, that the Subject Lands are improved, and that the improvements had been demolished prior to his date of inspection. With regard to those improvements he stated as follows:

> Typically, agricultural properties are acquired to expand cash, crop, farm operations and improvements are often considered to be a liability to maintain and have a nominal value in contribution.

[38] With regard to Financially Feasible, he characterized the Subject property as being in an area that is primarily agricultural.

[39] With regard to Maximally Productive, he stated that the Subject Lands are over 1 km outside the "Major Urban Area" and then quoted extensive portions of the Paul Britton report.

[40] The Board however observes that Mr. Van Houtte in his report at Exhibit 15 did not quote the reference in the Paul Britton report at Exhibit 15 as to speculative value, nor the notion of "Whitebelt" lands. Moreover, in reviewing the final considerations as to the highest and best use without the 407, Mr. Van Houtte continued with other specific quotations from the Paul Britton report and then concluded on page 54 that it was his opinion that the highest and best use of the Subject property before and after the taking is for a continuation of its current Agricultural use. No other analysis or commentary was provided.

[41] The experts for the Claimants advanced the proposition that but for the 407 the Subject Lands would have been brought into the Urban Area Boundary for the City of Oshawa and designated as Living Areas. They advanced this proposition based on the following:

- The Subject Lands are outside of the Oak Ridges Moraine.
- The Subject Lands do not fall within any of the "fingers" of the Greenbelt Plan.
- The Subject Lands are currently outside the Urban Area Boundary of Oshawa.
- The Subject Lands are "Whitebelt" lands.

- As such, the Subject Lands are the “hole in the donut”.

- The Subject Lands in the 1991 DROP as adopted by Council although then designated as Permanent Agricultural Reserve, were found within one of six special study areas for the Region.

- The Brooklin Area in North Whitby (special study area 5) and the Columbus Area in North Oshawa (ultimately deferral 12), were both brought into the Whitby and Oshawa Urban Area Boundaries and both Brooklin and the Columbus Areas are proximate to the Subject Lands but located closer to the GTA.

- The 1993 DROP as approved by the Province extended the Whitby Urban Boundary to include the Living Area for Brooklin but deferred the proposed inclusion of the Columbus Area within the Urban Boundary and as a Living Area as D12.

- The Subject Lands remained in a Permanent Agricultural Reserve and the Special Policy Area was removed.

- The June 5, 2008 Consolidated DROP continued to show Brooklin as being within the Urban Area Boundary for Whitby, the Columbus Area deferred and the Subject Lands within a designation Prime Agricultural Area.

- ROPA 128 as adopted by Council June 3, 2009 proposed to extend the Urban Area Boundary in the City of Pickering, the City of Whitby and the City of Oshawa northerly such that for the Brooklin Area in Whitby that lands to the north and lands to the west would be included within the Urban Expansion Area as Living Area and in Oshawa the Columbus Area would be included with lands north of the 407 redesignated from Prime Agricultural Areas to Employment Areas and north of that the Columbus Area would be designated

as Living Area. The Subject property continued to be shown as Prime Agricultural Area.

- However ROPA 128 also included Schedule F as adopted by Regional Council on June 3, 2009, which Schedule depicted the Subject Lands as being part of a Future Employment Area (see Exhibit 34).

[42] The Board observes that in the October 27, 2010 Province of Ontario decision with regard to ROPA 128 the following is noted with regard to Policy 13.2.4 which had read:

> Schedule F – Specific Policy Area D, Potential Future Growth Areas is a reflection of the Region's long range potential urban structure. It provides a context for growth and infrastructure planning. It is not a land use designation or an actual urban boundary expansion.

This policy was deleted in its entirety by the Province of Ontario and deleted the Schedule F.

[43] As a result of the decision by the Province of Ontario on October 27, 2010, ROPA 128 deleted the Urban Boundary Expansions proposed by the Region of Durham and North Pickering, North Whitby, and North Oshawa. However, all Areas were appealed to the Ontario Municipal Board and the Ontario Municipal Board in its decision of January 9, 2013 approved the Urban Area Boundary Expansion in North Whitby and in North Oshawa to include Employment Areas generally north and south of the 407 and beyond that the Urban Area Expansions for Brooklin, and the inclusion of the Columbus Area and an expansion to the Columbus Area.

[44] The Subject Lands remained in a Prime Agricultural Area and no Employment Lands in the vicinity of the Subject Lands were designated either north or south of the 407.

[45] The Claimants' land use planners produced the November 25, 2008 report to the Planning Committee for the Region of Durham which report includes the following statement:

> Conceptual strategies have been recommended for Growth Areas outside the current Urban Boundary Area.

[46] The Regional power point presentation shows both water and wastewater conceptual strategies for northeast Oshawa, including the Subject Lands; and the Claimants produced the City of Oshawa Kedron Study Area Wastewater Servicing which is essentially for a portion of Oshawa in the Harmony Road Area south of the 407 which shows wastewater servicing going beyond the current Urban Boundary and conceptually north of the 407 and through the Subject Lands: see Exhibit 5.

[47] Based on all this the land use planning experts for the Claimants conclude that but for the 407, growth in the City of Oshawa could only be to the north, and without the 407 the Subject Lands being outside the Oak Ridges Moraine, being outside the Greenbelt, would have become part of the City of Oshawa's Living Area. Thus they opine that the highest and best use of the Subject Lands without the 407 would have been the continued use of the Subject Lands with its improvements for agricultural purposes, with the speculative potential for future urban residential development on the table land component with some open space uses likely within the CLOCA regulated lands. The timing they concede is difficult to forecast with any degree of certainty but likely the 2021 Durham Official Plan Review would have moved the Urban Boundary north to include the Subject Lands.

[48] The land use planners for the Complainants also dispute the quantum of the alleged "non-developable lands" suggested by Mr. Britton as being regulated by CLOCA.

[49] Mr. Jordan contacted CLOCA and took a representative of CLOCA on site and viewed the property and based on that site visit refined his opinion as to the

development potential of the CLOCA regulated lands as found in Exhibit 20. Exhibit 20 demonstrates that due to the nature of the water feature on the Subject Lands that a potential water feature would be restricted to that portion running east and west and having an area of approximately 7.19 a. and not the 23 a. as suggested by Mr. Britton.

[50] The land use planners for the Claimants rely on the reports and documents prepared for the Region of Durham which clearly indicated the long term intention of the Region to develop all of the “Whitebelt” in the north portions of Pickering, Whitby and Oshawa beyond the then Urban Area Boundary. In their view Schedule F as seen on Exhibit 34 from the June 5, 2008 Consolidated DROP is indicative of the future Urban Area and future Growth Areas and while the Subject Lands were not shown as a Future Growth Area on that Schedule, they point to Schedule F on ROPA 128 as adopted by Regional Council on June 3, 2009 as clearly depicting the Subject Lands as being within a Future Employment Area and the Urban Area extended all the way up to Myrtle Road.

[51] They state that the Ministry of Municipal Affairs and Housing deleted Schedule F and the text reference from the Official Plan based on the fact that the Schedules went beyond the prescribed the 2031 period.

[52] Both planners acknowledge that in order for there to be Future Urban expansions in the municipalities that comprise the Region of Durham, that it will be necessary for a comprehensive municipal review to be done but that it is also reasonable to assume that the next wave of such Urban Area expansion would logically follow at the edges of Urban boundaries established in the conformity exercise that was done previously and for which potential servicing schemes have been devised. In their opinion, the Subject Lands would have entered the urban boundary in the time frame between 2021 and 2031.

[53] The Board prefers the evidence of the Claimants’ land use planners. The Board finds that as the Subject Lands are outside the Oak Ridges Moraine, outside the Green Belt (with the two very modest exceptions), located in the Whitebelt, but specifically

considered by the Region of Durham in Schedule F for Employment Lands (as adopted by the Regional Council on June 3, 2008), and for which conceptual servicing strategies were prepared by the Region of Durham itself, that there was a reasonable expectation that the Subject Lands would be redesignated and brought into the Urban Boundary, as Living Area.

[54] The Ministry contends that with the *Places to Grow Act* process for expansion of urban areas, that if such expansion were to occur, it would be far into the future. Counsel provided a number of cases to suggest that where the redesignation would not occur within the reasonably foreseeable future that the Re *Farlinger* test would not be met.

[55] Having reviewed all the Ministry's cases, the Board notes that all the cases point to the conclusion that the Board should be skeptical of long range forecasts. The cases point to timing for example of over 10 years as being "possible" but not "probable".

[56] From the Board's perspective, all of the Ministry's cases predate the *Places to Grow Act*, and/or are extra provincial.

[57] The Board finds that the *Places to Grow Act* changed the process for urban boundary expansions in Ontario requiring that settlement area boundaries can only occur as part of a municipal comprehensive review, and on that basis alone those cases can be distinguished.

[58] The Board finds that for the City of Oshawa to grow, it can only grow north, that it must avoid the Oak Ridges Moraine and the Green Belt, and thus such growth will be in the so-called Whitebelt area.

[59] The Board finds that the staff of the Region of Durham and the Regional Council gave due consideration to the long term needs of the Region. The Subject Lands were found to be within that long term assessment and that assessment by the upper tier level of government was known in the market place.

[60] Such an assessment by the upper tier municipal government in Durham validates the Subject Lands as having development potential beyond that of its agricultural use. As Mr. Dragicevic stated, the Subject Lands had the benefit of municipal identification. Thus the Board finds that the highest and best use of the Subject Lands, ignoring the 407, would have been as long term Living Area.

HIGHEST AND BEST USE AFTER THE TAKING

[61] As noted above the consultants on behalf of the Ministry have concluded that the highest and best use of the Subject Lands before and after the taking is a continuation of its current agricultural use.

[62] The land use planners for the Claimants both opine that the highest and best use after the taking would be for Future Employment Areas as:

- The DROP as adopted by Council in 1991 essentially established a linear Employment Area designation over most of the lands that abut the 407.

- Although the DROP as approved by the Province deleted some of those designations on the north side of the 407, the use of Employment Lands on the south side of the 407 and in some potions north of the 407 was continued.

- With regard to ROPA 128 as adopted by Council that linear projection was continued and although ROPA 128 as approved by the Province deleted a number of those Urban Area expansions and with them a number of the Employment Area designations, the DROP as approved by the Ontario Municipal Board continued the discernable pattern of Employment Areas in proximity to the 407.

[63] Mr. Dragicevic opined that with the presence of the 407, development of the Remnant Lands would be relegated to Employment Uses consistent with the land use

designations over large areas adjacent to the 407 corridor. He added the caveat that with the relatively large supply of Employment Land in the Region there may not be the basis for such a designation until the time frame beyond 2031.

[64] Mr. Robson in his appraisal report indicated that the highest and best use of the Remnant Lands after the partial taking is a continuation of the existing agricultural uses with the speculative potential for future urban employment development on the table land and Open Space uses likely with the CLOCA regulated area. He provided the caution that the future employment use potential is considered to be further restricted by:

(a) the closure of Wilson Road at the new 407 highway thus restricting convenient and direct access;

(b) the probable development layout taking into account the water feature on the Subject Lands, the MTO permitting exercise within 45 meters (“m”) of the 407 and the 14 m setback on the Subject Lands; and

(c) municipal servicing options would be more restricted and the potential development timing would be impacted by other future employment use areas along the 407 but closer to the GTA.

[65] The highest and best use after the taking as opined by Ken Stroud was similar to that of Mr. Jordan, Mr. Dragicevic and Mr. Robson, but with a different twist. Mr. Stroud evaluated two alternative scenarios: firstly, the employment scenario; and secondly, the agricultural scenario.

[66] While concurring with regard to the potential for long term Future Employment Land, Mr. Stroud was of the view that due to the limiting factors and the lack of market for long term Employment Land that the highest and best use would be the continuation of the Agricultural Use.

[67] The Board prefers the evidence of Mr. Robson, Mr. Jordan and Mr. Dragicevic that the highest and best use following the taking would be as long term Employment Use Lands.

[68] While the Board is cognizant of the market, the Board notes that the Growth Plan in Section 2.2.6.9 provides that:

> …municipalities are encouraged to designate and preserve lands within Settlement areas in the vicinity of existing major highway interchanges, ports, rail yards and airports as areas for manufacturing, warehousing and associated retail, office and ancillary facilities where appropriate.

[69] On the basis that the Subject Lands would come within the Urban Boundary it is clear that the Growth Plan encourages municipalities to designate such lands for Employment Uses.

[70] The Board finds that this policy direction is consistent with the policy approach that has been taken by the Region of Durham with regard to the possible designation of lands along the 407 as exhibited in Schedule F to the ROPA 128 which the Board acknowledges was deleted by the Province as it reflected land beyond the 2031 time horizon. Nevertheless, it was a clear indication of the policy direction of the Region of Durham and supported by plans for water and wastewater services to be extended into those areas.

[71] Thus the Board finds that the highest and best use after the taking is speculative Employment Lands.

THE IMPROVEMENTS

[72] The Subject Lands prior to the taking were improved with a two storey residence, the garage, the shed, the drive shed, the bank barn with the lean-to, and the covered feed area. All the improvements have been demolished.

[73] The only expert to actually see the improvements was Mr. Robson on his site inspection of August 11, 2011 prior to the taking. His report included photographs of all the improvements and interior photographs of the residence.

[74] The residence was an older two-storey dwelling of about 2,294 square feet (sq. ft.), and appears to have been informally subdivided into two completely self-contained separate units, each with their own kitchens, living areas and bedrooms.

[75] The drive shed was a structure about 40 ft. wide and 30.5 ft. deep with a gross floor area of approximately 1,230 sq. ft. with three bays.

[76] The garage was about 12 ft. wide and 20.5 ft. deep with an area of 250 sq. ft.

[77] The shed was about 45 ft. wide by 24.5 ft. with a gross floor area of approximately 1,110 sq. ft. with large sliding doors and the structure was used for storage purposes.

[78] The covered feed lot was otherwise open and located in the barn yard. The roof covering this open feed lot was 70 ft. deep and 26.5 ft. wide.

[79] Finally, there was a large bank barn that was 36.5 ft. wide and 104.5 ft. deep. On the lower level it had a stable whereas the upper level was available for storage. The original barn was enlarged by a frame lean-to addition.

[80] In order to evaluate the residence, and improvements, Mr. Robson created a hypothetical one-acre parcel of land and sought comparables in order to find a replacement dwelling in the subject vicinity for the rural residence.

[81] Similarly Mr. Stroud conducted a search for comparables, focused on finding sales of rural residential dwellings in the City of Oshawa, improved with older houses with lot sizes of at least half an acre and with sales occurring within three years prior to the effective date.

[82] Mr. Van Houtte on behalf of the Ministry in his report found at Exhibit 15 was of the view that no compensation would be payable with regard to the improvements. He states at page 48 of his report that:

> …typically Agricultural properties are acquired to expand cash crop farm operations, and improvements are often considered to be a liability to maintain and have a nominal value in contribution.

There is no other discussion in Exhibit 15 with regard to the residence or improvements other than at page 79 under the heading "Disturbance Damages" to quote Section 18.1 of the Expropriations Act with the finding that "no estimate for disturbance damages was prepared."

[83] The evidence before the Board is that Mr. Down resided at the residence on the Subject Lands. While the house had been improved to create two units, it had apparently been so reconstructed without benefit of any approvals under the *Planning Act*.

[84] It is also clear from the evidence that he had farmed the Subject Lands and subsequently had been renting them out.

[85] Mr. Van Houtte in Exhibit 17 being a Technical Review of the Ken Stroud Appraisal Report states this with regard to the valuation of the Subject residential dwelling:

> There is no reason to consider the home on one acre when severance is not an option. An appropriate method to estimate the value of the land taken, including building improvements would be to analyze improved rural residential/agricultural parcels. Isolating the improvements on one acre distorts the value of the overall lands taken. If the lands taken are developed lands as stated by Stroud, the improvements are an interim use, and their contribution and value would be given a limited emphasis by a developer. Often older farm buildings are seen as a detriment.

[86] However, in cross-examination Mr. Van Houtte agreed that Mr. Down should be entitled to equivalent reinstatement for the loss of his home.

[87] In response Mr. Van Houtte provided evidence of several possible replacement homes, which he believed would be comparable and would provide Mr. Down with equivalent reinstatement and amenity.

[88] Firstly the Board prefers the evidence of Mr. Robson that the improvements had value to broaden the scope of potential purchasers of the Subject Lands beyond just developers to include for example urban professionals who might be hobby horse enthusiasts, and who might be an interim user before development. Secondly, as the Ministry's taking took all of the improvements to the Subject Lands including the residence and the other improvements, in order to be made whole, the Claimants are entitled to additional compensation and that the Claimants ought to be placed in the same position that they would have been in but for the expropriation. This finding includes the fact that Mr. Down had the ability to live on the property in the home.

INJURIOUS AFFECTION

[89] The Board will now deal with the claim for Injurious Affection.

[90] Having found that the highest and best use of the Subject Lands without the taking was for future residential Living Area as designated in the DROP, and having found that the highest and best use following the expropriation was as speculative future employment lands, and based on the evidence of Mr. Robson and Mr. Stroud that there was a differential in value between long term residential lands and speculative employment lands, the Board finds that the Subject Lands were injuriously affected.

LOSS OF RENTAL INCOME

[91] The Robson Appraisal (Exhibit 8) states that the Subject Lands had four rights-of-way over the adjacent Ontario Hydro lands to the south. Map #4 shows the rights-of-way. The purpose of the rights-of-way was for persons, animals and vehicles and Mr. Stroud considers this in his Exhibit 9 with an air photo showing the rights-of-way

extending over the Ontario Hydro lands as such that the lands below the Ontario Hydro lands were accessible.

[92] Mr. Van Houtte deals with the rights-of-way in Exhibit 15 at page 9 and his map at page 21.

[93] All the appraisers agree that as a result of the taking by the Ministry, that the rights-of-way were extinguished.

[94] The Claimants' claim that as the owners of the Subject Lands they had been permitted to use approximately 17 a. of land on the adjacent hydro corridor for growing crops or grazing cattle.

[95] The Claimants' state that in recent years Mr. Down had been renting out not only the cultivated portion of the Subject Lands but also those lands which he had been used on the hydro corridor. It was estimated that the acreage on the hydro lands was approximately 17 a.

[96] Mr. Robson in Exhibit 8 arrives at damages attributable to disturbance for the loss of farm rental income from the hydro corridor at $90.00 an acre x 17 acres for $1,530.00 per year and estimates that this potential income stream would have continued for 10 to 15 years pending the urbanization of the Subject Lands and arrives at a valuation of $11,675.00.

[97] Mr. Stroud conducts a similar exercise but for a 20-year time horizon at a discount rate of 5% and arriving at compensation in the amount of $20,000.00.

[98] Mr. Van Houtte in Exhibit 16 states that Mr. Robson reported that the owner of the Subject property had historically been permitted to use approximately 17 a. of land within the adjacent hydro corridor for growing crops or grazing cattle and that recently the owner had rented the cultivated portion of those Ontario Hydro lands to a neighbouring farmer. Mr. Van Houtte indicates that there is no factual evidence of the

arrangement provided and that it is highly unusual that a non-owner of lands is permitted to use lands without compensating the owner (Ontario Hydro) and then is able to sublet the lands to a third party for compensation without the owner (Ontario Hydro) receiving any compensation. In Exhibit 17 he states that this proposition is not supported by any contractual evidence. Thus, in either case of Mr. Robson or Mr. Stroud, Mr. Van Houtte is of the opinion that the analysis is unsupported and unreasonable. The Ministry in its written submissions argues that the Claimants have failed to meet their onus of establishing that they would have received the rental income for these lands for the 20-year period claim. The Ministry submits that the Board should draw an adverse inference from the Claimants' failure to call Mr. Geisberger to confirm the rental amounts and his intention to continue to lease the hydro lands from the Claimants.

[99] The Claimants' written submissions state that as a result of the expropriation the Claimants have lost their ability to access the hydro lands as cash crop farmland. As a result they are no longer able to rent them out for farming purposes and have lost the rental income from those lands due to the expropriation and they are entitled to this lost rental income as disturbance damages.

[100] The Board has examined all the air photos that have been provided in the course of the hearing and in each instance the Ontario Hydro lands immediately abutting the Subject Lands appear to be under cultivation.

[101] Having said that the Board is not satisfied that the Claimants have met their onus of proof in this matter. The facts remain that Ontario Hydro owns the lands. The Subject Lands have rights-of-way <u>over</u> the Ontario Hydro lands to access lands further to the south of the Ontario Hydro lands. The Board was not shown any written agreement with regard to the use for cultivation of the hydro lands with the Claimants, nor is there any written evidence of authorizing the subletting of the Ontario Hydro lands to some other third party with all the compensation going to the Claimants.

[102] The Board has examined the cheque stubs provided in the Claimant's Book of Documents being Exhibit 19, Tab 23. The cheque stubs reference semi-annual rent at $3,575.00 from Ryeland Farms. There is no further information contained on those cheque stubs to give any indication as to the acreage being rented, whether it was on the Subject Lands, or whether it included the 17 a. on the Ontario Hydro lands, and no viva voce evidence was provided from either the "tenant" or any one of the claimants to substantiate the claim.

[103] Based on these facts, the Board finds that the onus on the Claimants has not been met and the Board will not make a finding of loss of rental income for the hydro lands.

COMPENSATION

[104] The Board will now turn to the calculation of compensation with regard to the findings above.

[105] Having arrived at a finding that the highest and best use without the 407 was a long term Living Area, both Mr. Robson and Mr. Stroud using totally different approaches arrived at a valuation of $35,000.00 per acre.

[106] Mr. Robson provides the details of ten individual sales with speculative long term development potential located in the "Whitebelt". Mr. Robson notes in Exhibit 8 that there are several different value components with regard to the Subject Lands including:

(a) the table land component which is considered to have development potential;

(b) the existing dwelling and one acre of land;

(c) the two small triangular areas that fall within the boundaries of the Greenbelt (at the southeast corner 0.717 a. and in the northwest corner 0.173 a.; and finally

(d) the CLOCA regulated area.

[107] Mr. Robson then adjusted the “Whitebelt” sales based on factors including financing, market conditions, locations, physical characteristics, etc., and arrived at a valuation of $35,000.00 per acre of table land.

[108] In Exhibit 9 Mr. Stroud conducted a different exercise. He noted at page 70 of Exhibit 9 that the valuation of long term future development land in Durham Region as at the effective date is a difficult appraisal assignment. This submarket, he said, is highly speculative and is based on the market’s anticipation of the comparable lands’ inclusion within the Urban Boundary.

[109] Thus, Mr. Stroud opted to undertake an analysis of the entire market place in the northern areas of the urban municipalities of Pickering, Whitby and Oshawa with the aim of reconciling a point of value that is rational given the forecasted timing of the various future development nodes in the northern areas of the urban area of Durham. Thus there were some 12 comparable Future Development Land sales examined and adjusted ending up with a range of five categories, the first category having development timing of three to five years with a range of value of $150,000.00 to $160,000.00 per acre; the second category at five to seven years of development timing at $130,000.00 to $145,000.00 per acre; the third category was 10 to 20 years with a value of $65,000.00 to $75,000.00 per acre; the fourth category was 20 plus years which were superior to the Subject Lands at $40,000.00 to $50,000.00 per acre; and finally the fifth category – the long term lands to 2056 being at a value of $30,000.00 to $40,000.00 per acre.

[110] Based on this and having considered the characteristics of the Subject Lands, the market conditions, and the market evidence, Mr. Stroud concluded that $35,000.00 per net developable acre was appropriate.

[111] In contrast, Mr. Van Houtte at Exhibit 15 has five comparables. Four of those comparables are noted in his report as being within the Province of Ontario's Greenbelt and under cross-examination Mr. Van Houtte confirmed that his fifth comparable was also contained within the Greenbelt.

[112] From all those Greenbelt properties he arrived at a value of $20,000.00 per acre.

[113] The Board has some significant concerns with regard to the comparables utilized by Mr. Van Houtte. The Subject Lands are not within the Greenbelt.

[114] The Board notes that all the land use planners, Mr. Jordan, Mr. Dragicevic and Mr. Britton, acknowledge that the Subject Lands are found within the so-called "Whitebelt" being lands that are within the corporate limits of the City of Oshawa, outside the Greenbelt and outside the Oak Ridges Moraine and not within the Urban Boundary of the City of Oshawa.

[115] Mr. Robson and Mr. Stroud specifically reference the "Whitebelt" (Exhibit 8, page 97 and Exhibit 9, page 3). Only Mr. Van Houtte does not reference the "Whitebelt" in his Exhibit 15.

[116] This omission is noted in the Review Report of the Van Houtte Appraisal by Mr. Stroud found in Exhibit 10 at pages 14 and 15. He states the following:

> In the most simplistic of terms the Ministry's appraiser exclusively employed Greenbelt sales which indirectly function to depress what would have been deemed fair and proper compensation. One can surmise that the intent behind using only Greenbelt land sales was to ensure that no speculative future development potential would influence the value opinion which runs contrary to the location of the Subject property within Category 3. This tactic makes the conclusions rendered totally unreliable and fails the reasonable appraiser's test.

[117] The Board does not accept the Greenbelt sales as appropriate comparables as the Board prefers the land use planning evidence that the Subject Lands are located within the Whitebelt.

[118] The Board prefers the evidence of Mr. Robson and Mr. Stroud and accepts their valuation of $35,000 per acre.

THE GREENBELT

[119] With regard to the Subject Lands there are two modest portions of the Subject Lands that have a Greenbelt designation: one modest portion in the extreme southeast of the Subject Lands which were included in the taking; and one portion in the northwest extremity of the Subject Lands. The area of the southeast portion is 0.717 acres and the area of the northwest portion is 0.173 a. Mr. Robson valued the Greenbelt non-developable land at $7,500.00 per acre whereas Mr. Stroud values it at $5,000.00 per acre. The Board notes that Mr. Van Houtte did not separately value the Greenbelt lands but simply applied a value of $20,000.00 for the 20.96 acres to reach a value of $419,200.00 which was rounded up to $420,000.00.

[120] The Board prefers the approach by Mr. Robson and Mr. Stroud that recognizes the non-developable portion of the Subject Lands and finds that on the basis of the comparables prepared by Mr. Robson that the valuation of $7,500.00 per acre is appropriate.

CLOCA REGULATED LANDS

[121] With regard to the CLOCA regulated lands, Mr. Robson adjusted the area to result in 6.9 a. at $7,500.00 per acre.

[122] Mr. Stroud did not adjust the acreage, but rather adjusted the acreage rate as being speculative residential open space land and assigned a value of $20,000.00 per acre.

[123] Based on the evidence of Mr. Jordan, and as a result of his site visit, Exhibit 20 demonstrates a potential water feature corridor of 7.19 a. The Board finds that Exhibit 20 is the best evidence before the Board and the Board will use the 7.19 a. and prefers the evidence of Mr. Robson with regard to the specific valuation of the CLOCA lands at $7,500 per acres.

IMPROVEMENTS

[124] With regard to the residence and improvements on the Subject Lands, both Mr. Robson and Mr. Stroud in the “before the taking” scenario carved out a one-acre parcel from the overall holdings. For that notional one acre parcel they then sought comparables for the residence and improvements.

[125] Mr. Robson provided a summary of four sales for a residence on a one acre site. The unadjusted sale prices range from $290,000.00 to $415,000.00. As noted in Exhibit 8 only Sale R1 was a home as old as the residence on the Subject Lands; the others were much newer. However, the gross floor area of the home on the Subject Lands (MPAC) had a square footage of 2,294 and the closest to that was one sale at 1,944 sq. ft. Additionally, none of the four sales were on a one acre parcel and thus all had to be adjusted. The four sales all however were within a six mile (“mi.) radius of the Subject property and as close as 1.5 mi. away. Based on a one acre parcel Mr. Robson estimated the value at $325,000.00.

[126] Mr. Robson indicated that one of the claimants, as a result of the expropriation of the principle residence, would be forced to find a replacement dwelling in the Subject vicinity on a comparatively short notice. He noted that the market for rural residences remained comparatively small, but with a comparatively wide value range.

[127] Based on the site containing one acre of land and in a quiet rural location within a similar distance of the urban amenities of the City of Oshawa, his research disclosed only two properties that were listed for sale that loosely met the above requirements and he reached the conclusion that the very limited number of available replacement homes

being offered for sale would cost more than the $325,000.00 market value of the residential component of the residential taking. Based on those listings he concluded that a reasonable replacement for the Subject residence could potentially fall in the range of $375,000.00 to $425,000.00 and that the allowance for damage attributable to the value of equivalent replacement home would be about $100,000.00.

[128] Mr. Stroud similarly searched for comparables of rural residential dwellings in the City of Oshawa with lot sizes greater than half an acre and with sales occurring within three years prior to the effective date. He found five such sales which he then adjusted based on market conditions, location, lot characteristics, house characteristics, value of additional improvements, and arrived at a value of $395,000.00.

[129] Mr. Van Houtte in his original report (Exhibit 15) provided no opinion of value with regard to the residence or the improvements that were expropriated.

[130] However, in his reply report being Exhibit 16 he reiterated his position that the residence was located on lands taken by the Ministry and therefore the value associated with the residence should be considered in combination with the 20.962 a. taking.

[131] In cross-examination Mr. Van Houtte agreed that Mr. Down should be entitled to the equivalent reinstatement for the loss of his home and provided evidence of several possible replacement homes that he believed to be comparable. Those comparables selected by Mr. Van Houtte had considerably smaller gross floor areas, fewer rooms, fewer bathrooms, and were located further from the Subject Lands.

[132] The Board has found that the Claimants were entitled to be made whole as a result of the expropriation by the Ministry. Both Mr. Robson and Mr. Stroud carved out a one-acre parcel from the Subject Lands and sought comparables for rural residences on one-acre parcels which Mr. Robson found to be in the range of $325,000.00 plus a $100,000.00 equivalent reinstatement. Mr. Stroud found the comparable value to be $395,000.00.

[133] The Board finds that it prefers the evidence of Mr. Stroud in this regard at a value of $395,000.00. The Board finds that it is within the range as noted by Mr. Robson with his additional equivalent reinstatement calculation.

INJURIOUS AFFECTION

[134] The Board has already found that the Remnant Lands have been injuriously affected by the taking. The Board has found that the highest and best use of the Subject Lands before the taking was as long term Living Area that would be brought into the Urban Boundary of the City of Oshawa and that after the taking the highest and best use would be as speculative Employment Lands following the Remnant Lands being brought into the Urban Area of the City of Oshawa.

[135] Mr. Robson in his report examined a number of comparables with speculative future employment development potential. These he adjusted based on a number of factors including the servicing options for the Remnant Lands would be more restrictive due to the presence of the highway corridor, the access would be affected by the closure of Wilson Road North, the probable development layout of the Remnant Lands taking into account the water feature would be affected, the development layout would also be affected by the Ministry development setbacks for which a permit is required for 45 m and a setback for no use for 14 m, and access with the result of the Wilson Road North closure to the highway interchange would be more circuitous.

[136] Having done that analysis he arrived at a value of $17,500.00 per acre of table land. With regard to the CLOCA regulated area of 6.90 a. he valued that at $7,500.00 per acre and with regard to the 14 m Highway 407 development setback being 1.49 m he valued that at $0 per acre.

[137] Mr. Stroud in his report examined a valuation under a future employment development land scenario. In that regard his preferred methodology was to use a ratio analysis whereby an examination of a similar market place undertaking to determine a ratio of future residential land to future employment land. Then that ratio would be

applied to the known estimate of market value for the Remnant Lands under a future residential land scenario which has already been determined to be $35,000.00 per net developable acre. He then looked at four sales of future residential land with medium-term development potential and four sales of future employment development with medium-long term potential and arrived at a ratio of 58.8% of the value of residential development land. Having arrived at the value of $35,000.00 per acre and applying the 58.8% he arrived at an employment land value of $20,000.00 per net developable acre.

[138] Mr. Van Houtte did not provide any evidence with regard to Employment Land values.

[139] The Board therefore has two opinions of value for net developable acreage at $20,000.00 and $17,500.00 which the Board finds to be a reasonable range and will utilize the average in arriving at a value of $18,750.00 per net developable acre.

[140] With regard to the CLOCA regulated lands as noted above Mr. Robson has valued that using 6.9 acres at $7,500.00 per acre whereas Mr. Stroud has utilized the full acreage of 11.515 acres at a Speculative Employment Open Space land value of $12,500.00 per acre.

[141] The Board prefers the evidence of Mr. Jordan in this regard and will utilize the 7.19 acres and the $7,500.00 per acre value. With regard to the 14 m 407 development setback only Mr. Robson did a calculation of that at 1.49 a. which he assigned $0 value.

SUMMARY

[142] To summarize, the Board sets out below its land calculations and the details of the compensation awarded.

LAND CALCULATIONS

1. Subject Lands: 72.373 acres

2. Expropriated Lands: 20.962 acres

   Less .717 acres Greenbelt: 20.245 acres

3. Expropriated Lands: Less 1 acre parcel for residence and improvements: 19.245 net developable acres

4. Before the Taking: Remnant Lands: 51.411 acres

   44.048 acres Developable

   0.173 acres Greenbelt

   7.19 acres CLOCA

5. After the Taking: Remnant Lands: 51.411 acres

   42.558 Developable

   0.173 Greenbelt

   7.19 CLOCA

   1.490 14m MTO setback

SUMMARY OF COMPENSATION AWARDED

1. Expropriated Lands: 20.962 acres

   a) 19.245 acres Net Developable @ $35,000/acre $ 673,575

   b) .717 acres Greenbelt $ 5,378

   c) Residence and improvements (on 1 acre) $ 395,000

2. Injurious Affection Remnant Lands: 51.411 acres

   2A. Before

a)	44.048 Net Developable	@ $35,000	$1,541,680	
b)	0.173 Greenbelt	@ $ 7,500	1,297	
c)	7.19 CLOCA	@ $ 7,500	$ 53,925	$1,596,902
	51.411			

2B. After

a.	42.558 Net Developable	@ $18,750	$797,962	
	.173 Greenbelt	@ $ 7,500	$ 1,297	
b.	7.19 CLOCA	@ $7,500	$ 53,925	
c.	1.490 14 m MTO setback	Nil	Nil	$ 853,184
	51.411			

2C. Injurious Affection

Before	$1,596.902	
After	853,184	
	$ 743,718	$ 743,148

3.	Hydro Corridor "Rental"		Nil
4.	Disturbance Damage @ 5%		$ 19,750
5.	Disturbance Damages: Moving Expenses		$ 4,673
6.	Total		$1,842,094
7.	Less MTO Payment	-	$ 358,000
8.	Total Compensation Awarded		$1,484,094
9.	Plus Interest		
10.	Plus Costs		

INTEREST

[143] With regard to the matter of interest, the parties agree that interest on the market value and injurious affection is to be applied as of May 15, 2012 to the issuance date of the Board's decision. The Board will leave the calculation of interest to counsel, and in the event of disagreement, the Board may be spoken to.

COSTS

[144] With regard to the matter of costs, in light of the findings of the Board above, the Board awards costs to the Complainants, which are to be agreed upon, failing which they shall be assessed.

ORDER

[145] This is the Order of the Board.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.