Court File No. C50945

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF AN APPLICATION UNDER SECTION 116(1) 6

OF THE *SOCIAL HOUSING REFORM ACT, 2000,* S.O. 2000, c. 27
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43

BETWEEN:

THE REGIONAL MUNICIPALITY OF YORK

Applicant
(Respondent in Appeal)

and

THORNHILL GREEN CO-OPERATIVE HOMES INC. and
CO-OPERATIVE HOUSING FEDERATION OF CANADA

Respondents
(Appellants)

EXHIBIT BOOK – VOLUME 3 of 5

September 28, 2009

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INDEX

Exhibit Book Index

Tab	Contents and Sub-tabs
[VOLUME 1]	
Affidavits Provided by Thornhill Green Co-op and CHF Canada	
1	Affidavit of Nicholas Gazzard affirmed June 11, 2008
A	Excerpts from Co-operative Housing Federation of Canada's ("CHF Canada") website
B	Nicholas Gazzard, "The Benefits of Co-op Housing"
C	CMHC, "Co-operative Housing Programs Evaluation", Executive Summary dated September 2003
D	Excerpt from "Eviction in Ontario Housing Co-operatives: A Proposal for Change" dated March 2004
E	Excerpts from Ontario Hansard re: *Co-operative Corporations Statute Law Amendment Act, 1992*, on December 16, 1991, June 23, 1992, July 9 and 13, 1992
F	Letter from Colandco Co-operatives Homes Inc., to the Board of Directors and Members, Thornhill Green Co-operative Homes Inc. ("Thornhill Green Co-op") dated June 11, 2008
G	CHF Canada – Financial Scenario Calculations
H	CHF Canada, Thornhill Green Co-op Governance Review, Education and Training Plan
I	Thornhill Green Co-op, Sample By-Law: The Temporary Board of Directors By-Law
J	Notice of Triggering Events dated March 9, 2006, from Ms. Sylvia Patterson, Director, Housing Services, Community Services and Housing Department, York Region, to Ms. Sue Daniel, Chair, Thornhill Green Co-op
K	Copy of Resolution re: Thornhill Green Co-op from Minutes of York Region Council dated April 27, 2006

Exhibit Book Index

Tab	Contents and Sub-tabs
2	Affidavit #2 of Nicholas Gazzard affirmed July 2, 2008
3	Affidavit of Diane Miles affirmed June 30, 2008
	A *Social Housing Reform Act, 2000*, S.O. 2000, c. 27, s. 102
	B *Social Housing Reform Act, 2000*, S.O. 2000, c. 27, ss. 102-110, as enacted in 2000
	C Letter dated February 7, 2003 from Ms. Christine Terry, Manager, Housing Subsidies, Community Services and Housing Department, York Region, to Ms. Jennifer Adamthwaite, President, Thornhill Green Co-op
	D Letter dated February 2, 2004 from Ms. Christine Terry, Manager, Housing Subsidies, Community Services and Housing Department, York Region, to Ms. Jennifer Adamthwaite, President, Thornhill Green Co-op
	E Notification of Ontario Regulation 244/04 and a copy of O. Reg. 244/04
	F *Social Housing Reform Act, 2000*, S.O. 2000, c. 27, ss. 102-111, as in force as of July 1, 2008
	G Report dated May 20, 2004 from Connelly Consulting Services re: Thornhill Green Co-op's "negative subsidy" situation
4	Affidavit #2 of Diane Miles affirmed November 14, 2008
5	Affidavit of Susan F.J. Daniel affirmed July 1, 2008
	A Notice of Triggering Events dated March 9, 2006, from Ms. Sylvia Patterson, Director, Housing Services, Community Services and Housing Department, York Region, to Ms. Sue Daniel, Chair, Thornhill Green Co-op
	B Responding Cover Letter dated May 4, 2006, from Ms. Sue Daniel, President, Thornhill Green Co-op, to Ms. Sylvia Patterson, Director, Housing Services, Community Services and Housing Department, York Region
	C Copy of Resolution re: Thornhill Green Co-op from Minutes of York Region Council dated April 27, 2006

Exhibit Book Index

Tab	Contents and Sub-tabs
D	Letter regarding Thornhill Green Co-op's response to Notice of Triggering Events dated July 19, 2006, from Ms. Sylvia Patterson, Director, Housing Services, Community Services and Housing Department, York Region, to Ms. Sue Daniel, Chair, Thornhill Green Co-op
6	Affidavit of Andrea Bradley affirmed July 9, 2008
A	Report No. 2 of the Regional Community Services and Housing Committee Meeting held on March 8, 2006
B	Minutes of the Council of the Regional Municipality of York dated March 23, 2006
C	Report No. 3 of the Regional Community Services and Housing Committee Meeting held on April 12, 2006
D	Minutes of the Council of the Regional Municipality of York dated April 27, 2006
E	Report No. 5 of the Regional Community Services and Housing Committee Meeting held on June 7, 2006
F	Minutes of the Council of the Regional Municipality of York dated June 22, 2006
G	Report No. 1 of the Regional Community Services and Housing Committee Meeting held on February 13, 2008
H	Minutes of the Council of the Regional Municipality of York dated February 21, 2008
Affidavits Provided by The Regional Municipality of York	
7	Affidavit of Kerry Hobbs sworn May 29, 2007
A	Corporation Profile Report for Thornhill Green Co-op dated May 1, 2007
B	Letter from Sylvia Patterson, Director, Housing Services, to Toni Farley, Director, Social Housing Branch dated February 22, 2006
C	Letter from Sylvia Patterson, Director, Housing Services, to Sue Daniel, Board of Directors, Thornhill Green Co-op dated March 9, 2006

Exhibit Book Index

Tab	Contents and Sub-tabs	
	D	Letter from Doug Barnes, Assistant Deputy Minister, to Joann Simmons, Commissioner, Community Services and Housing dated July 6, 2006
	E	Letter from Joann Simmons to Bryan A. Tannenbaum, President, Mintz & Partners Limited (the "Receiver and Manager") dated July 19, 2006
	F	Receivership Services Agreement between the Regional Municipality of York and the Receiver and Manager dated July 19, 2006
	G	Loan Agreement The Regional Municipality of York and Thornhill Green Co-op dated December 20, 2006
	H	Promissory Note dated January 29, 2007
	I	Assignment of Rents dated January 29, 2007
	J	Mortgage dated February 26, 2007
	K	General Security Agreement dated January 29, 2007
[VOLUME 2]		
	L	Enquiry Response Certificate from Ministry of Consumer and Business Services dated May 1, 2007
	M	Report from the Receiver and Manager dated September 8, 2006
	N	Report from the Receiver and Manager dated November 1, 2006
	O	Report from the Receiver and Manager dated April 16, 2007
	P	Consent from the Receiver and Manager
8	Affidavit of Kerry Hobbs sworn November 10, 2008	
	A	Updated Chronology of Events in Thornhill Green Co-op Proceedings
	B	Letter from the Ministry of Municipal Affairs and Housing regarding Ministerial Consent for Loan dated July 6, 2006
	C	Deficit Reduction Plan prepared by Precision Property Management as of April 28, 2006

Exhibit Book Index

Tab Contents and Sub-tabs

[VOLUME 3]

Transcripts of Cross-Examinations on Affidavits

9 Transcript of the cross-examination of Diane Miles on November 19, 2008

10 Transcript of the cross-examination of Susan Daniel on November 19, 2008

11 Transcript of the cross-examination of Kerry Hobbs on November 20, 2008

Responses to Undertakings Given During Cross-Examinations

12 Cover Letter regarding responses to undertakings made by Diane Miles, from Klippensteins to Borden Ladner Gervais LLP, dated November 21, 2008

- A Email from Diane Miles to Judy Shaw *et al* regarding "Thornhill Green Co-op Receivership," dated July 21, 2006
- B Email chain between Kerry Hobbs to Diane Miles regarding "Receivership Transition Plan," dated May 29-30, 2007
- C Email from Diane Miles to Nick Sidor regarding "Thornhill Green," dated April 29, 2008

13 Cover letter regarding responses to undertakings made by Kerry Hobbs, from Borden Ladner Gervais LLP to Klippensteins, dated November 21, 2008

- A Materials provided regarding package sent to the Ministry of Housing seeking consent to the sale of Thornhill Green Co-op, beginning with a cover letter from Kerry Hobbs to Lilian Hulme-Smith regarding "Ministerial Consent Requests – Thornhill Green Co-operative Homes Inc.," dated February 29, 2008
- B Briefing note prepared by Kerry Hobbs regarding Thornhill Green Co-op, dated September 26, 2007
- C Briefing note prepared by Kerry Hobbs regarding Thornhill Green Co-op, dated November 19, 2007

Exhibit Book Index

Tab	Contents and Sub-tabs
D	Appraisal Report on Thornhill Green Co-op, prepared by Peter D. Clark for the Service Manager, effective date July 29, 2005

[VOLUME 4]

Reports of the Receiver and Manager

14	First Report of the Receiver and Manager (as Court-appointed Receiver and Manager) dated May 14, 2008
A	Appendix "A" – Letter from The Regional Municipality of York (the "Region") to Board of Directors, Thornhill Green Co-op dated July 19, 2006
B	Appendix "B" – Order of Madam Justice Pepall dated June 26, 2007
C	Appendix "C" – Articles of Incorporation for Thornhill Green Co-op dated October 1, 1991
D	Appendix "D" – Articles of Amendment for Thornhill Green Co-op dated October 18, 1991
E	Appendix "E" – Parcel Register for 51-95 Inverlochy Boulevard, Markham, Ontario dated May 14, 2008
F	Appendix "F" – Royal Bank of Canada Mortgage dated December 1, 2007
G	Appendix "G" – Agreement of Amending and Extending Charge/Mortgage dated April 28, 2008
	Acknowledgement and Direction dated April 28, 2008
H	Appendix "H" – Loan Agreement dated December 20, 2006
I	Appendix "I" – Promissory Note dated January 29, 2007
	Assignment of Rents dated January 29, 2007
	Collateral Mortgage dated February 26, 2007
	General Security Agreement dated January 29, 2007

Exhibit Book Index

Tab	Contents and Sub-tabs
J	Appendix "J" – Amending Agreement dated March 18, 2008
	Letter from the Region to the Receiver and Manager dated April 3, 2008
K	Appendix "K" – Enquiry Response Certificate from Personal Property Registration System Search dated May 14, 2008
L	Appendix "L" – Thornhill Green Co-op's audited financial statements for fiscal year ended January 31, 2006
	Thornhill Green Co-op's audited financial statements for fiscal year ended January 31, 2007
	Draft Thornhill Green Co-op's audited financial statements for fiscal year ended January 31, 2008
M	Appendix "M" – Receiver and Manager's Deficit Reduction Plan dated June 8, 2007
N	Appendix "N" – Phillips Hager & North ("PHN") Investment Account Statement, April 1, 2006 to June 30, 2006
	PHN Investment Account Statement – October 1, 2006 to December 31, 2006
	PHN Investment Account Statement – January 1, 2007 to March 31, 2007
	PHN Investment Account Statement – April I, 2007 to June 30, 2007
	PHN Investment Account Statement – July 1, 2007 to September 30, 2007
	PHN Investment Account Statement – October 1, 2007 to December 31, 2007
	PHN Investment Account Statement – January 1, 2008 to March 31, 2008
O	Appendix "O" – Phase I List of Deficiencies
P	Appendix "P" – Minutes of Members' Meeting of Thornhill Green Co-op, held on July 12, 2007 at 7:00 p.m.
Q	Appendix "Q" – Summary of Construction Statement of Receipts and Disbursements for the period from February 14, 2007 to April 30, 2008

Exhibit Book Index

Tab	Contents and Sub-tabs	
	R	Appendix "R" – Letter from the Receiver and Manager to the Region dated January 18, 2008
	S	Appendix "S" – Report of the Commissioner of Community Services and Housing and Commissioner of Corporate & Legal Services dated June 27, 2002
	T	Appendix "T" – Report of the Commissioner of Community and Health Services dated February 13, 2008
	U	Appendix "U" – Report of the General Manager of Housing York Inc. dated February 13, 2008
	V	Appendix "V" – Consent of the Ministry of Municipal Affairs and Housing dated April 11, 2008
	W	Appendix "W" – Letter from the Ministry of Municipal Affairs and Housing to Board of Directors, Thornhill Green Co-op dated February 13, 2001
	X	Appendix "X" – Draft Agreement of Purchase and Sale
[VOLUME 5]		
15	Second Report of the Receiver and Manager (as Court-appointed Receiver and Manager) dated June 27, 2008	
	A	Appendix "A" – Thornhill Green Co-op Chronology by Receiver and Manager
	B	Appendix "B" – Letter from the Ministry of Municipal Affairs and Housing to the Board of Directors dated January 26, 1998
	C	Appendix "C" – Comparison chart of expected rent increases and actual rent increases by the Board of Directors from 1998-2007
		Chart of Provincial Rent Increase Guideline rates from 1986-2007
	D	Appendix "D" – Letter from York Region to the Board of Directors dated March 9, 2006
	E	Appendix "E" – Proposal submitted by Thornhill Green Co-op

Exhibit Book Index

Tab	Contents and Sub-tabs
F	Appendix "F" – List of residents
G	Appendix "G" – Minutes of the Members' Meetings
H	Appendix "H" – Website Materials taken from Thornhill Green Co-op website
16	Third Report of Receiver and Manager (as Court-appointed Receiver and Manager) dated July 11, 2008
A	Appendix "A" – Correspondence from Borden Ladner Gervais LLP to the Receiver and Manager, the Board of Directors and the Service List dated May 30, 2007
B	Appendix "B" – Correspondence from Borden Ladner Gervais LLP to the Receiver and Manager, the Board of Directors and the Service List dated June 11, 2007

TAB 9

Court File No: 493/08

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D/sr

B E T W E E N:

CO-OPERATIVE HOUSING FEDERATION OF CANADA and
THORNHILL GREEN CO-OPERATIVE INC.

Applicants/Moving Parties

- and -

THE REGIONAL MUNICIPALITY OF YORK and
HOUSING YORK INC.

Respondents/Responding Parties

This is the Cross-Examination of DIANE MILES, on her Affidavits affirmed the 30th day of June, 2008 and on the 14th day of November, 2008, taken at the offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto-Dominion Centre, Toronto, Ontario, on the 19th day of November, 2008.

A P P E A R A N C E S:

MURRAY J. KLIPPENSTEIN CORY WANLESS (student-at-law)	--	for the Applicants
DOUGLAS O. SMITH	--	for the Respondent, The Regional Municipality of York

INDEX OF PROCEEDINGS

	PAGE NUMBER
DIANE MILES, affirmed	
Cross-Examination by: MR. SMITH	1 - 54
Exhibits	55 - 55
Undertakings	56 - 56
Under Advisements	57 - 57

DIANE MILES, affirmed

CROSS-EXAMINATION BY MR. SMITH:

1. Q. You are Diane Miles?

A. I am.

2. Q. And you are employed with Canadian...the Cooperative Housing Federation of Canada?

A. I am.

3. Q. And can we refer to that as CHF?

A. CHF Canada.

4. Q. Okay, CHFC.

A. A joke.

5. Q. And I understand that your evidence binds CHFC today.

A. It does.

6. Q. You have sworn two affidavits in these proceedings?

A. Yes.

7. Q. The first one being June 30, 2008, is that correct?

A. That is correct.

8. Q. And the second one being November 14, 2008?

A. That is correct.

9. Q. In reviewing these affidavits before

today, are there any changes that need to be made to the evidence as presented in either of your affidavits?

A. No.

10. Q. You have in your affidavit number 2 dated November 14, 2008 adopted certain portions of an affidavit sworn by Mr. Nicholas Gazzard?

A. Yes, that's right.

11. Q. Are there any changes that need to be made to the evidence of Mr. Gazzard that you have adopted?

A. No.

12. Q. I understand that you also provided an affidavit in the Labourview case; is that correct?

A. I did.

13. Q. In preparation for today, did you meet with and discuss your evidence with anyone from the board of directors of Thornhill Green?

A. No.

14. Q. Who have you met from the board of directors of Thornhill Green in the course of your business with CHFC?

A. You want me to identify which members of the board?

A. Yes.

15. Q. Which I have met? I have met all the members of the current board that are still on the board. There were some names of people that had moved out in terms of the application served on May 16th. So, I know...I have met Jim Common, Tibor Barsony, Rose Harrison, Maggie Fillmore, Galit Menahem, Murray Hewton, and Sharilyn Dyck. And in the past, when I attended board meetings...I am stretching my memory now. Janet Connelly, somebody called Gary. I can't remember his last name. I mean, I can probably find them in my files, because we're talking about four years ago in terms of the board before this board.

16. Q. Okay. Sue Daniel, have you met her?

A. Can you believe that? Sue Daniel. Sue doesn't live in the co-op anymore, so in my mind I am thinking she is not a current board member. So, sorry, yes, of course.

17. Q. Have you met with any of the rent geared to income residents?

A. I wouldn't know who is on rent geared to income.

18. Q. You haven't done anything on behalf of CHFC to determine the wishes of the rent geared

to income residents in respect of the sale... proposed sale of Thornhill Green?

A. Essentially, when CHF Canada deals with a community, we would never think in terms of households receiving RGI subsidy being any different in terms of status, interest in the community as market paying households. And we don't know who, in fact, was on rent geared to income when we are dealing with the co-op.

19. Q. Okay.

A. Unless we had been at an eviction. We may help around an eviction hearing, so there will be the odd situation where that happens. But when we are dealing with a community on large co-op issues, no, we wouldn't know.

20. Q. Okay. So, I think the answer to my question was no, you haven't done anything to determine what their wishes are in respect of the...

A. Well, we...

21. Q. Hold on.

A. Okay.

22. Q. And I think the reason that you gave me was because you don't treat them any differently and you wouldn't know who was RGI and who was not.

A. Right. That is fair enough.

23. Q. Let me ask you some questions about your first affidavit, June 30, 2008. And I think you have a copy of it in front of you.

A. Yes.

24. Q. When did you first become involved with the Thornhill Green receivership?

A. With the receivership? Involved is an interesting word. It would be the board meeting of July 19th, 2006 when I was asked by the co-op to attend a special board meeting that the Region wanted to hold, and they asked that I be there. And I was there when the receiver showed up with the Region.

25. Q. Can I get you to refer to paragraph 3 of your affidavit. Sorry, back up. The last sentence in paragraph 3, you say:

"...CHF Canada is authorized by the board of directors of Thornhill Green to submit this affidavit..."

Do you see that?

A. Yes.

26. Q. Are you aware of a Thornhill Green board resolution that authorizes you to submit this affidavit on behalf of...well, as part of Thornhill Green's cross-motion?

A. There was a resolution by the board of directors of Thornhill Green very soon after they had been served with the application for sale. And we met with them and they did, in fact, pass a resolution essentially...I don't have the wording of the resolution in front of me, but essentially authorizing...giving CHF Canada the right to make decisions with regard to the legal process. So it was pretty broad.

MR. KLIPPENSTEIN: I am obviously worried about privileged issues, and I didn't object but if you go further we may have to look at that.

27. MR. SMITH: Okay. I would like a copy of that resolution. I am obviously not interested in anything that refers to solicitor/client conversations, but I would like a copy of that resolution.

MR. KLIPPENSTEIN: I will take that under advisement. I think that is probably privileged and we probably won't turn it over, but I have your question. U/A

28. MR. SMITH: All right.

BY MR. MILES:

29. Q. Paragraph 4, you refer to the general budget of CHF Canada. How does CHF Canada get its income? Is it from dues paid by co-op?

A. About 90 percent of the income is from member dues. And 90 percent of the members would be housing co-ops. Something like that.

30. Q. You told me that your first involvement with Thornhill Green receivership was July 19, 2006. You attended a meeting with board members of Thornhill Green.

A. Yes.

31. Q. People on behalf of the receiver, Mintz & Partners Limited, and people from the Region.

A. That's right.

32. Q. Did you make any notes of that meeting?

A. I didn't make notes at the meeting. I certainly sent an e-mail about the meeting to my colleagues at CHF Canada. That would have been not even the following day, it would have been a couple of days later because the following day was another meeting that I also attended.

33. Q. Right. Do you have a recollection of what was discussed at the July 19th meeting?

A. Yes. My memory is that it was actually Sylvia Patterson that introduced everybody, introduced the receiver. Asked the staff, the two staff of the co-op, the property management staff to leave and then essentially told the board that the co-op was going to be put in the hands of the receiver while the...she may have given some background around the fact that the co-op had been looking for some money from the Region to do capital work and that the decision by counsel had been that that money must be managed by a receiver. So that was the kind of opening gambit. And then there was clearly questions and answers once people got over the shock of it. It was very shocking for board members. But they asked how long it was going to last.

They asked questions about what was going to happen to the property manager. They asked about what would be their own role. And my memory is that...and Sylvia answered most of the questions. But that they as a board wouldn't have much of a role. It would be a chance for them to take a break from their duties. And I actually intervened at that point, because...made it clear, because Bryan Tannenbaum was at the meeting, made it clear, and

Bryan agreed, that there is a difference of opinion between the receiver and the sector around what, in fact, were the continuing residual duties of boards of directors. So, I didn't make a big item of it, but did indicate that there were some issues there. Sylvia said that...maybe it would be Bryan Tannenbaum then also spoke and sort of explained how the property management would work, that they would keep Precision Property Management on on a month-to-month basis, they would supervise them. That as far as the members were concerned, they would ask for services just as they always had. But that the property managers would be supervised by the receiver and not the board.

And in tears of how long it was going to last, Sylvia thought probably two to three years. And there was some talk about education and the fact that before the co-op, you know, got back to self governance they would need training, there would have to be a plan. And I indicated at that point... because this was quite a new board. At least half the board had just been elected in May. And they had already arranged for board training for July 6th, actually. And we decided it would be better, both for the trainer in terms of, you know,

difficulty doing a normal usual routine board training, albeit adapted to an individual co-op the way they always are, it would be very difficult given that the board would have no, sort of, control of the assets or the finances for them to have training a month into a receivership. So, it was about that...that was cancelled. No, the training wasn't July. It was August, that's right, because that is when they were going to be having training.

34. Q. August 6th?

A. I think it was August 6th. I have got the material in there.

35. Q. Okay.

A. If the meeting was July 19th, it was August. It was the next month, anyway. And so there was...everybody agreed that that was a good idea. It would perhaps be a waste of time doing it now, but that that would be something that we would be looking to doing in the future.

36. Q. Okay.

A. I think that is kind of it.

37. Q. Were any assurances given by anyone from York Region that governance would be returned to the board after the repairs were complete?

A. Well, given that I was there talking

about...given that I was there, I had asked to be there by the Region, given that we were talking about looking for a transition plan and associated education and support once the capital work was completed, I certainly concluded that that meant that the co-op...the housing provider as a co-op would continue as such. And I believe that everybody else felt that way too.

38. Q. Okay. But my question was, were there any assurances given that governance would be returned to the board after repairs were completed?

A. Nobody asked the question.

39. Q. Did anyone from the region give that answer...

A. At the board meeting?

40. Q. Yes.

A. Not at the board meeting. Other than it is just some time, take a break, it will be two or three years.

41. Q. But no one said those magic words, that governance would be returned to the board after the repairs were completed?

A. Certainly there was talk about a transition plan to provide training to the board at the end of the receivership. Given that the co-op

sector was being discussed as the provider of the training, once again I can say we in that room believed that that meant the Region was at least in the absence of any kind of denial of such, was, in fact, at that point planning for the co-op to return. That is the best thing I can say.

42. Q. I don't want to be overly technical, but I do need an answer to my question.

A. Right.

43. Q. You are answering what you took from the meeting.

A. Yes.

44. Q. I am asking you what was said. And I think you have answered it, but I just want to make sure. No one from the Region said, "Governance will be returned to the board after the repairs are complete"?

A. I can't...I mean, the problem is I can't remember that because it wasn't asked and no one would have...I suppose I would have to say I don't know.

45. Q. Okay. Do you still have a copy of that e-mail that you sent to your colleagues?

A. Yes, I do.

MR. KLIPPENSTEIN: We can...

THE DEPONENT: We can show you that.

MR. KLIPPENSTEIN: ...get you a copy. U/T

THE DEPONENT: Yes. I took a paper copy of it. I didn't keep the e-mail.

BY MR. MILES:

46. Q. What was the date? You said it was a couple of days later.

A. It was the...it would have been the 21st. I think it was the Friday. Because the board meeting was the Wednesday...I think so. It was a couple of days afterwards, anyway.

47. Q. Okay. And you were also present at a July 20, 2006 meeting?

A. I was.

48. Q. That was an all-members meeting?

A. It wasn't a members meeting. It was an information meeting for the members. When we talk about members meetings, we talk about duly called members meetings with an agenda and due notice under the Act. This was, indeed, though, an information meeting for the members called the morning of July 20th. But the board was told about it the night before when I was at the meeting. And they did ask if I could be there.

49. Q. I am going to show you Exhibit G to the second report of Mintz & Partners Limited dated June 27th, 2008, which appears to be minutes of a July 20, 2006 at 7:00 p.m. meeting. Have you had a chance to review those notes in the past?

A. I have.

50. Q. And it seems to me that they are... they consist of four pages.

A. M'hmm.

51. Q. Are these...

A. Yes.

52. Q. Are these minutes, to the best of your recollection, an accurate summary of what was discussed at this meeting?

A. I don't believe they are an accurate summary and they give me great cause for concern.

53. Q. Okay. Did you take any of your own notes at this meeting?

A. It is all in the e-mail.

54. Q. So we can look at the e-mail for...

A. Yes.

55. Q. ...your recollection of what happened?

A. That's right.

56. Q. Did you do anything to correct or

ask that these minutes be corrected?

A. I didn't see the minutes until I saw the Motion for Sale. There were no minutes provided to anybody before then. I wouldn't call them minutes.

57. Q. All right.

A. No one was told that anybody was taking notes at the meeting. But they were done by a staff of Mintz & Partners.

58. Q. Did you do anything to follow up with the events discussed at this meeting, July 20, 2006, by way of sending a note or an e-mail to either the Region or the receiver to commemorate what happened at the meeting?

A. What do you mean? I don't know what you mean by "to commemorate".

59. Q. Did you send a note to anyone, including an e-mail or a letter, to anyone at the Region or with the receiver saying, "I am just writing to confirm that the following items were discussed at this meeting"?

A. No. No, I didn't. I can't imagine why I would. If you don't mind me saying so. Can I say more about the meeting, or you don't want me saying more about the meeting?

60. Q. Sure, go ahead.

A. I actually thought it was really quite a good meeting. I thought the members were dignified. They were concerned that the notice was so short, that there were...there was not...there certainly weren't that many members there. I spoke at the meeting, which the minutes do not reflect. I spoke to the fact that the co-op sector would be supporting the co-op, that we would be helping with the transition plan, and that, you know, obviously made comments that receivership was not a good thing. That we didn't see it as a sector as a good response to problems. That said, we were going to be supportive of the co-op, but also that we would continue to argue with the receiver, particularly Mintz & Partners, around some of their understanding of the powers of the board as they continued.

So, I made a statement about that and made other interventions during the course of the meeting. The minutes don't reflect that. I didn't see the minutes until after May 16th, 2008, otherwise I would have sent something to the receiver.

61. Q. Okay. Did anyone at the July 20, 2006 meeting, anyone from the Region give any

assurances that governance would be returned to the board after the repairs were complete?

A. To some extent, I would say my response is similar to the response that I have just given on the board to talk about the board meeting. There was certainly no indication...when people ask that, you know, will we stay as a co-op or...I am not even sure if they actually asked if we would stay as a co-op. Will we be okay when the receivership is over, will we continue...yes, will we continue to be a co-op. And, again, I can't remember exactly what was said, but there were reassurances about the continuation of the community and the sense given that they were talking to a co-op community, that they meant a co-op community.

62. Q. Okay. But, again, I am going to chase you around the mulberry bush on this one as well.

A. Then I have to say, I don't know.

63. Q. You can't recall anyone saying, "The governance will be returned to the board after the repairs are completed"?

A. Same thing. There was discussion about training and transition and I guess people don't ask questions if they are coming from a base

of trusting that it is going to continue as a co-op and that the receivership is there for the management of this 2.1 million dollars. People did ask about, "How is that going to be paid for?" And assurances that that would be reviewed, likely we would see how things were after about five years and see what the co-op's ability was. The co-op's ability to pay back. So, it didn't...it was not an issue. I guess that is what I have to say.

64. Q. So I think the answer to my question is no.

A. I can't remember.

65. Q. The minutes, if we can call them that, just for ease of reference, and I know you don't accept them as minutes, reflect that somebody asked, "Will Thornhill Green remain a co-op?" and the answer was given:

"...It is too soon to stay, however the social stock always has to be maintained..."

A. I find it very hard to think that in the context of that group, that type of a...that that is exactly what was said.

66. Q. It could have been?

A. It is possible.

67. Q. Can I get you to take a look at paragraph 21 of your affidavit.

A. Yes.

68. Q. It says:

"...In about May of 2007 at approximately the time that the Region applied to have the receivership changed into a court appointed receiver, [you] were contacted by Kerry Hobbs of the region who requested information from CHF Canada about transition plans for co-ops in receivership. I sent her some materials..."

A. That's right.

69. Q. Is that accurate?

A. It is.

70. Q. I am going to show you an e-mail and ask if you can identify it. It is an e-mail chain, to be accurate.

A. Yes, that is it.

71. Q. Okay. It consists of five pages, I believe, or six pages.

A. Yes. They were samples. They had not been adapted for Thornhill Green. They were samples.

72. Q. Is this, to your recollection, an accurate reproduction of what information passed back and forth between you and Ms. Hobbs?

A. Yes.

73. MR. SMITH: I am going to mark this as Exhibit 1. This is an e-mail chain between the witness and Ms. Kerry Hobbs dated May 29th, 2007 with two attachments.

--- EXHIBIT NO. 1: E-mail chain between Diane Miles and Kerry Hobbs dated May 29, 2007 with two attachments

BY MR. MILES:

74. Q. And this is what is referred to in paragraph 21 of your affidavit, is that correct?

A. Yes.

75. Q. So the material that you provided to Ms. Hobbs was a document entitled "Proposed Methodology for Transition"?

A. Yes.

76. Q. And the second document was "Co-Op Education and Training Plan".

A. Yes.

77. Q. Yes?

A. Yes, that is what I sent.

78. Q. Okay.

A. But they are samples.

79. Q. Right.

A. For another co-op, basically.

80. Q. Okay. These were not developed for the purposes of Thornhill Green?

A. No.

81. Q. This was something that was going to be developed into a Thornhill Green-specific program?

A. It could have been, that's right. Exactly. That is the kind of thing that we would do. And I am just trying to see where Kerry's... there was another...there is one more. Kerry sent another one after I sent one, and she said something to the effect of, "We are about a year away from this". I have got that e-mail, if you would like to see it.

82. Q. Yes.

A. "We are about a year away from this". And that was May 30th. So my assumption was in a year's time, someone would say, "It is time to start the transition plan". So it is interesting that Kerry's response isn't part of these documents.

83. Q. Can you provide me with the response from Kerry?

A. Absolutely. U/T

84. Q. Was this material that you provided to Ms. Hobbs ever provided to anyone from Thornhill Green?

A. Was this material provided to Thornhill Green?

85. Q. Yes.

A. No. No. Because the co-op was in receivership under the...no. Basically, the receiver is in charge, and the Region. But certainly I spoke about it. That is what we spoke about, in terms of the type of transition plan, when I stood up and spoke in July of 2006. And this is the kind of thing that we were talking about.

86. Q. Did CHF Canada ever help Thornhill Green develop a transition plan?

A. No, because we were waiting...Kerry said we are a year away from that. That was May 30th, 2007. That is the date of her response to me, May 30th. We are about a year away from that. And so, no, we have enough experience now working with co-ops in receivership, including with Mintz & Partners, and when they are ready for an educational

transition plan to happen, they ask us for it. Start calling every day, "You ready yet? You ready yet?" That is not the way it works. Do you want this back.

87. Q. Sure. Did CHF Canada ever propose an education session to Thornhill Green? Did CHFC ever say, "Okay, Thornhill Green, here is the education that is available to you"?

A. Well, it would have been...you mean since the receivership?

88. Q. Yes.

A. No, because we talked about...well, other than the one that was planned for August, 2006, which we agreed with the Region and the receiver to cancel until the end of the capital work was done and the receiver was ready to start the transition plan, to start the hand over. So it would have been patently foolish to stand up at some point and say, "Let's do a workshop". That said, they continued to be our members and we have sent all the materials to them about the various educational events, including regional education events in York Region, and if the receiver or the property manager did not encourage involvement in CHF Canada events, I don't think that is our

responsibility.

89. Q. Okay. In paragraph 22, you stated that you did not receive any further contacts from the Region after that time expressing interest in working on programs or strategies.

A. That's right.

90. Q. Did you ever follow up with anyone from the Region suggesting that maybe it was time to work on programs...

A. No, but I attended every members meeting that they invited me to. And clearly there is back and forth. You know, I have known these people for years. We worked with York Region in other co-ops. So, it is not the kind of situation where you just, "Oh, this is the day I am going to call and say, 'Is it time to do it?'" You are having an ongoing relationship. The co-op is in receivership. They have got so many players involved.

You are waiting for the appropriate time, but you don't make that time. Especially after they have said the receivership would be two to three years. They said that at the board meeting, they said it at the members meeting, they continued to say that. So, why would we start asking, "Are you

ready now? Are you ready now?" It is preposterous. But we stayed engaged. We stayed involved. The staff called. We gave advice. We talked to Kerry. So there was...and they continued to be our members.

91. Q. Did anyone from the board of directors, past or present, ask CHF Canada for any training or transition planning during the course of the receivership?

A. During the course of receivership, they were not treated as board members and didn't feel they had any authority. And, in fact, did not have authority because they were not given opportunity to meet as a board. They can't make individual decisions as a board. They were basically discouraged from acting as a board with any kind of control. How could they ask for a workshop? This is going to cost them money. They have got no access to any assets. So, no, they didn't and one wouldn't expect them to.

92. Q. Okay. I take it that CHF Canada provided no training to the board during the course of the receivership...

A. What board?

93. Q. ...for the same reasons that you have told me?

A. Yes.

94. Q. And from what you have told me, I take it that I am correct that no transition plan has ever been provided by CHF Canada or Thornhill Green to the Region in respect of Thornhill Green?

A. Only the samples. Mintz & Partners is thoroughly aware of the kinds of transition plans that are available and, in fact, have been implemented in other co-ops. So, we were waiting for them to decide it is time.

95. Q. Okay. So the answer to my question is no?

A. No.

96. Q. And has there been any proposal for governance provided by CHF Canada or Thornhill Green to the receiver or to the region during the course of the receivership?

A. Well, it is the same thing. It would be a transition plan and the expectation would be governance that could involve external directors, non-resident directors. That is part of the sample transition plan, part of the temporary bylaw that is referred to in that sample transition plan. So within that, there was clearly an assumption that there were a number of, kind of, governance

strategies that we might take.

MR. KLIPPENSTEIN: If I may clarify, I think there was a further elaboration in the materials, the affidavit materials submitted during these legal proceedings.

THE DEPONENT: Yes.

MR. KLIPPENSTEIN: So I don't know if you count that.

97. MR. SMITH: Sorry, what are you referring to?

MR. KLIPPENSTEIN: There was further, more detailed materials about possible transition...

98. MR. SMITH: Right. Okay.

THE DEPONENT: That was attached to Nicholas Gazzard's first affidavit.

99. MR. SMITH: Fair enough.

BY MR. MILES:

100. Q. I understand that you were present at a June 12, 2007 meeting?

A. I was.

101. Q. And have you seen what purports to be the minutes arising out of that meeting?

A. I am sure I have. I can't remember.

102. Q. I will show them to you. They are part of the same exhibit to the second report of Mintz & Partners Limited dated June 27, 2008 and it is at Exhibit G.

A. This is the termite meeting. Of course I remember the termite meeting. Catherine Hristow chaired it.

103. Q. Have you seen those minutes before?

A. Yes. It is July. You said June. It is July 12th.

104. Q. My mistake.

A. I thought, how could it be June? Because it was after the court order. Yes, so I have seen this. Yes.

105. Q. Okay. You were present at that meeting?

A. I was present at that meeting.

106. Q. And are those minutes accurate?

A. Of course, they are not minutes. No duly called meeting. Minutes are subject to some form of approval, aren't they, ongoing? So these are notes from the receiver. I thought they were okay. It is a cut and paste thing from presentations from the various contractors that were there. It seemed okay.

107. Q. The notes or the minutes seem to say that advice was given that a copy of the court order appointing Mintz & Partners Limited was available.

A. They said it was available in the office, that's right. At that point, I hadn't actually seen it. And it took until about...well, early August Catherine Hristow sent me a copy of it. But I hadn't seen it until that point.

108. Q. But you did obtain a copy of the order...

A. In August, yes.

109. Q. Of 2007?

A. Yes. There was one aspect of this meeting that appears...it is not so much in the notes, because the notes just sort of describe who said what. But there was some aspect of this that found its way into a receiver's report that talked about...that used the lack of an asbestos management plan in the co-op as a kind of example of poor management. And, in fact, Catherine Hristow from Mintz & Partners sort of tried to say that at the meeting. But it was made very clear by the asbestos expert that, indeed, it was unusual for social housing providers at that stage to have asbestos management plans because the regulations in the

Ontario Health & Safety Act came into force in November, 2005 with a period to November, 2007 to actually implement them.

Now, the receiver was there from July of 2006. So here we are in July, 2007 and the co-op has been blamed for not having an asbestos management plan. I went to a session that York Region put on in October, 2007...

110. Q. Can I just stop you there?

A. I am sorry, it is just...

111. Q. I didn't ask you that.

A. You didn't ask me any of that. But you asked me if I agreed what I thought about the minutes. And what I am saying is the minutes in some ways don't reflect what was said at that meeting. Because I think they were an embarrassment to Mintz & Partners. So, I don't know when these minutes were done. I didn't see them until they were appended to some report.

112. Q. Did you make any of your own notes for that meeting?

A. No, I don't think I did. No, I didn't.

113. Q. Okay.

A. I have got...they gave us some

handouts. I didn't take any notes.

114. Q. Can I get you take a look at paragraph 23 of your first affidavit, please. And I will take that book back.

A. Sure.

115. Q. Thanks. Paragraph 23, you refer to a telephone call that you received from the co-op's staff person relating to a membership issue.

A. Yes.

116. Q. Who was that person?

A. It was Therese Baduria, Precision Property Management.

117. Q. And what was the nature of that conversation?

A. She was calling apologetically to say that she had just faxed a letter to our Ottawa office terminating Thornhill Green Co-Op's membership in CHF Canada. And she called because she felt terrible about it and thought it would be good to give us a heads up. As you might imagine, co-op staff property management companies work throughout the sector and we had become somewhat familiar with staff and I guess she felt that it was a courtesy to let me know this letter had gone to our Ottawa office. I then got a copy of the

letter...okay, so that is what happened.

In the course of that discussion, she said, "We think that the Region is planning to take over the co-op. Everybody feels that". And I said, "Well, that is ridiculous", or words to that effect. But I said I will certainly ask when I follow-up on this membership issue, I will ask Kerry, I guess I said, because Kerry was my usual contact. So, that is what happened.

118. Q. Okay. And did you develop a sense at that time, or at least a concern, that there was, as Therese said, a takeover plan?

A. I couldn't really...I was shocked at the thought so, no, I...I figured that Therese was wrong, frankly. But that I had an obligation to, you know, to ask about it.

119. Q. Okay.

A. But no part of me thought, "I guess something is definitely up, a decision has been made". I didn't feel that at all. I just felt Therese was anxious. I think they were anxious about their own position within the co-op. So, I think she...it was a personal sharing of concern.

120. Q. Okay. Can I get you to look at paragraph 24 of that affidavit?

A. Yes.

121. Q. You are referring to an April 28, 2008 phone call with Kerry Hobbs.

A. Yes.

122. Q. Did you take any notes after that?

A. No, I didn't take any notes. But I...

123. Q. Did you commemorate the meeting...

A. I made notes of what I was going to ask Kerry. But it wasn't...it was about the termination of the membership. My notes were all about that; who made the decision. In other words, I sort of clarified the questions I was going to ask her. So, I didn't really make any notes about it.

And I did do...I sent an e-mail afterwards, but it was mostly about the screw-up on the membership...the membership termination decision and the fact that, clearly, in receipt of further information on the implications of dropping the membership, they were going to look at it again. So, I did send an e-mail to our corporate affairs director who deals with the insurance. Because that was the problem. You drop membership and then insurance costs go up, and the members who have insurance with us lose their insurance. So that was

really what the nature of that conversation was about. And the note I made was just an e-mail...obviously that is what I intend to do, write e-mails and share it with colleagues.

124. Q. In paragraph 24 you state that you asked Ms. Hobbs about whether the Region was planning to dissolve the co-op and absorb it into the Region's own housing.

A. Yes, I did. I said I...you know, I said, "I heard on Friday that there is a rumour that you are planning to take over the co-op". I either said, "Have you made some kind of decision like that?" or I said, "What is up?" And Kerry, she was caught off guard. She wasn't expecting to talk about that. She was expecting to talk about the membership in CHF Canada.

And just as Kerry can't remember exactly what she said, I can't remember exactly what we said. But what I said...we said, I said...but, I do remember the conversation. It wasn't just generalities. I asked if they were planning to do that, and she said, "No, but if we did, it wouldn't be the first time". And I knew what she was talking about. She was talking about the 14 townhouse units in Woodbridge that were separated through the

download between two different service managers. And there was a two-year consultation. And as I said, it wouldn't be the same because there was, A, it was one co-op with a few units split off, so the co-op wasn't taken over. And, secondly, there was a two-year consultation and the members agreed to that.

So that wouldn't be a precedent. I said we would be very worried about the precedent, and she went on to say, "Well, it won't be precedent because we would never do it with another co-op", which on reflection is pretty bizarre. That is what she said, and I said, "No, for us the precedent is if York Region gets away with this, other service managers will get away with it". And that was the essence of our discussion and I think that is more than generalities, frankly. But I said we would have...if they were planning to do something like that, we would certainly seek some kind of legal advice.

But, you know, again, Kerry and I go back a long time. It wasn't. "We are going to go get a lawyer now because you are planning to do this". It is, like, well, if you do, if you are...and then I guess we returned back to where I was going to get

some information on the impact of the membership on the insurance and would get back to her. And that is what I did April 28th. And by April 29th, they had rejoined CHF Canada. That was the upshot of that.

125. Q. Okay. You have seen, obviously, the affidavit of Kerry Hobbs dated November 10, 2008?

A. Yes.

126. Q. And your affidavit says that during this telephone conversation of April 28th, 2008, Kerry advised you that no decision had been made.

A. That's right.

127. Q. And in Ms. Hobbs' affidavit at paragraph 32, she says, "I didn't say that".

A. I know she does. She...

128. Q. Hold on.

A. Sorry.

129. Q. Can you explain that discrepancy in your evidence...between your evidence and Ms. Hobbs' evidence?

A. Yes, I can. I can only...I hope that we are not kind of hanging here on semantics, because, in fact, those actual words...I am willing to admit those actual words may not have been used. And I don't think we said that in my affidavit.

Just that she said no decision had been made. You can say that in many ways. I can say, "Have you decided?" She can say no, and there are all kinds of different ways. But certainly I think...I put her on the spot. She was in a very difficult situation and I guess I can understand how she could very strictly speaking be able to say, "I didn't say that". But that was not my understanding.

130. Q. Did you take away from that conversation that no decision had been made?

A. I certainly did.

131. Q. Do you feel today that Ms. Hobbs was trying to mislead you?

A. Well...

132. Q. Or do you feel that she...

A. Well, you know what is interesting? I felt...because, frankly, there had been times, not just Kerry, other service managers will say, you know, "I just can't tell you about this", but they will find ways of telling you anyway. That wasn't the situation here. I did on reflection think, once I realized the decision had been made, that maybe Kerry felt justified because it hadn't gone to court, and the court was actually going to make the final decision.

So I kind of rationalized it in that way; that maybe she...for sure she said it, she left that impression at least with me, but maybe it was because in her mind the Region itself...not the Region, the staff, the bureaucrats and the receiver weren't making that decision, the court was going to make the decision. That was the only rationalization I could possibly make.

133. Q. My question was, is it your view that Ms. Hobbs was actively trying to mislead you?

A. Well, she was very anxious...you know, that is an almost impossible question to answer. She was anxious and I felt bad for her. I think it was a misleading impression. But whether, again, I caught her off guard, this wasn't a plan, you know, that is really all I can say. I don't know.

134. Q. You said that you followed up this conversation with the e-mail. In your e-mail, did you reference any of your discussions about this issue, about the sale of Thornhill Green? Or about the rumour that you had heard?

A. Yes, just very briefly. Mostly the e-mail was about the insurance.

135. Q. Can I get a copy of that e-mail?

A. Yes.

U/T

136. Q. Whatever the exact words that had passed between you and Ms. Hobbs were, did you come away feeling reassured that there was no plan by the Region to support a sale of Thornhill Green?

A. I came away reassured that there was no decision made, but that it was one of the options being discussed.

137. Q. Okay. What did you do after that conversation?

A. Well, you remember this is April 28th. I shared that with...which is right before our AGM. I shared that with my colleagues and said I thought we should probably get some legal advice. But I don't think we did very much more until two weeks later, the co-op board was served.

138. Q. Okay.

A. In other words, there wasn't a lot of time to really do much. And, frankly, if I had known a decision was made, I would have beat the bushes down. So that is the reality of it.

139. Q. Okay. During that telephone conversation that you have referenced in your affidavit, April 28, 2008 or at any other time before you were served with the Motion for Sale, did

you tell Ms. Hobbs or anyone else with the Region that CHF Canada would be interested in making submissions to the Region before any decision had been made?

A. First of all, the Motion of Sale wasn't served to CHF Canada.

140. Q. It was served on Thornhill Green?

A. Yes.

141. Q. Okay.

A. So, I didn't see it until they called me.

142. Q. So at any time before the Motion Record was served?

A. Did we make submissions...

143. Q. Did you tell anyone, either Kerry or anyone else, that before the Region makes a decision, we would like to be advised that the decision is going to the Region?

A. Again, it is one of those very difficult questions. I think that...

144. Q. It is my job.

A. Yes. There is a history here...

MR. KLIPPENSTEIN: Just a minute. Can you clarify, did you say after that phone conversation?

145. MR. SMITH: Yes.

MR. KLIPPENSTEIN: So between the phone conversation...

THE DEPONENT: So in those two weeks?

MR. KLIPPENSTEIN: During those two weeks.

146. MR. SMITH: Yes.

MR. KLIPPENSTEIN: Did she or someone from CHFC tell Kerry or someone at the Region that CHFC would want to make submissions on the issue of continuation...

147. MR. SMITH: Submissions to the Region.

THE DEPONENT: In those two weeks? Absolutely not, we didn't.

BY MR. MILES:

148. Q. If CHF Canada had been advised that the option of selling Thornhill Green was going to be put to York Region council, if you had been given that advice before the decision was made by council, what would you have done?

A. A, we would certainly have...I guess we would have got both our co-op services and government relations people in line. Because if they are already ready to make a decision at

council, you know, we would be looking to making some kind of deputation at council. And in terms of alternatives, there are some alternatives outlined in Nicholas Gazzard's affidavit. So, you know, for sure...and not knowing what the time frame would have been, I am not sure how those kinds of things work within York Region, what kind of time frame and what kind of option, but we had always assumed that there would be...there would be a transition back and they know enough about co-ops and the democratic process that at the very least the co-op members would have had an opportunity to vote on this, just as they had at Northwood Park.

So we would have been pressing council to defer any decision until a true democratic process had been allowed to happen. And I suspect we might have been successful at that. And then the alternatives, you know, if indeed, you know, there...on a real review and a decision of the members that they wanted to stay as a co-op, then I guess you would get into other potential options if the receivers...if the Region is going to play hard ball on the loan, then that is another whole area of discussion that one would get into. Would you look at the land trust option, whatever. There is a

whole bunch of strategies that one might have taken. But we would have taken them, that is for sure.

149. Q. As far as submissions, as far as submitting documentation, would CHF Canada have submitted anything other than what has been submitted in these legal proceedings?

A. Submissions to council?

150. Q. Yes.

A. I think I just described what we would submit. We would submit, in fact, a plan of...first of all, engaging with the members, finding out what the members want, then looking at the financial capabilities of the co-op, which I don't necessarily feel are reflected accurately in terms of their current status. So we would have made a submission that would say just halt and let's, in fact, implement an appropriate process here. So in terms of what the various outcomes are, I wouldn't be the only person looking at that. I am not the co-op developer. I am not the political person. That is the kind of thing that we would have been submitting.

151. Q. Okay. Do you know if such a vote that you talked about has occurred?

A. It has not.

152. Q. Let's take a look at your second affidavit. Now, in your second affidavit you adopt a number of paragraphs of an affidavit of Mr. Gazzard.

A. Yes.

153. Q. So I think we are going to have to get that out as well, if you have got that convenient to you.

A. Yes.

154. Q. And that is the affidavit of Nicholas Gazzard affirmed June 11, 2008. That is the one you adopted, is that correct?

A. Yes.

155. Q. Can I get you to look at paragraph 76 of the Gazzard document. In paragraph 76, Mr. Gazzard refers to a deficit reduction plan. Do you see that?

A. Yes.

156. Q. That deficit reduction plan is that of the receiver and not Thornhill Green; is that correct?

A. It is.

157. Q. And are you aware of any Thornhill Green board resolutions adopting the deficit reduction plan of the receiver?

A. The board wasn't given any authority during the receivership, so they didn't meet and they weren't given that opportunity.

158. Q. So the answer to my question is no?

A. No. Right.

159. Q. And are you aware of any commitment, either formal or informal, of Thornhill Green to the region that Thornhill Green would adopt the deficit reduction plan of the receiver if governance was returned?

A. I can speak to...I may need Murray's advice on this. I can certainly speak to discussions with the board since the application for sale. Is that appropriate?

160. Q. My question was, are you aware of anything sent to the Region by Thornhill Green saying, "If governance is returned to us, we will adopt the deficit reduction plan of the receiver"?

A. No.

161. Q. Okay. Are you aware of any expression of willingness by Thornhill Green board members to the Region since they submitted their deficit reduction plan in response to the Notice of Triggering Events to in any way raise the rents?

A. Well, they have raised the rents.

162. Q. The receiver did?

A. No, they made the decision for fiscal 2006/2007. They made that decision because in co-ops, you have to meet before the fiscal year. So they made that decision before the receivership for fiscal 2006/2007, okay? After that, they weren't...the board doesn't make the decision. The members make the decision, and the members weren't given the power to do that because, you know, the receiver felt they had the powers to do that. We disagree, but they felt they did and they were running the show.

163. Q. My question was, was there an expression of willingness by Thornhill Green board members?

A. I don't know.

164. Q. Okay. Can I get you to take a look at paragraph 77 of the Gazzard affidavit. This is an alternative scenario proposed by Mr. Gazzard.

A. M'hmm.

165. Q. You have to say yes.

A. Yes. Sorry.

166. Q. Are you aware of this scenario being in place in any other co-op in Ontario?

A. I am certainly aware of co-ops under

various different programs where the...absolutely the...be it either a rent supplement or an RGI is paid to the full housing charge. So this approach is very similar to funding arrangements in...for many housing providers.

167. Q. Okay. I take it that this option was something that was crafted by CHF Canada and not Thornhill Green?

A. Yes, but it was shared with Thornhill Green. This was part of a proposal that came out of a report that we commissioned in 2004 related to the negative subsidy. And Paul Connelly was the consultant that produced a report looking at the impact of the negative operating subsidy, indicating that such a negative total subsidy was never the intent of the Social Housing Reform Act and provided...and recommending that Thornhill Green be taken out of the provisions, the financial provisions part 6 of the Act and, instead, be allowed to operate with a rent supplement agreement.

I should say that that was an option that also was being discussed by a Ministry consultant who produced a report on implementation problems with the new Social Housing Reform Act funding model, and one of them was the negative subsidy

approach. And they came up with a very similar kind of idea that perhaps the co-op should just come out of those arrangements. So, in fact, the co-op was aware of that proposal back in 2004.

168. Q. Was there any vote on the proposal at Thornhill Green?

A. No, it didn't go to the members, but the board supported the recommendation and we forwarded it to York Region and York Region said, you know, it would have...it required some lobbying at the Province. The Province dropped the ball, no question about that. York Region at the time said, "This is outside of our scope. It is something the Province should be looking at. But in the meantime, a faster way of getting the money you need is through a request for capital reserve funding".

And so the co-op decided...and I hate to say it, I feel I was complicit in that because we think any change that involves the Ministry takes a long time. So, it seemed to be the best option at the time. But, in fact, this scenario would perfectly work for Thornhill Green, with them receiving a rent supplement to the full housing charge and then having sufficient funds to pay for their own capital, while at the current time it

could pay back the loan easily and then continue to operate with an appropriate level of funding.

169. Q. Okay. Paragraphs 85 through 87 of the Gazzard affidavit.

A. M'hmm.

170. Q. Yes?

A. Yes.

171. Q. Discusses the use of an outside director.

A. Yes.

172. Q. Was that option ever discussed with Thornhill Green by CHF Canada?

A. Not before the application of Motion for Sale.

173. Q. Okay. I take it no vote has been taken on that option?

A. No, but it has been discussed with the board since and they are familiar with that option.

174. Q. Can I get you to look at paragraph 88 of the Gazzard affidavit. It states:

"...It is not uncommon for co-ops to obtain capital repair financing independently of a service provider through market-like mechanisms..."

MR. KLIPPENSTEIN: As a point of clarification, I am not sure that was adopted by Ms. Miles in her affidavit.

THE DEPONENT: I think I just went to 87.

BY MR. MILES:

175. Q. Yes, you didn't adopt that. In fairness to you, I should point that out. Thank you, Mr. Klippenstein. But let me ask you, do you now adopt that as a true statement?

A. Yes, I would adopt it as a true statement.

176. Q. And are you aware of any other possible source of financing in respect of Thornhill Green, other than the Region?

A. I personally haven't, sort of, investigated that. I guess what we are saying is that they might well be. Nobody has looked at it. I guess the usual funding mechanisms, through different financial institutions, would be appropriate. This is not my...I am not an expert on the financing options, that is for sure. But I certainly believe that Mr. Gazzard, who he is, he is thoroughly acquainted with the various funding

options.

177. Q. Okay. Am I correct that between the time that the response from Thornhill Green to the Notice of Triggering Events was sent to the Region and the time that Thornhill Green and CHFC responded to the receiver's Motion for Sale, there was nothing provided by Thornhill Green by way of proposals, plans or options in respect of future governance?

A. So, from the point of the triggering event...

178. Q. Thornhill...

A. Their response to that was May of 2006. And...

179. Q. And these materials that have been filed in defence of the receiver's Motion for Sale. Was there anything that came from Thornhill Green to the Region by way of a proposal or a plan or future governance options?

A. Only as discussed at the board meeting and the members meeting. No proposal made, because they were in receivership and it was all to be two to three years. That is when it will happen. So, no, they didn't.

180. Q. All right. And in these proceedings, my understanding is, and we discussed

this, you filed two affidavits, Mr. Gazzard has filed two affidavits. The only material that we have from Thornhill Green is the one affidavit of Sue Daniel.

A. M'hmm.

181. Q. Yes?

A. Yes, I think so.

182. Q. And Ms. Daniel doesn't live there anymore, is that correct?

A. She left, I think, in August or September of this year.

183. MR. SMITH: Subject to the undertakings, those are my questions. Thank you.

INDEX OF EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	PAGE NUMBER
1	E-mail chain between Diane Miles and Kerry Hobbs dated May 29, 2007 with two attachments	22

D. Miles - 56

INDEX OF UNDERTAKINGS

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	15	45
2	24	83
3	41	135

INDEX OF UNDER ADVISEMENTS

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	8	27

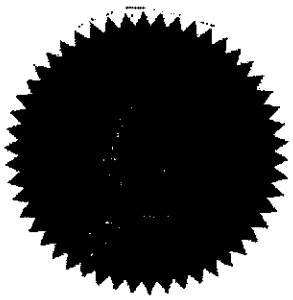
REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the **19TH DAY OF NOVEMBER, 2008** and taken to the best of my skill, ability and understanding.

Certified Correct:

Robert Dudley
Certified Verbatim Reporter



TAB 10

Court File No: 493/08

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D/sr

B E T W E E N:

CO-OPERATIVE HOUSING FEDERATION OF CANADA and
THORNHILL GREEN CO-OPERATIVE INC.

Applicants/Moving Parties

- and -

THE REGIONAL MUNICIPALITY OF YORK and
HOUSING YORK INC.

Respondents/Responding Parties

This is the Cross-Examination of SUE DANIEL, on her Affidavit sworn the 2nd day of July, 2008, taken at the offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto-Dominion Centre, Toronto, Ontario, on the 19th day of November, 2008.

A P P E A R A N C E S:

MURRAY J. KLIPPENSTEIN CORY WANLESS (student-at-law)	--	for the Applicants
DOUGLAS O. SMITH	--	for the Respondent, The Regional Municipality of York

INDEX OF PROCEEDINGS

	PAGE NUMBER
SUE DANIEL, sworn	
Cross-Examination by: MR. SMITH	1 - 26
Exhibits	27 - 27
Refusals	28 - 28

SUE DANIEL, sworn

CROSS-EXAMINATION BY MR. SMITH:

1. Q. You are Susan Daniel?

A. Yes.

2. Q. What is your current address, please?

A. 7250 Yonge Street, Apartment 611, Thornhill, L4J 7X1.

3. Q. I understand that you used to be a resident of Thornhill Green?

A. For 28 years.

4. Q. And you are a former board member?

A. Yes.

5. Q. I take it that your evidence on this cross-examination binds Thornhill Green Co-Operative Inc.?

A. Yes.

6. Q. You have provided one affidavit in these proceedings, and the date of that affidavit is July 2, 2008.

A. Yes.

7. Q. Have you had a chance to review that affidavit before coming here today?

A. Yes.

8. Q. Are there any deletions,

substitutions or alterations that need to be made to the evidence as stated in your affidavit?

A. Except that I don't live in the co-op anymore, no.

9. Q. And I take it that you provide this affidavit not in your personal capacity, but in your capacity as a representative of Thornhill Green Co-Operative Inc.?

A. At the time that most of these things happened, I was a chair of the board.

10. Q. Okay. So, the answer to my question is yes?

A. Yes.

11. Q. Was there a board resolution authorizing you to put this affidavit forward?

MR. KLIPPENSTEIN: I think I will object. She has said she is authorized to say this, and on a matter of privilege I would ask that we just leave it at that. /R

12. MR. SMITH: Okay.

BY MR. SMITH:

13. Q. Has there been any resolution of the board regarding their position on this matter of the sale of the assets of Thornhill Green to HYI?

MR. KLIPPENSTEIN: I will object to that as well. I think their position has been repeatedly made clear in various court filings by legal counsel, so I will leave it at that. /R

14. MR. SMITH: Okay.

BY MR. SMITH:

15. Q. Has there been any attempt on behalf of the board to meet with the RGI, rent geared to income, residents to get their position regarding the potential sale of the assets of Thornhill Green to HYI?

A. The board doesn't legally exist anymore. The board was dissolved by York Region.

16. Q. Let me back you up. My question was, has there been any attempt by the board, and I will broaden that, board members, former board members, to meet with the RGI residents to get their position on the proposed sale?

A. Not formally, no.

17. Q. Okay. Let me get you to refer to your affidavit, and I see you have a copy in front of you.

A. Yes, I do.

18. Q. Can I take you to paragraph 29, please. Sorry, that is the wrong paragraph. Paragraph 37. In paragraph 37, you are discussing receipt of a letter from Ms. Sylvia Patterson; is that correct?

A. M'hmm.

19. Q. Yes?

A. Yes.

20. Q. And that letter was provided in response to the co-op's response to the Notice of Triggering Events.

A. Yes.

21. Q. And I take it that at that time, you were a board member?

A. I was the chair of the board, yes.

22. Q. The letter you have attached as Exhibit D to your affidavit, do you have a copy of that?

A. No.

MR. KLIPPENSTEIN: We have one available, if you would just give me a moment.

23. MR. SMITH: It is tab 7 in the Motion Record, if you have that.

MR. KLIPPENSTEIN: The letter dated

July...

MR. SMITH: July 19th, 2006.

MR. KLIPPENSTEIN: Yes, we have it.

BY MR. SMITH:

Q. Is this a true copy of the letter that you received from Sylvia Patterson on July 19th, 2006?

A. Yes.

Q. After receiving this letter, did anyone from Thornhill Green do anything to respond to the Region?

A. This letter was delivered at a meeting of the board. And basically we were not given time to respond to it, because what it is telling us is that they are putting us into receivership.

Q. So I take it there was no letter from Thornhill Green that responds to this letter?

A. No.

Q. You will see that this letter sets out the issues, apparently, that the Region took with the material submitted by the board of Thornhill Green; is that correct?

A. Yes.

29. Q. And the first heading in the letter deals with the deficit reduction plan. I take it that you understood that York Region wasn't satisfied with Thornhill Green's deficit reduction plan?

A. Yes.

30. Q. Has there been anything done during the two years plus of receivership to develop a new deficit reduction plan by Thornhill Green?

A. Thornhill Green as a co-op no longer exists. There is no board. There is no finance committee. There is nobody whose responsibility that would be. We were very clearly told that we had no rights. We couldn't use the office. We couldn't have meetings. We couldn't...we gave our keys back in and they changed the locks on that night, on July 19th.

31. Q. Have there been any meetings of any members of Thornhill Green, any residents of Thornhill Green...

A. Yes.

32. Q. Wait.

A. Sorry.

33. Q. ...with the purpose of developing a new deficit reduction plan?

A. No.

34. Q. And you are aware of the fact that the receiver, Mintz & Partners Limited, developed a deficit reduction plan?

A. Not one that we ever saw.

35. Q. Well, I take it that you are aware, whether it is through these legal proceedings or otherwise, that there is a new deficit reduction plan in place?

A. No.

36. Q. You are not aware?

A. I am not aware of that.

37. Q. Still dealing with this July 19 letter, there was an issue with the cheque register and invoices for February 1, 2006 through April 30, 2006. Or at least when I say an issue, the Region expressed dissatisfaction on that issue; correct?

A. Yes.

38. Q. Was anything done to provide the bank statements...sorry, the other documents that the Region said was still outstanding?

A. They never actually said what was outstanding. This was all we were told.

39. Q. My question was, was anything done to provide other documents that the Region said were

still outstanding?

A. After that moment, we were no longer a board. That was made very clear to us. We had no legal standing. We had no place to meet. We had no authority. We had no access to any records. None of it.

40. Q. I understand that.

A. So it would be very hard to do that under those circumstances.

41. Q. Well, whether it was hard or not, what I want to know is, was anything done to determine what documents were missing and to provide those missing documents?

A. No.

42. Q. Member deposits, you will see in the letter that the Region took issue with the member deposits; correct?

A. Yes.

43. Q. And was anything done by any members of Thornhill Green to satisfy the issues expressed by the Region on that account?

A. No.

44. Q. Audited statements, there is sentiment expressed by the Region that the auditor's management letter is still outstanding. Do you know

if that has ever been provided to the Region?

A. I believe it was. I believe it was actually provided that night by the management... the Precision Management people who were there.

45. Q. Okay. Capital expenditures, there is a note that Thornhill Green had failed to provide what, if any, expenditures were made from January 1, 2006 to April 30, 2006. Has anything been done to advise the Region in that respect?

A. Not as far as I know.

46. Q. Maintenance plan. The comment from the Region was that no costs were attached to any of the identified work. Was anything done to attach costs to the identified work?

A. The co-op's proposed budget for that year was part of this package that they received. They decided that was not sufficient.

47. Q. Was anything supplemental submitted to the Region after you learned that it wasn't sufficient?

A. Not as far as I know.

48. Q. Capital plan is the next item. There is a note that the only expenditure identified for 2006/2007 was playground equipment. And playground upgrades were not to be considered a

priority capital expenditure. Was anything done to revise the capital plan after receipt of this letter?

A. The capital plan actually identified bathrooms as the major capital expense for the year. The playground was a way down the list possibility, and only because the plan for the capital repairs was what had been under discussion with York Region for the previous six months and what we thought was an agreement had already been reached.

49. Q. Okay. Thank you for that. My question was, was anything done to revise the capital plan?

A. No.

50. Q. Arrears collection, the Region says that you failed to provide a description of the co-operative's arrears collection practice, the arrears reports are still outstanding. Was there anything done by any member of Thornhill Green to satisfy the Region on that account?

A. They were given the arrears information that night.

51. Q. July 19th?

A. On July 19th. That was waiting for them when they arrived at the meeting and their

action once the meeting began made it very clear that none of these things were going to be desired or allowed.

52. Q. Property tax receipts, it is noted that the package provided stated that the property taxes were up to date but the receipts were not included. Were those receipts ever provided?

A. Those receipts had actually been forwarded to York Region some time before, because they actually provided funding for those...for the property taxes until the money for the capital repairs was to come through. So they already had those receipts at some other place in York Region, and had had for some time.

53. Q. Can I get you to take a look at paragraph 35 of your affidavit. Do you have that?

A. Yes.

54. Q. Did you take any notes at that meeting?

A. Yes. We were all required to turn the notes in before we left, along with the agenda for the meeting.

55. Q. Did you actually take notes?

A. Yes, I did.

56. Q. And who required you to turn those

notes in?

A. Ms. Patterson required that everything that we had done be left at the meeting, on the table. The agendas, the notes, the financial statements were all left.

57. Q. Did you make any notes after the meeting?

A. Yes.

58. Q. And what did you do with those notes?

A. I kept them.

59. Q. And can I have a copy of those notes?

A. No.

60. Q. Why is that?

A. Because at the...I kept them because I did the newsletter, all the newsletter things as chair of the board. And so usually my meeting notes and the minutes were what I used to create the newsletter that would go out to people once a month, as that was part of my job. And as part of the job description of chair of the board was to write a newsletter article every month. And so I used those things to write my newsletter articles with, and the minutes. Well, there were no minutes, not that we

were able to keep anyway, because the Precision person who normally recorded all the meetings and did the minutes was asked to leave. And so no minutes, no formal minutes were ever recorded for that meeting. So, the things that I wrote down were what I used to write the newsletter article which I wrote and which was published in the newsletter.

61. Q. So, do you still have a copy of the notes?

A. Not the notes. I have the newsletter.

62. Q. Can I get a copy of the newsletter?

A. This is the first one after that, because we never did newsletters in the summer. We didn't usually have board meetings in the summer either, because nobody was there. So this is the newsletter article from the first newsletter back in that fall, which basically attempts to explain to people what is happening and is largely, if you read it, quite positive because I believed that that was...that York Region was actually trying to help us.

63. Q. Can we get a copy of this before we leave?

MR. KLIPPENSTEIN: Sure.

64. MR. SMITH: I am going to mark this as Exhibit 1, if I may. Exhibit 1 is a Thornhill Green newsletter dated September, 2006.

--- EXHIBIT NO. 1: Thornhill Green Newsletter dated September, 2006

BY MR. SMITH:

65. Q. Is that correct?

A. Yes.

66. Q. I understand that the next day, July 20, 2006, there was another meeting?

A. Not as far as I know. The July 19th letter was the...we met with them on July 19th and they brought the letter. I never received a copy of the letter ahead of time. It just arrived with them.

67. Q. My understanding is that July 19th was a meeting with the board of Thornhill Green.

A. And Mintz. And Sylvia Patterson.

68. Q. And then July 20th was a meeting with the members of Thornhill Green.

A. I don't think so.

69. Q. Okay. I will show you a copy of

what has been identified as notes...what I have called minutes, but notes of a meeting dated July 20, 2006.

A. And where was this being...

70. Q. At the Thornhill Green Community Centre, 7:00 p.m.

A. The day after? I don't remember it being the day after. Well, it must have been. I didn't remember that it was the next day. I know there was a meeting very quickly, but I didn't know it was the next day.

71. Q. Were you at this...

A. Yes.

72. Q. At that meeting?

A. Yes.

73. Q. And did you make any notes after that meeting?

A. No. There wasn't anything...they didn't say anything that hadn't been said the night before.

74. Q. All right. I understand that the Co-Operative Housing Federation of Canada has been involved with Thornhill Green since the commencement of the receivership.

A. They were working with Thornhill

Green for some time before the commencement of the receivership, yes.

75. Q. What were they doing before?

A. They were working with us to try to help us find a way to stabilize the financial condition of the co-op.

76. Q. When did that work start? Do you recall? When did CHFC become involved?

A. CHFC has been involved with this co-op since the very beginning of the co-op. They loaned us the expertise to set up the co-op and Lantana is part of their...is associated with them, and they were the people who actually worked with us for the first two years that the co-op was there to set up the committees and do all of the repair work, the capital repair work. Then there were some years during which they were not involved with us, but we asked them to come and help us deal with the whole subsidy issue.

77. Q. At any time during the receivership, did anyone from Thornhill Green work with CHFC to develop a transition plan, transition from receivership back to governance?

A. No, because we were told that would happen at the end of the receivership.

78. Q. Did anyone with CHFC propose any education sessions to any members of Thornhill Green during the course of the receivership?

A. No.

79. Q. Are you aware of any residents of Thornhill Green, whether it be the past board members or somebody else, requesting any education or training from CHFC during the course of the receivership?

A. We were told that training would come from Mintz. That is what was...it was explained to us that Mintz would help make us more able to run the co-op because they had extensive experience in working with co-ops.

80. Q. Was there any training, either from Mintz or anyone else, including CHFC, during the course of the receivership?

A. No.

81. Q. Did anyone from Thornhill Green push the issue and ask for training during the course of the receivership?

A. No. Not as far as I know. Mostly because we didn't feel training was the issue. We had run a very successful co-op for almost 15 years. It stopped being successful when York Region became

the people to whom we had to be accountable. When we were accountable to the provincial government, it operated just fine.

82. Q. Are you aware of any proposal for transition or governance provided by Thornhill Green to the receiver or to the Region during the two plus years of the receivership?

A. No.

83. Q. Can I get you to take a look at paragraph 54 of your affidavit. Paragraph 54 says on or about...it says:

"...On about May 30, 2007 I was served with court materials from the Region's legal counsel regarding the continuation of the receivership beyond one year..."

Correct?

A. Yes.

84. Q. And can you describe the material that you were served with?

A. It looked a lot like the other large pieces of legal information.

85. Q. Did it consist of two Cerlox-bound books?

A. Yes. Looking much like that.

86. Q. Okay.

A. Both of which I read.

87. Q. And let me show you this. I will just identify it for the record. This appears to be a letter from my firm, Mr. Roger Jaipargas, dated June 11, 2007 regarding the application for court appointment of the receiver. Can I just show you that and ask you if you recall receiving that letter? You will see on page 3 that it is directed to yourself.

A. I don't remember seeing it, however...at all. No, I wouldn't have. Because that was June.

88. Q. June, 2007?

A. Yes. My daughter had a baby in California and I left as soon as I could, and so I left right after the long weekend. I had very little warning, as in, "She is in labour", and I got on the nearest plane and left and I was gone for... until early August.

89. Q. Okay. Whether you got it right at that moment, I take it that when you got back you opened your mail?

A. I don't actually remember seeing this ever.

90. Q. I will take it back, then. Thanks.

You recall that there was another meeting with the Region and...well, maybe you don't if you weren't around in June. Were you in...

A. I was gone from the 3rd of June until the 5th of August.

91. Q. There was apparently a meeting June 12th, 2007 with the...with members from Mintz & Partners Limited and with representatives of the Region. Do you know if anyone on behalf of Thornhill Green took notes at that meeting?

A. I don't know if anyone on behalf of Thornhill Green was even at that meeting. We had major difficulties because we were told we weren't...we had no actual legal standing of any kind to do anything that had anything to do with the co-op.

92. Q. Okay. Can I get you to take a look at paragraph 63, please. The last sentence says:

"...There have been no discussions of management training or assistance structures or anything else that would be a less drastic measure than complete abolition of the co-op structure..."

Do you see that?

A. Yes.

93. Q. Did anyone on behalf of Thornhill Green request management training during the course of the receivership?

A. Who could do that? Since none of us were legal.

94. Q. So I take it the answer to my question is no?

A. They told us that they would provide that at the beginning of this process, of the receivership process. That did not happen.

95. Q. Did anyone from Thornhill Green follow up and say, "Hey, you were supposed to provide us with training..."

A. Every time I set foot in that...

96. Q. Hold on. Hold on.

A. Sorry.

97. Q. "You were supposed to provide us with management training. We haven't gotten it yet. Can we please schedule that?"

A. Every time I set foot in the office to ask about anything, I was told that we had no legal right to be in the office, we had no access to any of the documents, we had no standing to speak for anybody else in the co-op and that all we were able to do would be what any other resident of

Thornhill Green could do, which was to write the Mintz people a letter.

98. Q. Did anyone...

A. On our own behalf, individually.

99. Q. Did you or anyone else write a letter?

A. I did write them a letter suggesting that it would be nice if they made some attempt to keep people up to date on what they were actually doing.

100. Q. My question was going to be, did you write them a letter to ask about management training?

A. No.

101. Q. Did you write them a letter to ask about assistance structures?

A. No.

102. Q. During the course of the receivership process, have the past board members met at any time to discuss the future of Thornhill Green?

A. Yes.

103. Q. And were these formal meetings where minutes were kept and resolutions were made?

A. No.

104. Q. Have there been any resolutions of the board of Thornhill Green Co-Operative Inc. since the start of the receivership?

A. No.

105. Q. Have there been any formal proceedings of the board of Thornhill Green Co-Operative Inc. since the start of the receivership?

A. It is my understanding that it is impossible to have formal procedures if you are not legally a board. That is certainly what Mintz told us.

106. Q. Did you get a second opinion on that?

A. I asked my daughter, the lawyer.

107. Q. Okay.

A. And she said if we had been told legally that we had no rights and by this time we are past the point where the new board would have been elected. The new board would have been elected in the spring of 2008. So those of us who were on the board in 2006 would no longer have been the board, had there been a board.

108. Q. All right. I take it that neither you nor anyone else from Thornhill Green was advised that the Region was considering...or requesting the

receiver to sell Thornhill Green to HYI?

A. Never a word.

109. Q. If you had received that advice, what would you have done?

A. Gone directly to put people together and find a lawyer.

110. Q. Okay. After you found out that that was in the offing, that is exactly what you did?

A. Yes.

111. Q. And a fine one you found.

MR. KLIPPENSTEIN: Let the record show.

112. MR. SMITH: Let the record show.

BY MR. SMITH:

113. Q. I am correct that the only affidavit we have from any member-resident past, present or, as far as we know, future is from you; that is correct?

A. I don't know.

MR. KLIPPENSTEIN: That is correct.

114. MR. SMITH: Okay. Those are my questions. Thank you.

INDEX OF EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	PAGE NUMBER
1	Thornhill Green Newsletter dated September, 2006	16

INDEX OF REFUSALS

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	4	11
2	5	13

REPORTER'S NOTE:

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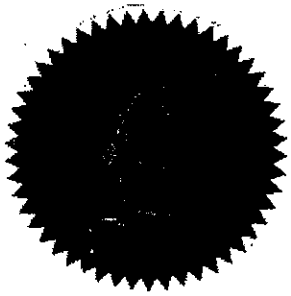
I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the **19TH DAY OF NOVEMBER, 2008** and taken to the best of my skill, ability and understanding.

Certified Correct:

Robert Dudley
Certified Verbatim Reporter



TAB 11

Court File No. 493/08

ONTARIO SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

B E T W E E N:

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HOUSING YORK INC.

Respondents/Responding Parties

This is the Cross-Examination of KERRY HOBBS, a representative of The Regional Municipality of York, taken before Shona Bowins, Verbatim Reporter, at the offices of Exact Transcription, 17665 Leslie Street, Suite 31, Newmarket, Ontario, on the 20th day of November 2008 commencing at 9:00 a.m.

A P P E A R A N C E S:

MR. M. KLIPPENSTEIN -- For the Applicants

MR. D. SMITH -- For the Respondents

MS. J. VANDERBURGH -- For the Respondents

I N D E X

WITNESS

KERRY HOBBS, SWORN

CROSS EXAMINATION BY MR. KLIPPENSTEIN 2 - 127

UNDERTAKINGS

1. To advise whether the Minister was advised of the Region's position on Section 95 when consent was sought for the transfer of Thornhill Green assets. 28

2. To provide a copy of the 2005 appraisal. 80

3. To advise of the state of awareness of the Region of York as to the proposed subway stop near Thornhill Green Co-op. 81

4. To determine whether the disposition of assets on dissolution as discussed in Section 5 of the CCA was in any way taken into account in the decision making process and, if it was, described how. 116

REFUSALS

1. Page 63, Line 14.

2. Page 65, Line 3.

3. Page 65, Line 19.

4. Page 67, Line 4.

5. Page 72, Line 15.

6. Page 77, Line 23.

ADVISEMENTS

1. Page 28, Line 12.

2. Page 49, Line 19.

3. Page 91, Line 6.

4. Page 108, Line 8

KERRY HOBBS, SWORN

CROSS-EXAMINATION BY MR. KLIPPENSTEIN:

Q. Good morning, Ms. Hobbs. Could you state your name for the record, please?

A. Kerry Hobbs.

Q. And we're here today to cross-examine on your affidavit sworn November 10th, 2008. Is that right?

MR. SMITH: That's correct.

THE DEPONENT: That's correct.

BY MR. KLIPPENSTEIN:

Q. And you're here on behalf of the party, the Regional Municipality of York. Is that right?

A. Yes.

Q. And you're authorized to be here on their behalf I take it?

MR. SMITH: Yes.

BY MR. KLIPPENSTEIN:

Q. And your answers bind that party?

MR. SMITH: That's correct.

BY MR. KLIPPENSTEIN:

Q. I'd like to first ask some questions about the overall role of the Regional Municipality of York, which I may refer to as the Region, in terms of housing in this case. I gather that the Regional Municipality of York is designated as a service manager under the Social Housing Reform Act. Is that right?

A. Yes.

Q. And can I take it that the Region's housing programs are carried out as a service manager under that statute, not wearing its hat as a municipality under the Municipal Act?

MR. SMITH: I don't understand the question, I'm sorry.

MR. KLIPPENSTEIN: Let me try again.

BY MR. KLIPPENSTEIN:

Q. The Region's housing programs are based on the Social Housing Reform Act, right?

A. They were devolved to us pursuant to Act, yes.

Q. Right. Did the Region have any housing programs before it was devolved under the, I'll call it, SHRA, did you have any housing

programs before that?

A. It depends what you mean by housing programs. There was a municipal non-profit that was affiliated with the Region.

Q. Okay. Does that still exist?

A. It has subsequently been amalgamated with the former public housing stock to form Housing York Inc.

Q. Okay. And Housing York Inc. is wholly owned by the Region I take it?

MS. VANDERBURGH: Yes, it is.

BY MR. KLIPPENSTEIN:

Q. And Housing York Inc. is operated under the Social Housing Reform Act?

A. It is subject to the Act, yes.

Q. And when the -- first of all, the Region controls and directs Housing York Inc., is that right, directly or indirectly?

A. Housing York Inc. has a board of directors which is responsible for its governance. Those directors are elected political officials, members of regional council.

Q. Okay. Now, Housing York Inc. is not designated a service manager under Social

Housing Reform Act. Is that right?

A. Correct.

Q. So the only service manager in York Region designated under the Social Housing Reform Act is the Region itself?

A. That's my understanding, yes.

Q. And you are of the manager of housing programs in the Community and Health Services Department of the Region?

A. Yes.

Q. And you work for the Region -- let me rephrase that. Do you do any work for the Region other than the service manager role of the Region?

A. No.

Q. Okay. And so it's fair to say that your job is under the umbrella of the service manager which derives from the Social Housing Reform Act?

A. Yes, I'm part of that structure.

Q. You don't do any work other than the service manager role. Is that right?

A. No. I'm an employee of the Region responsible for housing programs.

Q. Okay. And I take it in your role

working for the service manager -- let me take a step back, the Region of York obviously has a variety of functions and roles as a municipality in addition to being a service manager under the Social Housing Reform Act, right?

A. I'm not actually sure I'm qualified to answer that question.

Q. Okay.

A. I don't know what the legal definition of a municipality is.

Q. Okay.

A. There are nine area municipalities that comprise part of the Region so I'm not sure how to answer your question.

Q. Okay, that's fine. And that is what I'm getting at, you're a service manager employee, not a municipal official in some other capacity?

MR. SMITH: You can take it that this witness doesn't drive a salter, or have anything to do with roads, she's not part of York Regional Police, she's not part of York Transit. Her duties are solely related to housing, part of the housing department, and that's

where she works and her duties are solely confined to housing.

BY MR. KLIPPENSTEIN:

Q. Does the housing department do anything outside of the Social Housing Reform Act?

A. Well, in our context, there isn't actually a housing department. Housing is part of the newly formed Housing and Long term Care Branch which is part of Community and Health Services so I'm not sure --

Q. Right. You don't to anything for Health Services I take it?

A. No.

Q. You actually don't do anything other that what's covered by the Social Housing Reform Act?

MS. VANDERBURGH: If I may interject, we are -- because the Region is a municipality subject to other legislation, it wouldn't be correct to confine it to just the role of service manager under the Social Housing Reform Act because the municipality is subject to much more legislation than that

legislation.

MR. KLIPPENSTEIN: Exactly, that's what my questions relate to and I'm just trying to ascertain what I think is the case which is that Ms. Hobbs, in her role, functions -- doesn't function in those areas, just functions in the service manager role created by the Social Housing Reform Act?

THE DEPONENT: I'm just having some difficulty with your question because I'm part of a large municipal organization. I sit on task forces and things that are involved with other things pertaining to Regional business, corporate structure. I mean, we're transitioning into a new branch, some of those kind of things, and those things have nothing to do with the Social Housing Reform Act. They have to do with my role as a regional employee so I think it would be difficult to say that I'm exclusively responsible for things under SHRA.

MS. VANDERBURGH: And not all the

housing programs are subject to the Social Housing Reform Act.

MR. KLIPPENSTEIN: Okay.

MS. VANDERBURGH: So it would be not correct and to confine it only to the tasks or the functions ascribed to a service manager under the Social Housing Reform Act.

MR. KLIPPENSTEIN: Okay.

BY MR. KLIPPENSTEIN:

Q. In relation to the case here, Thornhill Green Co-operative Inc., you -- and for now, I mean you personally, deal with Thornhill Green Co-op only as part of a service manager under the Social Housing Reform Act. Is that right? You're not -- the question is unclear.

A. No. I agree. I am an employee of the Region, the Region is the designated service manager, my responsibility is for housing programs.

Q. Right. Thornhill Green Co-op is a designated housing provider under the Social Housing Reform Act, right?

A. Yes.

Q. And you deal with Thornhill Green

Co-op under the Social Housing Reform Act, right?

A. In my capacity as an employee of the Region, yes, I deal with the aspects of the property that are subject to the Social Housing Reform Act. But ...

Q. Is there any legislation that you look to when you deal with Thornhill Green Co-op other than the Social Housing Reform Act and perhaps the Co-op Corporations Act?

MR. SMITH: What do you mean by look to?

MR. KLIPPENSTEIN: Refer to, draw power from?

MR. SMITH: Isn't that a legal question?

MR. KLIPPENSTEIN: Partly, yes, but partly not.

BY MR. KLIPPENSTEIN:

Q. I'm just wondering in your functions, you obviously look to the Social Housing Reform Act and its structure to govern what you do, right?

A. That's the framework in which we operate, yes.

Q. Right. Is there any other framework in terms of a statute that you look to or do you look to pretty much exclusively the Social Housing Reform Act when you're dealing with Thornhill Green Co-op?

A. The role and relationship is defined by the Social Housing Reform Act. If there was a specific issue that had other implications, then we would seek legal advice as to whether or not there were other statutes that apply.

Q. Okay. But in the case of Thornhill Green Co-op, you haven't -- and laying aside again the Co-op Corporations Act, you haven't at any time had to look to other legislation outside of the Social Housing Reform Act?

MR. SMITH: Are you talking about in that context of these legal proceedings or just in the --

MR. KLIPPENSTEIN: Any --

MR. SMITH: -- service manager function?

MR. KLIPPENSTEIN: Any dealings with Social Housing Reform Act -- with Thornhill Green Co-op.

BY MR. KLIPPENSTEIN:

Q. Let me repeat that. In your dealings with Thornhill Green Co-op, including in these legal proceedings or generally over time, have you ever had to look to any other legislation outside of the Social Housing Reform Act?

A. Housing providers are subject to a myriad of pieces of legislation. So, you know, there are requirements with respect to occupational health and safety. So I'm having difficulty responding to your question because the Social Housing Reform Act gives the framework but, depending on what the issue is, there are a host of other statutes or regulations that may apply that's inherent in residential housing.

Q. Right, okay. Yeah, you've given some useful examples. How does the Region -- let me ask it this way, you're the manager of housing programs?

A. Yes.

Q. And that's clearly a separate department or division within the structure of the municipality I take it?

A. Yes.

Q. Okay. And is it fair to say that

the housing program -- what would be the right term, would in be a division or a department or --

A. Housing programs is part of the Housing and Long-Term Care Branch.

Q. Okay. And that Housing and Long-Term Care Branch is part of the Community and Health Services Department?

A. Correct.

Q. And you, as manager of housing programs within the Housing and Long-Term Care Branch, is there another designation which denotes the group that you work with and manage? The housing programs, is that called a branch or a department or division or --

A. There isn't a formal designation. You could refer to it as a unit, that's helpful.

Q. Okay. So is that a colloquial term or something on a letterhead somewhere?

A. No, it's not a formal term. As I said, it's helpful for the purposes of this discussion, I'll know what you mean if you refer to it as a unit.

Q. Okay. The housing unit of the Housing and Long-Term Care Branch, do you deal -- does that unit deal with any programs other than

under the Social Housing Reform Act?

A. Yes.

Q. And can you give me an example?

A. For example, we will be responsible for the administration of the affordable housing program buildings currently under construction. And, as part of that project, council has approved a regionally funded rent supplement program, I am responsible for the development of that program and that's currently in place. So that would be an example of something that's housing related but not specific to the Social Housing Reform Act.

Q. And that regionally funded rent supplement program, does it exist already?

A. It's in development. The funds have been designation to provide rent geared to income in the new affordable housing buildings that are being constructed.

Q. Okay. So is it accurate to say that that rent supplement program doesn't apply now to Thornhill Green Co-op and wouldn't in the future if the co-op continued as a co-op?

A. It's designated for the new program so, no, it wouldn't apply to existing buildings.

Q. Okay. And that's outside of the

Social Housing Reform Act?

A. It is.

Q. So you wouldn't and the Region wouldn't be working on that rent supplement program as a service manager, that would have nothing to do with it under the Social --

A. It wouldn't be subject to the Social Housing Reform Act, no.

Q. But for Thornhill Green Co-op, everything you do would be covered by the Social Housing Reform Act?

A. That's the framework, yes.

Q. Okay. And the funds that you, meaning the housing unit, provide to Thornhill Green Co-op, those are public funds, that's obvious right?

A. They are generated from the tax levy, yes.

Q. Right. And you are a public employee so your salary and the infrastructure and things you require for your job are also publicly funded?

A. Yes.

Q. And do you, as head of the housing unit, report to Sylvia Patterson?

A. I do.

Q. Okay. And remind me again, what's her title?

A. In her new title is General Manager Housing and Long-Term Care.

Q. So she is the general manager of that branch?

A. Yes.

Q. Okay. Are there any other, to your knowledge, departments or divisions or units of the Region of York who do work within the Social Housing Reform Act framework or just the housing unit?

A. Housing York Inc. is subject to the Social Housing Reform Act.

Q. All right. Now, Housing York Inc. is not designated a service manager under that Act?

A. It's a housing provider, it's designated as a housing provider under the predecessor Corporations Act.

Q. Right. And when you -- are there any other departments or divisions or units within the Region who do service manager work under the Social Housing Reform Act or is it just the housing unit?

A. There are supports provided by other branches.

Q. Can you give me some examples?

A. For example, the actual processing of the EFT payments that are issued to housing providers monthly, that process involves staff from the Business Services Branch as well as from Corporate Finance.

Q. But those are administrative functions in a way?

A. Support, as I say, there are supports provided by other ...

Q. Right. I'd like to call up a couple of reports related to Thornhill Green in or about February of 2008, I'm just trying to find them in the materials here.

MR. SMITH: I think they are appended to the first report of Mintz & Partners Limited, I think they're T and U.

BY MR. KLIPPENSTEIN:

Q. If you could turn up, and I think it's in Volume 4 of the motion record which you probably have available.

MR. SMITH: I didn't bring my Volume 4, maybe we can share.

BY MR. KLIPPENSTEIN:

Q. I'd like to refer you, Ms. Hobbs, to a report entitled Receivership of Housing Project which is dated February 13, 2008, and is headed Report of the Commissioner of Community and Health Services and that's found in the motion record Volume 4, Tab T, the motion record dated September 26, 2008, for convenience.

MR. SMITH: I think it's 14 T, is that right?

MR. KLIPPENSTEIN: 14 T, thank you.

BY MR. KLIPPENSTEIN:

Q. Do you recognize that report?

A. I do.

Q. And it's signed by Sylvia Patterson, Joanne Simons, and Bruce MacGregor, right?

A. Yes.

Q. And you're familiar with this report?

A. I am.

Q. Did you have input into the creation of this report?

A. I did.

Q. Are you perhaps the main author of this report?

A. I am.

Q. Okay. At page 6 of that report at the bottom, the report says, "Notwithstanding the receivership proceedings, Thornhill Green remains the legal owner of the complex. In order to convey the property to Housing York Inc., multiple approvals are required as detailed in the diagram below." And then on the next page, page 7, there is a diagram headed Thornhill Green Transfer Authorization Process and the first box says approval of Regional Council and the HYI Board of Directors. Do you see that?

A. Yes.

Q. So that seems to suggest that -- well, first of all, did you essentially prepare that paragraph and that chart?

A. I believe so, yes.

Q. When it refers to approval of Regional Council, can you elaborate what you referred to there or why that approval is required?

A. Effectively, this report authorizes an offer to purchase.

Q. I see.

A. And it requires -- it recommends funding be provided to HYI to assist with that, council approval would be required for the funding.

Q. Okay.

A. And the Housing York Inc., of course, has to decide whether or not they were willing to make the purchase.

Q. Right. Now, as you may be aware, part of the issue raised by the applicants in this matter is the section of the Social Housing Reform Act which essentially states, and I'll show it to you, that a housing provider, and this section 95 (1), a housing provider shall not, without the prior written consent of the service manager, transfer, lease, or otherwise dispose of a housing project or any part of it. Now, I know -- you're not a lawyer, are you?

A. I'm not.

Q. So I don't mean to ask a legal question but can we agree that that section would apply to the transfer of the assets of Thornhill Green that's contemplated here?

A. Actually --

MR. SMITH: This specific transfer from the receiver to HYI is subject to court approval?

MR. KLIPPENSTEIN: Uh-huh.

MR. SMITH: No. It's going to be our position on the JR that it's not required.

MR. KLIPPENSTEIN: Okay. Just to clarify, so your position on the judicial review is that consent specified in Section 95 (1) of the Social Housing Reform Act is not required for the transfer of Thornhill Green assets at issue here?

MR. SMITH: Correct.

MR. KLIPPENSTEIN: Although there has been a variety of references to that section and that consent in various preliminary proceedings, do you want to give me a hint as to why you say that because that is the first I hear of that?

MR. SMITH: Okay. I mean, it'll be in our factum obviously. But

essentially because this is a sale not by the housing provider but by the receiver, what governs is the appointment order and the powers delineated therein. And the receiver is not a housing provider so this is not a sale by a housing provider, it's a receivership sale. So our legal position is that the consent of the service manager is not required as it would be under what I'll call a normal transaction by a housing provider.

MR. KLIPPENSTEIN: Okay. And I don't mean to pursue legal issues here, I guess it's a factual issue. Based on what I've seen, Section 95 (1) of the Social Housing Reform Act was not put before the Court in the materials provided to the Court on the appointment order. Can you will advise me otherwise?

MR. SMITH: I think the entirety of the Social Housing Reform Act would have been available to Justice Pepall. I can't tell you sitting here today

whether or not Justice Pepall was referred to Section 95 of the Social Housing Reform Act, I just don't know.

MR. KLIPPENSTEIN: Everything I've seen and those materials, and I've been through them more times than I care to think about, suggests to me that Section 95 and the requirement therein was in no way brought to the attention of the Court. Could you undertake maybe to inquire of your counsel and advice me if that's incorrect?

MR. SMITH: I don't see what possible relevance that could have to the judicial review unless you can help me out.

MR. KLIPPENSTEIN: Well, on its face, that section seemed to create a fairly strong prohibition against transfer of housing provider assets. And I think, for the present purposes, we can agree that Thornhill Green Co-op is a housing provider for purposes of the statute in that section. Am I right so far?

MR. SMITH: Yes.

MR. KLIPPENSTEIN: So on its face, that section seems to provide a fairly strong prohibition or barrier to the transfer of such assets. And so it seems to me that would prima facie be very relevant to the proposed transfer and I don't -- if there's some other section of some statute or something that overrides or contradicts or makes an exception to that, I'm not aware of it.

MR. SMITH: All lawyers are deemed to be aware of all legislation on the books and I would think that all judges would be as well. So whether it was brought to her attention or not, I just don't see it as at all relevant to this judicial review.

MR. KLIPPENSTEIN: Okay, I'll leave it at that for now. Thank you.

BY MR. KLIPPENSTEIN:

Q. Now, that Section 95 (1) states an apparent prohibition against transfer of housing provider assets but makes an exception that

requires two consents, one of the service manager and one of the Minister. Is this roughly familiar to you so far, Ms. Hobbs?

A. I have read that section of the Act.

Q. And, in fact, the Region, I think wearing its hat as a service manager, did seek the approval of the Minister, the relevant Minister, to the transfer of Thornhill Green assets as proposed. Is that right?

MR. SMITH: In the context of the proposed sale?

MR. KLIPPENSTEIN: Yes.

MR. SMITH: Yes, that's correct.

BY MR. KLIPPENSTEIN:

Q. Was that approval of the Minister sought because of Section 95 or for some other reason?

MR. SMITH: I think it was sought partially on the advice counsel on the basis that, as has been said before, this is relatively new legislation. And while it's our position that such consents are not required, we would

rather have such consents in place than find out that our legal position is not, in fact, correct. So short answer is advice of counsel.

MR. KLIPPENSTEIN: I don't want to go behind a wall into advice of counsel but I also don't want to avoid asking common-sense questions. Can you tell me whether Section 95 of SHRA played a role in that decision to seek Minister's advice?

MR. SMITH: Yeah, absolutely. As I said, our position is that section does not apply to this proposed transaction.

MR. KLIPPENSTEIN: Okay.

MR. SMITH: But out of an abundance of caution, application was made for consent with the Minister.

MR. KLIPPENSTEIN: When the application was made for consent of the Ministry, was the Ministry advised about the Region's position on Section 95, either that it did or did not apply or might?

MR. SMITH: I'll have to do some

digging to answer that. My sense is that there was no position stated either way but we'll let you know.

MR. KLIPPENSTEIN: Okay, thanks, I'll take that as an undertaking.

U/T: To advise whether the Minister was advised of the Region's position on Section 95 when consent was sought for the transfer of Thornhill Green assets.

MR. KLIPPENSTEIN: Obviously from the materials filed by the applicants, our concern throughout has been the lack of notice and the lack of opportunity for input by the co-op into the service manager's decision to transfer its assets or seek transferring of its assets. And part of that is a concern that there was no notice provided to the co-op that the consent of the Minister was being sought and no such materials have been filed to my knowledge other than the written approval of the Minister. Can you

advised me, was there a written request to the Minister made for approval and can I have a copy of that?

MR. SMITH: There was a written request provided to the Minister, to the Ministry, and I will have to seek direction on whether or not I can give that to you. So we'll put it as under advisement.

MR. KLIPPENSTEIN: Okay. And, Counsel, I've asked for a couple of undertakings and there is probably more coming, I hate to say --

MR. SMITH: We'll get them to you tomorrow.

MR. KLIPPENSTEIN: I was going to say -- thank you very much, I appreciate that, given the time --

MR. SMITH: Yeah, we will make best efforts to get them to you tomorrow.

MR. KLIPPENSTEIN: Great.

MR. SMITH: And if, for some logistical reason, we can't get them to you tomorrow, we'll advise as soon as

possible.

MR. KLIPPENSTEIN: As soon as possible and maybe continue to try as soon as possible including on the weekend and so forth.

MR. SMITH: Correct.

MR. KLIPPENSTEIN: Thank you, I appreciate that.

BY MR. KLIPPENSTEIN:

Q. Ms. Hobbs, are you aware generally of the application to the Minister for approval?

A. I am.

Q. Did you prepare some materials for that application?

A. I did.

Q. I see references to a meeting between the Region representatives and Ministerial representatives. Did that occur?

A. My only knowledge of that meeting is what's reflected the letter in the record.

Q. Okay. So you weren't there obviously?

A. I was not.

Q. Did you help set up that meeting?

A. I had no involvement with that and have no awareness of it beyond what's in that letter.

Q. Do you recall what materials you prepared for that application, was it a briefing package for the request for the Minister's consent?

A. The ministerial consent package?

Q. Yeah.

A. I'm sorry, could you repeat the question?

Q. Do you recall what you prepared for the ministerial consent request, was it at a kind of a briefing package or a request package?

A. Well, typically consent packages include a business case and then whatever supporting documents are appropriate.

Q. Okay. So the business case includes a financial description of the proposed transfer?

A. It depends on what you mean by a financial description.

Q. I deliberately used vague language.

MR. SMITH: You lawyer, you.

BY MR. KLIPPENSTEIN:

Q. I assume you can't make a business case without a financial aspect. On the other hand, I guess we lawyers do that all the time. So when you use the words, business case, can you describe what that is roughly?

A. Well, a typical business case outlines the rationale for the decision and any key considerations that were included in the process.

Q. Okay. Did you prepare the business case document?

A. I did.

Q. Can you give me a bit of an idea, was it two pages or 20 pages or somewhere in between?

A. It's difficult to respond to your questions without having the document in front of me.

Q. Sure. And that's why I'm asking just from memory. It's not as if you don't prepare a lot of documents all the time.

A. And a number of ministerial consents. I honestly don't recall how many pages the document was.

Q. Approximately, was it like just a

one-pager or was it a 50-pager? I mean it would have to be --

A. Not one and not 50. The business case --

MR. SMITH: I don't want you to guess.

THE DEPONENT: That's my discomfort, I'm not --

MR. SMITH: I'm going to take instructions on whether or not we're going to produce it to you and when I think the pages are numbered.

MR. KLIPPENSTEIN: Okay.

BY MR. KLIPPENSTEIN:

Q. I take it it's correct that the co-op was not given a copy of that request, the material to the Minister?

A. Not that I'm aware of, no.

Q. And as far as I know, there was no indication in any way, shape, or form given to anyone associated with the co-op that that ministerial request was happening. Am I my right so far?

A. I believe that's correct.

Q. An obvious question is why the co-op was not given notice of and an opportunity to comment or respond to that request when it involved the transfer of all of the co-op's assets?

A. I'm sorry, your question was?

Q. Why the co-op was not given an opportunity to see and responded to those request materials to the Minister when it, in fact, involves transfer of all the co-op's assets?

A. The co-op members were not given the information. However, the Region did advise the court appointed receiver who was responsible for the co-operative that the consent request was being made.

Q. Okay. Did the Region give the receiver a copy of the consent request materials?

A. I don't believe so, no.

Q. Is it fair to say that, and you don't have to agree with me, but is it fair to say that the more or less working assumption throughout this process was that the Section 95 consent requirement for the service manager did apply to Thornhill Green transfer and that the decision that is does not crystallized rather recently?

MR. SMITH: I think that's an

issue for -- you know, whether or not it applies is an issue for the Court. I've told you that there was advice given by legal representation, by counsel. So I don't think it's fair to probe with this witness the questions that may, in fact, go behind solicitor client/privilege. I think it's really an argument for you and I to make on the 5th of December.

MR. KLIPPENSTEIN: Fair enough, I won't push the question.

MR. SMITH: Thank you.

MR. KLIPPENSTEIN: Just so I understand, is it the Region's position that a Section 95 consent of the service manager is not required whenever a co-op is in receivership and the transfer of the co-op's assets to someone else is contemplated?

MR. SMITH: I don't know because we don't have that situation. Our narrow position on this judicial review will be, given the terms of the appointment order and the powers

granted to the receiver thereunder, Section 95 consent was not necessary. And it will further be our position that even if it was necessary, it wasn't sufficient.

MR. KLIPPENSTEIN: It would appear to logically follow, and I don't mean to get into a legal argument, but this is a basic fact, it would appear to follow logically that what applies to the reference to the service manager in Section 95 applies to the Minister. So I'd take it the Region's position is that the Minister's consent also was not required for the proposed transfer of Thornhill Green?

MR. SMITH: Correct. I've said that it was sought and received out of an abundance of caution.

MR. KLIPPENSTEIN: Okay.

MR. SMITH: On the advice of counsel.

MR. KLIPPENSTEIN: Based on the materials I've seen, it appears to me that that position was not communicated

to the Ministry in the proceedings. In other words, it appears to me that the Ministry did not know that the Region's position was or would be that the appointment order dispensed with Section 95 ministerial consent. You tell me if I'm wrong on that.

MR. SMITH: I think I've undertaken to determine whether or not such a position was in any way articulated to the Ministry.

MR. KLIPPENSTEIN: Okay. Can you help me out at all, because it seems to me if the Minister's consent apparently required by Section 95 to the transfer of a 14 million-dollar property, or thereabouts, was legally eliminated without the Ministry being so advised, there's a problem? Can you help me out with that in any way?

MR. SMITH: I'm not sure I understand the question and I'm not sure this is the appropriate forum to help you out.

MR. KLIPPENSTEIN: Okay. Well, I know

your every intention is to help me out as much as possible --

MR. SMITH: At all times.

MR. KLIPPENSTEIN: -- but I won't push the question. Thank you. That may be for another forum. Can we go off the record for a moment.

--- BRIEF RECESS

MR. KLIPPENSTEIN: I'm trying to understand a little bit further the Region's position vis-a-vis the Section 95 consent requirement. The Region's position, as I understand this morning, is that it is the appointment order appointing the receiver in this case that obviates the need for the Section 95 consent. Have I got that -- you haven't referred to other statutes, for example. Can I get a little clarification on that?

MR. SMITH: It's really, I don't think, the forum for flushing out legal positions but, yes, more or less it

will be our position that Section 95 applies to a transaction sought by a housing provider and not by a receiver. And while Section 95 dictates the procedure to be followed in the case of a sale by a housing provider, it is the appointment order that dictates the procedure to be followed by a sale by a receiver.

MR. KLIPPENSTEIN: Okay.

MR. SMITH: As I said, it's a legal position. I'm not aware of any case law going either way. But it would stand to reason that even if the Minister or the Region or the service provider was of the view that the sale should not go through, that the receiver could still apply to court under the general receivership powers granted under the appointment order to get the Court's direction on the issue. The service provider and the Ministry can then show up at court and make their positions known.

MR. KLIPPENSTEIN: As I recall, no

ministerial representative showed up in court for the appointment order in this case. Do you know if that's true?

MR. SMITH: I think the only parties there were the Region and the receiver.

MR. KLIPPENSTEIN: Right. And, logically, I guess that position would apply to any housing provider not just a co-op?

MR. SMITH: Correct. Any housing provider under receivership given the unique terms of each appointment order.

MR. KLIPPENSTEIN: Okay.

MR. SMITH: Now, if it was just a Section 116 (1) (5) appointment, what we've been referring to as a private appointment, then I don't know.

MR. KLIPPENSTEIN: Thanks.

MR. SMITH: I hope that helps. But, as I said, I don't think this is that correct forum to bash out and mute these legal issues.

MR. KLIPPENSTEIN: Well, your position makes me very unhappy but it does help

clarify the position.

BY MR. KLIPPENSTEIN:

Q. In the paragraph that I read to you earlier, Ms. Hobbs, which is part of the February 13, 2008, report at the bottom of page 6, the paragraph says, "Thornhill Green remains the legal owner of the complex." It take it that refers to the fact, and I think this is obvious, that legally, technically, and in reality, the land and buildings and property at Thornhill Green Co-op belong to the Thornhill Green Co-operative corporation, right?

A. That's my understanding, yeah.

Q. And quite aside from any questions of who originally paid for the land or building 15 or 20 years ago, or who contributed or not, it's very clear that that land and building belongs to that corporation, right?

MR. SMITH: They're on title.

BY MR. KLIPPENSTEIN:

Q. I'd like to inquire a little bit about the decision made by the Region to request the Thornhill Green Co-op property be transferred

to the Region.

MR. SMITH: To page HYI.

BY MR. KLIPPENSTEIN:

Q. To HYI as a wholly owned corporation of the Region service manager. Can I take it, and I'm speculating, that there was never a request or a suggestion made to the receiver that these properties should be transferred to anybody else but the Region's corporation?

A. The report reflects the only request to the receiver authorized by council.

Q. Okay. This report dated February 13, 2008, with its recommendations deals pretty comprehensively with the proposal for the transfer of the properties. And it seems to me, quite likely, that there would have been some committee work or staff work prior to February 13, 2008, to prepare these materials, right?

A. Correct.

Q. And I take it you probably were quite involved with that, right?

A. I was involved in some aspects of it, yes.

Q. And were there any working papers

that fed into this formal proposal dated February 13, 2008, about the proposed transfer?

A. Committee reports go through an approval process that is documented through the commissioner's office.

Q. Can you remember, either exactly or approximately, when you first became aware of the idea of transferring the property that was in receivership to the service manager's -- to the Region's corporation?

A. The discussions were initiated in response to the requirement for additional funds.

Q. And that request for additional funds goes back to -- I think it's mentioned in this report, was it January of 2008 or maybe before then? Sorry, let me just see if I can locate the date reference I'm referring to. I'm looking at another document also dated February 13, 2008, which is a report of the general manager of Housing York Inc. and that's found in the motion record, Volume 4, Tab 14, Sub-Tab U, which I'm showing to you. Do you recognize that?

A. I do.

Q. It seems to be very similar to the other report I just showed you, right?

A. Yes.

Q. And that makes a reference on page 3 of that report saying that in 2005, the co-operative approached the Region with a consultant's report detailing their urgent and projected short-term capital requirements and requesting financial assistance. So that refers to 2005. Based on your previous answer, do I understand that there were initial discussions about transferring all of the co-op's assets to the Region back around 2005?

A. No, that's not correct.

Q. Okay. Can you clarify that?

A. The discussion that I referred to with respect to the additional funds requirement pertained to the receiver's inability to complete Phase 3.

Q. I see. And they requested another 600,000?

A. We were advised that they were unable to proceed without additional funding, yes.

Q. So is it fair to say that there was no internal discussion of property transfer of the co-op until that request for 600,000 came in?

A. It was always acknowledged that

that was one of the possibilities, that primarily there are two, return to some form of co-operative governance or transfer to another non-profit. But there were no specific plans or discussions taken with respect to either of those options in any detail until the need for additional funds was identified by the receiver.

Q. Do you remember when that is? That's in the papers somewhere, when the $600,000.00 request?

A. I believe the receiver's letter is in the record.

Q. I'm sure it is, give me a moment. This appears to be mentioned in the first report of the receiver dated May 14, 2008. I just happened to glance at Paragraph 75 which talks about the receiver requiring a further $600,000 but that was long after the February date.

MR. SMITH: I think if you take a look at 14 R, that might be the letter.

MR. KLIPPENSTEIN: Yes. Thank you, Mr. Smith.

BY MR. KLIPPENSTEIN:

Q. I'm just looking at that Tab R, to

a letter dated January 18th, 2008, which is a letter to the Region from Mintz & Partners which seems to be requesting an additional --

A. The amount there was 473,000 and change. That identifies the shortfall based on the tender that was completed in the fall.

Q. Right.

A. Which would have presumed a 2007 execution of the work.

Q. Okay. But is this the letter that triggered the discussions that you've mentioned?

A. That's the formal notification. I was informally advised by the receiver subsequent to the close of the Phase 3 tender that there was an issue.

Q. Okay. Do you remember when the Phase 3 tenders closed?

A. I don't, I'm sorry. It would have been last summer or early fall is my best guess but I'm not certain of the date.

Q. Late summer or early fall of 2006?

A. Seven.

Q. Right. Did the receiver suggest to you at any time prior to January 18, 2008, the date of that letter, that the property of the Thornhill

Green Co-op be transferred to the Region or its body?

A. They identified the issue.

Q. The issue being?

A. That there wasn't enough money.

Q. Right.

A. But, no, they didn't specifically propose the sale.

Q. So the sale idea came from the Region?

A. It was presented in response to the need for additional funds, yes.

Q. And I take it from what you've said that you, as the head of the housing unit, would have had to deal with this idea early on, in other words, this idea of potential sale of the co-op's assets?

A. My role was to make senior management aware of the issue and to seek direction. This is well beyond the scope of my authority in terms of making a decision.

Q. Right, okay. So presumably you raised that idea, namely, the idea of a transfer of the co-op property to your senior managers?

A. I don't know that I was the first

person to raise -- to identify that as an option.

Q. Do you know who was the first person?

A. No, I don't recall. There were numerous discussions around how to manage this issue.

Q. Okay. Can you recall one of the first or the first time that this topic was seriously discussed in a formal meeting or working group meeting or staff meeting, namely, the issue of transfer of the co-op's property?

A. Well, the first conversation would have been after I was advised by the receiver that additional funds were required, I would have notified Sylvia Patterson.

Q. Uh-huh.

A. And that would have initiated other discussions with staff in the Region around options.

Q. Would you undertake to review your files and provide to me the first written notification to Sylvia Patterson by yourself?

A. I didn't do it in writing. I walked into her office and told her.

Q. Okay. Did she throw you out of her

office?

A. No.

Q. Do you recall that happening?

A. I don't recall the specifics, I know I did it but I don't recall the dates.

Q. Do you recall that discussion, did she -- how did she respond?

A. I don't recall the specifics, it was sometime ago.

Q. Okay. Well, presumably that would have then sparked some kind of written examination or analysis of the issue. Is that fair? Because it's $600,000 on the one hand and a $14 million property on the other so there must have been then a report or an analysis prepared on a preliminary basis?

A. There would have been a briefing note I believe.

Q. You can probably guess my next question. Can I get a copy of that briefing note?

MR. SMITH: I'll take direction. I'm a little uncertain about privilege, et cetera, so I just want to check with in-house counsel, et cetera.

MR. KLIPPENSTEIN: Okay. I don't see

any issue of privilege but then again I'm biased.

MR. SMITH: I didn't see any issue of privilege of board resolutions yesterday but, then again, I was biased.

BY MR. KLIPPENSTEIN:

Q. What would have been the group or committee that this issue, namely, the issue of the possible sale would have then been reviewed by?

A. Well, the ultimate decision maker is regional council so that's the group.

Q. Right. But before that, there must have been meetings of a committee or a sub-unit or a working group?

A. There would have been discussions with various levels of staff. But I didn't attend what I can call a specific designated working meeting.

Q. Okay. Who was it that made the decision to recommend the transfer to council, Ms. Patterson?

A. This would have been the result of a discussion with a number of people including the

commissioner. I expect that there would likely have been discussions with -- as part of the committee process, there's a process that involves a review by all of the Region's commissioners. There would have been input from a number of sources.

Q. That would have taken months I guess?

A. It's part of the committee report process so ...

Q. Right. And it's fair to say, I think, that throughout that process, there was, at no time, any information or hint given to anybody associated with the co-op that the transfer of all the co-op property was being considered?

MR. SMITH: Except for the receiver as the witness has said before.

THE DEPONENT: The court appointed receiver.

BY MR. KLIPPENSTEIN:

Q. Aside from the receiver?

A. Aside from the receiver, no.

Q. So just to be clear, if the co-op

-- aside from the receiver, but the co-op members, the co-op board of directors, if they complain of unfairness in the process, as they do complain, and say we had no notice, no chance for input in any of this property transfer concept prior to the approval by council in February of 2008, they're right insofar that they had no notice, right?

A. The Region's relationship is with the receiver.

Q. Right.

A. So the Region would not have given notice directly to the members.

Q. All right. And obviously this is a question also involving the receiver and the receiver's reports, but to your knowledge, and as far as I can see in the paperwork this is the case, but to your knowledge, the receiver never gave any hint to the members or the board of directors that a takeover or a transfer of property was being considered prior to May of 2008. Is that fair?

A. Not that I'm aware of.

Q. Okay. So when members or directors of the co-op say they were taken by complete surprise when they received the court papers in May of 2008 seeking approval of a sale, when they say

they were taken by complete surprise, you have no information to suggest otherwise?

MR. SMITH: I think that's inviting the witness to speculate on what the state of the knowledge of the Thornhill Green residents was and I don't think that's a fair position to put the witness in. There is some evidence in the volumes of material that we have that there was some suspicion and I think it was described yesterday by Ms. Daniel or it might have been Ms. Myles as rumours. But I don't think it's fair to ask this witness to speculate on what the state of suspicion or rumours or knowledge was.

MR. KLIPPENSTEIN: I wasn't asking that and I understand your point.

BY MR. KLIPPENSTEIN:

Q. I'm asking whether you have any information, you know of any information of any kind of communication to members of the co-op or any kind of information flow that would have tipped

them off, whether you know of it?

A. What I'm aware of is the receiver's information meetings, and minutes of same I believe are in the record, that that issue did come up generally in a couple of instances, I believe, as is recorded in the minutes.

MR. SMITH: But I think your question was was there any -- I think what you're getting at was was there any information, to our knowledge, disseminated about the decision making process in house at the Region?

MR. KLIPPENSTEIN: That's part of it, yes.

MR. SMITH: Okay. And we're not aware of any information that there was such a dissemination of information.

MR. KLIPPENSTEIN: Okay.

BY MR. KLIPPENSTEIN:

Q. Ms. Hobbs, are you aware of any communication by anybody, including yourself, the receiver, or the Region, or anybody at all to co-op members or co-op board members prior to May 14, 2008, that alerted them to the fact the transfer of

the co-op property was being seriously considered?

A. No.

MR. SMITH: Now, by seriously considered, do you mean actively considered, the decision making process was ongoing, reports were being generated? Or by seriously considered, do you mean it was a viable option? Because I think that's a subtle but important distinction, I don't want to be too lawyerly but I just want to make sure that we are all on the same page.

MR. KLIPPENSTEIN: Well, I asked a question, I got an answer. I'll move on.

MR. SMITH: That's fine, it's your transcript.

BY MR. KLIPPENSTEIN:

Q. Now, the proposed transfer, is the proposed transfer to the Region of all of the assets of the present co-op, right? I think that's clear that's what the paperwork says?

A. That's my understanding, yes.

Q. So that if this transfer were

approved and was completed, the co-operative corporation as it now exists would have no assets, nothing, right?

A. I believe that would be the effect of the transfer, yes.

Q. Right. And would you agree with me that that would have the effect of, for example, of leaving the co-op corporation without any housing units whatsoever? Obviously it follows I think.

A. Well, the corporation would no longer own the units but the members would still occupy them. Is that --

Q. Right. That's part of what I'm starting to get into. Is it fair to say that once the transfer of the assets occurs as proposed, the Region and the service manager would have nothing more to do with the co-op corporation, that's the plan, right?

MR. SMITH: Unless the corporation bought another housing project that was subject to the SHRA. And I'll just remind the witness that if I say something that you disagree with, you are deemed to adopt my answer unless you correct me.

THE DEPONENT: Okay, thank you.

BY MR. KLIPPENSTEIN:

Q. But certainly there is no plans now for the Region to have anything more to do with the co-op corporation after the transfer because the co-op corporation, as far as you know, would not be functioning?

A. Their relationship would transfer to Housing York Inc. So, yes -- I'm sorry, what was the question again?

Q. The Region would have nothing more to do with the co-op corporation as an entity, as a corporation? The Region would have no interest in that corporation anymore?

A. I can't see that the Region would have a continued relationship with them.

Q. Right. And the present units owned and operated by the co-op corporation are, in part, governed by the Co-operative Corporations Act. Is that fair? I think that's obvious.

A. Yes. My understanding is the cooperatives are subject to the Co-operative Corporations Act.

Q. Right. And there are about 100

households in the Thornhill Green Co-op now. Is that right?

A. They have 101 rental units.

Q. Right. And those units would include a variety of types of households, some couples with children, some single seniors, a variety of households. Is that fair?

A. Well, there are three and four bedroom units. So with respect geared to income households, the composition would be subject to the occupancy standards. I can't speak to the composition in the market units.

Q. Okay. But there's about 40 of the rent geared to income units or RGI units?

A. That's the target plan for Thornhill Green, yes.

Q. Do you happen to know if those are all three or four bedroom units? Or it's just --

A. The target plan doesn't stipulate whether they have to be three of four.

Q. It could be any of the units?

A. A combination, yes.

Q. Out of 101. But to your knowledge, the RGI units, present units, in the co-op have a variety of families with -- would most of them have

kids in them, do you think?

A. I'm not certain. The occupancy standards require a minimum of one person per bedroom for a three or -- so there would be a minimum of three in a three, and four correspondently for a four bedroom unit.

Q. Okay. And most of those units then would have one or more members of the co-op who are actually technically members, voting members of the co-op, right?

A. My understanding is that in the Co-operative Corporations Act, at least one, that all adults who are permanent residents must be members of co-operative.

Q. Okay. And each of those adult members of the co-op living in those units has the right to vote towards a board of directors elected within the co-op subject to whatever technical restrictions there might be. Is that fair?

A. Whatever the co-op's specific bylaws are, yes.

Q. So that board of directors is elected by vote of the members?

A. Yes.

Q. And, presently, that board of

directors has overall management responsibility of the co-op, subject to obviously its own bylaws, the funding requirements, oversight by the service manager and those qualifications, right?

MR. SMITH: Do you mean a generic co-op or Thornhill Green?

BY MR. KLIPPENSTEIN:

Q. Let's say Thornhill Green for now?

A. Thornhill Green, no. The receiver has control of the property.

Q. I'm sorry, same question but before the receiver was in place?

A. Prior to the appointment of the receiver, then I believe that would be correct.

Q. Right. So each member living in a unit has the right to vote for the board which has significant management powers over their place of living, right?

A. Yes.

Q. And each member can also run to be elected on a board of directors, right?

A. Yes.

Q. So each member living in the co-op unit has the right to participate in the management

of their home both by voting and potentially running for the board of directors, right?

A. Yes, in that respect.

Q. And many of these people living in Thornhill Green now have been there for many years, even many decades. Do you know that?

A. That's my understanding.

Q. So this is, in a very real sense, their home and their neighbourhood. Is that fair?

A. I think most people feel that way about the place they live.

Q. Yeah. Well, to varying degrees. Is that right?

A. I assume so. I can't speak for everyone else.

Q. So what will change, if the proposed transfer goes through, is that the homes that these members now live in and in which they have a voting right and an option to run for the board will no longer be a co-op and so those rights won't apply to the units after the proposed transfer, right?

A. Correct. It will revert to the same form of tenure that applied before it became a co-op.

Q. Right. So, in that sense, what people gained when they decided to become a co-op would now have been lost, right?

A. The specific participation that you mentioned will no longer be in place.

Q. Right. And participation is important, isn't it, when it gives you control over your home?

MR. SMITH: Mr. Klippenstein, this is really argumentative. I'm not saying you are arguing with the witness but this is the argument that you're going to present, I would assume, on the 5th, whether -- I don't know that this witness is at all qualified to say whether participation is important generally, specifically to the residents of Thornhill Green or to any specific resident of Thornhill Green. To some, it might be important; to others, it might not be. I understand your argument, I understand where you're going. I just don't think it's a fair discussion to have with the witness.

MR. KLIPPENSTEIN: Thanks, Counsel. I beg to differ and I do want to pursue that line of questioning. Ms. Hobbs is the manager of the housing unit for the Region.

BY MR. KLIPPENSTEIN:

Q. How many housing units are covered within your purview including co-ops and other forms of housing?

A. Co-ops, non-profits, any affordable housing projects that have built since the SHRA is approximately 6,000 units.

Q. Six thousand units. Well, my question was wouldn't you agree that it's important for a family to have some participation in the control of their home and whether that participation is something short of ownership? But isn't it fair, as a manager of 6000 housing units, to say that people want to have some kind of degree of control over where they and their families live. Isn't that fair?

MR. SMITH: I don't think it's a fair question to ask.

MR. KLIPPENSTEIN: Why not?

MR. SMITH: Because you're asking her to make a sweeping statement about a generality of human desires Some people may want participation, some people may want no participation at all. Some lawyers are so busy that they'd be very happy to have somebody run their households for them and not be troubled at all but the burdens of decision making. You can ask her, I think, fairly if she's aware as part of her duties that some people are interested in having some control over the governance of the place that they live. But I don't think it's fair to put a sweeping generality to the witness.

BY MR. KLIPPENSTEIN:

Q. Okay, let me ask that; isn't it fair to say, Ms. Hobbs, that in the field of housing, some people are interested in having some significant degree of participation in the control of their housing?

A. I would say that I'm aware that

there are some who feel that way. I'm also aware than some co-ops struggle to recruit board members.

Q. Now, when you agreed that some people are interested in participating in the control of their homes, that's, in fact, a very common feeling, isn't it?

MR. SMITH: Mr. Klippenstein, this isn't psych 101.

MR. KLIPPENSTEIN: Well, with respect, Counsel, you may think so. But that's part of the problem, there are dozens of families in the co-op whose homes are at risk, you know. I'm not giving evidence but I own my home and that's pretty damned important to me. Now, let me just repeat the question.

BY MR. KLIPPENSTEIN:

Q. Wouldn't you agree, Ms. Hobbs, that if some people are interested in participating in the control of their homes, that's a legitimate and important value, right?

MR. SMITH: I don't think this witness is qualified to answer that. That's a perfectly valid argument to

make on the 5th of December. But I don't think it's fair to ask this witness to validate your arguments. She has no better experience than anyone as a human being.

MR. KLIPPENSTEIN: Well, with respect, Counsel, I mean, if the Region, who oversees 6,000 units, is not qualified to express an opinion about whether some people value participation in the control of their homes and whether that's a valid value -- I mean, is that the state of qualifications of the head of the housing unit?

MR. SMITH: No. She's already given you the answer that she's aware that some people want that control. But whether it's valid or not, I don't understand how this witness is qualified to answer that. We certainly don't take the position that it's an invalid desire. But to ask this witness whether not the desire to participate in the management of their home is valid or not, that's a human

behaviour question I would think.

BY MR. KLIPPENSTEIN:

Q. Isn't that a basic human and a very common human -- a need and desire that includes security of home for one's kids and one's family? And isn't that part, a basic part, of providing housing for people? How can you say otherwise? Wouldn't you agree that's a basic part of -- a factor?

MR. SMITH: Mr. Klippenstein, I've given you my position on that line of questioning. She's eminently qualified I think to give you her experience as far as what people have expressed to her by way of desires. But to question this witness on psychological aspects of, you know, primal human desires, I think is way outside of the box.

MR. KLIPPENSTEIN: Well, you've said it's legitimate to ask about her experience.

BY MR. KLIPPENSTEIN:

Q. So let me ask you about your experience. Would you agree that, in your experience, many people want to have participation in the control of the homes that they live in, in your experience?

MR. SMITH: That's a fair question.

THE DEPONENT: My experience, perhaps with respect to the waiting list administration may be helpful in this regard. There are 32, not private not for profits corporations plus Housing York Inc. plus ten cooperatives. My understanding from my role as manager, which includes responsibilities for the waiting list, is that whether or not a property is a co-operative is not a significant deciding factor when people are selecting their locations. When they're making their building choices for which waiting list they choose, they are more driven by location. I'm aware that the co-ops in York Region

have greater difficulty filling their units in some cases because of the participation requirement and an expectation that people attend an orientation session. So I am not aware that applicants, who are considering their housing choices, give preference to co-ops, I've not seen any evidence of that.

BY MR. KLIPPENSTEIN:

Q. Now, are you referring to RGI waiting lists?

A. Yes.

Q. All right. And people on waiting lists for RGI subsidized units usually have been on the waiting list quite a while, right?

A. It depends on their circumstances.

Q. Would be fair to say many of them are pretty desperate to find housing?

A. I think many people have an urgent need for housing, yes.

Q. Let me go back to my question which was, in your experience, isn't it fair to say many people want to have participation in the control of

their housing?

A. I don't have any direct knowledge of that. I know that there are some co-ops that are very successful. I know that there are non-profits that are very successful and have high levels of tenant satisfaction. I'm not aware that participation, as I think you're asking me about it, is the primary issue.

Q. Now, my question wasn't whether it's the primary issue because people have many factors that go into various important decisions. But would you agree with me that, for many people, participation in --

A. Mr. Klippenstein, I don't have direct knowledge of the opinions of many people with respect to their housing.

Q. Okay. Would you agree with me that in terms of housing, in particular housing for families, a feeling of some degree of security, of ability to stay in one place if one desires, that that's an important factor for many people?

A. I'm sorry, can you repeat that?

Q. Would you agree with me that in terms of people -- people's housing choices or home choices, especially for family situations, the

ability to feel somewhat secure in their housing in terms of the ability to stay over the long term is often a very important factor?

A. I think people generally like to feel secure in their homes.

Q. Yes. Now let's look at factors affecting security in a co-op situation. Would you agree with me that, in general, under the Co-operative Corporations Act, before a member can be evicted from their home in the co-op, a decision for eviction has to be made by the board of directors, right?

A. That is the first step in the process as I understand it.

Q. Right. And that board of directors is elected by the members, right?

A. Yes.

Q. So any member, when faced with a potential eviction for whenever reason, they may have temporarily lost their job or something, they know that their eviction decision will be made at first level by a board elected by members like themselves, right?

A. I believe that's the process.

Q. And, in deed, by the rules under

the Co-op Corporations Act, that decision for eviction cannot be made by a board without first having heard from the member and that member having had an idea of the grounds of eviction, right?

A. My understanding is that the member has the right to appear, if they choose. I believe that if they don't do so, the board has the right to make a decision in the absence of that information.

Q. Right. And if the board decides to evict, that member has the right to appeal that decision to a general meeting of the members of the co-op. Is that right?

A. That's my understanding.

Q. Now, would you agree with me that those various rights I've just decided, including the right to have an eviction decision regarding one's home made by a board elected by members, the right to appear to that board and address the complaints, the right to appeal to the general membership, those are important beneficial rights to members when the security of their home is at stake. Isn't that fair?

MR. SMITH: Again, that's another argument that is quite appropriate to

make, I suppose, on the 5th. But it's not fair to ask this witness to validate your arguments.

MR. KLIPPENSTEIN: I'm just asking, Counsel, about what seems to me to be a fundamental part of a picture of housing which is Ms. Hobbs' primary line of work.

MR. SMITH: I think the relevance is extraordinarily tangential. But if you phrase the question as, in your experience, do these rights as set out in the CCA to be able to have eviction proceedings dealt with at the board level in the first instance and the right to appear in the eviction proceedings, et cetera, in your experience, are those rights important, have you heard from people that those rights are important in respect to their choice of housing, I think that's a fair question. But just to ask this witness, you'll agree with me that those are important, I think that's extraordinarily unfair.

MR. KLIPPENSTEIN: No, I'm not going to ask the question that way. I'm asking the question based on Ms. Hobbs' knowledge as an experienced housing manager at a policy and public administration level, a public servant, and I think it's a fair question to ask her about that based on a provision of services to ordinary people.

MR. SMITH: But her personal views on whether or not it's important to be able to have your eviction proceedings dealt with by a board of your peers is neither here nor there. I suppose that it might be relevant, without conceding the point at all, as to her experience as to whether people have said, you know, I really want to live in a co-op because if I'm subject to eviction proceedings, I know my first -- the first up in the process to it is to appear before a board of directors that I helped elect.

BY MR. KLIPPENSTEIN:

Q. Ms. Hobbs, as I understand the proposal here, in other words, the proposal to transfer the co-op's assets to the Region, since those assets and 100 or so housing units will be folding into HYI's assets, none of the co-op rules will apply to those units anymore, right?

A. There will be a different governance structure, Residential Tenancy's Act versus the Co-Operative Corporations Act.

Q. Right. And none of the protections regarding security of homes that I've just gone through, namely, the right to elect the board that makes the eviction decision, the right to appear before the board, the right to appeal to the members living in the housing project, none of those will exist after the proposed transfer for the people in those units?

A. Those specific provision will not. However, whereas currently whatever decision is made by the co-op or the members, enforcement of that decision still requires a court process. Under the Housing York Inc. governance model which is the standard in the province for all rental housing with the exception of co-operatives, that

same decision is made through a provincially constituted board, the landlord and tenant board. So ultimately, in both cases, whether or not an occupancy right or tenancy is terminated actually falls to a judicial or quasi-judicial body.

Q. And accepting for the moment what you say, namely, that the decision ultimately, and I underline the word ultimately, falls to a judicial or quasi-judicial body, in the case I've just been looking at in the rights and protections in the co-op, the member has at least three or so of these protections that we've discussed before the member even gets to the judicial or quasi-judicial body. Is that fair?

MR. SMITH: I think the witness has said the CCA will not apply if the property is transferred to HYI, it will the TTA that applies.

THE DEPONENT: RTA, sorry, they've changed it. I think the RTA is the most recent incarnation.

MR. KLIPPENSTEIN: So the answer to my question is, yes, in other words those three specific protections that I've identified that exist prior to the

judicial or quasi-judicial decision will no longer exist for the residents of those units?

MR. SMITH: The procedures outlined in the CCA will not apply.

MR. KLIPPENSTEIN: My question used the term rights because those procedures give rights. And I'd prefer that the question be answered in terms of its terms that is those rights will no longer pertain to those members in those units, right?

MR. SMITH: I'm really trying, I know it doesn't seem that way to you, but I an trying hard not to interfere with your questions. My concern is you are really engaging in an argument with the witness on this issue. The answer is that the CCA will not apply and we accept that. What flows from that, I think, is argument.

BY MR. KLIPPENSTEIN:

Q. Well, let me put it this way and then I'll move on, wouldn't you agree with me, Ms.

Hobbs, there are import protection rights for people's homes which will be lost by the folks in the co-op if the transfer occurs?

MR. SMITH: Don't answer that.

MR. KLIPPENSTEIN: It seems to me to be a very important and valid real world question.

MR. SMITH: I know it does.

MR. KLIPPENSTEIN: All right.

BY MR. KLIPPENSTEIN:

Q. Now, I've gone through a number of what I've called rights and protections that members of the Thornhill Green Co-op now have including participation rights in the management of their home, protections on being removed from their home that I've suggested to you will no longer exist after the proposed transfer. Now, is it -- it is the case, is it not, that those changes in the housing rules pertaining to those residents in those units is proposed to be made without any notice or input to those families prior to the service of the May 14 filing date, in other words, they had no realistic chance to have input into the loss of those rights?

MR. SMITH: I think you've -- she's already answer that. We're not aware of any notice being given directly to any of the residents of Thornhill Green that there was a decision making process underway in house at York Region.

MR. KLIPPENSTEIN: Okay, thank you. I'll move on.

MR. SMITH: Can we go off the record for one second.

--- BRIEF RECESS

BY MR. KLIPPENSTEIN:

Q. I'd like to ask questions, if I may, about the property itself, the land and units of the present Thornhill Green Co-operative. I see references made in the materials to a real estate appraisal the comes to a value of approximately 14.5 million or thereabouts in 2005. Could I have a copy of that?

MR. SMITH: Do we have a copy of the appraisal?

THE DEPONENT: I think I have

provided it.

MR. SMITH: Yes, you can have a copy of the appraisal.

MR. KLIPPENSTEIN: Thank you.

U/T: To provide a copy of the 2005 appraisal.

BY MR. KLIPPENSTEIN:

Q. So that appraisal was in 2005, as I understand it. I won't go into detail about those issues. But I have one question. I think I got the impression somewhere that there is a new subway stop or something being considered for near that location. Are you aware of anything like that?

A. No, I have no information of anything like that.

Q. I can't remember where I got that so that may be a wrong impression.

MR. SMITH: Off the record.

--- DISCUSSION OFF THE RECORD

BY MR. KLIPPENSTEIN:

Q. I'm going to ask, Ms. Hobbs, if you

make a few basic inquiries about whether there is talk about a proposed new subway stop not far from the Thornhill Green property? There may be some consultation papers out there or some kind of discussion about that possibility.

MR. SMITH: Wouldn't that be Toronto Transit not York Transit?

MR. KLIPPENSTEIN: I don't know the borders and arrangements there so I don't know. All I'm asking is a sort of basic level review. I don't know whether a simple Google search will accomplish something. So if you could do a simple review of that?

MR. SMITH: Okay. This witness isn't aware of it. We'll make best efforts to let you know the state of awareness of the Region of York.

MR. KLIPPENSTEIN: Okay.

U/T: To advise of the state of awareness of the Region of York as to the proposed subway stop near Thornhill Green Co-op.

BY MR. KLIPPENSTEIN:

Q. My follow-up question is if there is a subway stop planned potentially to be built near the co-op property, would you agree with me, from a housing perspective, that would increase the desirability of that property including increasing the economic value of the property?

MR. SMITH: I think that would be a reasonable assumption.

MR. KLIPPENSTEIN: Okay, thank you.

BY MR. KLIPPENSTEIN:

Q. And one of the concerns of the co-op and the Cooperative Housing Federation is that, to put it in short, that we appear to have a very valuable piece of property being transferred partly in order to fund some repairs which, in my client's view, repairs could be fundable from outside sources. In the consideration by the Region, the service manager of the options related to funding the repairs, after this additional request from the 600,000 from the receiver, was there any serious consideration given to having funding from a third-party lender?

A. We actually went through that

process prior to recommending the initial $2.1 loan to the co-op. We evaluated the options for third-party financing, we discussed with the Ministry options around blending and extending the first and, through that process, determined that the only cost-effective approach was to actually do a direct loan from the Region.

Q. You say cost effective, I take it there were other options which were potentially feasible but somewhat more expensive?

A. I think feasibility was highly in doubt. Third-party financing would have required the co-operative to actually have the capacity to carry the debt and to begin to service it immediately which it did not then and I don't believe it has now. The only way that could have been possible was for the Region to provide addition subsidy to which the co-op's not entitled under the SHRA. The blend and extend option has never -- at that point, had never been done to the best of my knowledge, still has not been done. It affects the secured mortgage pool. Substantial indemnities would have been required from the Region before the Province could have considered it.

So having determined that neither of those options, couldn't add to the first, couldn't reasonably secure financing through a third party, the only option left to assist the co-op was to provide a direct loan from the Region, which, as you know, has very generous repayment terms, it's deferred until the co-op has capacity or until retirement of the first.

Q. Can I have a copy of reports that reviewed those financing options including the third-party financing options that would have been presented to either council --

A. It was a discussion with Sylvia Patterson and ministry staff, it was not a meeting and there were not notes that I'm aware of.

Q. It was not a meeting and there were not notes?

A. It was a meeting but there were not minutes of the meetings. It was a meeting with the then director of housing for the Ministry, Toni Farley.

Q. When was that meeting?

A. I don't recall the specific date, it was prior to -- it was while we were going through the exercise of trying to determine how

best to meet the co-op's needs for additional funding which would have been prior to the loan. So this is back in 2005.

Q. Did you attend that meeting?

A. I did.

Q. And were there any briefing materials prepared for that meeting for the participants of that meeting that included a review of third-party financing options?

A. The review of the third-party financing was limited to recognition of the fact that there would have to be some capacity to service it and the co-op's financial situation was such that that really wasn't an option.

Q. So the capacity to service was a key, if not the key issue?

A. In terms of third-party debt, yes.

Q. Now, since that time -- well, first of all, that brings us to the issue of the funding formula and its effect on the co-op. There was a change to the provincial funding formula a couple of years ago that increased the amount the co-op gets, right?

A. It increased -- there's a new funding model that applies to all social housing

providers.

Q. When was that implemented more or less?

A. First fiscal year was 2006.

Q. 2006. And is it fair to say in general, that that new fiscal or funding formula, that was during the receivership, right? That came into place during the receivership?

A. It would have been effective for the fiscal year for the co-op that I believe would have begun February 1st. So part of that time would have been under the board's control and the balance under the receiver's.

Q. And that change to the funding formula, in fact, increased the capacity of the co-op to service liabilities, right? They got more money?

A. They got more money. I wouldn't say that it gives them greater capacity to service additional debt.

Q. Why not? They're getting more money.

A. The terms of the loan to the Region require that first payment be made to the Region when the co-operative has capacity to pay. At this

point, they don't have capacity to repay the Region. We haven't required repayment of the tax advance, we haven't required repayment of the urgent health and safety advance, we haven't required payment on the $2.1 million loan because they are still in the process of -- the receiver is still moving them towards financial health.

Q. The various receiver's reports include reference to the fact that the funding formula was changed so as to increase the co-op's income, the 2006 funding formula, right, the receiver takes that into account?

A. It's reflected in the financial statements, yes.

Q. And the receiver's report refers to a deficit reduction plan that projects elimination of the deficit within five years, right?

A. That's contingent upon five years of aggressive rent increases and ongoing expenditure controls.

Q. And refresh my memory, those five years of what you call aggressive rent increases, are those set out in the receiver's reports in terms of specifics?

A. I believe the deficit reduction

plan is attached to one of the reports but I don't recall specifically.

Q. Okay. Now, since those receiver's reports and since the receiver's deficit reduction plan was created, there has been another change to the provincial funding formula around September of 2007 or thereabouts and that change to the funding formula again increases the revenue available to the co-op. Is that fair?

A. Not -- I wouldn't characterize it that way. It eliminates mandatory payment but it's a completely different calculation now in many respects.

Q. Well, let's take this step by step. There was a significant change to the provincial funding formula in about September 2007. Is that right?

A. It's effective for 2008 fiscal years.

Q. Okay.

A. So I don't recall the specific date of the regulation.

Q. Okay. And do you know if that change to the funding formula will benefit the co-op financially assuming it remains a co-op?

A. I don't know that it would significantly increase the amount of money they would receive over the old funding model, I haven't done that specific analysis. I can tell you that they still don't have fully funded reserves and they haven't fully funded the member deposits.

Q. I'm setting that aside for now, that's dealt with elsewhere. So you haven't done the analysis?

A. I didn't do a specific comparison of the two funding models, if that's what you're asking me.

Q. That's partly what I'm asking you. What I'm asking you is whether you did an analysis of whether the changes to the provincial funding formula would significantly change the financial position of the co-op, assuming it went forward as a co-op?

A. I'm sorry, please repeat that.

Q. Have you done an analysis of whether the provincial change to the funding formula effective for 2008 would significantly improve the financing of the co-op assuming it remains a co-op?

A. I didn't do one specific to

Thornhill Green. We did, however, do an overall analysis on the budget implication for the Region as part of our process and determined that the funding model change wasn't really material.

Q. Now the Thornhill Green Co-op is pretty much unique, if not unique, in the region as being a co-op created out of existing buildings rather than new construction, right?

A. It's the only acquisition rehabilitation project in York Region.

Q. And I'll get into some of the history of that in a moment. But that changes the mortgage funding costs of Thornhill Green as compared to new construction co-ops, right?

A. Yes.

Q. Have you done so -- well, you've said you haven't done an analysis. Would you do a financial analysis of how the new funding formula for 2008 changes, if it does, the financial situation of Thornhill Green Co-op?

A. I'm not sure what the purpose of that analysis would be.

Q. Well, given that it appears your client, I mean your organization puts financial carrying ability going forward as a pretty

important part of why the co-op should effectively be abolished, it seems to me financially a pretty significant --

A. Are you asking me if it would enable them to carry third-party debt?

Q. No. I'm asking if you would do that analysis?

A. No.

MR. SMITH: Hold on. The witness has said it hasn't been done. And you're asking for an undertaking for her to do it?

MR. KLIPPENSTEIN: Yes.

MR. SMITH: By tomorrow?

MR. KLIPPENSTEIN: As soon as possible.

MR. SMITH: Is there any reason why your clients can't do that?

MR. KLIPPENSTEIN: My clients don't have much of the or any the financial information for the co-op, the receiver has it all. We've requested that actually and haven't received it, now that you mention it. So that's another thing, I'll make a note to address that. Yeah, so client can't do it.

MR. SMITH: I'll take instructions. My sense is it's probably an overly burdensome task to ask for something like that to be done on such short order.

MR. KLIPPENSTEIN: Well, you say it's short order. But, with respect, I will say this, it seems to me that would be part of assessing whether the co-op could continue. But anyway, I will see what your answer is.

THE DEPONENT: Actually, Mr. Klippenstein, I have been advised by the Ministry that further to our initial analysis around the issues around third-party debt, that securing a third-party loan would remove the Thornhill Green mortgage from MBS pool indefinitely which would also result in substantial additional costs. So it's really not a viable option in many respects.

BY MR. KLIPPENSTEIN:

Q. When were you advised of that?

A. Within the last two months probably.

Q. Can I have a copy of that advice?

A. No. Because it was a conversation with a ministry staffer who manages the mortgage renewals.

Q. And who's that?

A. Irene Neill.

Q. And why did -- did Ms. Neill tell you why it would remove --

A. The mortgage pool, to use her words, must be pristine. So service manager debt that has deferred performance is acceptable but -- under limited circumstances. But other debt is an issue because it affects the overall rating of the pool.

Q. Are you aware of other co-ops in the province who have third-party loans, significant third-party loans?

A. To a private institution, no, I'm not aware of any such examples.

Q. Have you conducted any research at all to find out whether there are such examples elsewhere in the province?

A. I'm a member of the service manager

housing network, we do have conversations comparing various practices. There are a limited number of service managers who have agreed to provide loans to housing providers. I'm not aware of any of that have undertaken an exercise with respect to third-party debt. And I'm advised by the Province, in that same conversation with Irene, that there are none that have third-party under the program administered by the Province.

Q. Okay.

A. And by third-party, I'm not, of course, including the service manager.

Q. Okay. Thank you. And I was going to ask you in follow up to our request to the receiver about financial information for the co-op but that's the receiver not you so I will have to pursue that through other avenues. Are you aware if the receiver has done a new analysis since the fall of 2007 to review whether the funding formula changes effective 2008 would change the financial status of the co-op going forward?

A. I'm not aware of steps the receiver may have taken in that regard.

Q. I referred to the fact earlier that the Thornhill Green Co-op is somewhat unique. I

gather it's unique within the region in being an acquisition co-op so that when it was created, its mortgage costs were comparatively low because they weren't covering new construction. Do you agree with me that the result of that years ago, for example around 2000 and after, was that when Thornhill Green's mortgage costs were plugged into the standard province-wide funding formula, they got a surprisingly low subsidy payment?

A. That would one of the factors. The other would also have been that their actual rents were not in line with the project occupancy charges for that property.

Q. I'll come back to the actual rents. So the result was that for a few years, effectively, money was flowing from the co-op to the Region as a negative subsidy?

A. There were no payments made by the corporative to the Region.

Q. Well, I won't get into that, there's various documents in the materials. But the Region requested, actually, there are letters stating that the co-op owes money to the Region at year end?

A. They identified the negative

subsidy but no payment was ever required.

Q. Right. But no payment was required although the letters suggested in fact the co-op owed the Region money, right?

A. Are you referring to a specific letter that I can --

Q. You've seen this, you know this, don't you, that the result of the calculations was that on paper the co-op owed the Region money, right?

A. I know that the negative subsidy was a result of the calculation.

Q. All right. Now, would you agree that that calculation caused a great deal of friction between the co-op and the Region because of perceptions at the co-op that they were not being fairly treated financially?

A. My understanding of the co-op's position at the time was that they didn't feel that revenues from market rent tenants should be used to reduce the costs of rent for folks who were receiving rent geared to income assistance.

Q. And the effect of that is, in the context of my question, yes. In other words, you're aware that the co-op felt it was being

unfairly treated financially because of the negative subsidy effect of the formula?

A. In none of my discussions with co-op members at the time did they characterize it as an issue of negative subsidy. They spoke about it in terms of the rent geared to income subsidy.

Q. But that issue that you've pointed to is an effect of the application of the funding formula, right, the way it was?

A. The intent of the funding formula is to ensure that --

Q. I didn't ask about intent. I asked about the effect.

A. The effect was that they didn't receive subsidy.

Q. Right. And that caused, when all was said and done, a lot of -- a perception of unfairness within the co-op, right?

A. I can't speak to how the co-op felt as a whole. I can tell you that the members that we spoke to did indicate that they felt they should receive subsidy.

Q. Yes. Now in relation to a question a few moments ago, you identified the negative subsidy as a factor and also another factor. Help

me out, can you remember -- housing charge increases, you said there was an issue related to the fact that the housing charges at the co-op were not in line with something. What was the something that they are not in line with?

A. My understanding of the co-operative funding model that predated the Social Housing Reform Act was that -- a key calculation was the project occupancy charge which was expected to go up by the guideline every year and that the subsidy was calculated on the assumption that those increases had been made as required.

Q. You've used the words required and guideline and I think I've seen the document you're referring to. Would you agree with me that there was no binding, legally binding requirement on a co-op to implement those so-called guideline rates?

A. There was a funding expectation.

Q. Expectation. I ask for requirement?

A. The funding formula, as I understand it, was set out in their operating agreement which would have been binding on the co-operative.

Q. Would you undertake to identify for

me how those guidelines or expectations that you referred to were, in fact, somehow binding on the co-op at that time? Because I have not seen, and to my knowledge, they're not?

A. I wouldn't characterize them as binding. I would say that they were the basis of the funding calculation. If the co-operative chose not to implement them, then the consequence was an effect on their funding and a significant effect on their revenue stream for not having sufficient market revenues either.

Q. So those were not binding?

A. They were decisions with consequences, they were not legally binding.

Q. Okay. And, again, this co-op almost uniquely had significantly lower mortgage costs than another co-ops, right?

A. Yes.

Q. One of the concerns that my clients have raised is the fact, the glaring fact if I may say so, that the Region indirectly through its wholly owned subsidiary is acquiring a property that may be worth in the area of $14 or $15 million at effectively a cost or price of around $9 million, so there is a very large apparent value

that is going from the co-op corporation to the Region or its subsidiary. Was there any analysis in the Region's or service manager's decision making process about the transfer that looked at that issue of equity, any kind of accounting analysis, economic analysis, legal analysis of what it meant for the service manager to get a $15 million property for 9 million?

A. The appraisal was actually obtained as part of the process I mentioned to you earlier initially of determining whether or not commercial financing was an option. There has been a recognition throughout that that appraisal reflected the market value of the property which could only be achieved if the property was no longer social housing. The Region's intent throughout this process has been to maintain the property as social housing and on that basis the equity of a market property isn't relevant to the decision making.

Q. Now the requirements on the Region and the service manager to maintain the Thornhill Green property as what you call social housing, those requirements, as far as I can tell, are only in the Minister's consent letter. Because, in

fact, the Region, as long as it meets its subsidy requirements and housing requirements for a certain number of RGI units, could provide those units in some other location apart from Thornhill Green, right?

A. Well, the service level standard is derived from the cumulative targets of all of the properties. If the Court approves the sale and this property is transferred to Housing York Inc., it will become part of their portfolio and part of their target that they have to achieve. And the Region can't unilaterally make changes to that.

Q. Well, the bottom line is that the Region or the service manager or HYI or some combination of them could take the 40 RGI units at Thornhill Green location, create them somewhere else, and sell the property, the only barrier being the Ministry's consent letter at present. Is that right?

A. No. You've convoluted a couple of issues there.

Q. I never done that before, that would be a first.

A. The service level standard is an obligation on the Region, and, yes, that's an

obligation that is measured across the entire portfolio. Housing York Inc., however, will be assuming the target plan for that property and can't make any changes to that unilaterally, can't do anything to the properly unilaterally.

Q. Housing York Inc. can't. But if the Region, as the overall service manager, agrees or desires it, it can happen?

A. Housing York Inc. has a separate board of directors. It is a wholly owned subsidiary but it is a separate legal entity. And I'm not sure I understand the purpose of the question. But as I've said previously, the Region's intent in this exercise is to preserve that site as social housing. We have an acute need for rent geared to income housing in the south end of the region. People who need rent geared to income housing often have transportation challenges, the proximity of that site to Yonge Street and transit opportunities is helpful for rent geared to income residents. It's in the Regions interest to preserve that property and ensure that it continues to operate as social housing.

Q. Now the target you referred to,

what is that target again?

A. The target plan that was transferred as part of the download of social housing.

Q. And that target plan is between the service manager and the housing provider, right?

A. It was -- they were confirmed by the Province to the housing provider.

Q. But if the service manager decides it would like to change that -- let me take a step back. The Region, the service manager owns HYI when all is said and done, right?

A. It's a wholly owned subsidiary, yes.

Q. And the Region or the service manager can determine what HYI does at the end of the day, right?

A. I wonder if that's a legal question. It has a separate board of directors and the board of directors is responsible for the governance of Housing York Inc. There is a relationship but I'm not sure that I'm qualified to answer your question.

Q. Well, you've talked about the separate board of directors of HYI and I've asked

you, whether, in fact, as a real world matter the Region controls what HYI does. And it sounds like you don't know which means the service -- go ahead.

A. I'm saying that the politicians who act as the board of directors of Housing York Inc. do so responsibly and with a view to the best interests of Housing York Inc. I'm acknowledging that there is a relationship between that board and regional council but I'm not sure I can answer the question as you phrased it.

Q. It sounds like you, you being the service manager for now, if I may term it that way, is requesting the receiver to transfer this property to a housing provider which you don't even know if you control. I mean, you own HYI, you being the service manager or the Region, but you keep referring to a separate board of directors and --

A. I'm acknowledging the governance framework. I'm not sure I'm following your question in terms of how that relates.

Q. How will the service manager control what happens to this property if it's transferred to HYI which has a separate board of directors?

A. Housing York Inc. is subject to Social Housing Reform Act like all other housing providers within the Region.

Q. Uh-huh.

A. And is subject to the same administrative requirements.

Q. And if HYI decides it would like to sell this Thornhill property and create RGI units somewhere else where they're cheaper, how would the service manager stop that or condone that?

A. I can't imagine a scenario where that would be likely to occur. But in any event, if Housing York Inc. wants to sell any of its properties for any reason, it requires the consent of the Minister.

Q. Well, I referred to the Minister's consent before. But that aside, what else would control it or stop it?

A. Well, that's fairly significant.

Q. I know. But I'm asking aside from that?

MR. SMITH: I think under Sections 95, the section that we debated before, the Region's consent would also be required as long as HYI

wasn't in receivership.

THE DEPONENT: There would be a process around that.

BY MR. KLIPPENSTEIN:

Q. And that would be an example of Section 95 affording additional protection for the housing assets because it could require the consent of both the Minister and the Region?

A. Providing that Housing York Inc. was not in receivership, yes.

Q. One of the concerns, additional concerns of the Co-op Housing Federation and of the co-op is that their understanding is that the Co-operative Corporations Act has a clear requirement and direction providing what happens to co-op assets when the co-op ceases to be a co-op. The statue uses the term dissolved. And their understanding is that the Act effectively requires that the assets of the co-op, when it ceases to function, go to other non-profit housing co-ops or to charities. And that wouldn't be happening here with the assets. Did the service manager conducted any analysis of the issue of the apparent conflict between the intention of the Co-op Corporations Act

and what's happening here?

MR. SMITH: We don't accept that there is a conflict as that term is used in legal parlance under conflict of laws, jurisprudence. But are you asking was the issue of what would normally happen if a co-op was dissolved, was that taken into account in the decision making process?

MR. KLIPPENSTEIN: Not quite. My specific question is whether --

MR. SMITH: Are you asking was there a legal analysis?

MR. KLIPPENSTEIN: I asked whether there was analysis, any analysis, any significant analysis of a connection or conflict between the section of the Co-op Corporations Act, namely Section 5 (3.1) (c) which deals with the property of the co-op on dissolution, whether there was any analysis as to the relationship between that and what's happening in this transaction?

MR. SMITH: Certainly that issue has been analysed by counsel.

MR. KLIPPENSTEIN: Was that issue analysed by legal counsel prior to the decision being made in February of 2008?

MR. SMITH: I think that would probably follow under solicitor/client privilege given that you're asking what the lawyers were up to.

MR. KLIPPENSTEIN: Can you advise me whether there was legal advice or opinion given to the service manager on the question of the potential conflict between that section, that's Section 5 (3.1) (c) of the Co-op Corporations Act and the proposed transfer before the February 2008 date? I'm just asking whether or advice was given not the content of it.

MR. SMITH: Fair enough. Let me take that under advisement and I'll let you know.

BY MR. KLIPPENSTEIN:

Q. And then was there any analysis done, quite apart from legal advice, was there any

analysis done within the service manager's staff on that issue prior to the February 2008 decision?

A. On the issue of interrelationship between the CCA and the SHRA?

Q. No. On the interrelationship or potential conflict between Section 5 (3.1) (c) of the CCA and the proposed transfer, namely, the provisions of the CCA on what happens to co-op assets on their dissolution?

A. Not specifically in that context.

Q. You say not specifically in that context. I understand that to mean --

MR. SMITH: She'd make a good lawyer, wouldn't she?

THE DEPONENT: As I've said previously, the discussion at the staff level has been around preserving the asset. It is a standard -- it's not at all uncommon in the social housing context where a -- it hasn't happened in the co-operative sector that I'm aware of. But in the not-for-profit sector, when a group is in difficulty, to transfer it to a more experienced provider, that's typically done by an

assumption of the liabilities. As I said previously, the equity in his case in our view really isn't material because it's only relevant if you take it out of the social housing sector and our intent throughout this has been to prevent that outcome.

BY MR. KLIPPENSTEIN:

Q. Well, part of the issue here is that this is, in fact, a co-op and there is a hint in the name of one of my clients, to my clients that matters a lot. But going back to your answer --

MR. SMITH: Maybe even both of your clients.

MR. KLIPPENSTEIN: Yeah, good point.

BY MR. KLIPPENSTEIN:

Q. The question or rather I take it from your answer, is it fair to say that there wasn't, in fact, an analysis prior to the February 2008 decision to go for a transfer of whether there was a problem caused by Section 5 (3.1) of the CCA? Nobody looked at it. Is that fair?

MR. SMITH: Other than the legal --

MR. KLIPPENSTEIN: The legal question I've addressed, yeah.

MR. SMITH: If I can summarize the question as I understand it, was Section 5 of CCA and what happens to the assets of a co-op on dissolution, was that considered as part of the decision making process at the staff level?

THE DEPONENT: The disposition of the asset, yes, in terms of -- but as I've said previously, the equity wasn't considered material to the decision.

BY MR. KLIPPENSTEIN:

Q. Okay. Just to -- I understand what you're saying. My client begs to differ. And as I understand it, you know, whereas my clients or other people may say there is real equity there, there's ground and soil and bricks and mortar, and the CCA Section 5 says one thing about how it should eventually be disposed of however many years down the road. But as I understand it, you say the

equity wasn't considered in that sense, and the CCA Section 5 wasn't considered?

A. Apart from discussions with legal counsel, was there -- I'm having difficulty separating the two. You're asking me if there was a separate discussion at a staff level that did not include legal counsel?

Q. My question is apart from legal advice that you received, legal advice or legal opinion, was their analysis by the service manager or the Region as to an apparent or potential conflict between this transaction and the protections in Section 5 (3.1)?

A. Considerations with respect to that element of the Act were taken in consultation with legal counsel.

Q. Can you explain? What do you recall about that? Like, when and how? What were the circumstances? I'm not asking about the content of legal advice, I'm asking more about the assertion that this was considered.

MR. SMITH: I'm not trying to be protectionist, I just -- I'm concerned about granting a general waiver of the solicitor/client privilege.

MR. KLIPPENSTEIN: I'm not asking for that.

MR. SMITH: Okay. We've undertaken to let you know if legal advice was taken on the issue and the interrelation between Section 5 of the CCA and the SHRA.

MR. KLIPPENSTEIN: Prior to the February 2008 decision.

MR. SMITH: Let me write that down.

MR. KLIPPENSTEIN: I mean, my concern is obvious which is that since, as Ms. Hobbs says, equity was not a factor, that suggest to me there was no serious consideration or analysis or any given to what should happen to those co-op assets under the Co-op Corporations Act. I am asking if you can give me evidence that there was significant or serious analysis or consideration on that issue prior to the February 2008 decision? And I don't think you can -- you, as counsel, probably don't know that information right now.

MR. SMITH: No. But I'm having trouble with the question because it sort of would suggest a scenario that is not being considered by my client which scenario is the sale on the open market and the dissolution of the housing project.

MR. KLIPPENSTEIN: No. My client's concern is that Section 5 of the CCA protects very valuable assets against dispersion out of the a co-op or charitable sector. And, frankly, I've seen nothing so far suggesting that the Region or service manager gave any kind of serious or legitimate consideration to those statutory protections. And I want to know was there, where, when, how, what? Was there any significant consideration?

MR. SMITH: I think it's difficult to untangle the legal ramifications. You have legal advice received from what you would call real world considerations. So if you'll permit us, maybe we can answer that by

way of an undertaking.

MR. SMITH: Yes, I would request that Ms. Hobbs provide to me a detailed description of analysis and consideration that was undertaken, if any, of the potential conflict between Section 5 (3.1) (c) of the Co-operative Corporations Act and the proposed transfer particularly in view of Ms. Hobbs' answer a minute ago that equity was not a factor.

MR. SMITH: I don't think she quite said that.

MR. KLIPPENSTEIN: I think she said equity wasn't considered is what my notes say, but anyway that's the context of the request.

THE DEPONENT: I said it wasn't material.

MR. SMITH: I still don't agree with the way the question is phrased. But what I will undertake is to determine whether the disposition of assets on dissolution as discussed in Section 5 of the CCA was in any way

taken into account in the decision making process and, if it was, described how.

MR. KLIPPENSTEIN: I will ask that as an undertaking. And I will also say you effectively refused to answer my previous question and I'll see what you come up with in --

MR. SMITH: The reason that I refused -- the reason that I didn't go along with your wording of the question because inherent in your question is the assumption that there is a conflict and we don't accept that there is a conflict, and that's a legal position and not a factual one.

MR. KLIPPENSTEIN: All right. We'll move on.

U/T: To determine whether the disposition of assets on dissolution as discussed in Section 5 of the CCA was in any way taken into account in the decision making process and, if it was, described how.

BY MR. KLIPPENSTEIN:

Q. When was the actual request to the receiver made to transfer the property to the subsidiary of the service manager?

A. The receiver was provided with a copy of the committee report, I don't recall the specific date but it would have been shortly after the report was approved.

Q. Did you discuss that scenario, the one that's incorporated in the February 2008 decision, did you discuss that with the receiver before it was put to council and decided on?

A. I believe we discussed it as an option.

Q. And when did you discuss that?

A. I don't recall specifically.

Q. Did you discuss it with someone from the receiver?

A. I presume so, although I don't have a specific recollection of a conversation.

Q. And, at some point, the service manager advised the receiver that the Region would not provide the additional approximately $600,000.00 requested so long as the co-op remained a co-op, right?

A. That's clear in the committee report. And prior to the committee report, at a staff level, we had advised that given our previous discussions around trying to secure the 2.1, that we were concerned that council would not likely approve additional funds outside of the proposal in the report.

Q. So when was the receiver advised of that?

A. I believe that at the time that the receiver identified that additional funds were required, I identified a concern as to whether or not council would be willing to provide additional funds.

Q. And do you recall who you said that to at the receiver?

A. Catherine Hristow.

Q. And was that shortly after you got the written request from the receiver for additional funds?

A. It would been prior to the written request. It would have been in the conversation where she and advised me that the funds in hand were not going to be sufficient to complete Phase 3.

Q. Okay. So that was in the fall of 2007 at some point as I understand?

A. Yes, in that timeframe.

Q. The Co-operative Housing Federation has put forward in some of these materials various options for continuation of the co-op that involve the adjustments to the manager and structure as a transition period back to a full co-op status including a mixed board of member directors and outside directors. Did the Region analyse that possibility at all prior to making its February 2008 decision?

A. We were aware that those options have -- are permitted under the Social Housing Reform Act, however, they are temporary, there are limitation on how long an outside board member can be appointed pursuant to the Act. And I'm sorry, was that --

Q. Did the service manager seriously consider that option prior to the February 2008 decision on essentially abolishing the co-op?

A. At a staff level, yes. However, our concern was that council was unlikely to be willing to provide additional funds with any expectation that governance would be returned to

the co-op.

Q. Why do you say that was the expectation of what council would decide?

A. Because council expressed grave concerns around the provision of the original loan.

Q. And can you give me an example of those concerns and who expressed then and how?

A. I believe you will note in the recommendations of the 2006 report, which were public, that there was specific direction to staff, I don't have it in front of me so I don't want to quote it, but the direction was to follow up with the Ministry because council was clear that they didn't feel the costs should be borne by municipal tax payers.

Q. You say that was a 2006 direction to staff?

A. It's one of the -- it's an amendment to the recommendations in the 2000 -- it was an additional recommendation.

Q. That's part of the decision to essentially appoint the receiver?

A. To appoint the receiver, yes.

Q. I recall that. But staff did not put together a proposal for consideration of

regional council that included a transition back to co-op? In fact, there was no option put to council that included a possible transition back to co-op. Is that right?

A. It wasn't included as a recommendation, no.

Q. And it wasn't even included as an option, was it?

A. The report indicated that that was one of the possible outcomes I believe.

Q. But there was no --

A. But it's not recommended.

Q. It's not recommended and there is no detail given about what such an option would look like. There's a paragraph or two that says why it's not a good idea but there's no option for -- the possibility of mixed directorships is not considered and not put forward before the council, right?

A. It's not detailed in the report.

Q. It's not even mentioned, right?

A. Mixed directors specifically is not mentioned, no. However, return to co-op governance is.

Q. Mixed directorships is not

considered. Did the staff consider a possibility of putting together a plan of, for example, a series of housing charge increases over a number of years and putting those to a vote of the members so that they could decide whether they wanted certain rent increases to stay as a co-op?

A. Thornhill Green was given an opportunity to do that in their response to the triggering notice. The deficit reduction plan that they submitted proposed a one time increase of 4 percent, which didn't even bring them to the benchmark level for that year, followed by two years of 2.1 percent, which was a reasonable estimate of the guideline, followed by a rent freeze which is not at all the outcome of the final deficit reduction plan that is moving that group towards solvency.

Q. And, at no point, did staff go back to the membership and say here are the numbers of what a multi-year housing charge increase would look like that you would need or else we are going to sell the co-op? Nothing remotely looking like that in terms of information and choice was ever put to the members. Is that fair?

A. Well, your question raises a number

of points. First of all, the Region doesn't have a relationship with the members in any co-operative, we have a relationship with the board.

Q. Of course, but that's a technicality.

MR. SMITH: First answer the question.

THE DEPONENT: Then what was the question in there, I'm sorry?

BY MR. KLIPPENSTEIN:

Q. Was, at any point, including back around the triggering event letter or prior to the February 2008 decision, an option or discussion presented to the members or the board of directors of the co-op involving a multiyear housing charge increase and advising the co-op that the alternative might be the actual sale or abolition of the co-op?

MR. SMITH: There are a couple of parts to that. The first part, we're all aware of the July 19, 2006, letter from the Region to the co-op stating the Region's dissatisfaction with the co-op's response to the notice of

triggering events. Are you asking was there any further expression from the Region to the co-op as to what it would take to return governance to them?

MR. KLIPPENSTEIN: The July 19th letter does not have or lacks two things mentioned in my question. Number one, it does not identify for the co-op the kind of a financial plan of multiyear rent increases that the Region might consider necessary. And secondly, it does not alert them to the fact that, perhaps in the service providers mind, the sale or abolition of the co-op is at stake.

MR. SMITH: Let's break the question into those two parts then. Do you understand the two parts?

THE DEPONENT: Yes. With respect to the first question, although the July 19th letter doesn't specify in great detail the issues around the deficit reduction plan, the notice of triggering events gave clear parameters of what had to be provided. The notice

was specific about the comparators and the gap that had to be made up and recognition of ongoing inflation factors. So there was very clear direction in the notice of triggering events. So that was the first question, right. What was the second?

BY MR. KLIPPENSTEIN:

Q. The second part of the question was -- first of all, I'm not sure that the detail in that triggering event letter actually presents a viable specific alternative. But in any case, that letter clearly does not alert the board or the members to the possibility that what is at stake is the sale or abolition of the co-op?

A. Well, as I said previously, at that point, the Region wasn't contemplating an outcome.

Q. Right.

A. That discussion didn't happen until much later in the process.

Q. Right. And never since the triggering event letter, never at all, has the Region, the service manager said to the board or the members, here is the financial plan of

multiyear housing charge increases that is required, failing which we think the co-op has to be sold. That information and choice and option has never been put to the members or the board?

MR. SMITH: By the Region.

BY MR. KLIPPENSTEIN:

Q. By the Region, by the service manager, by anybody, by the receiver, nobody?

A. Well, it hasn't been done by the Region. The Region has a deficit reduction plan that the receiver prepared which sets out that schedule of rent increases. I can't speak to what the receiver did or did not convey to anyone at the co-op.

Q. But the answer I think to my question is that it is correct that nobody, the service manager, the Region, the receiver, nobody has put before the co-op members or board a reasonably detailed plan of multiyear housing charge increases for financial going forward, with the alternative being the sale or abolition of the co-op, that information and choice has never been put to them.

MR. SMITH: She said the Region

didn't do that and she's not aware of anything that the receiver may have done.

MR. KLIPPENSTEIN: Subject to undertakings, questions arising therefrom, those are all my questions. Thank you very much.

I HEREBY CERTIFY the foregoing to be the Cross-Examination of Kerry Hobbs, taken before me on the 20th day of November 2008.

SHONA BOWINS
VERBATIM REPORTER

Undertakings, refusals, and advisements are provided as a service to counsel and are not purported to be legally binding nor necessarily accurate.

TAB 12

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BARRISTERS & SOLICITORS
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TEL: (416) 598-0288
FAX: (416) 598-9520

November 21, 2008

BY FAX TO (416) 361-2725

Doug Smith
Borden Ladner Gervais LLP
Barristers and Solicitors
Scotia Plaza, 40 King Street West
Toronto, Ontario M5H 3Y4

Dear Mr. Smith:

Re: ***Co-operative Housing Federation of Canada et al v. The Regional Municipality of York et al,*** **Divisional Court File No. 493/08**

Please find enclosed copies of the three documents that Ms. Diane Miles undertook to provide to you during her cross-examination on November 19, 2008.

Yours truly,

Murray Klippenstein

MK/ba

Encl.

TAB A

Post-it FAX TRANSMITTAL MEMO 7671 3 NO. OF PAGES

TO: MURRAY KLIPPENSTEIN	FROM: DIANE MILES
CO.:	CO.:
DEPT.:	PHONE #:
FAX #: 416 598 9520	FAX #:

1007

Diane Miles

From: Diane Miles
Sent: July 21, 2006 4:44 PM
To: Judy Shaw; Keith Moyer; 'dmcgahan@chfc.ca'; Harvey Cooper; Dale Reagan
Cc: tom@coophousing.com; 'Judith Collins'
Subject: Thornhill Green Co-op Receivership

This message contains sensitive and confidential information. Please treat it carefully.

York Region has appointed a receiver and manager for Thornhill Green Co-op, effective Wednesday July 19. The receivership was announced at a special meeting of the co-op board on Wednesday evening, called by the Region. I was present at the meeting, and was somewhat prepared for the news, but not for the rather dramatic way that events unfolded. The Region had told the co-op in advance that the intent of the meeting was to:

- review the co-op's response to a triggering event letter of March ~~13~~ 9, which described significant financial and administrative problems, and
- discuss "next steps" in the process of managing an anticipated loan to the co-op of $2.1 million from York Region. The co-op needs the funds for extensive capital work.

The Region also requested that the co-op invite us, which they did.

In preparing for the meeting I had asked the co-op to send me all the documents related to the triggering event letter and the co-op's responding action plan. The co-op had not sought any sector assistance in preparing their response. I finally received some of the documents the day before the meeting, and found the co-op's material seriously flawed. I assume the Region felt the same way.

Board meeting: July 19: Key points

Three York Region staff attended (Sylvia Patterson, Christine Terry and Pauline Leuning, standing in for Kerry Hobbs, who is maternity leave). They were accompanied by three people from Mintz and Partners, the receivership company (Brian Tannenbaum, Ira Gerstein and Shirley Schrbrock). Sylvia asked the staff of Precision Properly Management (Philip Eram and Therese Baduria) to leave the room, but not to leave the property. She then told the board that the Regional Council had agreed to a loan of $2.1m, but on condition that a receiver and manager be appointed. She said that had been done effective immediately. The receivership is intended to:

- stabilize the financial and administrative operations of the co-op
- ensure that the capital work is done effectively

Brian Tannenbaum described the process as well as possible:

- Precision would stay on for the moment, but Mintz will supervise and evaluate them. All suppliers and property management protocols will be reviewed
- Mintz will take on the role of the board, including signing authority and financial decisions
- The receivership is likely to last about 2 years

Sylvia emphasized that everyone's housing was secure.

The board was shocked, but not really upset. They actually seemed relieved. They asked some good questions about the role of the board and the active committees (especially membership, newsletter and social), and dealing with community complaints or problems. I didn't think the receiver did a good job

answering them. The message was "give us time to figure out the co-op's financial and administrative status, and then we can address those "social" items". They said the board could choose to meet if they wanted, but did not commit to any regular involvement with the board or any communication or information strategy using the board. I gave some input here, and indicated that the receiver and the sector should be reviewing how to deal with co-op issues that are not directly related to the receivership (evictions, membership applications, etc). Brian Tannenbaum agreed.

Sylvia said that the co-op members would be invited to an information session the following night, and that letters would be hand delivered by the Region to every household the next morning.

Precision PM were then advised of the receivership. Phil said he was "disappointed". (I later talked to Therese, who said they were completely surprised by the news).

Member Information Session: July 20: Key points.

The same people attended from the Region and from Mintz. Precision staff were not able to be there. 40-50 co-ops members attended, which, given the short notice, was significant. Overall, throughout the meeting, the members were calm and reasonable.

Sylvia chaired the meeting, briefly explained the receivership, and then asked Mintz to describe the process. Ira described the key features of the receivership, including Property Management protocol and the Capital Repair project. Then members were given the opportunity to speak and ask questions.

A couple of members said they were "heart broken" to read the letter from the Region. One former board member said it felt as though they had done something wrong. Sylvia did a good job of relieving people of any personal blame, acknowledging the hard work of boards and committees, etc. One person said this was "the best thing that ever happened to the co-op"!

Some key questions and answers:

- How will the loan be paid back?
  - the funds will be advanced over the course of the capital work, interest will accrue at a reasonable rate of interest (below prime). Repayment will be postponed for 5 years, after which York will assess the co-op's ability to take on a repayment schedule. Any repayment arrangement would be subject to review by MMAH and the first lender
- Who will pay for the receivership?
  - No easy answer. SHRA says that the co-op is responsible. Sylvia said that the details of payment had not been settled, but this will be reviewed and York will make "appropriate decisions". She said that "the program will pay".
- Will market members face huge housing charge increases?
  - there may be increases beyond the rent control guideline, but they will be reasonable.
- What does the capital project involve?
  - In order of priority:
    - building envelope improvements (roofs, doors windows)
    - interior improvements (moisture control, mould elimination, exhaust fans, etc)
    - termite problem resolution
    - kitchen upgrades, furnaces, etc.
- Who will manage the co-op if Precision is terminated?
  - Not decided, but options are:
    - hiring another 3rd party property manager or
    - Mintz could manage directly
  - If there are any changes in Property Management, members will be informed promptly
- What role does the board have, and how will information be communicated to members regularly?
  - No good answers here, as at the board meeting.
  - Mintz will provide material for a Newsletter
  - Role of board during receivership rather vague.
  - Maybe Mintz will call another information session after 6 months to review progress
  - There will be a communication going out shortly to members explaining the property

management protocol. Members were advised they can call Mintz directly if they have complaints about how Precision is carrying out work.

I said a few words about our experience with other receiverships, and the fact that boards did have a continuing role to play in co-op operations, albeit with reduced powers. This was key to a successful outcome to the receivership.

The meeting lasted about 1.5 hours, and there was some polite applause at the end! Some members hung around to talk, and generally seemed resigned to this new arrangement.

Brian Tannenbaum talked to me for a while after the meeting. He is aware of the sector's concerns about receiverships. His take on the increase in receiverships is that it relates to the current global interest in improving corporate governance. That said, he conceded that social housing receiverships are a growth industry! He said he would like to meet with us to try to talk about the receivership process, and try to address our concerns. I agreed that this would be useful.

Sylvia said she would keep us in the loop on progress at THG. She knows that the co-op will need extensive support and training from the sector if they are to make a successful return to self-management.

Diane Miles
Acting Manager, Co-op Services
CHF Canada - Ontario Region
416-365-1711 (1-800-268-2537) x 228

TAB B

Diane Miles

1010

From: Hobbs, Kerry [Kerry.Hobbs@york.ca]
Sent: May 30, 2007 8:58 AM
To: Diane Miles
Subject: RE: Receivership Transition Plan

Follow Up Flag: Follow up
Flag Status: Completed

Since we're probably about a year away from deciding the post-receivership status of Thornhill Green, there's no rush for a budget but if you have a chance to think about numbers at some point I would appreciate it if you could let me know.

Thanks again,

Kerry

From: Diane Miles [mailto:dmiles@chfcanada.coop]
Sent: Tuesday, May 29, 2007 3:21 PM
To: Hobbs, Kerry
Subject: RE: Receivership Transition Plan

Good question. We would normally expect some cost sharing. There was a budget attached to the education plan, but it is tied to the service manager area, so needs revisions. Normally with co-ops in difficulty CHF Canada pays for by-law development, election planning and board mentoring. We might also include the cost of GMM chairing. The workshop component would be cost-shared with the service manager, and sometimes the co-op (if they have funds). This would be tailored to the individual needs of the co-op.

Hope that is helpful,

Diane.

Diane Miles
Manager, Co-operative Services, Ontario Region
Ontario Region Office
Co-operative Housing Federation of Canada /
Fédération de l'habitation coopérative du Canada
1.800.268.2537 ext. 228

From: Hobbs, Kerry [mailto:Kerry.Hobbs@york.ca]
Sent: May 29, 2007 3:01 PM
To: Diane Miles
Subject: RE: Receivership Transition Plan

Thanks, Diane

The attachments look great. If Council were to approve Thornhill Green's reinstatement as a co-operative, would CHF charge the co-op for all the support that would be required? (It looks like you'd be committing to an enormous workload.)

I spoke to Sue last night. I told her that once she receives the documents she could call me with any questions and that she could also call you for advice. She indicated that she supports the extension of the receivership so we may not hear from her.

Thanks again for all your support.

1011

Kerry

From: Diane Miles [mailto:dmiles@chfcanada.coop]
Sent: Tuesday, May 29, 2007 2:30 PM
To: Hobbs, Kerry
Subject: Receivership Transition Plan

Hi Kerry,

As promised, I am attaching a couple of samples of education and transition plans for bringing a co-op back to self governance. They were written with a particular co-op in mind, but give you an idea of the kind of tasks and time frames that might be involved.

I haven't heard from Sue.

All the best

Diane

Diane Miles
Manager, Co-operative Services, Ontario Region
Ontario Region Office
Co-operative Housing Federation of Canada /
Fédération de l'habitation coopérative du Canada
1.800.268.2537 ext. 228

*** York Region Mail Server has scanned this email for malicious content ***
*** IMPORTANT: Do not open attachments from unrecognized senders ***

TAB C

1012

Diane Miles

From: Diane Miles
Sent: April 29, 2008 11:09 AM
To: 'Nick Sidor'
Cc: Dale Reagan; Harvey Cooper
Subject: RE: Thornhill Green

I talked to Kerry Hobbs on Monday. I asked how the decision to cancel membership was made. She said that the receiver asked them (the service manager) last week whether they should pay the dues, and apparently Sylvia Patterson said no. The reason Kerry gave was the co-op's huge accumulated deficit ("they have no money"), and they feel if they need sector help, the co-op can do it on a direct fee for service basis. The Region is spending $2million on the capital work, and the co-op needs another $600,000, so clearly the Region feels it has the authority to make all the spending decisions.

I told Kerry I was disappointed that we got no heads up, and that the members were not involved in the decision at all, even for information sake. She indicated that the last members' meeting was so raucous that the service manager wasn't ready for another one yet (I didn't make that meeting, since I heard about it the same day, but have been to all the other members' meetings since the receivership was put in place). It's true that the community is difficult, but I can't see things getting better as they get more removed from the sector.

Kerry didn't know that some members have MemberGuard insurance, and that this will be affected by the cancellation of CHF Canada membership. She mentioned that the co-op bought housing charge insurance last year, and thought that was what I was referring to. She wanted to know how many members are affected (Pat told me 9, but I thought I would wait to pass this on to Kerry). I didn't mention that the cost of commercial and corporate insurance may also be higher if they are not members. Nick, do you have some firm information on what the difference is? Kerry did muse that perhaps they should have thought through the decision a bit more. She also didn't know the co-op was already 4 months in arrears when the decision was made.

On the matter of dissolving the co-op and absorbing it into York's own housing, Kerry said no decision had been made, but that was something that might be considered, given the fractious history of the community. I said I would be looking into the legal process involved, and reminded her that such precedents are a challenge for the sector. She said this wouldn't be a precedent for York since they have no interest in interfering with the corporate structure of any other co-op in York . I said it could be a precedent for other service managers and she understood that. I think we need to get an opinion from Bruce on this.

On the matter of tendering the property management contract, she said under no circumstances would they allow M & P to bid, since she sees this as a conflict of interest. That, at least, was reassuring.

Nick, can you give me some sense of any change in insurance costs? I promised to get back to Kerry on the MemberGuard, so could pass on anything else at the same time.

From: Nick Sidor [mailto:NSidor@chfcanada.coop]
Sent: April 28, 2008 1:38 PM
To: Diane Miles
Subject: Thornhill Green

Any word from the region?

Nick Sidor
Director, Corporate Affairs / Directeur des affaires de l'association
Co-operative Housing Federation of Canada /
Fédération de l'habitation coopérative du Canada
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TAB 13

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BORDEN LADNER GERVAIS

November 21, 2008

DELIVERED

Mr. Murray Klippenstein
Klippensteins
300 - 160 John Street
Toronto, ON M5V 2E5

Dear Mr. Klippenstein:

Re: The Regional Municipality of York ats Thornhill Green Co-operative Homes Inc.
Court File No. 07-CL-7044

I am writing to provide answers to undertakings and to some of the questions taken under advisement at today's cross-examination of Ms. Kerry Hobbs.

1. Q. To advise whether or not the Region has brought to the attention of the Ministry of Housing its positions that consents are not required under Section 95 of the SHRA to the proposed sale by the Receiver of the assets of Thornhill Green.

   A. This position has not been brought to the attention of the Ministry of Housing.

2. Q. To advise whether or not a position was taken by York Region in the application to the Ministry of Housing for their consent to the proposed sale by the Receiver.

   A. No position was taken either way in the material sent to the Ministry of Housing seeking Ministerial consent to the sale.

3. Q. Will you provide a copy of the package provided to the Ministry seeking their consent to the proposed sale?

   A. Enclosed herewith is a copy of the package sent to the Ministry.

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4. Q. To provide a copy of the briefing note prepared after the option of a proposed sale to HYI was discussed.

   A. Enclosed are two Briefing Notes dated September 26 and November 19, 2007.

5. Q. To provide a copy of the 2005 appraisal.

   A. Enclosed is a copy of the 2005 appraisal.

6. Q. To advise of the awareness of York Region regarding a subway extension to a location close to Thornhill Green.

   A. York Region is aware of a plan by Metrolinx to extend the Yonge subway line. This played no role in the decision making process regarding Thornhill Green and was not considered as a factor.

7. U.A. Will the Region perform an analysis of whether the recent change to the funding formula changes the amount of subsidy that would be received by Thornhill Green?

   A. We refuse to perform such an analysis on the basis that it is overly burdensome and is not relevant to the matters in issue. We can advise that the effect on any subsidy would not be material and would not change the Region's assessment of Thornhill Green's capacity to carry third party debt.

8. Q. Was legal advice taken by the Region on the inter-relationship between Section 5 of the *Co-Operative Corporations Act* and the provisions of the *Social Housing Reform Act* prior to February of 2008?

   A. Yes, legal advice was taken by the Region on that issue.

9. Q. To advise whether or not Section 5 of the *Co-Operative Corporations Act* was taken into account in the decision making process, and if so, how?

   A. The Region was aware that Section 5(3.1)(c) of the *Co-Operative Corporations Act* provided that the articles of a non-profit housing co-operative shall be deemed to provide that on the dissolution of the co-operative, the remaining property of the co-operative be transferred to or distributed among one or more non-profit housing co-operatives or charitable organizations. The effect of that section was considered, but the Region considered the preservation of social housing to be a consideration that was paramount.

BORDEN
LADNER
GERVAIS

Yours very truly,

BORDEN LADNER GERVAIS LLP.

Doug Smith
DS:cr

TAB A

Community Services and Housing Department

February 29, 2008

Lilian Hulme-Smith
Senior Adviser Risk Management - Risk Management
2nd Flr -777 Bay St
Toronto ON M5G 2E5

Dear Lil:

Re: Ministerial Consent Requests – Thornhill Green Co-operative Homes Inc.

The Regional Municipality of York requests the consent of the Minister of Municipal Affairs and Housing (MMAH) to the sale of Thornhill Green Co-operative Homes Inc. (the Co-operative) to Housing York Inc. (HYI), with a waiver of the applicable land transfer tax. As requested, three copies of the business case and supporting documentation have been provided for your review.

There is considerable urgency to the request for consent to the sale. The Co-operative requires substantial capital work that must be completed during the 2008 construction season. However, as the Co-operative does not have the necessary funds, the work cannot commence until HYI becomes the owner of the property. We appreciate your assistance in obtaining a March consent to the sale to enable an April application to the Superior Court of Ontario. We recognize that consent to the request for a waiver of land transfer tax cannot be processed within that time frame and have addressed that issue in the enclosed business case.

Please note that the Region anticipates that given the precedential implications of this transaction, the Co-operative Housing Federation of Canada may take legal action to oppose the sale. As such, the Region respectfully requests that MMAH retain the consent request and all supporting documents in strictest confidence.

If any further information or documentation is required, please contact me at (905) 830-4444, extension 2071. Thank-you for your assistance with this file.

Sincerely,

Kerry Hobbs
Manager, Housing Programs

Copy to: Janet Hope, Assistant Deputy Minister (Acting), Ministry of Municipal Affairs and Housing
Sylvia Patterson, Director, Housing Services, Regional Municipality of York

TABLE OF CONTENTS

Section	*Item*
1	Cover Letter Requesting the Consent of the Minister of Municipal Affairs and Housing to the Sale of Thornhill Green Co-operative Homes Inc. to Housing York Inc. With Waiver of the Applicable Land Transfer Tax
2	Business Case Supporting the Consent Request
3	**Certified Private** Reports for Housing York Inc. and Committee/Council and Council Resolution i. Housing York Inc. Proposed Acquisition of Housing Project Report – Housing York Inc. Committee Meeting February 13, 2008 ii. Receivership of Housing Project Report – Community Services and Housing Committee February 13, 2008 iii. Resolution from Council – February 21, 2008
4	Court Order Appointing Mintz & Partners Limited as the Receiver for Thornhill Green Co-operative Homes Inc.
5	Title Search and Instruments Registered Against Title to the Property
6	Current Mortgage Statement
7	Draft Notice of Application, Draft Approval and Vesting Order
8	Draft Agreement of Purchase and Sale
9	Draft Agreements Assuming Charge/Mortgage of Land i. Between Housing York Inc. and The Regional Municipality of York ii. Between Housing York Inc. and the Royal Bank of Canada
10	Ministry of Revenue Letter – February 26, 2008 Regarding Ruling Pertainng to a Potential Refund of Land Transfer Tax Due to Post Sale Exemption

Request for the consent of the Minister of Municipal Affairs and Housing to the sale of Thornhill Green Co-operative Homes Inc. to Housing York Inc., with a waiver of the applicable land transfer tax

Business Case

Section 1 – Executive Summary

Thornhill Green Co-operative Homes Inc. (the Co-operative) is 101 unit townhouse complex located in the Thornhill area of the Town of Markham. The townhouse units were constructed in 1966 and acquired as part of the Social Housing Program in 1992.

In July 2006, The Regional Municipality of York (the Region) privately appointed Mintz & Partners Limited (the Receiver) as the Receiver for Thornhill Green Co-operative Homes Inc. to address serious operational concerns and as a pre-condition of a $2.1 million loan to fund capital repairs. The receivership was subsequently extended through a court appointment by way of an order of the Ontario Superior Court of Justice dated June 26, 2007.

The Receiver completed the first phase of the repairs (roofs) and is in the process of completing phase two (interior repairs and mould remediation). The Receiver cannot complete phase three (termite and drainage remediation) without additional funding of approximately $600,000 to offset project cost increases resulting from the identification of asbestos in the units and related delays.

The Co-operative does not have the capacity to appropriately manage its affairs, and consequently the Region will not provide further funding to the Co-operative. However, Regional Council has agreed to provide the necessary repair funds to Housing York Inc. (HYI) should HYI acquire the property. As such, the Region requests the consent of the Minister of Municipal Affairs and Housing to the sale of Thornhill Green Co-operative Homes Inc. to Housing York Inc., with a waiver of the applicable land transfer tax.

Upon receipt of the requisite consents, the Region anticipates that the Receiver will seek a court order for the sale and a vesting order transferring the assets of Thornhill Green Co-operative to Housing York Inc. The Receiver's application will likely be the first time since the implementation of the *Social Housing Reform Act, 2000 (SHRA)*, that a court has been asked to transfer the assets of a social housing co-operative to a private non-profit. Given the precedential nature of this application, the Co-operative Housing Federation of Canada may take legal action to oppose the application. As such, this business case and all supporting documentation are submitted to the Ministry of Municipal Affairs and Housing in confidence.

Section 2 – Background

2.1 Appointment of a Receiver

In 2005, the Co-operative approached the Region with a consultant's report detailing their projected short-term capital requirements and requesting financial assistance. The Region obtained an independent consultant to conduct a building condition audit for validation purposes and additional technical reports were commissioned to clearly quantify specific costs related to termite remediation. The total required for immediate capital work was estimated at $2.1 million.

At the same time, the Region had serious concerns about the capacity of the Co-operative Board to manage their operations. The Co-operative's accumulated deficit of more than $200,000 was such that the capital reserve and last month rent deposits had been depleted to support operating costs. The financial situation was a result of poor expenditure control and a failure to charge and collect appropriate market rents. The Co-operative had consistently maintained their rents at levels well below the rates charged by other social housing providers. As a condition of the loan, Regional Council required the appointment of a Receiver to manage the extensive capital repairs and to address the Co-operative's operational issues.

In July 2006, Mintz & Partners Limited was appointed as the Receiver with the consent of the Minister of Municipal Affairs and Housing pursuant to the provisions of the SHRA. As SHRA receiverships expire one year after the appointment unless extended by Order of the Court, in June 2007, the Region sought and obtained from the Court the appointment of Mintz & Partners Limited as Receiver. The Receiver will report to the Court and will need to make a recommendation as to the ultimate disposition of the assets of the Co-operative.

2.2 Current requirement for additional funding

The capital work at the Co-operative was divided into three Phases:

- Phase one: replacement of roofs, eaves troughs, facia etc.
- Phase two: mould remediation, interior finish repairs, installation of exhaust fans.
- Phase three: termite treatment, removal of wood landscaping elements to eliminate termite habitats, site grading to correct drainage issues, foundation repairs as needed, underground garage repairs.

Phase one was completed early in 2007 and Phase two is currently in progress. However, Phase two has been complicated by the identification of asbestos in the drywall compound, textured ceiling finishes and floor tiles in the townhouse units. The Receiver hired an environmental consultant to oversee the contractors and ensure that all necessary precautions are taken to ensure the safety of workers and residents. The presence of asbestos has a significant impact on the project. Much of the mould remediation involves material containing asbestos. The asbestos-related safety procedures also resulted in considerable delay. The original project plan called for completion of all phases of the work in 2007. However, completion of Phase two is now tentatively scheduled for March 2008. The Receiver tendered Phase three, but was unable to award the contract as the funds remaining from the loan of $2.1 million were not sufficient. As a result of the asbestos and delay related costs, completion of the project is expected to require approximately $600,000 in additional funding to complete.

Section 3 - Rationale for not returning Thornhill Green Co-operative Homes Inc. to Co-operative Governance

3.1 The Co-operative has consistently acted in the best interest of individual co-operative members rather than making business decisions in the best interest of the corporation as a whole.

a) The Co-operative unsuccessfully attempted to capitalize on the significant equity in the property by allowing members to purchase their units at below market values.

The Co-operative units were built in 1961 and operated as rental properties. In the early 1990's, The Co-operative was formed, and with financial assistance from the Province of Ontario, purchased the rental units as part of the Homes Now social housing program. The Co-operative's articles of incorporation prohibit members from personally benefiting from any disbursement of the assets of the Corporation. However, in 1998, the Co-operative approached the Provincial Ministry of Housing and a number of politicians with a proposal seeking government support for a conversion to condominium status. If successful, the proposal would have allowed members to purchase their units by buying out their social housing mortgage, with unit purchase prices substantially below market value.

b) The Co-operative has failed to appropriately manage a significant termite infestation that requires comprehensive chemical treatment and removal of all wood landscape elements.

In 2003, the Co-operative undertook comprehensive chemical termite treatment, but allowed members in 10 units to refuse treatment. As the rental units are townhouses with common walls and foundations, incomplete treatment significantly reduces effectiveness. Furthermore, the Co-operative failed to implement their termite expert's advice with respect to landscaping renovations (removal of wood landscape features) required to deter the termites.

c) The Co-operative permitted members to make significant unit modifications that increase the Corporation's liability and future costs.

In rental housing, landlords generally do not permit residents to modify the rental units, unless the resident agrees in writing to return the unit to its original condition prior to vacating the unit. However, the Co-operative has permitted members to make numerous modifications, some of which adversely impact the Corporation. For example, the Receiver has identified 52 units with central air conditioning units. The Co-operative has no documentation requiring residents to remove these units upon vacating, effectively obliging the Corporation to either remove the units at its own expense or to assume responsibility for maintaining the units. Most of these air conditioning units must now be temporarily relocated to accommodate required site re-grading, increasing the Co-operative's capital repair costs by approximately $40,000. Similarly, a number of members have installed wood privacy fencing. As part of the termite remediation, these fences must be removed and a number of affected members have indicated they will demand compensation.

d) The Co-operative members have not demonstrated any collective intent or desire to work together for the betterment of their community.

The Region and the Receiver have held regular information meetings for Co-operative members to keep them apprised of the capital work progress and the receivership status. The concerns expressed by members in these forums are universally self-interested. Members talk at length about their concerns with respect to their individual units or their personal right to receive services, but to date, no member has expressed a desire to reconvene the board of directors or to create a working group of any kind. In the fall of 2006, the Region and the Receiver convened a small members' working group to give feedback on the proposed landscape design. Unfortunately, the members who volunteered for the committee could not be persuaded to consider overall design impact; instead the discussion invariably deteriorated to "my yard" and "my fence". At this point there is no active board of directors to assume governance of the Co-operative and there is no indication that attempts to recruit an appropriately motivated board of directors could be successful.

3.2 The Co-operative has failed to behave as a prudent owner with respect to maintenance of the assets.

a) The Co-operative's housing units have asbestos containing materials regulated by Ontario Asbestos Regulation 278/05. The Co-operative failed to comply with the requirement to develop and maintain an asbestos management plan and has permitted work to be performed in the units without making provision for the required safety precautions.

b) The financial statements provided by the Co-operative indicate that for the period January 2004 to November 2005, $108,020 was spent on appliance replacement. While some replacements may have been unavoidable, it is important to note that these expenditures were made at a time when the Co-operative had identified a health and safety hazard in the uneven walkways on the property. The Co-operative was involved in a lawsuit arising from a trip and fall claim, yet the Co-operative made no attempt to repair the trip hazards.

c) A 2005 technical inspection conducted by the Region revealed that the Co-operative had failed to install required carbon monoxide detectors in the rental units.

d) Co-operative members continue to oppose efforts to conduct comprehensive termite remediation.

The Region provided emergency funding to address the Co-operative's health and safety repair requirements and the Receiver is ensuring that the Corporation complies with applicable regulations and expert recommendations regarding termite remediation. However, given the complexity of the maintenance issues facing the Co-operative, the Region is concerned that the property would not be appropriately maintained if returned to Co-operative governance.

3.3 The Co-operative has failed to appropriately manage its financial affairs.

a) The 2005 audited statements revealed that the Co-operative had depleted the restricted capital reserve funds and the member deposits to fund operating costs and a total accumulated deficit of $227,043. The Co-operative's financial situation was such that the February 1, 2006 mortgage renewal was in jeopardy as the Co-operative was in default on their property tax payments. Had the Region not intervened and provided emergency funding to pay the property taxes, the mortgage could have been called.

b) The Co-operative failed to optimize its housing charge revenues. The market housing charges are substantially below those of other social housing providers in the area. Prior to the 2006 housing charge increase, the Co-operative's monthly 3 bedroom housing charges were $145 lower than the comparable average and the 4 bedroom housing charges were $189 below the comparable average. Even with the 2006 4% increase approved by the members as part of their response to the Region's Notice of Triggering events, the Co-operative's 3 bedroom housing charges were still $127 below the comparable average and the 4 bedroom units were $183 lower than the comparable average.

The Receiver is implementing a strategy to stabilize the Co-operative's financial operations, but it will take a number of years of aggressive rent increases and financial constraints to return the Corporation to financial health. Given that the Co-operative governance model requires that a majority of the residents approve the operating budget and any rent increases, a return to Co-operative governance would most likely result in continued financial instability and possible insolvency.

Section 4 - Rationale for selling Thornhill Green Co-operative Homes Inc. to Housing York Inc.

Unlike the other purpose built social housing projects in the Region, The Co-operative became social housing as an acquisition rehabilitation project. The buildings are now more than 40 years old and will have on-going maintenance and capital repair challenges. In particular, the property will need diligent monitoring and treatment of termite activity as well as an appropriately administered asbestos management plan.

Housing York Inc. is the Region's largest social housing provider, managing 30 buildings with approximately 2000 units. HYI has specialized technical staff and is the only housing provider in the Region with the expertise required to manage the complex capital repair and ongoing maintenance issues inherent in the Co-operative's property. HYI is also the only housing provider in the Region with community development and social work resources.

Most importantly, HYI is the only housing provider with the financial capacity to manage the property. This project requires significant current and future capital repairs and has no reserves with which to fund the work. Regional Council has approved one-time additional funding to complete the current capital repair project, but in the absence of appropriate capital funding from senior levels of government, HYI will have to address the property's on-going needs as part of its annual budget process.

Section 5 - Rationale for waiver of the land transfer tax

The sale of a social housing project to another social housing provider differs from conventional real estate transactions in many respects. There is no commercial motivation for the transaction. The social housing purchaser accepts ownership of the social housing seller's assets and assumes the seller's liabilities for the sole purpose of ensuring that the project continues to provide housing to vulnerable residents. Both the purchaser and the seller are not for profit corporations with income streams limited to regulated rent revenues and regional funding as prescribed under the SHRA. The purchaser's rent revenues and prescribed funding are required to manage the existing portfolio and those buildings would be adversely impacted if resources were redirected to pay the land transfer tax. Recognizing these considerations, the Province has historically approved land transfer tax waivers for transactions where both the purchaser and the seller were social housing providers.

Section 6 - Request for consideration of retroactive application of the land transfer tax if required.

The nature of the capital repairs is such that it is imperative that Phase three (termite and drainage remediation) be undertaken during the 2008 construction season. Given that the work cannot commence until HYI owns the property, the sale cannot be delayed without incurring significant additional costs.

Provided that the Minister consents to the sale, the Receiver will apply to the Court for an order approving the sale and a vesting order to be effective in late May. This timeline would enable HYI to proceed with the work in 2008. If the request for a waiver of land transfer tax cannot be processed within that timeframe, all parties will be in a difficult position. While the land transfer tax waiver is pending, the Region will continue to incur receivership costs. A delay will also result in higher capital repair costs and a probable requirement to repeat elements of the termite treatment, with considerable disruption to tenants. As such, Regional Council has authorized withdrawal of funds from its Social Housing Reserve Fund to compensate HYI for any land transfer taxes incurred. However, it should be noted that the Reserve's limited funds were set aside to support new affordable housing development and to assist housing providers with capital repairs. Withdrawing funds to pay land transfer taxes reduces the Region's capacity to support housing providers and to participate in provincial affordable housing initiatives.

The Region's legal counsel obtained a ruling from the Minister of Finance on a no-name basis with respect to the possibility of obtaining a refund of land transfer tax under subsection 8 (1) of the *Land Transfer Tax Act, 1990*, should the Minister of Municipal Affairs and Housing approve a waiver of the tax subsequent to the conveyance through an amendment to section 15 of Regulation 368/01, made under the *Social Housing Reform Act, 2000.* The Minister of Finance stated that Land Transfer Tax would only be refunded if the said Regulation is made on a retroactive basis. The Region requests that the Minister give consideration to such an amendment to the Regulation or a similar instrument.

Section 7 – Draft and/or confidential nature of consent request and supporting documents.

It appears that if the Minister provides the requested consents, the Receiver's application will be the first time a Court has been asked to sell a housing co-operative to a non-profit corporation. Given the precedential implications of this action, the Region anticipates that the Co-operative Housing Federation of Canada may take legal action to oppose the sale. As such, to date, all matters pertaining to the potential application have remained within the ambit of solicitor client privilege. The Region respectfully requests that the Ministry of Municipal Affairs and Housing continue to ensure that all matters pertaining to this file be handled in as confidential a manner as possible.

It should also be noted that the legal documents included in this package to support the consent requests are in draft form. Although no material changes to the documents are anticipated, the final versions of the document may vary from those provided herein.

Section 8 – Conclusion

This business case supports The Regional Municipality of York's request for the consent of the Minister of Municipal Affairs and Housing to the sale of Thornhill Green Co-operative Homes Inc. to Housing York Inc., with a waiver of applicable land transfer taxes. The Region also requests that if the land transfer tax waiver cannot be processed prior to the completion of the sale, that the Minister provide for the retroactive application of the waiver.

The sale of Thornhill Green to Housing York Inc. will conclude the current receivership and ensure the long-term stability of a social housing community that is home to more than 100 families.

Court File No. 07-CL-7044

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION UNDER SECTION 116(1)6 OF THE *SOCIAL HOUSING REFORM ACT, 2000*, S.O. 2000, c.27

AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43

THE REGIONAL MUNICIPALITY OF YORK

Applicant

- and -

THORNHILL GREEN CO-OPERATIVE HOMES INC.

Respondent

THE HONOURABLE	)	TUESDAY, THE 26TH DAY
	)	
MADAM JUSTICE PEPALL	)	OF JUNE, 2007

ORDER

THIS APPLICATION, made by The Regional Municipality of York ("York Region") for an Order pursuant to section 116(1)6 of the *Social Housing Reform Act, 2000*, S.O. 2000, c.27, as amended (the "SHRA") and section 101 of the *Courts of Justice Act*, R.S.O 1990 c. C.43, as amended (the "CJA") appointing Mintz & Partners Limited as receiver and manager (the "Receiver") without security, of all of the assets, undertakings and properties of Thornhill Green Co-Operative Homes Inc. (the "Respondent") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application dated May 29, 2007, the Affidavit of Kerry Hobbs sworn May 29, 2007 and the Exhibits thereto, and on hearing the submissions of counsel for York Region, counsel for Mintz & Partners Limited and no one appearing for the Respondent, although duly served as appears from the Affidavits of Service of Michael William Doran, sworn May 30, 2007 and June 12, 2007, and the Affidavit of Service of Jean Finn sworn June 12, 2007, and on reading the consent of Mintz & Partners Limited to act as the Receiver.

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 116(1)6 of the SHRA and section 101 of the CJA, Mintz & Partners Limited is hereby appointed Receiver, without security, of all of the Respondent's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property") and that such appointment shall continue from and after the date of this Order until terminated by an Order of this Court.

3. THIS COURT ORDERS that the Respondent, its directors, employees and/or agents be and are hereby restrained from issuing cheques on, withdrawing any monies from, or in any way dealing with the Property of the Respondent or in which the Respondent has an interest, including but not limited to personal property, bank accounts, trust accounts and real property.

4. THIS COURT ORDERS that the Receiver is appointed as agent of the Respondent and the Applicant is not responsible for the acts or omissions of the Receiver.

5. THIS COURT ORDERS that the Respondent shall be deemed to ratify and confirm whatever the Receiver does in the course of the receivership, so long as it is done in accordance with the SHRA, the regulations to the SHRA and the terms of the

appointment herein, and that the Receiver shall not be required to consult with, obtain the approval of or have its actions ratified by the Respondent.

6. **THIS COURT ORDERS** that the Respondent shall be deemed to release and discharge York Region, the Receiver, and every person for whom either of them would be responsible, from every claim of any nature arising by reason of any act or omission on the part of any of them, other than:

(a) a claim for an accounting of the money and other Property received by the Receiver in the course of the receivership; and

(b) a claim that is the direct and proximate result of negligence, dishonesty or fraud by the Receiver or by another person for whom either the Receiver or York Region would be responsible.

RECEIVER'S POWERS

7. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable provided that the Receiver in carrying out the said acts continues to comply with the terms of the appointment, the Receivership Services Agreement dated July 19, 2006 and the SHRA:

(a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate and carry on the business of the Respondent, including the powers to enter into any agreements, incur any obligations in the ordinary course of the Respondent's business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondent or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent;

(g) to settle, extend or compromise any indebtedness owing to the Respondent;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondent, for any purpose pursuant to this Order;

(i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondent;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondent, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of its business,

(i) without the approval of this Court in respect of any transaction not exceeding $500,000, provided that the aggregate consideration for all such transactions does not exceed $1,000,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority including the seeking of any further consents as may be required from the Minister of Municipal Affairs and Housing and any renewals

thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondent;

(r) to exercise any partnership, joint venture or other rights which the Respondent may have;

(s) to dispense with member consents or approvals that may be required and to carry out any of the powers conferred by this Order;

(t) to increase housing charges, rents and any other fees and charges to occupants or members of or at the housing project (as that term is defined in the SHRA) as the Receiver deems appropriate under the circumstances;

(u) to terminate the occupancy and/or the membership of a member of Thornhill Green;

(v) to act exclusively as the Respondent with respect to the housing project under its control and the assets and liabilities of the Respondent relating to the housing project;

listed in

(w) to exercise any powers ~~granted to it by~~ subsection 18(4) of Ontario Regulation 368/01, pursuant to the SHRA;

(x) to make an assignment in bankruptcy on behalf of the Respondent including executing any necessary documents to effect such an assignment in bankruptcy, consent to the issuance of a bankruptcy order and the Receiver may take such proceedings under the *Bankruptcy and Insolvency Act* as the Receiver may deem appropriate; and

(y) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondent, the Board of Directors of the Respondent, the members of the Respondent and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

8. **THIS COURT ORDERS** that (i) the Respondent, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and members, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

9. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondent, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 9 or in paragraph 10 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

10. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall

forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

11. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

12. **THIS COURT ORDERS** that no Proceeding against or in respect of the Respondent or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondent or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

13. **THIS COURT ORDERS** that all rights and remedies against the Respondent, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Respondent to carry on any business or operations which the Respondent is not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondent from compliance with statutory or regulatory provisions

relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondent, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Respondent or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondent are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Respondent's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Respondent or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

16. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts

from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

17. THIS COURT ORDERS that all employees of the Respondent shall remain the employees of the Respondent until such time as the Receiver, on the Respondent's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

18. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally

contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

20. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* or by any other applicable legislation, including the protections afforded to the Receiver pursuant to the provisions of the SHRA.

RECEIVER'S ACCOUNTS

21. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall, without limiting the provisions of the SHRA, form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

22. THIS COURT ORDERS the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

23. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

24. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, and subject to the SHRA, the Receiver's Borrowings Charge shall rank in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

25. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

26. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

27. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

28. **THIS COURT ORDERS** that the Receiver, for and on behalf of the Respondent, shall be at liberty and is hereby empowered to execute and deliver a general assignment of rents and leases to York Region as collateral security for any amount borrowed by it from York Region pursuant to this Order and to register, file and record same against the Property in the Land Registry Office and wherever necessary in order to perfect the security interest created and granted therein.

GENERAL

29. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondent.

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever

located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCJ Pepall J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 26 2007

PER/PAR:

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that Mintz & Partners Limited, the receiver and manager (the "Receiver") of all of the assets, undertakings and properties of Thornhill Green Co-Operative Homes Inc. appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the ___ day of _____, 2007 (the "Order") made in an action having Court file number 07-CL-7044, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of $_____, being part of the total principal sum of $_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, _____.

MINTZ & PARTNERS LIMITED, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____

Name:

Title:

Court File No. 07-CL-7044

THE REGIONAL MUNICIPALITY OF YORK

Applicant

- and -

THORNHILL GREEN CO-OPERATIVE HOMES INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

ORDER

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Solicitors for the Applicant

::ODMA\PCDOCS\TOR01\3553312\6

Court File No. 07-CL-7044

THE REGIONAL MUNICIPALITY OF YORK

Applicant

- and -

THORNHILL GREEN CO-OPERATIVE HOMES INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDINGS COMMENCED AT TORONTO

APPLICATION RECORD OF APPLICANT
(Returnable June 11, 2007)

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SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE
FILED / DÉPOSÉ
JUN 01 2007
REGISTRAR - GREFFIER, TORONTO

June 26/07

I am satisfied that the order requested appointing Mintz + Partners Limited as receiver + manager of the respondent should be granted for the reasons enumerated in paragraph 2(a) to (k) of the notice of application. In July, 06, the Ministry of Municipal Affairs + Housing issued a consent to the appointment of a receiver pursuant to s 117(2) of the SHRA. That appointment is set to expire on July 19/07 pursuant to s 120(9) of the SHRA + there continue to be numerous outstanding issues for the receiver to address. The matters left + comments discussed –

It is not necessary in the circumstances for the court to decide the matters for future trial. I have signed the order amended by me.

mtg #51820397-001

PRINCIPAL BALANCE	:	6779861.42000000000000
MONTHS TO AMORTIZE	:	242.00000000000000
INTEREST RATE	:	5.45000000000000
PAYMENT FREQUENCY	:	MONTHLY
CALCULATED PAYMENT AMOUNT	:	46001
OVERRIDE PAYMENT AMOUNT	:	46001.77000000000000
INTEREST FACTOR	:	4.4909423210737E-003

NO	PRINCIPAL	INTEREST	PR-PORTION	ACC INTEREST
1	6764307.62	30447.97	15553.80	30447.97
2	6748683.97	30378.12	15623.65	60826.09
3	6732990.15	30307.95	15693.82	91134.04
4	6717225.85	30237.47	15764.30	121371.51
5	6701390.75	30166.67	15835.10	151538.18
6	6685484.54	30095.56	15906.21	181633.74
7	6669506.90	30024.13	15977.64	211657.87
8	6653457.50	29952.37	16049.40	241610.24
9	6637336.02	29880.29	16121.48	271490.53
10	6621142.14	29807.89	16193.88	301298.42
11	6604875.54	29735.17	16266.60	331033.59
12	6588535.89	29662.12	16339.65	360695.71
13	6572122.85	29588.73	16413.04	390284.44
14	6555636.10	29515.02	16486.75	419799.46
15	6539075.31	29440.98	16560.79	449240.44
16	6522440.15	29366.61	16635.16	478607.05
17	6505730.28	29291.90	16709.87	507898.95
18	6488945.37	29216.86	16784.91	537115.81
19	6472085.08	29141.48	16860.29	566257.29
20	6455149.07	29065.76	16936.01	595323.05
21	6438137.00	28989.70	17012.07	624312.75
22	6421048.53	28913.30	17088.47	653226.05
23	6403883.32	28836.56	17165.21	682062.61
24	6386641.02	28759.47	17242.30	710822.08
25	6369321.29	28682.04	17319.73	739504.12
26	6351923.77	28604.25	17397.52	768108.37
27	6334448.12	28526.12	17475.65	796634.49
28	6316893.99	28447.64	17554.13	825082.13
29	6299261.03	28368.81	17632.96	853450.94
30	6281548.88	28289.62	17712.15	881740.56
31	6263757.18	28210.07	17791.70	909950.63
32	6245885.58	28130.17	17871.60	938080.80
33	6227933.72	28049.91	17951.86	966130.71
34	6209901.24	27969.29	18032.48	994100.00
35	6191787.78	27888.31	18113.46	1021988.31
36	6173592.97	27806.96	18194.81	1049795.27
37	6155316.45	27725.25	18276.52	1077520.52
38	6136957.85	27643.17	18358.60	1105163.69
39	6118516.80	27560.72	18441.05	1132724.41
40	6099992.94	27477.91	18523.86	1160202.32
41	6081385.89	27394.72	18607.05	1187597.04
42	6062695.27	27311.15	18690.62	1214908.19
43	6043920.71	27227.21	18774.56	1242135.40
44	6025061.84	27142.90	18858.87	1269278.30
45	6006118.28	27058.21	18943.56	1296336.51
46	5987089.64	26973.13	19028.64	1323309.64
47	5967975.54	26887.67	19114.10	1350197.31
48	5948775.60	26801.83	19199.94	1376999.14
49	5929489.44	26715.61	19286.16	1403714.75

Draft

Court File No. 07-CL-7044

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION UNDER SECTION 116(1)6 OF THE *SOCIAL HOUSING REFORM ACT, 2000*, S.O. 2000, c.27

AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43

THE REGIONAL MUNICIPALITY OF YORK

Applicant

- and -

THORNHILL GREEN CO-OPERATIVE HOMES INC.

Respondent

NOTICE OF MOTION

MINTZ & PARTNERS LIMITED, in its capacity as Court-appointed receiver (the "Receiver") of Thornhill Green Co-Operative Homes Inc. ("Thornhill Green"), will make a motion before a judge presiding over the Commercial List on [•], • [•], 2008 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

THE MOTION WILL BE HEARD ORALLY.

THE MOTION IS FOR AN ORDER:

1. abridging the time of service of this Notice of Motion and Motion Record if necessary, validating service and dispensing with any further service of this Notice of Motion and the Motion Record such that this motion is properly returnable on • [•], 2008;

2. approving the transaction (the "Transaction") contemplated by an Agreement of Purchase of Sale dated [•], 2008 (the "Purchase Agreement") between the Receiver and Housing York Inc.

(the "Purchaser") and authorizing the Receiver to take such steps as are necessary to complete the Transaction of purchase and sale;

3. vesting the Purchased Assets, as that term is defined in the Purchase Agreement, in and to the Purchaser free and clear of any and all claims, subject to certain assumed liabilities and permitted encumbrances as set out in the Purchase Agreement;

4. approving the forms of lease agreements set out at Schedules • and • of the draft Approval and Vesting Order attached at Tab 3 of the Motion Record;

5. declaring that, upon the filing of a certificate by the Receiver,

(i) all occupancy agreements for the property located at 51-95 Inverlochy Boulevard, Markham, Ontario (the "Property") are hereby deemed to be terminated;

(ii) any lease agreements remaining to be executed between the tenants at the Property and the Purchaser are hereby deemed to be executed, valid and in full force and effect and binding on the respective tenants of the Property; and

(iii) the housing units at the Property are no longer part of any housing co-operative;

6. directing that the Receiver serve a notice by ordinary mail advising of any Order made by this Honourable Court in connection with the relief sought herein on all members of Thornhill Green within five (5) days of the date of this Order;

7. approving the activities of the Receiver as set out in the First Report; and

8. such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. On June 26, 2007, by Order of the Honourable Madam Justice Pepall, Mintz & Partners Limited was appointed as Receiver of all of the assets, undertakings and properties of Thornhill Green pursuant to section 116(6) of the *Social Housing Reform Act, 2000,* S.O. 2000 c. 27, as amended (the "SHRA") and section 101 of the *Courts of Justice Act,* R.S.O. 1990 c. C.43, as amended (the "CJA");

2. Following the appointment of the Receiver, the Receiver discovered that the Property required extensive major repairs and remediation. Thornhill Green does not have sufficient funds to complete all repairs and remediation;

3. No one is prepared to make further advances to the Receiver to fund the repairs and remediation of the Property;

4. The Receiver has negotiated the sale of the Property to the Purchaser;

5. The Purchase Agreement contemplates that the Purchaser will assume the existing secured indebtedness of Thornhill Green;

6. The Purchaser is a corporation incorporated under the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16, and is wholly-owned by York Region. The Purchaser is responsible for social housing owned by York Region and currently manages under 2000 units at 30 different properties in York Region and is best capable of managing the Property herein;

7. The Purchaser does not operate any housing co-operatives and is not prepared to purchase and manage the Property herein if it is to remain a co-operative;

8. The Receiver and York Region wish for the housing units to remain as part of the social housing stock in York Region, and therefore do not wish to sell the Property on the open market;

9. The only way to remediate and thus preserve the Property as part of the social housing stock is to transfer the Property to the Purchaser;

10. The Purchaser has provided commitments to York Region and the Receiver that it will remediate and preserve the Property as part of the social housing stock following the completion of the Transaction, on the condition that the housing units included in the Transaction are not part of a housing co-operative;

11. The members of Thornhill Green currently have occupancy agreements with Thornhill Green;

12. If this Honourable Court approves the Transaction herein and grants the ancillary relief, there will no longer be a housing co-operative, and thus the occupancy agreements will cease to apply to the housing units, and the *Co-operative Corporations Act*, R.S.O. 1990, c.C.35 will no longer apply to Thornhill Green and its members;

13. The enabling legislation for the Purchaser requires that all tenants residing in social housing units under its control execute lease agreements with the Purchaser;

14. As the same individuals currently occupying their housing units will be occupying the same units in the same building, following completion of the Transaction, and certain individuals may refuse to execute the new lease agreements, the Purchaser wishes to ensure that, in the case where those individuals refuse or fail to execute lease agreements, as required, those individuals will be subject to the said lease agreements;

15. On [•], 2008, Counsel for York Region approved the Transaction;

16. On [•], 2008, the Ministry of Municipal Affairs and Housing provided ministerial consent for a completion of the Transaction;

17. The Transaction will benefit all of the stakeholders of Thornhill Green;

18. The Receiver recommends that this Honourable Court approve the Transaction and requests that the relief sought be granted;

19. the Order of Madam Justice Pepall dated June 26, 2007;

20. the provisions of the SHRA and the regulations thereunder;

21. section 100 of the *Courts of Justice Act* (Ontario), R.S.O. 1990, c. C.43;

22. rules 2.01, 2.03, 3.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

23. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the First Report of the Receiver dated [•], 2008; and

2. such further and other material as counsel may advise and this Honourable Court may permit.

[•], 2008

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Mervyn D. Abramowitz
LSUC #28325R
Tel: (416) 225-8750
Fax: (416) 225-3910

Solicitors for Mintz & Partners Limited, in its capacity as Court-appointed Receiver of Thornhill Green Co-Operative Homes Inc.

TO: **THORNHILL GREEN CO-OPERATIVE HOMES INC.**
61 Inverlochy Blvd.
Suite 8
Markham, ON L3T 3R4

Attention: Sue Daniels
Chair, Board of Directors

AND TO: **[NOTE TO DRAFT: SERVE ALL MEMBERS OF THE BOARD]**

AND TO: **BORDEN LADNER GERVAIS LLP**
Barristers and Solicitors
Scotia Plaza
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ROGER JAIPARGAS
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BRENDAN Y. B. WONG
Tel: (416) 367-6743
Fax: (416) 682-2824

Solicitors for The Regional Municipality of York

AND TO: **Ministry of Municipal Affairs and Housing**
777 Bay Street
2nd Floor
Toronto, ON M5G 2E5
Attention: Rosalind Lerman
Director - Housing Finance Branch

AND TO: **Diane Winters [NOTE TO DRAFT: TO DISCUSS]**
Senior Counsel, Tax Law Services Section
Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

AND TO: **Kevin O'Hara [NOTE TO DRAFT: TO DISCUSS]**
Ministry of Finance
Legal Services Branch
33 King Street West, 6th Floor
Oshawa, On L1H 8H5

AND TO: **ROYAL BANK OF CANADA**

AND TO: **[NOTE TO DRAFT: ANY PPSA REGISTRANTS LISTED ON AN UPDATED ENQUIRY RESPONSE CERTIFICATE]**

Court File No. 07-CL-7044

THE REGIONAL MUNICIPALITY OF YORK
Applicant

- and -

THORNHILL GREEN CO-OPERATIVE HOMES INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

NOTICE OF MOTION

KRONIS, ROTSZTAIN,
MARGLES, CAPPEL
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Solicitors for Mintz & Partners Limited, in its capacity as Court-appointed Receiver of Thornhill Green Co-Operative Homes Inc.

::ODMA\PCDOCS\TOR01\3684432\4

Draft

Court File No. 07-CL-7044

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	[•], THE [•]TH DAY
	)	
JUSTICE	)	OF • , 2008

IN THE MATTER OF AN APPLICATION UNDER SECTION 116(1)6 OF THE *SOCIAL HOUSING REFORM ACT, 2000*, S.O. 2000, c.27

AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43

THE REGIONAL MUNICIPALITY OF YORK

Applicant

- and -

THORNHILL GREEN CO-OPERATIVE HOMES INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by Mintz & Partners Limited, in its capacity as the Court-appointed receiver (the "Receiver") of all of the assets, undertaking and property of Thornhill Green Co-Operative Homes Inc. ("Thornhill Green"), for approval of the sale of the Purchased Assets (as hereinafter defined), a Vesting Order in respect of the Purchased Assets and for certain other ancillary relief was heard this day at 330 University Avenue, Toronto, Ontario.

UPON READING the Notice of Motion, the First Report of the Receiver dated •, 2008 (the "First Report"), and on hearing the submissions of counsel for the Receiver, counsel for The Regional Municipality of York ("York Region"), and such other counsel as may be present and on reading the Affidavit of Service of • , sworn • , 2008.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that unless specified herein, all capitalized terms shall have the meanings ascribed to them in the Agreement of Purchase and Sale dated • , 2008 between the Receiver as Vendor and Housing York Inc. as Purchaser (the "Agreement of Purchase and Sale").

SALE APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the Agreement of Purchase and Sale, substantially in the form attached as Schedule [•] to the First Report, the sale of the Purchased Assets by the Receiver (the "Transaction") on the terms and conditions provided for in the Agreement of Purchase and Sale, and the Transaction be and is hereby authorized and approved.

4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized, empowered and directed to implement and complete the Transaction contemplated by the Agreement of Purchase and Sale, substantially in accordance with the terms and conditions of the Agreement of Purchase and Sale, with such alterations, amendments, deletions and additions as the parties thereto may agree to, and to perform the obligations contained in the Agreement of Purchase and Sale without giving notice under Part V of the *Personal Property Security Act* (Ontario), R.S.O. 1990, c. P.10 and the *Mortgages Act*, R.S.O. 1990, c. M.40.

5. **THIS COURT ORDERS** that in completing the Transaction, subject to the terms and conditions of the Agreement of Purchase and Sale, the Receiver be and is hereby authorized to execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to the Transaction as the Receiver, in its discretion, may deem to be reasonably necessary or advisable to conclude the Transaction. Any transfers, assignments or other conveyances to be registered at any Land Titles Office shall be deemed to be validly executed if signed by the Receiver.

6. **THIS COURT ORDERS** that the *Bulk Sales Act*, R.S.O. 1990, c. B-14, as amended, and any other legislation affecting sales in bulk do not apply to the Agreement of Purchase and Sale and to the Transaction contemplated therein.

7. **THIS COURT ORDERS** that effective immediately upon the filing with this Honourable Court by the Receiver of a certificate (the "Certificate"), substantially in the form of the Certificate attached as Schedule "A" hereto, confirming that the Transaction contemplated by the Agreement of Purchase and Sale has been completed to the satisfaction of the Receiver, the right, title and interest of Thornhill Green and the Receiver in and to the Purchased Assets including the lands and buildings described in Schedule "B" hereto (the "Lands") shall vest and are hereby vested in and to the Purchaser, absolutely and forever, free and clear of and from any and all estate, right, title, interest, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, security notices, assignments, actions, levies, taxes, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts, encumbrances or other rights, limitations or restrictions of any nature whatsoever, including, without limitation, any rights or interests of any of the creditors of Thornhill Green, whether or not they have attached or are perfected, registered, or filed, whether secured or unsecured or otherwise, whether liquidated, unliquidated or contingent and the claims of any of the members of Thornhill Green (collectively, the "Claims"), by or of all persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executors, administrators or other legal representatives (collectively, the "Claimants"), including, without limitation, Claims listed or described or referred to in Schedule "C" hereof, provided that nothing herein shall affect either: (1) those instruments listed or described or referred to in Schedule "D" hereto; or (2) the liens, charges or rights in respect of any liabilities that have been assumed in accordance with the Agreement of Purchase and Sale.

DIRECTION TO LAND REGISTRAR

8. **THIS COURT ORDERS** that the instruments referred to in Schedule "C" are to be ruled off and expunged from title and that the Land Registrar is hereby so ordered.

9. **THIS COURT ORDERS** that the Land Registrar is hereby directed to, upon delivery to it of a certified copy of the Certificate, issue new Certificates of Title to the property described in Schedule "B" in the name of Housing York Inc., free and clear of all encumbrances and the right, title and interest and equity of redemption of Thornhill Green and any person claiming by, through or under Thornhill Green will upon closing of the Transaction, forever be extinguished, save and except for the permitted encumbrances listed in Schedule "D" to this Order.

AGREEMENT BINDING ON TRUSTEE

10. **THIS COURT ORDERS** that, notwithstanding:

(i) the pendency of these proceedings;

(ii) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Thornhill Green and any bankruptcy order issued pursuant to any such applications; and

(iii) any assignment in bankruptcy made in respect of Thornhill Green;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Thornhill Green, and shall not be void or voidable by creditors of Thornhill Green, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

TERMINATION OF OCCUPANCY AGREEMENTS AND APPROVAL OF LEASE AGREEMENTS

11. **THIS COURT ORDERS** that the forms of lease agreements set out at Schedules "E" and "F" to this Order be and are hereby approved.

12. **THIS COURT ORDERS AND DECLARES** that, upon the filing of the Certificate by the Receiver;

(i) all Occupancy Agreements for the Property located at 51-95 Inverlochy Boulevard, Markham, Ontario are hereby deemed to be terminated;

(ii) any lease agreements remaining to be executed between the tenants at the Property and the Purchaser are hereby deemed to be executed, valid and in full force and effect and binding on the respective tenants of the Property; and

(iii) the housing units at the Property are no longer part of any housing co-operative.

AID AND RECOGNITION

13. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered, to the extent necessary for fulfilling the terms of this Order, to seek the aid and recognition of any Court, tribunal or administrative body of any Province of Canada for an Order recognizing this Order in such other jurisdiction as is necessary to give effect to and assist the Receiver and its agents in carrying out the terms of this Order including the making of such Orders concerning the vesting of the assets as may carry forward the intention of this Order.

APPROVAL OF ACTIVITIES

14. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the First Report, be and are hereby approved.

NOTICE TO MEMBERS

15. **THIS COURT ORDERS** that the Receiver shall send a copy of the notice set out at Schedule "G" to this Order to all known members of Thornhill Green as of the date hereof, which notice shall be delivered by ordinary mail within five (5) days of the date of this Order.

Schedule "A"

Court File No. 07-CL-7044

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION UNDER SECTION 116(1)6 OF THE *SOCIAL HOUSING REFORM ACT, 2000*, S.O. 2000, c.27

AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43

THE REGIONAL MUNICIPALITY OF YORK

Applicant

- and -

THORNHILL GREEN CO-OPERATIVE HOMES INC.

Respondent

CERTIFICATE

MINTZ & PARTNERS LIMITED, in its capacity as Court-appointed receiver of Thornhill Green Co-Operative Homes Inc. (the "Receiver"), hereby certifies that the transaction contemplated by an Agreement of Purchase and Sale dated • , 2008 between the Receiver and Housing York Inc. has been completed to the satisfaction of the Receiver, all in accordance with the Approval and Vesting Order issued by the Ontario Superior Court of Justice (Commercial List) dated • , 2008.

Mintz & Partners Limited, in its capacity as Court-appointed Receiver of Thornhill Green Co-Operative Homes Inc.

Per: _____
Name:
Title:

Court File No. 07-CL-7044

THE REGIONAL MUNICIPALITY OF YORK **Applicant**	- and -	**THORNHILL GREEN CO-OPERATIVE HOMES INC.** **Respondent**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

CERTIFICATE

KRONIS, ROTSZTAIN, MARGLES, CAPPEL
Barristers and Solicitors
700-25 Sheppard Ave. West
Toronto, Ontario M2N 6S6

Mervyn D. Abramowitz
Tel: (416) 225-8750
Fax: (416) 225-3910
LSUC #28325R

Solicitors for Mintz & Partners Limited,
in its capacity as Court-appointed Receiver of
Thornhill Green Co-Operative Homes Inc.

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Schedule "B"

LEGAL DESCRIPTION AND APPURTENANT RIGHTS

Schedule "C"

ENCUMBRANCES EXPUNGED AND DISCHARGED BY THIS ORDER

Schedule "D"

ENCUMBRANCES NOT AFFECTED BY THIS ORDER

SCHEDULE "E"

RENT GEARED TO INCOME LEASE

SCHEDULE "F"

MARKET LEASE

SCHEDULE "G"

NOTICE TO MEMBERS

Court File No. 07-CL-7044

THE REGIONAL MUNICIPALITY OF YORK	- and -	**THORNHILL GREEN CO-OPERATIVE HOMES INC.**
Applicant		**Respondent**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

KRONIS, ROTSZTAIN, MARGLES, CAPPEL
Barristers and Solicitors
700-25 Sheppard Avenue West
Toronto, Ontario M2N 6S6

Mervyn D. Abramowitz
Tel: (416) 225-8750
Fax: (416) 225-3910
LSUC #28325R

Solicitors for Mintz & Partners Limited, in its capacity as Court-appointed Receiver of Thornhill Green Co-Operative Homes Inc.

::ODMA\PCDOCS\TOR01\3684666\5

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RBC ®

MORTGAGE AMENDING AGREEMENT

Re: Thornhill Green Co-Operative Homes Inc.
Address: 1 Concorde Gate
Suite 200
Toronto, ON M3C 4G4

By this agreement each of the undersigned agree(s) to the following:

1. that, effective the date of the advance by Royal Bank of Canada (the "Bank"), its mortgage with the Bank is amended to contain the terms and conditions set out in the Statement of Disclosure and Terms and Conditions of Mortgage (the "Document") previously signed by the undersigned;

2. that all of the other terms and conditions of the mortgage that were not amended by the Document remain in effect;

3. that this agreement and the Document are not meant to create a new mortgage or to amend or prejudice any rights of the Bank with respect to the mortgaged property or any other security it may have;

4. each covenantor or guarantor agrees that its covenant or guarantee extends to the amended terms and conditions of the mortgage as contained in the Document as if it is the primary debtor;

November 27, 2007
Date

Thornhill Green Co-Operative Homes Inc.
by its Receiver and Manager
Mintz & Partners Limited
Per: [signature]
Name: CATHERINE HRISTOW
Title: VICE PRESIDENT

Per: [signature]
Name: BRYAN TANNENBAUM
Title: SENIOR VICE PRESIDENT

Per: _____
Name:
Title:

Per: _____
Name:
Title:

® Registered trade-mark of Royal Bank of Canada.

(SWITCH)
Social Housing
(12/02)

MTG REF# 51820397-001
DATE: November 21, 2007
TRANSIT: 04143

STATEMENT OF DISCLOSURE AND TERMS AND CONDITIONS OF MORTGAGE

Your Existing Mortgage is being switched to Royal Bank of Canada ("Royal Bank") pursuant to the process applicable to your social housing loan. This Statement of Disclosure provides you with an estimate of the cost of borrowing and sets out the terms and conditions upon which your Existing Mortgage is being transferred to us.

Name and address of Borrower(s):
Mintz & Partners, LLP
1 Concorde Gate
Suite 200
Toronto, ON M3C 4G4

Civic Address: **51-95 Invertochy Blvd.**
Markham, ON

Legal Description: BLK B PL 7686 Markham, S/T Right in R58828, S/T MA57567 & MA65612 Assigned by R692069, Markham
Mortgage Type: 1st ranking ☒ NHA

Fixed Rate: ☒ Closed

I DEFINITIONS:
"We", "us" and "our" mean Royal Bank of Canada;

"You" and "your" mean the borrower(s) signing this Document and the guarantor(s) or covenantor(s), if any, signing this Document;

"Document" means this "Statement of Disclosure and Terms and Conditions of Mortgage" agreement;

"Existing Mortgage" means the mortgage agreement you currently have on the property described above and the terms and conditions of the most recent renewal, extension, conversion or amendment thereto;

"Interest Adjustment Date" means **December 1, 2007**;

"Monthly Payment Date" means the date provided in Section II.4 for monthly payments,

"Mortgage Rate" means with respect to your Existing Mortgage, the rate of interest described in your Existing Mortgage; with respect to the Proposed Mortgage, it means the rate set out in Section II.3 of this Document; and

"Proposed Mortgage" means the mortgage agreement into which you shall enter with us.

II **Based on the information relating to the Existing Mortgage provided to us,**

1. PRINCIPAL AMOUNT
Based on an approximate Existing Mortgage of **$6,779,861.42** on a pay-out date of **December 1, 2007**, the principal amount of your Proposed Mortgage is: **$6,779,861.42.**

2. MONEY TO BE PAID OR DISBURSED
The amount of money to be paid or disbursed under your direction to the mortgagee under the Existing Mortgage is item 1. Your Existing Mortgage must be paid in full using the funds advanced.

Per diem interest may be charged by CMHC on your Existing Mortgage if the money is not paid by a pay-out date of **December 1, 2007**You may be responsible for any per diem interest charged by your existing lender.

3. ANNUAL INTEREST RATE
The interest rate for the Proposed Mortgage shall be **5.45%** per annum, calculated semi-annually, not in advance, as well after as before maturity, default and judgment until paid.

4. MONTHLY PAYMENTS
Accrued interest on the Proposed Mortgage is payable on the **1st** day of each month following the advance of funds. After the advance of funds the principal amount and interest thereon will be payable in

monthly payments of $46,001.77 on the 1st day of each month commencing on the 1st day of January, 2008 until the end of the term stipulated on item 6 plus the monthly property tax portion provided for in the mortgage of $ 0.00 until further notice for a total payment of $46,001.77 until further notice.

In the event that the funds are advanced by us prior to the day of the month provided in this item 4 for monthly payments, then we will compute interest at the Mortgage Rate on the amount advanced from the date of such advance until the date provided in this item 4 for monthly payments. Such interest will be due and payable on that date. At your option, such accrued interest will be added to the principal amount advanced and will bear interest at the Mortgage Rate for the Proposed Mortgage and will form a charge on the mortgaged property.

5. BALANCE AT MATURITY
The Proposed Mortgage will be due and payable on December 1, 2012 at which time, based on the annual rate disclosed in item 3 and your monthly payments, it is calculated that if all payments are made on their due dates, you will owe $5,711,536.78*. On the date of this Document we charge an administrative fee of $100 to prepare a discharge of mortgage and an administrative fee of $100 to prepare the documents required to switch your Proposed Mortgage to another lender. This amount will be paid by the financial institution that pays out the Proposed Mortgage at a later date.

6. TERM AND AMORTIZATION
The term of the Proposed Mortgage will be 60 months and the amortization will be 242 months.

7. APPLICATION OF MONTHLY PAYMENT
We shall apply each monthly payment stipulated in item 4 firstly to payment of the interest due, at the annual interest rate stipulated in item 3, and secondly to the reduction of the principal amount. If you are in default under the Proposed Mortgage, we will apply any payments you made during the period of default in whatever order we may elect as between taxes, interest, repairs, insurance premiums or other advances we make on your behalf.

8. NO PREPAYMENT
You agree that the Proposed Mortgage is a closed mortgage with no prepayment privileges.

9. PAYMENT
Unless we agree otherwise, any payment must be made in money which is legal tender at the time of payment.

10. ASSIGNMENT
You agree that we may transfer and assign our rights and obligations under this Proposed Mortgage to our mortgage loan subsidiary, or to any other third party. In connection with such a transfer and assignment or a proposed transfer, you agree that we may also transfer and assign the Proposed Mortgage and any related documentation to the assignee.

11. MORTGAGE TAX ACCOUNT
Notwithstanding any provision contained in your Existing Mortgage, we will pay you interest on the average monthly credit balance, if any, in your mortgage tax account relating to the payment of property taxes at a rate per annum and at such times as we may determine in our sole discretion. The interest rate on the average monthly debit balance, if any, in your mortgage tax account relating to the payment of property taxes will be the Mortgage Rate under the Proposed Mortgage. You agree that you will reimburse us for any amounts or fees that we pay to a municipality or any third party in connection with the administration of your mortgage tax account and the remittance of property taxes on your behalf. You also agree that any such amounts or fees may be deducted directly from your mortgage tax account. We estimate the amount of this fee to be $ 0.00 per calendar year.

If the mortgage tax account for your Existing Mortgage shows an amount owing to your existing lender, we will, at your request, pay that amount to your existing lender. This will result in the mortgage tax account under your Proposed Mortgage having a debit for the amount paid to the existing lender. If your mortgage tax account has a credit your existing lender may offset that amount against the balance owing under your Existing Mortgage. If your existing lender transfers a credit in your mortgage tax account to us, we will credit that amount to the mortgage tax account under the Proposed Mortgage.

12. COVENANTORS
Each covenantor or guarantor agrees that his or her covenant or guarantee extends to the terms and conditions set forth in this Document as if he or she is the primary debtor.

* Calculated and accurate to within 1/8 of 1% of the annual cost of borrowing disclosed.

13. MAKING A COMPLAINT

You may raise any concerns about the disclosure of, or manner of calculating, the cost of borrowing in respect of the Proposed Mortgage by writing to the Royal Bank branch with which you deal or contacting any employee of the branch or contacting our Customer Relations Centre at 1-800-ROYAL™99. If you experience a problem with this Document or Proposed Mortgage that cannot be resolved at your branch or by contacting our Customer Relations Centre, you may contact the RBC Ombudsman, in writing at P.O. Box 1 Royal Bank Plaza, Toronto, Ontario M5J 2J5, by facsimile at (416) 974-6922, by e-mail at ombudsman@rbc.com or you may visit the website at www.rbc.com/ombudsman. If you are not satisfied with the manner in which we have dealt with the concerns, you may contact the Financial Consumer Agency of Canada, in writing, at 427 Laurier Avenue West, 6th Floor, Ottawa, Ontario (K1R 1B9).

BY:
NAME:

Thornhill Green Co-Operative Homes Inc.
by its Receiver and Manager
Per: Mintz & Partners Limited
Name: Catherine Ariston
Title: VICE PRESIDENT

Per: _____
Name: Bryan Tannenbaum
Title: Senior Vice President

Per: _____
Name:
Title:

Per: _____
Name:
Title:

™Trade-mark of Royal Bank of Canada

E-FORM 20057 (04/2008)

AUTHORIZATION FOR INTERBANK DEBIT FOR LOANS AND MORTGAGES

PSC-ONT MORTGAGE PROCESSING
2ND FLR-C/O METRO MTG CTR.
180 WELLINGTON ST. W.
TORONTO, ON
M5J 1J1

Borrower Name: Thornhill Green Co-Operative Homes Inc.

Account Owner Name (if different from borrower): Thornhill Green Co-Operative Homes Inc.

I/We acknowledge that this authorization is provided for the benefit of Royal Bank of Canada and Thornhill Green Co-Operative Homes Inc., and is provided in consideration of my financial institution, , agreeing to process debits against my/our account (details provided below) in accordance with the rules of the Canadian Payments Association.

I/We warrant and guarantee that all persons whose signatures are required to sign on this account have signed this agreement below.

Please accept this as my/our authority to deduct loan/mortgage payments from the following financial institution and designated account number. These instructions are effective until written notice to the contrary is given by me/us to you. I/We agree that from time to time I/we may authorize Royal Bank of Canada to deduct such payments from another account upon my/our oral or written instructions. Upon designating such other account the terms of this agreement and the authority provided to you shall apply to that account and all debits made pursuant to this agreement.

Financial Institution:
TD Canada Trust

Deposit Account Number:
0685-0859525

Address:
7967 Yonge Street
Thornhill, Ontario L3T 2C4

Deposit Branch Entity:
Bank No.: 004 Branch Transit No.: 7562

Loan/Mortgage Details:
51820397-001

Loan/Mortgage Payment Details:
Payment Amount: $46,001.77
Payment Timing: monthly

This authorization/agreement may be cancelled at any time upon notice being provided by any one of the undersigned, either in writing or orally with proper authorization to verify the identity of the person, within 30 days before the next Pre-Authorized Debit (PAD) was to be issued. I/We acknowledge that, in order to revoke this authorization, I/we must provide notice of revocation to Royal Bank of Canada as set out above.

A PAD may be disputed by the undersigned under the following conditions:

(i) If the PAD was not drawn in accordance with this agreement; or
(ii) If this agreement was revoked; or
(iii) If pre-notification was not received and such pre-notification was required under the terms of this agreement.

In order to be reimbursed, the undersigned acknowledge(s) that a declaration to the effect that either (i), (ii) or (iii) took place, must be completed and presented to the branch of Royal Bank of Canada holding the account up to and including 90 calendar days after the date on which the PAD in dispute was posted to the above account.

E-FORM 20057 (04/2006)

I/We acknowledge that a claim on the basis that this agreement was revoked, or any other reason, is a matter to be resolved solely between I/us and Royal Bank of Canada when disputing any PAD after the 90 calendar days.

Revocation of this authorization/agreement does not terminate any contract for products/services that exists between the undersigned and Royal Bank of Canada. This agreement applies only to the method of payment and does not otherwise have any bearing on the contract for products/services exchanged.

If my/our payment amount is variable I/we waive any requirements that you give pre-notification of any payment amount.

A payment will only be debited to my/our account for interest, principal or both depending on payment method if there is a balance outstanding.

[Attach a void cheque if available.]

THORNHILL GREEN COOPERATIVE HOMES INC
BY ITS RECEIVER AND MANAGER
MINTZ & PARTNERS LIMITED

November 27/07 Per: [signature]

Date Borrower/Account Holder Signature(s)

CATHERINE HRISTOW
VICE PRESIDENT

November 27/07 Per: [signature]

Date Borrower/Account Holder Signature(s)

BRYAN TANNENBAUM
SENIOR VICE PRESIDENT

® Registered trademark of Royal Bank of Canada.

RBC

DIRECTION FOR FIRE INSURANCE

Insurance Company: Date: November 21, 2007

The Co-operators General Insurance Company
Priority Square
Guelph Ontario N1H 8P8

RE:

Policy Number: 9634220 Property Address: 51-95 Inverlochy Blvd. Markham, ON
Insurer's/Policy Holder's name: Thornhill Green Co-Operative Homes Inc.

Address: **1 Concorde Gate**
Suite 200
Toronto, ON M3C 4G4

SRF#: 197920937 CASPER#:

In consideration of financial assistance granted by ROYAL BANK OF CANADA from time to time, please be advised that we have agreed to change the loss payable clause of the subject property to add the name ROYAL BANK OF CANADA.

In the circumstances, please accept this letter as your irrevocable authority to have the loss payable clause amended to read: "Loss, if any, payable to: ROYAL BANK OF CANADA"

These arrangements are to remain in effect for each and every renewal of this policy.

Thornhill Green Co-Operative Homes Inc.
by its Receiver and Manager
Mintz & Partners Limited
Per: _____
Name: CATHERINE HRISTOW
Title: VICE PRESIDENT

Per: _____
Name: BRIAN TANNENBAUM
Title: SENIOR VICE PRESIDENT

ACKNOWLEDGEMENT

Date: _____

Return to:
Royal Bank
Personal Service Center
180 Wellington St. West,
Toronto, ON M5J 1J1

Reply:
(To be completed by Insurance Company/Agency).
We hereby acknowledge receipt of the foregoing instructions and the necessary documentation will be forwarded to you in due course.

_____
Insurance Company/Agency

_____
Signature

Ministry of Revenue

Tax Compliance and Regional
Operations Branch
Land Taxes Section
PO Box 625
33 King Street West
Oshawa ON L1H 8H9
Tel: 905-433-5170
Fax: 905-433-5770

Ministère du Revenu

Direction de l'observation fiscale et
des opérations régionales
Section des Impôts Fonciers
C.P. 625
33, rue King Ouest
Oshawa ON L1H 8H9
Tél: 905-433-5170
Téléc: 905-433-5770

Ontario

February 26, 2008

Alan M. Sless
Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West
Toronto ON M5H 3Y4

Dear Mr. Sless:

Re: Ruling request on a refund of tax due to exemption
File No. 08-0124
Land Transfer Tax Act (LTTA)

We are writing in response to your letter dated January 23, 2008 wherein you requested a ruling as to whether we would grant a refund of land transfer tax due to an exemption provided under subsection 8(1) *LTTA*.

This is to confirm that we would grant a refund only if the legislative amendment to section 15 of Ontario Regulation 368/01 *Social Housing Reform Act, 2000* allows for retroactive application to the date of the conveyance.

Please be advised that our opinion is based upon the information that you have provided and that the Ministry reserves the right to reconsider the matter if additional information is obtained affecting the tax implications of the transactions.

If you have any questions regarding this matter, please do not hesitate to contact me.

Yours truly,

Ebrahim Patel
Land Transfer Tax Analyst

TOWN OF MARKHAM
ANTHONY ROMAN CENTRE
101 TOWN CENTRE BOULEVARD
MARKHAM, ONTARIO L3R 9W3
TAX INQUIRIES: 905-475-4864
FAX: 905-415-7544

RETAIN THIS BILL FOR YOUR RECORDS

TAX BILL

Final 2007

Billing Date: 2007-06-04
Customer No: 92Y9BMJ2

THORNHILL GREEN
CO-OPERATIVE HOMES INC
61 INVERLOCHY BLVD UNIT #5
THORNHILL ON L3T 3R4

113(1)
34(F)

Tax Roll #: 36-01-0-084-84400-0000-0 3
Location: 51 INVERLOCHY BLVD
Legal Desc: PL 7686 BLK D & RRR & SSS

Assessment		City Levy		Region Levy		Education Levy	
Tax Class	Assessment	Rate(%)	Amount	Rate(%)	Amount	Rate(%)	Amount
RT	8,306,000	0.260657	21,657.88	0.495729	41,185.17	0.264000	21,933.12
Totals	8,306,000	City	$21,657.88	Region	$41,185.17	Education	$21,933.12

Account Summary (as of Jun 04, 2007)	
Future Due	33,269.17
Account Balance	$33,269.17

Summary	
Final 2007 Levies	$84,776.17
Final 2007 Taxes	$84,776.17
Less Interim Billing	-51,507.00
Total Amount Due	$33,269.17

You have registered for our Pre-Authorized Payment Plan. This bill is for your records only. No payment is required. We will withdraw from your bank account on the due dates. Please notify our office in writing at least 14 days prior to the withdrawal date for any bank account changes or cancellations.

If any of your pre-authorized payments do not clear through your bank account, the Town will charge you an administrative fee and interest charges. You will be automatically removed from the pre-authorized plan and returned to the regular instalment plan.

Thank you for participating in our Pre-Authorized Tax Payment Plan.

Due Date	Amount
Jul 1, 2007	5,548.17
Aug 1, 2007	5,544.00
Sep 1, 2007	5,544.00
Oct 1, 2007	5,544.00
Nov 1, 2007	5,544.00
Dec 1, 2007	5,544.00

Explanation of Tax Changes From 2006 to 2007 Residential, Farmland, Pipelines & Managed Forests	
Final 2006 Levies	103,014.40
*2006 Annualized Taxes	103,014.40
2007 City Levy change	828.87
2007 Region Levy change	1,866.33
2007 Prov. Education Levy change	0.00
2007 Tax change due to Reassessment	-20,963.69
**Final 2007 Levies	84,776.17
Total Year-Over-Year Tax change	-18,238.23

* An annualized tax figure is used in this analysis to compensate for mid-year adjustments in tax treatment or assessment value. If a property did not have any mid-year adjustments, the annualized taxes should equal the Final 2006 levies listed above.
** Final levy amount applies only to the property or portion(s) of property referred to in this notice and may not include some special charges and credit amounts.
*** Adjusted tax amount applies only to the property or portion(s) of the property referred to in this notice and may not include some special charges and credit amounts or levies that are not part of the capping calculation.

TOWN OF MARKHAM
ANTHONY ROMAN CENTRE
101 TOWN CENTRE BOULEVARD
MARKHAM, ONTARIO L3R 9W3
TAX INQUIRIES: 905-475-4864
FAX: 905-415-7544

RETAIN THIS BILL FOR YOUR RECORDS

1071

TAX BILL

Final 2007

Billing Date: 2007-06-04
Customer No: 6LIW6GGH

THORNHILL GREEN
CO-OPERATIVE HOMES INC
61 INVERLOCHY BLVD UNIT #5
THORNHILL, ON L3T 3R4

115/1
34(P)

Tax Roll #: 36-01-0-084-85000-0000-0 9
Location: 85 INVERLOCHY BLVD
Legal Desc: PL 7688 BLK B

Assessment		City Levy		Region Levy		Education Levy	
Tax Class	Assessment	Rate(%)	Amount	Rate(%)	Amount	Rate(%)	Amount
RT	4,533,000	0.260687	11,816.94	0.495729	22,471.40	0.264000	11,967.12
Totals	4,533,000	City	$11,816.94	Region	$22,471.40	Education	$11,967.12

RECEIVED

Account Summary (as of Jun 04, 2007)	
Future Due	18,289.46
Account Balance	$18,289.46

Summary	
Final 2007 Levies	$46,255.46
Final 2007 Taxes	$46,255.46
Less Interim Billing	27,966.00
Total Amount Due	$18,289.46

You have registered for our Pre-Authorized Payment Plan. This bill is for your records only. No payment is required. We will withdraw from your bank account on the due dates. Please notify our office in writing at least 14 days prior to the withdrawal date for any bank account changes or cancellations.

If any of your pre-authorized payments do not clear through your bank account, the Town will charge you an administrative fee and interest charges. You will be automatically removed from the pre-authorized plan and returned to the regular instalment plan.

Thank you for participating in our Pre-Authorized Tax Payment Plan.

Due Date	Amount
Jul 1, 2007	3,048.46
Aug 1, 2007	3,048.00
Sep 1, 2007	3,048.00
Oct 1, 2007	3,048.00
Nov 1, 2007	3,048.00
Dec 1, 2007	3,048.00

Explanation of Tax Changes From 2006 to 2007 Residential, Farmland, Pipelines & Managed Forests	
Final 2006 Levies	55,933.68
*2006 Annualized Taxes	55,933.68
2007 City Levy change	452.30
2007 Region Levy change	1,029.22
2007 Prov. Education Levy change	0.00
2007 Tax change due to Reassessment	-11,159.74
**Final 2007 Levies	46,255.46
Total Year-Over-Year Tax change	-9,678.22

* An annualized tax figure is used in this analysis to compensate for mid-year adjustments in tax treatment or assessment value. If a property did not have any mid-year adjustments, the annualized taxes should equal the Final 2006 levies listed above.
** Final levy amount applies only to the property or portion(s) of property referred to in this notice and may not include some special charges and credit amounts.
*** Adjusted tax amount applies only to the property or portion(s) of the property referred to in this notice and may not include some special charges and credit amounts or levies that are not part of the capping calculation.

Pay to:
VOID

MINTZ & PARTNERS LIMITED

CHEQUE DATE	CHEQUE NO.	TOTAL
11-28-2007	10	***$.01*

Reference No.	Description	Amount
	VOID	0.01

Reason: RECEIVER AND MANAGER OF THORNHILL GREEN CO-OPERATIVE HOMES INC

Please Detatch Before Presenting for Payment

THE FACE OF THIS DOCUMENT HAS A COLOURED BACKGROUND ON WHITE PAPER - THE END BORDERS CONTAIN MICRO PRINTING

MINTZ & PARTNERS LIMITED
RECEIVER AND MANAGER OF THORNHILL GREEN CO-OPERATIVE HOMES INC
1 Concorde Gate
Suite 200
North York, Ontario M3C 4G4

TD CANADA TRUST
7967 YONGE STREET
THORNHILL, ONTARIO
L5T 2C4

No. 10
Date: 11/28/2007

PAY ***ZERO DOLLARS AND 0¢ CENT*****

***$.0¢*

To The Order Of VOID

PER _____

PER _____

THE BACK OF THIS DOCUMENT HAS A BROWN WIRE WOVE, A RECYCLED LOGO AND ARTIFICIAL WATERMARK

⑈000010⑈ ⑆17562⑈004⑆ 0685⑈0859525⑈

the co-operators
A Better Place For You

Co-operators General Insurance Company

CERTIFICATE OF INSURANCE

This is to certify that:

Thornhill Green Co-operative Homes Inc.
61 Inverlochy Blvd
Thornhill, ON
L3T 3R4

is insured in accordance with the terms, provisions, limitations and conditions of the policy hereinafter described:

POLICY NUMBER:	9634220
POLICY PERIOD:	January 1, 2007 to January 1, 2008
ITEM:	Commercial General Liability
COVERAGE:	Bodily Injury and Property Damage Inclusive policy includes cross liability and severability of interests
AMOUNT OF INSURANCE:	$5,000,000

COMMENTS:

It is understood and agreed that the above described policy has been endorsed upon execution of mortgage to add The Regional Municipality of York, 17250 Yonge Street, Newmarket, ON, L3Y 6Z1 as second mortgagee with respect to liability arising out of the operations of ***Thornhill Green Co-operative Homes Inc.***

It is further understood and agreed that the Insurer will endeavor to provide 30 days notice of cancellation or material change to The Regional Municipality of York.

This coverage is continuous until cancelled.

Dated: January 23, 2007

Signed: Maggie Brown
Maggie Brown, BA
Commercial Insurance Services

COMMERCIAL OPERATIONS
PINORY SQUARE
GUELPH ON N1H 6P9
PHONE(519) 824-4400
FAX (519) 824-8808

the co-operators CO-OPERATORS GENERAL INSURANCE COMPANY (hereinafter called the Insurer)

RETAIN THIS DOCUMENT FOR YOUR RECORDS

CORPORATE COMMERCIAL DECLARATION - THIS NOTICE WAS PRODUCED ON 16 NOV 2006
CHF

YOUR AGENT/SERVICE OFFICE IS:
LILY NG 76201
TELE: 416-366-6989
PO BOX 33 STATION B
TORONTO ON M5T 2T2

MAIL TO
THORNHILL GREEN
CO-OPERATIVE HOMES INC.
61 INVERLOCHY BLVD

THORNHILL ON
L3T 3R4

POLICY NUMBER: 009634228

POLICY PERIOD: From 01 JAN 2007 (Day/Month/Year) To 01 JAN 2008 (Day/Month/Year)
All Times Are Local Time At The Insured's Postal Address

YOUR POLICY EXPIRES ON 01 JAN 2008 12:01 A.M. LOCAL TIME.

NAME (INSUREDS)
THORNHILL GREEN CO-OPERATIVE HOMES INC.

COVERAGE SUMMARY	RIDER #	% CO-INS	DEDUCTIBLE	LIMIT	$ PREMIUM
INSURED LOCATION: - 51-95 INVERLOCHY BLVD THORNHILL					
MORTGAGEE(S): THE TORONTO-DOMINION BANK MORTGAGE SECURITIZATION LENDING					
PROPERTY					
INSURING AGREEMENTS & EXCLUSIONS FORM NO. AB					
APPLICABLE TO ALL COVERAGES OF THIS PROPERTY SECTION					
BUILDING	AB-2B		1000	16,679,307	
102 UNITS;					
GUARANTEED REPL COST ON BUILDING	AB-20(A)			INCLUDED	
PAVING ENDORSEMENT	AB-(H)		500	INCLUDED	
CONTENTS	AB-2B		1000	911,156	
SUBJECT TO REPLACMENT COST					
HOUSING CHARGES	AB-2B			1,283,832	
EARTHQUAKE	AB-1B				
3% QUAKE DED. MIN OF $50,000	CE3			INCLUDED	
FLOOD	AB-10B		10000		
CRIME					
CRIME STANDARD CONDITIONS FORM NO. C					
APPLICABLE TO ALL COVERAGES OF THIS SECTION					
INSIDE/OUTSIDE ROBBERY (HOLD-UP)	C-2			5,000	
THEFT EXTENSION ENDORSEMENT	C-2(B)			1,000	
ACCIDENT					
BLANKET ACCIDENT INSURANCE	F-9			200,000	
DIRECTORS ACCIDENT WEEKLY					
INDEMNITY LIMIT IS $400. BLANKE					
MEDICAL REIMBURSEMENT IS $5,000					
AGGREGATE LIMIT 5,000,000					
BLANKET ACCIDENT INSURANCE	F-9			200,000	
VOLUNTEERS ACCIDENT WEEKLY					
INDEMNITY LIMIT IS $400. BLANKET					
MEDICAL REIMBURSEMENT IS $5,000					
AGGREGATE LIMIT 5,000,000					
BONDS					
CRIME STANDARD CONDITIONS FORM NO. C					
APPLICABLE TO ALL COVERAGES OF THIS SECTION					

MAXIMUM RETAINED PREMIUM $ ▶ $

THIS POLICY IS NOT VALID UNLESS COUNTERSIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE INSURER.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

SECRETARY

the co-operators CO-OPERATORS GENERAL INSURANCE COMPANY (hereinafter called the Insurer)

RETAIN THIS DOCUMENT FOR YOUR RECORDS

CORPORATE COMMERCIAL DECLARATION - THIS NOTICE WAS PRODUCED ON 16 NOV 2006 CHF

YOUR AGENT/SERVICE OFFICE IS:
LILY NG 76201
TELE: 416-364-6989
PO BOX 33 STATION B
TORONTO ON M5T 2T2

MAIL TO
THORNHILL GREEN
CO-OPERATIVE HOMES INC.
61 INVERLOCHY BLVD

THORNHILL ON
L3T 3R4

POLICY NUMBER 009634220

POLICY PERIOD From 01 JAN 2007 (Day/Month/Year) To 01 JAN 2008 (Day/Month/Year)
All Times Are Local Times At The Insured's Postal Address

YOUR POLICY EXPIRES ON 01 JAN 2008 12:01 A.M. LOCAL TIME.

NAME INSURED(S)
THORNHILL GREEN CO-OPERATIVE HOMES INC.

COVERAGE SUMMARY	RIDER #	% CO-IN	$ DEDUCTIBLE	$ LIMIT	$ PREMIUM
COMMERCIAL BLANKET BOND	C-12			50,000	
AMENDED DEFINITION	C-15			INCLUDED	
				TOTAL PREMIUM - THIS LOCATION:	15862.00
LIABILITY					
COMMERCIAL GENERAL LIABILITY	D-1				
BODILY INJURY & PROPERTY DAMAGE	COV-A		500	5,000,000	
AGGREGATE LIMIT 5,000,000					
PERSONAL INJURY	COV-B			5,000,000	
MEDICAL EXPENSES	COV-C			2,500	
AGGREGATE LIMIT 250,000					
TENANTS LEGAL LIABILITY	COV-D		500	100,000	
ABILITY EXTENSION END	D-1(3)			INCLUDED	
EMPLOYEE BENEFITS E&O	D-05			200,000	
FUNGI COVERAGE PRODUCTS/PREMISES	D-1(AA)		500	100,000	
AGGREGATE LIMIT 100,000					
NON-OWNED AUTO	D-4			5,000,000	
RESIDENTIAL LIABILITY	ML			1,000,000	
LIMIT PER UNIT					
LIMITED POLLUTION LIABILITY	D-99			500,000	
				PREMIUM FOR LIABILITY:	4506.00

PROVINCIAL SALES TAX IS NOT REFLECTED IN THIS NOTICE.

SUM RETAINED PREMIUM: $ 358

TOTAL PREMIUM ▶ $ 20368.00

THIS POLICY IS NOT VALID UNLESS COUNTERSIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE INSURER.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

SECRETARY

TAB B

Community Services and Housing Department – Housing Services Branch

Thornhill Green Co-operative Delays & Additional Costs Briefing Note

Issue:

- Thornhill Green Co-operative is in the process of a $2.1 million repair project funded through a loan from the Region. Phase 2 of the work was delayed by complications arising from the presence of asbestos identified in the drywall and the stucco ceilings. As a result of asbestos related costs, the project is projected to be over-budget by approximately $400,000.
- Phase 3 of the work, which includes termite remediation was scheduled for completion this fall. However, due to the Phase 2 delays, Phase 3 cannot be completed until Spring 2008. At this time, the Co-operative does not have enough money to complete Phase 3.

Key Message:

- Thornhill Green is undergoing extensive capital repairs. As a result of asbestos in the units, Phase 2 is behind schedule and significantly over-budget.
- Phase 3 has been postponed to spring 2008, and can only be completed if the Co-operative is able to secure approximately $400,000 in additional funding. As an interim measure, the Co-operative is proceeding with a portion of the termite control project to forestall further deterioration in the units.

Background/Context:

- The Province recently intensified the requirements for asbestos management. The Receiver engaged an environmental consultant to assess the Thornhill Green site. The consultant found asbestos in the drywall and stucco ceilings. Asbestos is also a suspected component of some of the original flooring tiles.
- The safety protocols have resulted in significant delays and additional costs. Any time the work will affect more than 1 square meter of asbestos containing material, workers must wear protective gear and work in specially vented sealed enclosures. The work must be supervised by qualified environmental experts with safety confirmed by air quality and surface tests. Approximately 28 families will have to be temporarily relocated while work is done in their kitchens or bathrooms.
- The Receiver tendered Phase 3 of the work (chemical termite treatment, removal of termite habitats, site re-grading, landscaping and underground garage repairs) but could not award the contract as the Co-operative does not have enough money to cover the contract costs. As an interim measure, the Co-operative is proceeding with termite chemical treatment (approximately $100,000) to prevent further short-term deterioration in the units. This interim measure will not prevent further termite incursions over the longer term.
- The $2.1 million loan does not allow for provision of additional funds. Council authority will be required if additional funds are to be provided. The $400,000 the Co-operative needs is not reflected in the $1.8 million requested in the 2008 budget submission.

Prepared By: Kerry Hobbs, Acting Director, ext. 2071
Reviewed By:
Date prepared: September 26, 2007

Issues/Sensitivities:

- We are consulting with legal as to options for next steps with Thornhill Green. If the direction is to seek court authorization to transfer the assets of Thornhill Green to HYI, it may be appropriate to withhold any further assistance until the transfer is complete.
- Residents and interested municipal and regional politicians expect that Phase 3 will be completed as soon as possible. Further termite damage and leaks/mould are likely to occur if the Phase 3 work is not completed in a timely manner.

Bottom Line

1) ***Due to asbestos related cost overruns and delays Thornhill Green Co-operative has not been able to complete Phase 3 of the capital repairs, which includes termite remediation. The work should be completed as soon as weather permits next spring, but the Co-operative will not be able to proceed unless the Region provides an additional $400,000.***

TAB C

Community Services and Health Department – Housing Services

Thornhill Green Co-operative Homes Inc.
Briefing Note

Issues

- Thornhill Green Co-operative is currently in Receivership as a result of serious management deficiencies and as a means to ensure appropriate control of the capital work being undertaken with the assistance of a loan of $2.1 million from the Region. Although Receivership is an appropriate control measure, it is very costly. Furthermore, the Province has had difficulty renewing the Co-operative's mortgage as lenders perceive the SHRA Receivership as indicator of financial instability. As such, it is in the Region's interest to conclude the Receivership as soon as reasonably possible.
- In the course of the mould remediation component of the capital work, asbestos containing materials were identified in the Co-operative's units. Asbestos is generally considered safe until it is disturbed through renovations. As asbestos materials are heavily regulated, the Receiver engaged an environmental consultant to oversee the unit repairs and ensure that all required safety precautions are implemented. As a result of the asbestos related costs, the project is expected to be about $600,000 over budget. As the Co-operative does not have the additional funds required, the Receiver has not been able to award the contract for the final phase of the project, which includes termite remediation. It is urgent that the balance of the work be completed in the spring. As such, Council approval will be needed to provide additional funds.

Background

- The Co-operative's units were built as rental housing in 1961 and purchased with the assistance of the Province of Ontario as social housing in the early 1990's.
- The Co-operative's situation is unique in the province.
    - As the Co-operative's 101 units were purchased instead of being newly constructed the debt to equity ratio is much lower than the social housing norm. The Co-operative is on 6.2 acres of land located in south Markham, one block off Young Street. A 2005 appraisal valued the property at $14.5 million. Even with an outstanding mortgage of 7.1 million and the $2.1 million loan from the Region, the Co-operative has substantial equity.
    - In 1998, the Co-operative attempted unsuccessfully to buy its way out of the social housing program and allow members to purchase their units at below market prices.
    - In 2004, the Co-operative engaged a lawyer to negotiate with the Region for more operating subsidy than they were intended to receive under the social housing program. As a result of the Co-operative's efforts, the Region and other service managers successfully pressed the Province to correct an error in the *Social Housing Reform Act, 2000* funding formula which could have entitled the Co-operative to a substantial retroactive subsidy payment.
- The Co-operative had a serious capital funding requirement which the Region addressed in part with a loan of $2.1 million from the Social Housing Reserve Fund.
    - The Province did not provide the Co-operative with an initial capital reserve fund contribution that reflected the age and condition of the building. The Co-operative's annual capital reserve funding was calculated in the same manners as that of housing providers with newly constructed buildings.
    - In 2006, the Region provided a loan of $2.1 million to enable the Co-operative to complete capital repairs including: roof replacement, carbon monoxide detector installation, mould remediation, site re-grading and termite remediation.

Prepared By: Kerry Hobbs, Manager, Housing Programs, ext. 2071
Reviewed By: Sylvia Patterson, Director, Housing Services ext. 2091
Date Prepared: November 19, 2007

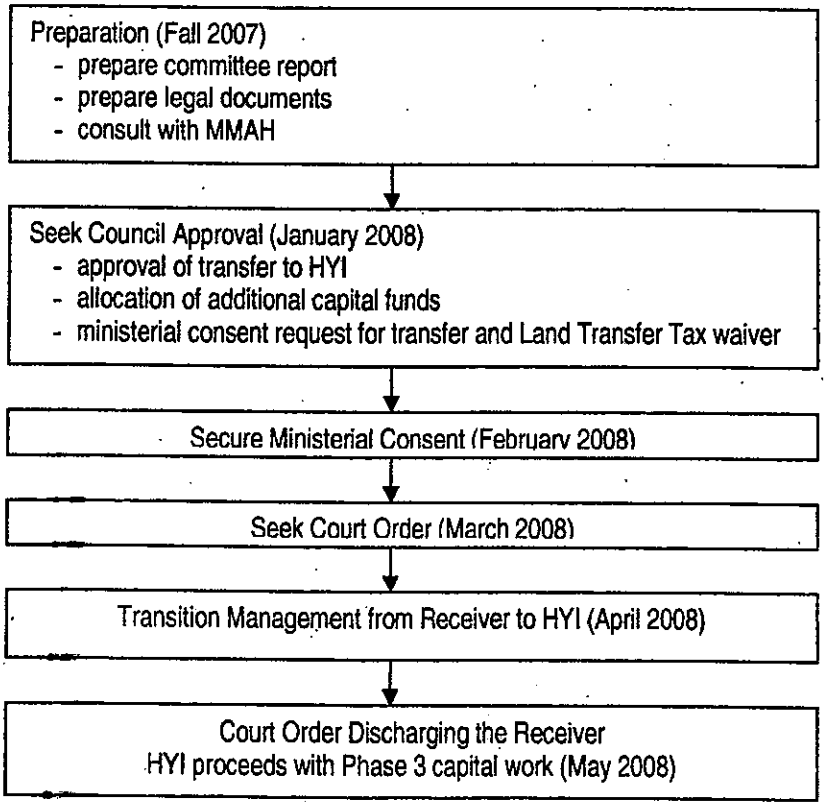
- Under the auspices of the *Social Housing Reform Act, 2000*, the Region appointed a Receiver to manage the affairs of the Co-operative and to oversee the capital work funded by the loan. The Receivership was subsequently confirmed with a June 2007 court appointment.

Options for Concluding the Receivership

- There are two options for conclusion of the Receivership;
  - governance of Thornhill Green could be returned to the Co-operative, or
  - the assets of the Corporation can be transferred to another non-profit corporation.

  The Co-operative has not managed its affairs responsibly. Rents were maintained at below market levels and expenditures were not controlled. As a result the Co-operative has an operating deficit of more than $200,000. Aggressive rent increases and tight expenditure controls will be required for several years. It is unlikely that a reconstituted Co-operative board of directors could effectively manage these requirements. Given that the Co-operative has substantial on-going capital repair needs, and no money to fund the work, it is unlikely that any private non-profit could be induced to assume ownership of Thornhill Green.
- The most reasonable option appears to be transfer of Thornhill Green to the Region's own housing company, Housing York Inc. Housing York Inc. is the only non-profit with the professional and technical expertise required to manage the complex technical and operational issues. Furthermore, transfer to HYI would ensure that the property remains within the social housing portfolio. Given the age of the Thornhill Green buildings, the proximity of the site to Yonge Street, and the growing need for affordable housing in the southern portion of the Region, transferring the property to HYI gives the Region the option of redeveloping and intensifying the site in future.

Process Map



Prepared By: Kerry Hobbs, Manager, Housing Programs, ext. 2071
Reviewed By: Sylvia Patterson, Director, Housing Services ext. 2091
Date Prepared: November 19, 2007

The *Social Housing Reform Act, 2000* is relatively new legislation and to date very little case law has been established. It appears that the Region's application would be the first instance where the court was asked to transfer ownership of a Co-operative to another Corporation. The Co-operative Housing Federation of Canada may oppose the application and there is no guarantee that the court will grant the application.

Prepared By: Kerry Hobbs, Manager, Housing Programs, ext. 2071
Reviewed By: Sylvia Patterson, Director, Housing Services ext. 2091
Date Prepared: November 19, 2007

TAB D

A CONCISE NARRATIVE
APPRAISAL REPORT

THORNHILL GREEN CO-OPERATIVE
51-95 INVERLOCHY BOULEVARD
THORNHILL, ONTARIO

PREPARED FOR:

Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Attention: Mr. Len Bulmer
Senior Housing Analyst

Effective Date: July 29 2005

Peter D. Clark AACI, P.App.
Real Estate Appraiser & Consultant

Cell: 416-919-6300
Fax: 905-619-9968
E-Mail: appraiser @ sympatico.ca

August 15 2005
Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Attention: Mr. Len Bulmer
Senior Housing Analyst

Re: Concise Narrative Appraisal,
Thornhill Green CO-operative
Thornhill, Ontario

As requested and to assist you with internal matters concerning potential refinancing mortgage of the property, *Peter D. Clark Real Estate Appraiser & Consultant* is pleased to submit the contents herein to report our principal findings, opinions and conclusions as to the Market Value of the subject property.

The property rights associated with the Market Value estimate herein are those of Fee Simple Interest. The effective date of this report is *July 29 2005* that was the date we inspected the property for appraisal purposes.

The report is considered to be a *Current Concise Narrative* appraisal report because it is intended to include all of the relevant information, data, reasoning and/or analysis upon which our value conclusion is based, but in a briefly descriptive format and because it is subject to certain Extraordinary Limiting Conditions that have been imposed for the purposes of this report.

These Extraordinary Limiting Conditions have been outlined on Page 18. It is considered to be a *current appraisal report* as the date of the report writing and the *Effective Date* of the report are within a similar time frame, where market conditions have not materially changed.

Please note our comments on Page-28, pertaining to environmental issues.

This document has been prepared in accordance with the Canadian Uniform Standards of Professional Appraisal Practice (The Standards) adopted by the Appraisal Institute of Canada.

Two methods of valuation were used, namely the *Direct Comparison Approach and the Income Approach;* the Cost Approach was not thought to be relevant for this particular property due to the difficulty of accurately estimating depreciation from all causes. Also the Cost Approach is not normally a method by which a potential purchaser would consider in relation to rental townhouse units.

The *Income Approach* provided a value indication of $7,000,000 based upon the current income and expense, and a value of $14,400,000 based upon the assumption of market rent and market conditions. The *Direct Comparison Approach* provided a value indication of $15,000,000 and was based upon a review of six principal sales.

Both of the methods of valuation are considered to be relevant for a property of this type, and on balance we elected to adopt the Direct Comparison as the basis of our final estimates of (market) value. The final estimate of value for the Fee Simple Interest was $14,500,000 as of the date specified. This took into account an amount of approximately $500,000 as the Cost to Cure accumulated repairs etc.

This letter is invalid as an opinion of value if detached from the report, which contains the text, exhibits, and Addenda. The Table of Contents is included on Page 6. This report has been prepared for you and your associates for internal matters relating to potential refinancing of the property. It is not to be referred to or quoted in any prospectus for the sale or exchange of securities. It is copyright and may not be reproduced, in whole or in part without prior consent from the author.

This report is subject to the Assumptions and Limiting Conditions set out on Page(s)7 to 9 as well as the Extraordinary Limiting Conditions, and those that may be noted in other sections of the report.

It is intended that all relevant data upon which we have based our comments, opinions and conclusions has been included in the 53 pages (excluding Addenda) of this report. There may be additional data however, utilized for the purposes of this report which has been retained in our files.

We have obtained a copy of the Site Plan, which we have relied upon to identify and describe the subject property.

Regional Municipality of York
August 15 2005
Letter of Transmittal/Page three of three

CERTIFICATION

In submitting this report I certify, that:

I personally inspected the subject property on *July 29 2005.*

I have no present or prospective interest in the property that is the subject of this report, nor do I have a personal interest or bias with respect to the parties involved.

To the best of my knowledge the statements of fact contained within this report are true and correct.

The reported analyses, opinions, and conclusions are limited by the Assumptions and Limiting Conditions, the Extraordinary Limiting Conditions, and other Limiting Conditions that are set out in this report, and they are my personal, unbiased and professional analyses, opinions and conclusions. Further, no other(s) provided significant professional assistance to me in preparation of this report.

Neither the employment to perform this appraisal, nor the compensation, was contingent upon the reporting of a predetermined value or direction in value that favours the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

The analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the Canadian Uniform Standards of Professional Practice (The Standards) endorsed by the Appraisal Institute of Canada and is subject to review by their duly authorized agent(s). The Appraisal Institute of Canada has a mandatory Recertification Program for its accredited members. As of the date of this report I have fulfilled the requirements of the program.

I further submit that, in my professional and considered opinion, and *subject to the Assumptions and Limiting Conditions and Extraordinary Limiting Conditions outlined herein*, the Estimated Market Value of the Fee Simple Interest of the Subject Property as at the date specified is:

FOURTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS
($14,500,000)
Based On Three to Six Months Exposure Time

Peter D Clark

Peter D Clark, AACI, P.App
Appraiser

Dated: August 15 2005

TABLE OF CONTENTS

TITLE PAGE
LETTER OF TRANSMITTAL
TABLE OF CONTENTS 5
ASSUMPTIONS AND LIMITING CONDITIONS 6
AREA MAP SHOWING LOCATION OF SUBJECT PROPERTY 9
PHOTOGRAPHS OF SUBJECT PROPERTY 10
EXECUTIVE SUMMARY 15

SECTION I: INTRODUCTION

SCOPE OF THE ASSIGNMENT AND REPORTING FORMAT
- Scope 17
- Report Format 17
- Extraordinary Limiting Conditions 18

TERMS OF REFERENCE
- Identification of Subject Property 18
- Effective Date, Purpose and Intended Use of the Appraisal 18
- Property Rights Appraised 19
- Definition of Market Value 19
- Exposure Time 20
- Official Plan and Zoning 21
- Assessment and Property Taxes 22
- History of Subject Property 22

SECTION II
- Area and Neighbourhood Description 24
- Neighbourhood Map 25

SECTION III PROPERTY DESCRIPTION

SITE DESCRIPTION 27
IMPROVEMENTS 29

SECTION IV VALUATION

HIGHEST AND BEST USE 32
METHODS OF VALUATION 34
THE INCOME APPROACH 36
THE DIRECT COMPARISON APPROACH 42
RECONCILIATION 52
FINAL ESTIMATE OF VALUE 53

SECTION V ADDENDA

QUALIFICATIONS OF THE APPRAISER
ZONING INFORMATION
SITE PLAN
STATEMENT OF OPERATIONS
DRAFT BUILDING CONDITION REPORT

ASSUMPTIONS AND LIMITING CONDITIONS

This Current Concise Narrative Appraisal Report has been prepared at the request of Mr. Len Bulmer, Senior Housing Analyst, on behalf of the Regional Municipality of York. The purpose of this report is to estimate the Market Value of the Fee Simple Interest in the subject property, as at the effective date. The intended use of this report is to provide assistance to the Client in connection with the potential refinancing of the subject property. **It is not reasonable for any person other than those acting directly on behalf of Client, to whom this report is addressed, to rely upon this appraisal under any circumstances whatsoever. We are not responsible to anyone else and all liability under such circumstances is denied.**

This report has been prepared at the request of, and for the exclusive and confidential use of, the recipient as named herein and for the specific purpose and intended use as stated herein. All copyright is reserved to the author and this report is considered confidential by the author and the client. Possession of this report, or a copy thereof, does not carry with it the right to reproduction or publication in any manner, in whole or in part, nor may it be disclosed, quoted from or referred to in any manner, in whole or in part, without the prior written consent and approval of the author as to the purpose, form and content of any such disclosure, quotation or reference. Without limiting the generality of the foregoing, neither all nor any part of the contents of this report shall be disseminated or otherwise conveyed to the public in any manner whatsoever or through any media whatsoever or disclosed, quoted from or referred to in any report, financial statement, prospectus, or offering memorandum of the client, or in any documents filed with any governmental agency without the prior written consent and approval of the author as to the purpose, form and content of such dissemination, disclosure, quotation or reference.

The property rights appraised herein exclude mineral rights, if any.

The estimate of value contained in this report is founded upon a thorough and diligent examination and analysis of information gathered and obtained from numerous sources. Certain information has been accepted at face value; especially if there was no reason to doubt its accuracy. Other empirical data required interpretative analysis pursuant to the objective of this appraisal. Certain inquiries were outside the scope of this mandate. *For these reasons, the analyses, opinions and conclusions contained in this report are subject to the following Contingent and Limiting Conditions, and to the Extraordinary Limiting Conditions set out within the body of our report.*

- It is assumed that the title to the real estate herein appraised is good and marketable.
- No responsibility is assumed for legal matters, questions of survey, opinions of title, hidden or unapparent conditions of the property, soil or sub-soil conditions, engineering or other technical matters which might render this property more or less valuable than as stated herein. If it came to our attention as the result of our investigation and analysis, that certain problems may exist, a cautionary note has been entered in the body of this report.
- The legal description of the subject property and the area related to this site was obtained from Plans and other data, but was not confirmed in the Land Registry Office.

- It is assumed that the real estate is free and clear of all value influencing encumbrances, encroachments, restrictions or covenants except as may be noted in this report and that there are no pledges, charges, liens or special assessments outstanding against the property other than as stated and described herein.

- It is assumed there are no outstanding liabilities except as expressly noted herein, pursuant to any agreement with a municipal or other government authority, pursuant to any contract or agreement pertaining to the ownership and operation of the real estate, which may affect the stated value, or saleability of the subject property or any portion thereof.

- Investigations have been undertaken in respect of matters that regulate the use of land. However, no inquiries have been placed with the fire department, the building inspector, the health department or any other government regulatory agency, unless such investigations are expressly represented to have been made in this report. The subject property must comply with such regulations and, if it does not comply, its non-compliance may affect the market value of this property. To be certain of such compliance, further investigations are necessary.

- It is assumed that, save and except for encumbrances as may be permitted, there are no easements, rights-of-way, building restrictions or other restrictions so affecting the site as to prevent or adversely affect the operation of the property or so as to materially and adversely affect its market value.

- It is assumed that there is no action, suit, proceeding or investigation pending or threatened against the real estate or affecting the titular owners of the property, at law or in equity or before or by any federal, provincial or municipal department, commission, board, bureau, agency or instrumentality which may adversely influence the value of the real estate herein appraised.

- The data and statistical information contained herein were gathered from reliable sources and are believed to be correct. However, these data are not guaranteed for accuracy, even though reasonable attempts have been made to verify the authenticity of this information.

- The estimated market value of the property does not necessarily represent the value of the underlying shares, if the asset is so held, as the value of the shares could be affected by other considerations.

- Further, the estimated market value does not include consideration of any extraordinary financing, rental or income guarantees, special tax considerations or any other atypical benefits which may influence the ordinary market value of the property, unless the effects of such special conditions, and the extent of any special value that may arise there from, have been described and measured in this report.

- Should title to the real estate presently be held (or changed to a holding) by a partnership, in a joint venture, through a co-tenancy arrangement or by any other form of divisional ownership, the value of any fractional interest associated therewith may be more or less that the percentage of ownership appearing in the contractual agreement pertaining to the structure of such divisional ownership.

- In the event of syndication, the aggregate value of the limited partnership interest may be greater than the value of the freehold or fee simple interest in the real estate, by reason of the possible contributory value of non-realty interests or benefits such as provisions for tax shelter, potential for occupancy and income guarantees, special financing or extraordinary agreements for management services.

- The estimated market value of the property referred to herein is predicated upon the conditions that it would be sold on a cash basis or on terms and financial arrangements of which similar properties would ordinarily trade and subject to any contractual agreements and encumbrances as may be noted in this report. Other financial arrangements, good or cumbersome, may affect the price at which this property might sell on the open market.

- Should the author of this report be required to give testimony or appear in court or at any administrative proceeding relating to this appraisal, prior arrangements shall be made therefore, including provisions for additional compensation to permit adequate time for preparation and for any appearances, which may be required. However, neither this nor any other of these assumptions and limiting conditions is an attempt to limit the use that might be made of this report should it properly become evidence in a judicial proceeding. In such a case, it is acknowledged that it is the judicial body that will decide the use of this report that best serves the administration of justice.

- ***Because market conditions, including economic, social and political factors, change rapidly and, on occasion, without notice or warning, the estimate of market value expressed herein, as of the effective date of this appraisal, cannot necessarily be relied upon as of any other date without subsequent advice of the author of the author of this report.***

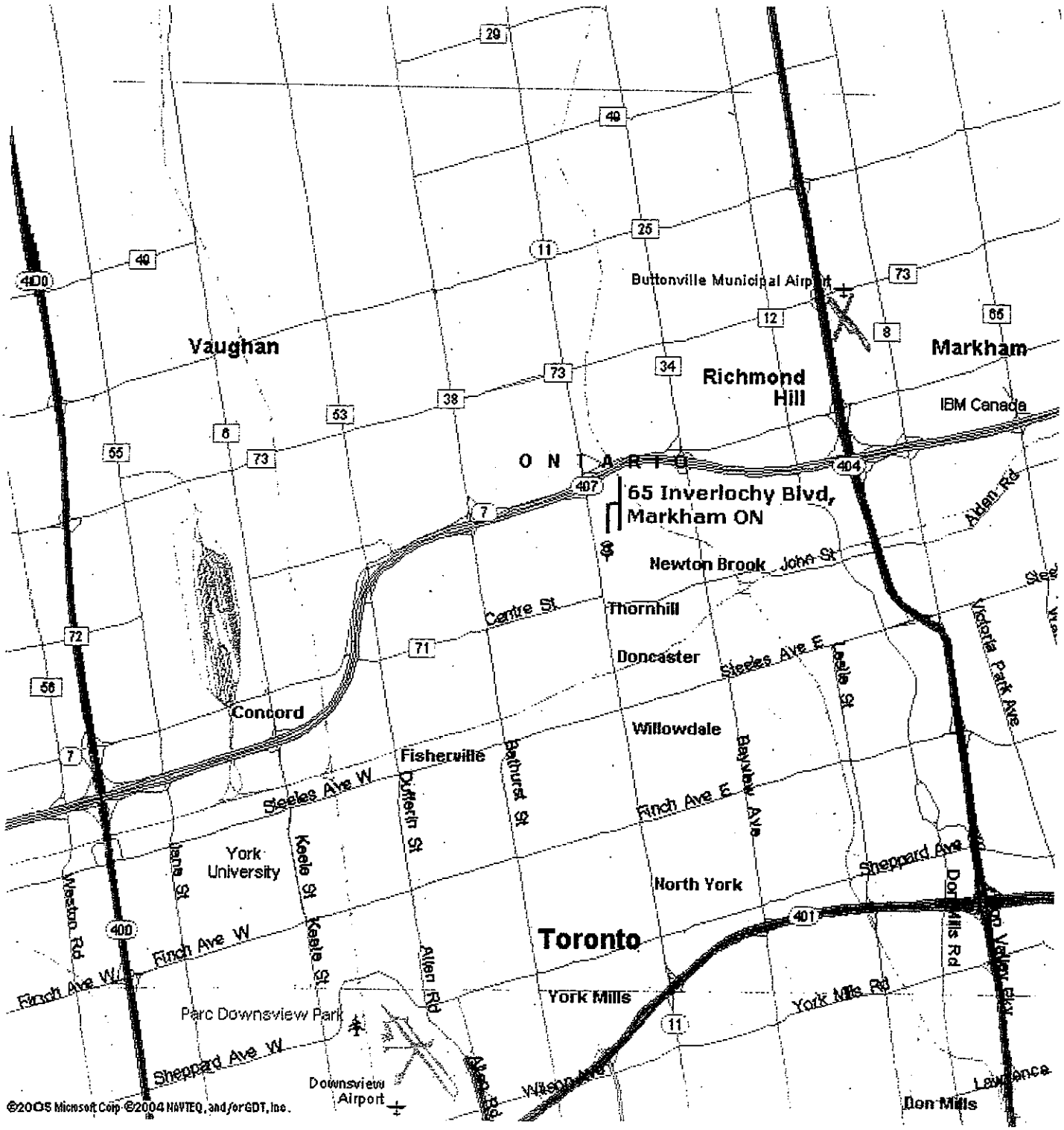
- The values expressed herein are in Canadian dollars.

- This report is only valid if it bears the original signature(s) of the author(s).

These Assumptions and Limiting Conditions shall be read with all changes in number and gender as may be appropriate or required by the context or by the particulars of this mandate.

The estimate of value arrived at in this report is based upon the assumption that there is no contamination of the land or improvements. Should there be any contamination, then the value estimate may not be applicable.

AREA MAP SHOWING LOCATION OF THE SUBJECT PROPERTY



PHOTOGRAPHS OF THE SUBJECT PROPERTY

TOWNHOUSE UNITS & VIEWS OF SUBJECT PROPERTY

PHOTOGRAPHS OF SUBJECT PROPERTY

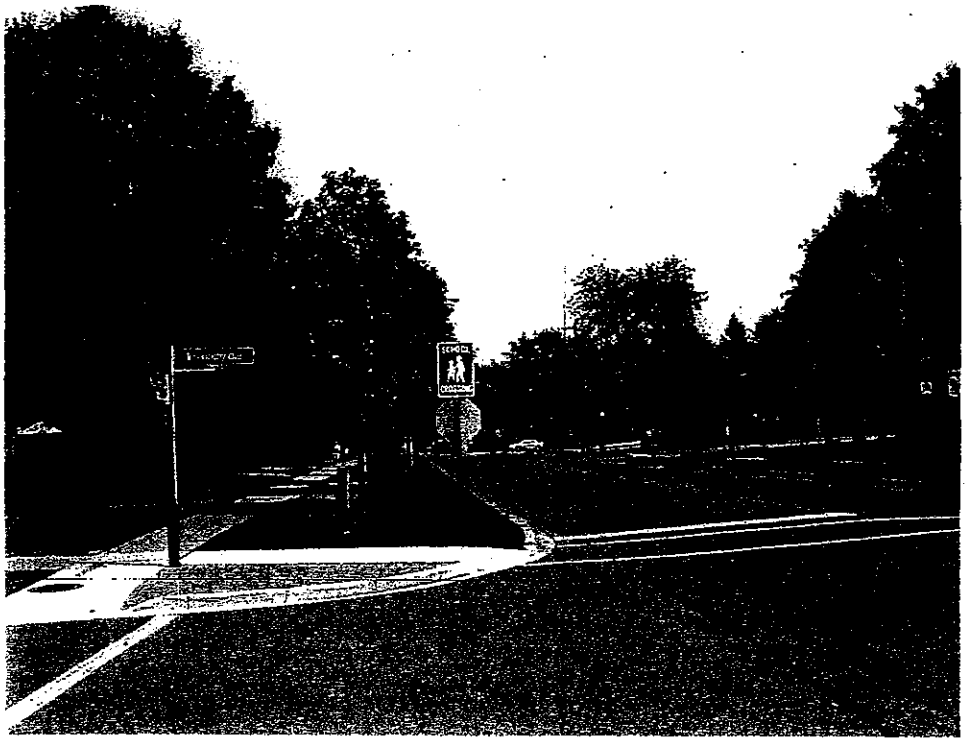
TOWNHOUSE UNITS & VIEWS OF SUBJECT PROPERTY

PHOTOGRAPHS OF THE SUBJECT PROPERTY

TOWNHOUSE UNITS & VIEWS OF SUBJECT PROPERTY

PHOTOGRAPHS OF THE SUBJECT PROPERTY

STREET VIEW-NORTH ALONG INVERLOCHY BOULEVARD



EAST VIEW ALONG ROYAL ORCHARD BOULEVARD

PHOTOGRAPHS OF THE SUBJECT PROPERTY

ENTRANCE TO UNDERGROUND PARKING

SURFACE PARKING LOT ON ROOF DECK OF THE UNDERGROUND LOT

EXECUTIVE SUMMARY

PROPERTY IDENTIFICATION	-	51-95 Inverlochy Boulevard Thornhill, Ontario
PIN NUMBER		03025-001
EFFECTIVE DATE OF REPORT	-	July 29 2005
OWNERSHIP -		Thornhill Green Co-operative Homes Inc
BRIEF LEGAL DESCRIPTION		Blocks B, D, RRR and SSS, Plan 7686 Town of Markham, Regional Municipality of York
LOCATION	-	Yonge Street and Royal Orchard Boulevard
SITE AREA		6.39-acres (combined)
IMPROVEMENTS		93 @ 3-bedrooms 8 @ 4-bedrooms 101-townhouses plus Co-op office
LAND USE CONTROLS		
Official Plan	-	Urban Residential
Zoning	-	RM1-Medium Density Residential
HIGHEST AND BEST USE	-	A continuation of its present use

ESTIMATES OF VALUE:

The Income Approach	
Based upon Existing Income & Expense	**$7,000,000**
Based upon Market Rent	**$14,400,000**
Direct Comparison Approach	**$15,000,000**
FINAL ESTIMATE OF VALUE	***$14,500,000***

Note: A deduction was made to the Final Estimate of Value of $500,000 that represents the Cost to Cure an accumulation of repairs as indicated in the draft building condition report.

SECTION 1

INTRODUCTION

SCOPE OF THE ASSIGNMENT AND REPORTING FORMAT

Scope

The specific tasks and items necessary to complete this assignment included the following:

- *The assembly and analysis of pertinent information concerning the property being appraised.*
- *The personal inspection of the subject property on July 29 2005*
- *The assembly and analyses of relevant economic and market data.*
- *The analysis of controls and regulations of land use for the subject property as at the effective date of this report.*
- *A review and statement of Highest and Best Use of the land.*
- *A discussion of appraisal methodologies and procedures employed.*
- *Attendance at each of the comparable properties in order to ascertain comparability to the subject.*
- *The inclusion of all appropriate photographs, maps, graphics, and addenda.*
- *The reconciliation of the collected data into a final estimate of the subject's market value as at the effective date of the appraisal.*

Report Format

All data included in the appraisal is to the best of our knowledge factual. We have prepared the findings in a *Current Concise Narrative Appraisal* format. It is considered a *Concise Narrative* report because it is intended to contain all relevant information, data, reasoning and/or analysis upon which our value conclusion is based, and the information is presented in a briefly descriptive format.

The *Value Opinion is Current* because the effective date is within a short period of time from the date of inspection of the property, and date of the report, where market conditions have not materially changed.

EXTRAORDINARY LIMITING CONDITIONS

The report is subject to *Extraordinary Limited Conditions*, as we have not:

- We have conducted a brief Title Search simply to establish ownership of the property, however we have not made an in-depth search nor examined the existence of easements, rights-of-way or restrictions (if any) and their effect on the appraised property.
- We have relied upon sales data provided by various sources such as the *Marsh Report, Realtrack, and Toronto MLS*; in some instances we have obtained electronic copies of sales data provided by Land Registry Information Services, however we have not conducted title searches unless specified.

TERMS OF REFERENCE FOR THE APPRAISAL ASSIGNMENT

Identification of the Subject Property

The subject property is municipally identified as:

51-95 Inverlochy Boulevard
Thornhill, Ontario,

It is legally described as:

Blocks B, D, RRR and SSS, Plan 7686
Town of Markham, Regional Municipality of York

Effective Date of Report

The effective date of this report is July 29 2005, which was the date that the property was inspected for appraisal purposes.

Purpose of the Appraisal

The purpose of this report is to estimate the Market Value of the *Fee Simple Interest* in the subject property as at the effective date of the report.

Intended Use of the Appraisal

The intended use of this report is to provide assistance to the addressee regarding the potential refinancing of the subject property.

Property Rights Appraised

The property rights appraised herein are those of the *Fee Simple Interest* free and clear of all other encumbrances (such as any charges or work orders that may exist), and any easements, restrictions and/or rights-of-way that may materially influence the property's value. These rights are necessarily subject to the usual statutory powers of the various levels of government.

Definition of Market Value

As defined in the Canadian Uniform Standards of Professional Practice, market value is

> **"the most probable price in terms of cash which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus."**

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- *buyer and seller are typically motivated;*
- *both parties are well informed or well advised, and acting in what they consider their best interests;*
- *a reasonable time is allowed for exposure in the open market;*
- *payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto; and*
- *the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.*

Exposure Time

In conjunction with the value estimates contained herein, it is critical to note the accompanying review of market exposure times upon which these value estimates have been based.

Market exposure time is presumed to have occurred within the period ending at the effective date ~~of this report and is the anticipated length of time, in the current market,~~ which is required to attract a potential purchaser and reach a final agreement of purchase and sale. Further consideration must include the time between execution of the final agreement and the actual date of closing the transaction.

During our valuation we had tracked the exposure period for a number of sales that had indicated exposure times of roughly two to six months.

Having regard to all of the foregoing, the estimates of value contained herein presume that the subject property has been exposed to the market for the preceding, say, ***three to six months period prior to reaching a final agreement of sale***. Naturally, emphasis must be given to establishing a realistic and competitive listing price in the current market.

It is with this understanding that correct interpretations of the value estimates contained herein are possible.

Limiting Conditions

The report is subject to the *Assumptions and Limiting Conditions* commencing on Page 6 of this report, as well as the *Extraordinary Limiting Conditions*. There may be additional *specific critical assumptions* stated in the body of the report.

LAND USE CONTROLS

The Official Plan designation for the subject property is Urban Residential. Permitted uses include high and medium density residential uses, and in certain areas may include neighbourhood commercial use to service surrounding residential neighbourhoods.

Medium density uses under the Official Plan designation include townhouses, street townhouses, terrace houses, duplexes, triplexes and four-plexes. In certain instances the Official Plan allows Neighbourhood Commercial use to service the surrounding residential areas.

Medium Density allows site density at a rate of 12.5-units per acre, with a maximum height limit of three storeys. A density of up to 14-units per acre may be approved.

Zoning for the property is RM-1, a multiple-family residential-density 1 zone. By-Law No. 153-76 rezoned the subject property from is previously zoned RM-3. This By-Law was dated August 1976, which we presume was preparatory to the construction of the existing townhouses.

The lot area of about 6.4-acres in relation to the maximum density of 14-units per acre accounts for some 90-units, whereas the subject has 101. We would have presumed that detailed drawings would have been circulated through the various departments of the Markham City Hall prior to construction, and that the development as built must have been approved.

Note: *We have included a copy of the relevant extract from the re-zoning by-law within the Addenda.*

Property Assessment and Taxes

We have received a copy of the Final Tax Bill for the subject property for the tax year 2005. The relevant information is noted below.

Assessment Roll No.	36-01-0-084-84400-00000-0 3
51 Inverlochy Boulevard	
Assessed Value	$11,151,000
Property Taxes	$119,088.22
Assessment Roll No.	36-01-0-084-85000-0000-0 9
85 Inverlochy Boulevard	
Assessed Value	$6,056,000
Property Taxes	$64,675.66

History of the Subject Property

Judging by the date of its re-zoning, the subject property was constructed around the mid to late 1970's. Thornhill Green Co-operative Homes had acquired it in November 1991 via initiatives of the Provincial government to provide a mix of affordable and market rental housing.

According to Instrument Number 581574, consideration was $6,000,000, of which some $50,000 related to chattels. Thornhill Green Co-operative Homes Inc is the current owner of record.

SECTION II:

AREA AND NEIGHBOURHOOD DESCRIPTIONS

NEIGHBOURHOOD MAP

AREA AND NEIGHBOURHOOD DESCRIPTION

The subject property is located in the north-central quadrant of the City of Markham; it is bordered to the north by Richmond Hill and to the west by the City of Vaughan. Its specific location is the first street east side of Yonge Street at Royal Orchard Boulevard, in the area known locally as Langstaff, within the Thornhill area.

The immediate neighbourhood comprises of mainly residential uses that include single-detached homes, high-rise apartments and condominiums. Additionally there is a neighbourhood commercial centre opposite the subject anchored by a supermarket and drugstore. There is a school within walking distance.

Bus service traverses the subject neighbourhood; there is also bus service along Yonge Street. The property enjoys excellent transit links, as it is approximately one and a half kilometres south of Highway-407. Yonge Street provides southbound access to Highway-401 and the City of Toronto.

Green space such Royal Orchard Park, the Toronto Ladies Golf Club, Uplands Golf Course and Thornhill Golf Course.

Overall the subject location is rated as excellent, and the land would be highly desirable if vacant today.

On the following page we have included a map showing the general neighbourhood and location of the subject property.

SECTION III

PROPERTY DESCRIPTION

SITE DESCRIPTION

Property Location Shape and Size

Royal Orchard Road bisects the subject site into two sections. The northerly section (Block-B) lies on the east side of Inverlochy Boulevard, and the north side of Royal Orchard Boulevard, extending north to the south side of Colonsay Road. This part of the property had roads on three sides; it was irregular in shape and according to Plan-7686, it comprised an area of 2.201-acres.

The south section comprises of Blocks D, RRR and SSS, with a total area of 4.189-acres. This part of the site also had an irregular shape that followed the contour of Inverlochy Boulevard.

Site Topography

The site is basically even with the road grade; it has a gradual slope that runs down from north to south.

Services

With the subject location in an established residential zone within the City of Markham it is anticipated that a full compliment of all normal services are available and with the capacity to serve the residential and commercial areas that use them.

In addition to the above there are fire hydrants along the street, also the area is provided with natural gas.

Site Improvements

Exclusive of the buildings the principal site improvements are fully developed landscaping that comprises of numerous grassed areas, with plantings and mature trees. Each unit had a small patio area at the rear of the unit that had rectangular paving stones. A number of the units had subsequently enclosed the rear patio with a board fence. We had also noticed on our inspection that one patio had been fully decked.

Other improvements include a small underground parking lot with surface parking above, as well as other open parking lots.

Easements, Rights-of-Way and Restrictions

We have conducted a brief search of title records simply to establish ownership of the property; we had not conducted an in-depth search pertaining to easements and rights-of-way etc. Naturally there will be easements pertaining to the installation and maintenance of utility service connections, however there might be information we do not have.

The existing improvements have been in place for many years, and visually there does not appear to be any evidence of restrictions. Our valuation is based upon the assumption that there are no restrictive or unusual circumstances that would affect the right to use the property, and that may affect the final value.

Environmental Concerns

We have not been provided with a subsoil analysis, or environmental assessment of the existing structure. The appraiser is not qualified to comment on environmental issues that may affect the market value of the property appraised, including but not limited to pollution or contamination of land, buildings, water, groundwater or air.

Unless expressly stated, the property is assumed to be free and clear of pollutants and contaminants, including but not limited to moulds or mildews or the conditions that might give rise to either, and in compliance with all regulatory environmental requirements, government or otherwise, and free of any environmental condition, past present or future, that might affect the market value of the property appraised.

If the party relying on this report requires information about environmental issues then that party is cautioned to retain an expert qualified in such issues. We expressly deny any legal liability relating to the effect of environmental issues on the market value of the property appraised.

This appraisal has been carried out on the basis and critical assumption that the property was free of contaminants as at the effective date of this report.

Improvements

The subject improvements comprise of 101, two-storey block townhouses, with an additional unit that is used as the on-site office and meeting rooms for the Thornhill Green Co-operative. Probably constructed in the 1970's, the units are spread out over the 6.39-acres site, amid a mature treed setting, that includes various surface parking spaces.

We had not been able to obtain a copy of the building plans, therefore our comments and descriptions of the improvements were based upon a brief walk-through and observations at the time of inspections. We also make approximate on-site measurements of the two basic unit types, to provide an approximation of the above-grade floor areas. It should be stressed that on-site measurements are only approximations, and are subject to confirmation with architectural drawings (if available).

There are six main blocks of townhouses comprising of 93-three bedroom units of approximately 1,300-square feet and 8-four bedroom units of approximately 1,700-square feet. As mentioned an additional unit had been set aside to function as the Co-op offices and meeting rooms. There is a small underground parking lot with 22-spaces, and a further 112-outdoor spaces throughout the site.

A brief walk-through inspection was made of a number of typical three and four-bedroom units, which were Nos. 65-10, 65-11, 85-8, 95-12, 95-7 and 95-5.

Typical construction of the townhouses is concrete slab basement floor, concrete foundation walls, wood framing with face brick exterior cladding. Roof covering is asphalt shingles.

Typical interior finishing of the townhouses includes hardwood flooring throughout except for bathrooms and kitchens that have vinyl tile. Walls are painted drywall; ceilings have spray-textured finish. In the basement there are vinyl tiles over concrete in the recreation room and two-piece bathroom. The utility room includes a gas-fired warm air furnace (Lennox) and gas-fired (rental) hot water heater. There is also a laundry tub; some are the original concrete type, while others had been replaced with fibreglass.

Typical interiors of a three-bedroom unit included:

Main Floor
Living room/dining room combination with patio door to the rear; kitchen with double stainless steel sink, breakfast area and two kitchen appliances, namely gas range and refrigerator.

Second Floor
There were three bedrooms, each of which had a closet, and the main bathroom.

Basement
Recreation room, utility room, two-piece bathroom and storage space.

The four-bedroom units were somewhat similar except for the second floor, which had an extra bedroom and a two-piece en-suite bathroom. Some had a small balcony.

Inspection Report

As noted, a brief interior inspection was made of several units on July 29 2005. In general the condition of most of the units inspected was good to very good; many tenants had made some upgrades such as air-conditioning, patio enclosures etc. One or two units appeared to be a little tired, and one had a damaged backsplash in the shower that allowed water to leak out of the enclosure.

We had been told that new furnaces had been installed by the previous owner (prior to 1991). After its acquisition by Thornhill Green Co-Operative Homes in 1991 there was a program of updating certain items. These included updating the kitchen built-ins and countertops, new kitchen appliances and new laundry appliances. New vinyl windows were also installed in the townhouses.

We have also been provided with a copy of a draft property inspection report that was prepared for the Regional Municipality of York.

SECTION IV

VALUATION

HIGHEST AND BEST USE

Theory

Fundamental to the concept of Market Value is the *Principle of Highest and Best Use*. This principle may be defined as follows: [2]

> *The Highest and Best Use of a property is "...that use which, at the time of the appraisal, is most likely to produce the greatest net return in money or amenities over a given period of time".*

Interpretation of the foregoing includes the realization that, in addition to the property being physically adaptable to a specific use, there must be a demand for the use and such use must be legally permissible under existing zoning ordinances or by-laws, or it must be probable that zoning amendment(s) can be approved to permit the use.

Generally, the utilization of a parcel of real estate tends to flow to its *Highest and Best Use*. However, the Market Value of real property results from the exercise of ones' rights associated with its ownership. A property's actual use at any given time does not necessarily represent its *Highest and Best Use* nor does it (necessarily) affect its Market Value.

Additionally, this is not to imply that a property currently under its *Highest and Best Use* will remain infinitely so.

Effectively then, the *Highest and Best Use* of a property, at any given moment, represents the exercise of a typical, prudent and informed owner's rights, so as to maximize the present worth of all anticipated future benefits from the property.

Analysis

The subject buildings were probably constructed in the 1970's, accordingly the townhouses are some 35-years or so of age. In general the units appeared to be in good condition, with a well-located site and attractive curb appeal. Some repairs are required, particularly to address roof leaks in some units as well as water seepage at the basement level. A draft building condition report prepared for the Region of York indicated an initial cost of approximately $500,000.

Rental townhouse complexes are something of a rarity in the Greater Toronto area. Most were constructed several decades ago, prior to the boom for condominium and street townhouses that were (at one time) an affordable option for potential homeowners compared to single-detached housing. New townhouses are frequently designed as high-end units that include one or two garages, good quality kitchens and large master-bedroom suites with full en-suite baths and walk-in closets etc.

All things considered we believe that a continuance of the existing or similar use is most likely its Highest and Best Use, until such time that redevelopment is practical. If the property were not operated as a housing co-operative, it could easily function as a private rental complex.

METHODS OF VALUATION

Appraisal theory recognizes three common methods of valuation.

The Cost Approach to Value

In the Cost Approach to Value, the subject site is valued as if vacant, unimproved and able to be developed in accordance with its Highest and Best Use. An estimate is then made of the reproduction costs (new) of the improvements, from which are deducted an estimate as to the loss in value from all forms of depreciation. The depreciated value of the improvements is then added to the estimated land value.

This method of valuation can be useful with fairly new structures where the degree of depreciation is usually quite limited, thus requiring less estimating to be done by the appraiser. Sometimes certain special purpose buildings have to be valued by the Cost Approach since there may be no comparable properties in that class.

Apartment buildings are typically acquired according to its financial characteristics; consideration is given to the current income and operating expenses and the potential for increasing rents and the possibility of capital increase. Rarely is consideration given to the reproduction cost new of the improvements.

Accordingly we have concluded that the Cost Approach to Value would not be particularly relevant in this appraisal report.

The Income Approach to Value

The Income Approach to Value is normally used for investment or income producing properties. In this method, an estimate is made of the expected future income for the property, from which is deducted an amount to reflect loss of income through vacancies and uncollected rents, resulting in the Effective Gross Income. From the Effective Gross Income is deducted the amount of expenses necessary to sustain the income stream. The resulting net income is then capitalized at a market-determined rate to arrive at an indication of capital value.

In this appraisal report the property is a rental townhouse that is occupied under the auspices of the Thornhill Green Housing Co-operative.

Direct Comparison Approach to Value

The Direct Comparison Approach to Value contemplates the comparison of the subject property with similar properties which have recently sold or which have been recently offered for sale and is the application of the Principle of Substitution. Generally this involves locating sales of similar types of properties that can be compared to the subject after considering the various differences that will occur between the subject property and the comparable sold property's.

Following this, adjustments may be made where required so as to arrive at a range of value indicators that can be reconciled into an estimate of value. It is customary with the Direct Comparison Approach to Value to analyse the sales using some form of unit rate, such as price per square foot of land or building, or with some types of building a gross rent multiplier may be used, or price per suite/room.

Final Estimate of Value

The aforementioned methods of valuation will most likely result in a range of value indicators. These indications of value are then be reconciled into one *Final Estimate of Value*, giving weight to the extent and quality of data available as well as the relevance of each method of valuation employed.

APPLICATION OF METHODS OF VALUATION

THE INCOME APPROACH

We have been provided with a copy of the Statement of Operations for Thornhill Green Co-op, for the year ended January 31 2005. The statement also includes data for the year 2004. We have included a copy of the Statement of Operations within the Addenda.

It is noted that we had been requested to provide an estimate of value (by the Income Approach), using two criteria. Firstly we have been requested to value the property using the stated income. Secondly we have been requested to value the property according to market rent levels for similar accommodation.

PART I (EXISTING INCOME & EXPENSE)

Income Estimate

According to the Statement of Operations the revenue and expenses for the year ending January 2005 was:

Net occupancy charge	$1,020,961	
Parking	$15,000	
Interest & Miscellaneous	$4,259	
Total Revenues	***$1,040,220***	
Expenses *		
Materials & Services (Maintenance & repairs)	$106,368	
Utilities	$33,545	
Administration (Property management)	$154,202	
Insurance	$23,600	
Property Taxes	$183,764	
Replacement Reserve	$52,661	
Total Expenses (Adjusted-see note)	***$554,140***	***(53% of gross)***
Indicated Net Operating Income	**$486,080**	

Note: The expenses have been adjusted to eliminate mortgage principal and interest, as well as bad debts that are shown within the allowance for vacancies.

Allowance for Vacancy and Unpaid Rent

Vacancy rates are anticipated in the range of three to five percent. We have budgeted for a stabilized vacancy rate of 3.0 %, which would include an allowance for unpaid rents.

SUMMARY OF POTENTIAL GROSS AND NET INCOME

Basic Rent	$1,040,220		
Parking	$15,000		
Miscellaneous	$4,260		
Total Revenue	$1,059,480		
Less Vacancy etc @ 3%	$31,784		
Effective Gross	$1,027,696	$1,027,696	
Less Reported Operating Expense:			
Materials & Services (Maintenance & repairs)	$106,368		
Utilities	$33,545		
Administration (Property management)	$154,202		
Insurance	$23,600		
Property Taxes	183,764		
Replacement Reserve	52,661		
Total Expenses	$554,140	$554,140	(55%)
Net Operating Income (NOI) (Before debt service & Depreciation)		$473,556	

Rounded to $475,000

Capitalization of the Net Income

The next step in the Income Approach is to capitalize the estimated net income to provide an indication capital value. As the income stream is expected to be stable over the next few years, we have elected to use the process of Direct Capitalization, using an Overall Capitalization Rate.

There were relatively few sales of rental townhouse complexes, and of those that were noted, details of Income and Expense were not available. In order to provide a basis for the selection of an Overall Capitalization rate, we have referred to sales of large apartment complexes and have made reference to one sale of a portfolio.

The following table contains examples of the Overall Capitalization Rates derived from multiple-family investment properties that have sold.

STUDY OF SOLD APARTMENT BUILDINGS THAT INDICATE AN OVERALL CAPITALIZATION RATE

Address	Sale Date	Sale Price	Reported NOI	Indicated OCR	Property Type
190 Clark Boulevard Brampton	Nov/04	$22,885,000	$1,589,331	6.90%	14-storey apartment with 190-units
20 Tinder Crescent North York	Sep/04	$4,118,000	$324,155	7.90%	Apartment building with 59-units
335 Van Horne Ave North York	Nov/04	$11,500,000	$849,000	7.40%	Apartment building with 125-units
100 Rowena Drive North York	Jun/04	$25,500,000	$2,044,482	8.00%	An apartment with 248-units and 30-townhouses
30 Central Parkway Mississauga	Mar/04	$9,500,000	$676,211	7.20%	Apartment building with 108-units
Portfolio Sale	Mar/04	$605,754,326	Not available	7.00%	33-rental properties The income & expense were kept confidential. The OCR was reported as about 7.0%

The above table of property sales suggests that an appropriate capitalization rate for the subject property would tend to be within the range of 7.0% to 8.0%. As the current rent is substantially below market, we have opted to use an OCR at the low end of the range.

The estimated net operating income for the subject building was $475,000 capitalized at an Overall Rate of 7.0% provides an estimate of capital value of $6,785,714.

Estimated Value by the Income Approach (Existing Income & Expense)
$7,000,000

NOI / Sale Price = Capitalization Rate

PART 2 (ESTIMATED INCOME & EXPENSE, BASED UPON MARKET CONDITIONS)

Income Estimate

We reviewed local listings in the local publication's classified sections for townhouse rentals, and have set out the information in the Table below.

CHART OF RENTAL TOWNHOUSE PROPERTIES STUDIED

Address	3 Bedroom	4 Bedroom		Remarks
Trinity Square 37 Bates Way, Markham	$1,253	$1,316	Garage	Non-Profit - 90-Town homes Plus Utilities
Private Rental Bayview and John Street	$1,650	N/A	5 Appliances Garage	End Unit, with loft. Walkout basement Plus Utilities
Hwy 7 and Wooten Way	$1,400	N/A	5 Appliances Garage Air-conditioned	Renovated, includes cable tv Other utilities extra
Private Rental Yonge and Clark in Thornhill	$1,500	N/A	5 Appliances Underground parking 3 Bathrooms Parking $75.00	3rd bedroom or den End Unit Close to Steeles and Finch Subway Plus Utilities
Richmond Hill Co-operative	$1,226	$1,358	2 Appliances Garage	Non-profit, near to Bayview and Highway-7
23 –33 Romfield Circuit Markham	$1,400		Appliance Open Parking	Newly Renovated with 4-appliances

At the low end of the range was a non-profit townhouse in Markham at $1,253-per month. At the upper end of the range was an upscale private townhouse, located southeast of the subject at Bayview Avenue and John Streets, which was $1,650-per month.

Based upon the above we estimate rents in the vicinity of $1,350-per month for a three-bedroom unit, plus the cost of utilities. We did not obtain details of any four-bedroom units, however we know from experience that they typically rent for $100-per month higher than three-bedroom units.

Based upon the subject units, the following estimate is made of the potential market rent.

93 3-bedrooms @ $1,350 (times 12-months)	$1,506,600
8 4-bedrooms @ $1,450 (times 12-months)	$139,200
Total Potential Income at Market Rents	$1,645,800

If we assume that the entire complex is operating at market rent levels, we believe that there would be a tendency for greater movement of tenants and possible unpaid rents. Accordingly under this scenario we anticipate that an allowance for vacancy and unpaid rents should be closer to 5%.

Operating Expenses

In order to estimate expenses for the property under market conditions, we have made reference to some of the existing property expenses such as taxes and insurance etc, and have referred to expense items from other multiple-residential properties that have sold on the open market.

Property Taxes
These are $183,764 according to the final tax bills for the year 2005.

Insurance
This is $23,600 according to the Statement of Operations.

Utilities
These are common area expenses of $33,545 according to the Statement of Operations.

Repairs & Maintenance
These are estimated at $800-per unit or $81,000.

Employee Wages
Employee wages are estimated at $500-per unit or $51,000.

Management Expense
These range from 3.0% to 3.5% of the collected annual income.

Replacement Reserve
Market properties tend not to set aside an allowance for the eventual repair and replacement of structural elements.

Miscellaneous and Unforeseen Expense
We have included an allowance for miscellaneous expense of 3% of EGI.

Advertising
We have included an allowance for advertising and promotion of $10,000

SUMMARY OF POTENTIAL GROSS AND NET INCOME

Basic Rent	$1,645,800		
Less Vacancy etc @ 5%	$82,300		
Effective Gross	$1,563,500	$1,563,500	
Less Reported Operating Expense:			
Repairs & Maintenance	$81,000		
Utilities	$34,000		
Property Management (@ 3.5% of EGI)	$55,000		
Employee Wages	$51,000		
Insurance	$24,000		
Property Taxes	$184,000		
Miscellaneous & Unforeseen expense (@ 3% of EGI)	$47,000		
Advertising	$10,000		
Total Expenses	*$486,000*	*$486,000*	*(31%)*
Net Operating Income (NOI) (Before debt service & Depreciation)		$1,077,750	

Capitalization of the Net Income

The next step in the Income Approach is to capitalize the estimated net income to provide an indication capital value. As the income stream is expected to be stable over the next few years, we have elected to use the process of Direct Capitalization, using an Overall Capitalization Rate.

Referring to the previous Table of Overall Capitalization Rates, an OCR at the mid-point of the range would be appropriate for a stabilized income stream at market rents.

With an estimated net income of $1,077,750 capitalized at 7.5% suggests an indication of capital value at $14,370,000.

ROUNDED TO $14,400,000

ESTIMATE OF VALUE BY DIRECT COMPARISON

The subject property is a rental townhouse complex; we have located four sales of rental townhouse properties that will be included for comparison purposes. Normally a unit rate of comparison is used; in this instance it would be the sale price divided by the number of townhouse units in the sale.

Sale No. 1

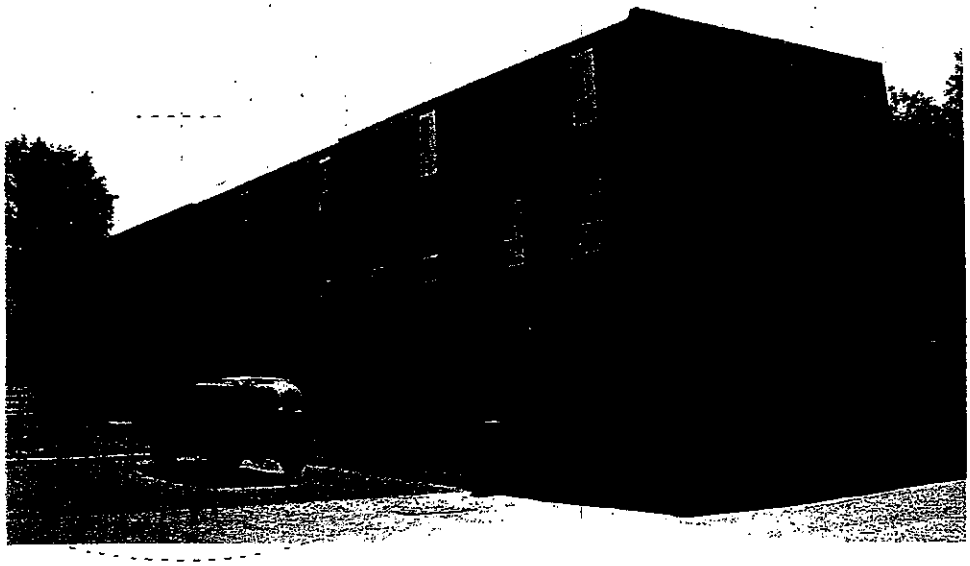
Property Address	64 Abell Avenue, Vaughan
Legal Description (Brief)	Part of Lot 7, Concession 7
Sale Date	May 2 2005
Sale Price	$1,970,783
Instrument Number	YR-633098
Vendor	Northwood Park Co-operative Homes Inc
Purchaser	The Regional Municipality of York
Lot Size	0.09-Acre
Number of Units	14-Stacked Townhouses
Sale Price/Unit	$140,783

Remarks:

This property is located in the southwest part of the City of Vaughan, in the vicinity of Kipling Avenue and Highway-7. It had good road access to Highways-427 and 407. A small-scale development of 14-units that were constructed around the mid-1990's; it had a mix of two, three and four-bedroom units.

The purchase was completed with all-cash to the vendor.

Sale No. 2



Property Address	707-711 Dundas Street West, Whitby
Legal Description (Brief)	Part 1; Plan 40R-2253
Sale Date	April 21 2005
Sale Price	$2,285,000
Instrument Number	DR-381513
Vendor	Tomlor Investments Ltd
Purchaser	707-711 Dundas Street Whitby Inc
Lot Size	1.32-Acres
Number of Units	24-Townhouses
Sale Price/Unit	$95,208

Remarks:

Located on the south side of Dundas Street West, near Cochrane Street, these townhouses were situated on a long, narrow lot. They were three-storey units set out in two blocks, each having six houses at the front and six at the rear (back to back format). They appeared to be in the vicinity of 35-years of age; they had no garage, but adequate on-site surface parking was provided. They appeared to be in average condition, with some updating of windows.

The purchase was completed with all-cash to the vendor.

Sale No. 3

Property Address	23-33 Romfield Circuit, Markham
Legal Description (Brief)	Blocks EE & FF, Plan 7686
Sale Date	January 28 2005
Sale Price	$5,350,000
Instrument Number	YR-593257
Vendor	723853 Ontario Ltd
Purchaser	Romfield Circuit Homes Inc
Lot Size	2.74-Acres
Number of Units	42-Townhouses
Sale Price/Unit	$127,381

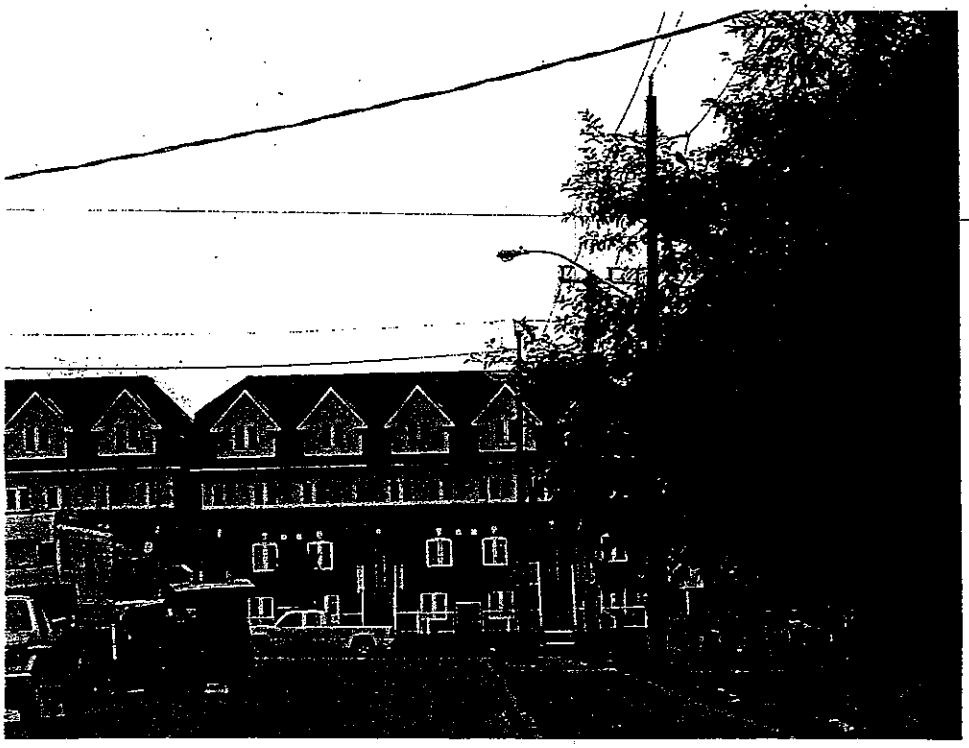
Remarks:

This property had a comparable location to the subject, less than two kilometres to the east. It was in the vicinity of Bayview Avenue just north of Royal Orchard Boulevard. Known as Monterey Park Gardens, the complex was constructed around the same time as the subject property. There were six buildings with a total of 42-townhouses; there were 39-three bedrooms and three-four bedrooms. Like the subject, these units had no garages. On-site parking was arranged at the rear of the property.

The purchase was completed with all-cash to the vendor. A mortgage was subsequently registered to the TD Bank in the amount of $4,109,081.

Sale No. 4

1130



Property Address	593 Kennedy Road, Scarborough
Legal Description (Brief)	Units 1-51, Level-1 and Units 1-15, Level-2, TCP 1588
Sale Date	April 16 2004
Sale Price	$5,000,000
Instrument Number	AT-458508
Vendor	593 Kennedy Corporation
Purchaser	Sedona Foxridge Inc
Lot Size	0.746-Acre
Number of Units	30-Stacked Townhouses
Sale Price/Unit	$166,666

Remarks:

An infill development on a former service station site, this property was located in the vicinity of Kennedy Road and Foxridge Drive, just to the north of Pine Hills Cemetery. Constructed by the Daniels Group in 2003, the units were two-storey in a stacked design. There were 4-two bedroom units and 26-three bedrooms. Outdoor parking was provided. The units were quite small, in the order of 1,041-SF. The units had been registered as condominiums; shortly after completion the entire project was sold. The purchaser began to market the units priced from $194,900 for lower level units and $204,900 for upper level units.

The purchase was completed with all-cash to the vendor, however a mortgage was subsequently registered to The Equitable Trust in the amount of $3,172,500.

Sale No. 5

Property Address	100 Rowena Drive, North York
Legal Description (Brief)	Block H, Plan 66M-1014
Sale Date	June 1 2004
Sale Price	$25,500,000
Instrument Number	AT-502278
Vendor	Rowenaville Holdings Ltd
Purchaser	2030251 Ontario Inc
Lot Size	4.70-Acres
Number of Units	30-Townhouses and 278-apartments
Sale Price/Unit	$150,000 (approximate price for townhouses)

Remarks:

This property comprised of an 11-storey apartment building with 278-apartments that dated from around the 1960's. Three blocks of townhouses having 10-units per block were added more recently. They were three storey units that had surface parking lots. The above price per unit was extracted from the overall price, where an average of $85,000-per unit was assumed for the apartments.

The property is located off to the west side of Victoria Park, between Lawrence Avenue and Ellesmere Road. The purchase was completed with all-cash to the vendor.

Sale No. 6

Property Address	32-50 Forest Manor Road, North York
Pin Number	10085-0185
Sale Date	March 15 2004
Sale Price	$13,745,630 (part of a larger sale)
Instrument Number	AT-432570
Vendor	Metro Capital Group
Purchaser	2041098 Ontario Limited
Lot Size	6.75-Acres
Number of Units	114-Townhouses
Sale Price/Unit	$120,576

Remarks:

This was the sale of a large portfolio that included 32-apartment buildings and one townhouse property. The townhouses were two-storey that dated from around the 1960's.

The property was well located just to the south of Sheppard Avenue East near Fairview Mall, between Don Mills Road and Highway-404. The purchase was completed with cash, existing mortgages and new financing from the TD Bank.

SUMMARY OF IMPROVED SALES STUDIED

Sale No	Sale Date	Sale Price	No. Units	Lot Area	UPA	Price Unit	Property Type
1	May 2005	$1,970,967	14	0.89	16	$140,783	Stacked Townhouses
2	April 2005	$2,285,000	24	1.32	18	$95,208	Back-to-Back Townhouses
3	January 2005	$5,350,000	42	2.74	15	$127,381	Block Townhouses
4	April 2004	$5,000,000	30	0.746	40	$166,117	Stacked Townhouses
5	June 2004	$25,500,000	30	4.70	N/A	$150,000	Townhouses & Apartments
6	March 2004	$13,745,630	114	6.75	17	$120,576	Townhouses
SUBJECT			***100***	***6.40***	***16***		Townhouses

Analysis of Comparable Sales

The six sales indicated a value range of $95,000 to $189,000-per unit.

Sale No. 1 was a fairly new complex, however a number of these were stacked townhouses while the subject units are all ground-oriented. It sold at a price of approximately $141,000-per unit, and we believe that a higher unit rate would apply to the subject.

Sale No. 2 represents older units, configured in a back-to-back format. These types of units were constructed at higher density than conventional grade related townhouses; they require less land and are usually less expensive to build. Overall the quality and type of improvements, as well as their location is considered to be inferior to the subject. A significant upward adjustment would be required.

Sale No. 3 is generally similar to the subject units and has a similar location. The two-storey townhouses are set out in blocks, within an attractively treed setting amid an area of good quality single-detached homes. The purchaser had renovated unit that were becoming vacant; hardwood floors were refinished and units were painted. The interior comprised of a kitchen with eating area, living room-dining room combination and patio door to the rear. In the basement there was a recreation room, utility room with washer and dryer as well as a two-piece bathroom. Upstairs there were three bedrooms and a full bath. (We could not inspect a four-bedroom unit).

In our view these townhouses offer a good indication of value to the subject, except that we rate their condition as inferior to the subject. In other words, at approximately $128,000-per unit this sale indicates the minimum level of value for the subject. Keeping in mind that the subject had been updated with new kitchens, and new windows in the early 1990's, we would anticipate an upward adjustment for the subject.

Sale No. 4 was new units, however these were also higher-density, stacked townhouses, in a back-to-back format. Its location was considered to quite average, and inferior to the subject.

Sale No. 5 was newer townhouses constructed in a back-to-back format. Their location was amid rental townhouses and apartments in the Vicinity of Victoria Park and Ellesmere Road. This location was close to bus services, a shopping centre and highway-401. The sale in this instance included 248-apartments as well as the townhouses. We had 'extracted' an approximate value attributable to the townhouse by assuming an average apartment price of approximately $85,000-per unit. It resulted an approximate indication of $150,000-per unit for the townhouses. We had included this sale due to the overall limited data available for recent sales of rental townhouse properties, however the indicated value of $150,000-per unit is an approximation.

Sale No. 6 involved conventional townhouses that were older than the subject, and appeared to be in need of updating. It had a convenient North York location that was within walking distance of Fairview Mall and the subway system. It also had good proximity to Don Mills Road and Highways 401 and 404. Overall the age and condition of these units would suggest a higher unit rate for the subject.

After considering all of the sales in relation to the subject property, it appears that the best comparable would be Sale No. 3. The units appear to be of a similar age and type as the subject, and their location is also quite comparable. In our view an upward adjustment should be considered in the order of $20,000 to $25,000-per unit to reflect the subjects superior condition at say ***$150,000-per unit.***

With the subject having 101-rental townhouses relation to a unit rate of $160,000-per square foot, the estimate of value by Direct Comparison is:

101 times $150,000=$15,150,000

ROUNDED TO $15,000,000

RECONCILIATION AND FINAL ESTIMATE OF VALUE

Reconciliation

In this appraisal of a rental townhouse complex, two methods of valuation were used that are considered to be the most appropriate for the property under consideration. These methods were:

The Income Approach:		
(1)	**Using Current Rent**	**$7,000,000**
(2)	**Using Market Rent**	**$14,400,000**
The Direct Comparison Approach:		**$15,000,000**

In the Income Approach reference was made to copies of the Statement of Operations that was provided to us. It indicated the current revenue and expenses for the building that was used in the Income Approach. We also investigated current market rent levels and operating expenses and produced an estimate of value that took into account its hypothetical use under market conditions.

The value estimate according to the property's current income and expense is of course much lower than it would be under market conditions. There is probably no way to reconcile this lower value with the other indications of value; the property under its existing use has a mandate to provide affordable (subsidized) rents to a number of tenants. Accordingly the property is not intended to maximize its rental potential; it provides an essential social service.

Under the second criteria the value estimated by the Income Approach is much higher. It assumed that the townhouses would be rented at market rents, which on average are naturally higher than the existing rents. Additionally private sector multiple-family buildings tend to have a lower expense ratio. This combination will produce a higher capitalized value.

The Direct Comparison Approach involved locating sales of rental townhouse properties and comparing these to the subject. As noted in the report, rental townhouses are something of a rarity in the private sector; most having been constructed many years ago. Over the past 20-years or more, condominium developments has been the preferred use for townhouses that are sold to individual purchasers.

One of the sales however was thought to provide a good indication of value for the subject; it had similar units and a similar location. While an upward adjustment was made to the subject, it was believed that this particular sale provided excellent support for our estimate of value.

On balance we believe that the Direct Comparison Approach provides the best indication of value at $15,000,000. As mentioned during the report, we had received a copy of the draft Building Condition Report, indication that an amount of approximately $500,000 should be made available for immediate repairs of accumulated repairs and maintenance. In our opinion this amount should be deducted from the final indication of value.

Indicated value	$15,000,000
Less Cost to Cure	$500,000
Net Property Value	**$14,500,000**

FINAL ESTIMATE OF VALUE

Having regard to all of the foregoing, including the subject property's location, the existing use, and considering our estimate of Highest and Best Use, it is our considered and professional opinion that the Market Value of the Leased Fee Interest in the subject property, as at the date specified was:

FOURTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS
($14,500,000)

Based on an estimated exposure time of approximately three to six months.

We trust this appraisal is satisfactory for your purposes. It is intended that all relevant data be included in this report; however, if any matter remains unclear or if further discussion is required, please contact us at your earliest convenience.

SECTION V

ADDENDA

QUALIFICATIONS OF THE APPRAISER

PETER D. CLARK

PROFESSIONAL QUALIFICATIONS AND EXPERIENCE

PROFESSIONAL CAREER

1976 – 1980	IAC/Continental Bank of Canada Mortgage Officer and Appraiser
1980 –1990	MICC Vancouver Regional Appraiser
	Falcus and Associates Vancouver Fee Appraiser
	Ontario Ministry of Housing Regional Appraiser
1990 – To Date	P.D. Clark & Associates Principal – Appraiser

PROFESSIONAL DESIGNATIONS

Accredited Appraiser (AACI)

Member Number A169800
Currently Recertified under the AIC
Mandatory Recertification Program

EDUCATION

Educated in London, England
Business and Marketing

Completion of all Courses
Required by the Appraisal Institute of Canada
Ontario Mortgage Brokers Course

ZONING BY-LAW

THE CORPORATION OF THE TOWN OF MARKHAM 153-76

BY-LAW NUMBER 153-76 1142

A by-law to amend By-law 2150 as amended

WHEREAS the lands shown on Schedule 'A' attached hereto are designated RM3 under By-law 2150, as amended and,

WHEREAS the lands shown on Schedule 'A' attached hereto have been designated Residential Low Density Multiple by Official Plan Amendment No. 42 approved by the Minister on December 13, 1975,

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM ENACTS AS FOLLOWS:

1. THAT By-law 2150, as amended, be and the same is hereby further amended as follows:

   a) By changing the designation of the lands shown on Schedule 'A' attached hereto from RM3 to RM1.

2. THAT save as aforesaid, all other provisions of By-law 2150, as amended, shall be complied with.

3. THAT no part of this by-law shall come into force without the approval of the Ontario Municipal Board, but subject to such approval, this By-law shall take effect from the date of passing thereof.

READ a first and second time this 10th day of August, 1976.

READ a third time and passed this 10th day of August, 1976.

Mayor

Clerk

APPROVED ONTARIO MUNICIPAL BOARD
8TH DECEMBER, 1976

THIS IS AN EXTRACT OF BY-LAW No. 153 TO ENSURE ACCURATE INTERPRETATION, REFERENCE SHOULD BE MADE IN CONTEXT WITH THE ENTIRE BY-LAW.

SITE PLAN

1144

ROYAL ORCHARD BOULEVARD
INVERLOCHY BOULEVARD
95
91
85
81
75
65
61
55
51
A
B
C
D
E
F
Project:
THORNHILL GREEN
CO-OP TOWNHOUSES

STATEMENT OF OPERATIONS

Thornhill Green Co-operative Homes Inc.

Year ended January 31, 2005

Statement of Operations	Note 8 Budget	2005 Actual	2004 Actual
Revenues			
Occupancy charges	$ 1,020,148	$ 1,300,380	$ 1,283,832
Subsidies allocated to members	0	(279,419)	(293,966)
Net Occupancy Charges	1,020,148	1,020,961	989,866
Government subsidies(excluding amounts in dispute), Note 4	278,232	(103)	(23,681)
Current year subsidy adjustment, Note 4	0	1,141	68,319
Parking	15,600	14,926	15,056
Interest	2,500	1,192	811
Other income	800	3,067	1,773
Total Revenues	1,317,280	1,041,184	1,052,144
Expenses			
Materials and services, schedule 1	112,230	106,368	116,562
Utilities, schedule 2	40,800	33,545	38,090
Administrative overhead, schedule 3	145,392	154,202	144,515
Bad debts (recovery)	1,500	1,913	(2,016)
Insurance	23,300	23,599	20,617
Mortgage interest	424,552	413,725	421,634
Amortization	137,720	146,825	138,753
Municipal taxes	169,375	171,090	168,670
Replacement reserve	253,632	52,661	51,117
Total Expenses	1,308,499	1,103,928	1,097,942
Shelter Deficit	8,781	(62,744)	(45,798)
Other			
Sector support revenue	7,272	7,272	7,272
Sector support interest	(4,500)	(4,139)	(4,225)
Sector support amortization	(1,300)	(1,469)	(1,388)
Cable revenue	35,960	34,180	34,150
Cable expense	(34,436)	(30,913)	(33,433)
Other Surplus	2,996	4,931	2,376
Deficit	11,777	(57,813)	(43,422)

Thornhill Green Co-operative Homes Inc.

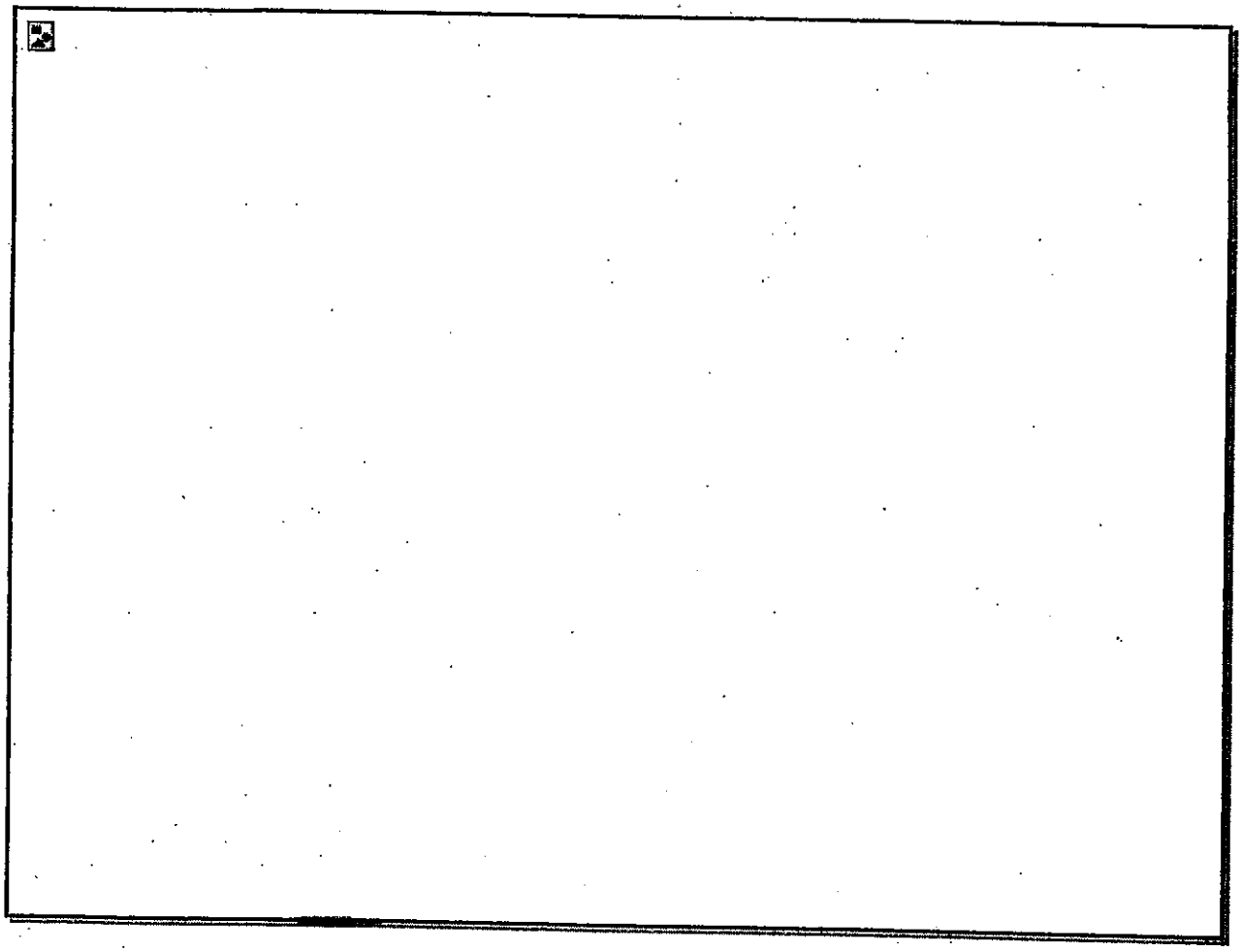
Year ended January 31, 2005

Schedule of Expenses

	Note 8 Budget	2005 Actual	2004 Actual
Schedule 1 - Materials and Services			
Temporary help	$ 1,000	$ 2,250	$ 2,198
Electrical systems	3,250	1,477	288
Heating and plumbing	7,750	19,903	4,935
Grounds	49,500	36,694	47,848
Paint and plastering	0	7,400	1,937
Waste removal	200	523	927
Security and life safety systems	2,690	4,041	2,988
General maintenance	24,740	20,140	25,111
Equipment	4,500	1,067	4,979
Roofing	4,000	0	3,424
Flooring	13,850	7,770	19,277
Building-general	750	2,605	557
Social and recreation	0	2,498	2,093
	112,230	106,368	116,562
Schedule 2 - Utilities			
Electricity	4,500	4,813	5,609
Fuel	1,500	1,341	915
Water and sewage	34,800	27,391	31,566
	40,800	33,545	38,090
Schedule 3 - Administrative Overhead			
Salaries	0	0	874
Management fees, Note 11	105,600	106,238	108,165
Professional fees	16,000	32,854	17,083
Materials and services	3,710	(624)	2,679
Telephone	2,640	2,296	3,121
Memberships	6,500	4,354	1,963
Other	150	134	25
Transportation and communication	420	269	294
Office supplies and photocopier	10,372	8,681	10,311
	145,392	154,202	144,515

DRAFT BUILDING CONDITION REPORT

Report of a
Building Condition Audit and
Reserve Fund Study



Thornhill Green Co-operative

61 Inverlochy Boulevard

Thornhilll, Ontario

Prepared for
Regional Municipality of York

Our Reference No.: 8645
June 2005

TABLE OF CONTENTS

SECTION		DESCRIPTION	PAGE
		Executive Summary	i
1.0		Introduction	1-1
	1.1	Terms of Reference	1-1
	1.2	Brief Description of the Development	1-2
2.0		Methodology	2-1
	2.1	Building Condition Assessment	2-1
	2.2	Documents Made Available for Review	2-1
	2.3	Reserve Funding for Property Elements	2-2
	2.4	Maintenance Costs	2-2
	2.5	Method of Reserve Calculation	2-2
	2.6	Assumptions	2-3

APPENDICES

A	Building Condition Assessment Data Sheet
B	Reserve Fund Study Spread Sheet
C	Photographs
D	Glossary of Terms

June 27, 2005

Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Attention: Mr. Walter Mancini
Supervisor, Housing Programs

Dear Sir,

Re: Building Condition Audit and Reserve Fund Study
61 Inverlochy Boulevard, Thornhill
Our Reference No. 8645

We are pleased to submit the following Building Condition Assessment Report (BCA) and Reserve Fund Study (RFS) for the above referenced property. This investigation was carried out in March and April of 2005 and detailed in the enclosed report are the observations made during the inspection of the exposed portions of the structure, building envelope, interior finishes, roof system, exterior paving and mechanical and electrical installations together with our conclusions regarding the conditions requiring repair and our recommendations with regard to the general extent of the remedial work required.

A 30-year Reserve Fund Study was prepared based on the information obtained during the Building Condition Assessment. The Reserve Fund Study indicates the future annual financial reserve that would have to be allocated to a reserve fund, in order to ensure that the anticipated cost of the future repairs and replacement of the property elements are provided for during that period.

We subjected the common element components and all of the residential units of this development to a visual inspection. Destructive testing was not carried out as part of the scope of work for this project.

The extent of each defective location can only be known for certain by evaluation of the "As-Built" conditions at every location at which a potential exists for a defective condition to be present.

This report lists the locations investigated but does not limit the extent of the defects to the locations inspected or listed.

Our opinion regarding each item is subject to review in the event additional information becomes available. Destructive testing was not undertaken as part of the scope of work for this project. For this reason, there may be latent or hidden deficiencies, not evident at the time of our inspections.

Except where otherwise indicated, conditions noted in this report are general in nature, and a record of every location at which any one defective condition is present, has not been made.

The extent to which the integrity of a structure is evaluated can vary from a simple visual inspection of those parts of the structure exposed to view to a program of sophisticated non-destructive and destructive testing designed to reveal information concerning "as-built" conditions followed by a structural analysis carried out to determine the extent of compliance of the structure with the requirements detailed in the relevant edition of the Ontario Building Code. The terms of reference governing our review of this structure limited our work to a visual inspection of those parts of the structure exposed at the time of our visit.

This report was prepared for the exclusive use of York Region. Construction Control Inc. accepts no responsibility for damages, if any, suffered by a third party as the result of decisions made, or action taken, based on this report unless we are specifically advised of, and participate in, such action in which case the extent of our responsibility would be agreed to at that time.

The client expressly agrees that it has entered into this agreement with **Construction Control Inc.**, both on its own behalf and as agent on behalf of its employees and principals.

The client expressly agrees that **Construction Control Inc.**'s employees and principals shall have no personal liability to the client in respect of a claim, whether in contract, tort and/or any other cause of action in law. Accordingly, the client expressly agrees that it will bring no proceedings and take no action in any court of law against any of **Construction Control Inc.**'s employees or principals in their personal capacity.

EXECUTIVE SUMMARY

This executive summary has been prepared to provide pertinent facts and it is provided as convenience only. Readers are advised to refer to the full text of this BCA/RFS report for detailed information.

This BCA/RFS report has been prepared by Construction Control Inc. and is based on a visual condition assessment of the property

All cost recommendations reported herein are in year 2001 dollars.

Client Group	Regional Municipality of York
Date of Study	March and April 2005
Property	61 Inverlochy Boulevard Thornhill, Ontario
	Constructed: approximately 1966
	Residential family townhouse complex
Major Building Elements	Sitework Structure Building Exterior Building Interior Electrical Systems Mechanical Systems Life Safety Systems Parking Garage

Significant Observations

Our visual review of the development found the buildings to be in fair condition for buildings of this age. Several of the roofs of the building are at the end of their service life and replacement is warranted. Basement water leakage was observed and reported in several of the basements. Repairs to the water leakage, and mould remediation is required at the basements. The caulking material has reached the end of its service life and replacement is required. The asphalt and precast paved walkways throughout the development are in fair to poor condition. Repairs to the concrete structure are required in the underground parking garage. We understand that major renovations have been carried out at the development in 1992.

1.0 INTRODUCTION

1.1 Terms of Reference

The terms of reference governing this Building Condition Assessment and Reserve Fund Study are detailed in the Request for Pricing as prepared by the Regional Municipality of York and dated February 15, 2005.

The building condition assessment is intended to provide documentation of the present condition of the existing property elements of the development, with respect to capital repairs, replacements, upgrades or renovations required over the next 30 years.

The following definitions are used in the Elemental Data Sheets (contained in Appendix A) to describe the condition of each element reviewed:

Good Condition: Reasonable condition, not requiring capital expenditure.

Fair Condition: Deteriorating condition, likely to become "poor" within a few years if not addressed.

Poor Condition: Observable deterioration requiring capital repair.

To assess the priorities of the capital work, the following prioritization system is used:

Priority A - Life Safety: *Hazardous conditions which could lead to loss of life or critical or extremely severe injury must be corrected or removed as a first priority.*

Priority B - Structural Integrity: *Conditions which lead to the deterioration of structural elements of a building must be investigated and corrected if necessary; structural integrity must be maintained at all times. Failure to do so will lead to unsafe, life threatening conditions and will eventually render the building structurally unsound and physically obsolescent, incapable of performing the task it was designed to do.*

Priority C - Legislative Requirements: *All buildings must be maintained or upgraded so that they comply with all applicable legislative requirements.*

Priority D - Corporate Policy Type Initiatives: *Replacement or upgrading of building elements which have reached the end of their useful life and which must be upgraded in order to maintain the tenants quality of life and to prevent the building from becoming physically or functionally obsolescent.*

Priority E - Cost-Effective Initiatives: *Upgrades with cost-effective initiatives which improve the operational efficiency of a building and which have a reasonable payback (five (5) years or less).*

We have provided three separate tables within the study. The first table utilises the existing annual contribution provided to us by the Corporation and details the annual shortfall.

The second 30-year table indicates the additional reserve that would have to be allocated to the reserve fund in order to ensure that the anticipated cost of the future repairs and replacement of the property elements are provided for during that period.

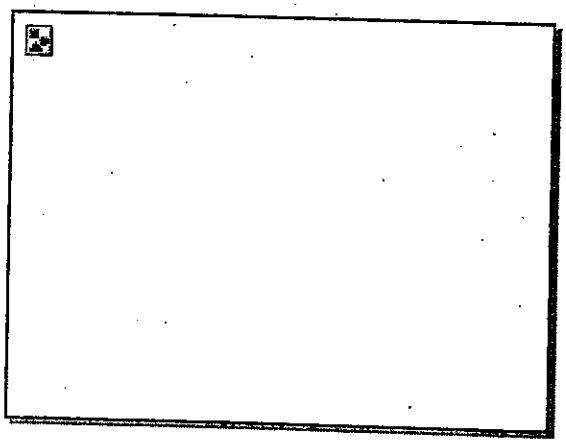
The third 30-year table indicates the lump sum amount that would have to be allocated to the reserve fund in the first year in order to ensure that the anticipated cost of the future repairs and replacement of the property elements are provided for during that period.

The first year of the 30 year plan is 2005 in current year dollars.

1.2 Brief Description of the Property

This property is located on the south of Highway 7 and east of Yonge Street off of Royal Orchard Boulevard in Thornhill in the City of Vaughan.

The development consists of one hundred and two (102) units configured in nine (9) blocks of townhouse units. The complex is currently utilized as a family residence and contains a combination of three (3) and four (4) bedroom units. We understand that construction of the facility was completed in 1966, with major renovations completed in 1992.



The structure of the building generally consists of wood framed floors, walls and roof trusses above grade. Below grade, the foundation walls are formed from cast-in-place concrete. The walls between adjacent units are formed with masonry block. The basement floors are formed by a non-structural cast-in-place concrete slab on grade.

The exterior walls of the building are generally covered by brickwork, with insulated double glazed fixed and operable window units providing fenestration of the interior spaces. The roofs of the buildings are covered by conventional asphalt shingles. Rainwater gutters are located along the eaves of the roof areas. Downspouts extend from the gutters to grade.

Asphaltic concrete pavement is located throughout the complex and forms the roadways and parking areas. Walkways typically consist of asphalt pavement and poured concrete; precast concrete pavers are located at the rear patio at several of the units. Exterior landscaping generally consists of sodded areas interspersed with trees and shrubs.

2.0 METHODOLOGY

2.1 Building Condition Assessment

During the course of the investigation, the following program of work was carried out:

1. The relevant construction documents made available for the purpose of this investigation were reviewed as they relate to the particular components of the development under investigation. Quantity estimates were carried out based on our review of the drawings and site conditions.

2. The interiors of ninety-seven (97) of the residential units were visually inspected.

3. The mechanical and electrical systems were visually inspected in two of the units.

4. The landscaped and paved areas were visually inspected.

5. Photographs were taken to document and illustrate the conditions encountered during the course of this investigation. These photographs have been included in this report and are referenced throughout the text.

2.2 Documents Made Available for Review

The relevant documentation related to the property elements made available to Construction Control for our review at the time of this investigation is listed below:

1. Architectural Drawings consisting of six (6) sheets, dated July 28, 1966, as prepared by Henry Fliess Architect.

2. Architectural Drawings numbered A0 to A11, dated June 1992, as prepared by A. Robert Murphy Architect Inc.

3. Mechanical and Electrical Drawings

2.3 Reserve Funding for Property Elements

The Reserve Fund Study incorporates the information from the Building Condition Assessment to predict reserve fund requirements over the thirty-year period beginning in 2005/2006 and ending 2035/2036. The Reserve Fund Study is prepared in the prescribed Property Element Format.

2.4 Maintenance Costs

It is essential that a suitable program of maintenance work be carried out on an annual basis for the following purposes:

- To maintain the property elements in a condition such that they will achieve the life expectancies detailed in this report.
- To maintain the landscaping and buildings in an attractive condition, to enhance the appearance of this development and to ensure good access in the winter.
- To maximize the resale value of the property.

2.5 Method of Reserve Calculation

The replacement costs of the various components forming the development detailed in this report are based on the unit rates detailed in the 2005 edition of "Yardsticks for Costing" published by Southam Business Information and Communications Group Inc., and "Building Construction Cost Data – 2005" by RS Means, combined with recent experience gained by **Construction Control Inc.** in the repair and renovation of residential, commercial, and industrial buildings.

The replacement cost of each component is based on the following assumptions:

- standard building materials will be used, purchased at the contractor's list price;
- current construction techniques will be used in replacement or repair of building components;
- the quality of construction will be in accordance with the current edition of the Ontario Building Code.

The estimated replacement and maintenance costs contained in this report are based in part on information and quantities obtained by a visual inspection of the property and in part from a review of the available drawings relating to this development.

The assumptions regarding the life expectancy of each of the various components forming the common elements of this development as detailed in this report are based on the technical literature of manufacturers, on our experience with the materials and equipment forming the common element components of the development, and on the life expectancy guidelines provided to us by the Regional Municipality of York. The estimations of the remaining life expectancies of the common element components are based on an assessment of their present condition made during a visual examination of the property carried out during March and April of 2005.

Based on our experience, we believe that only a partial replacement of some items will be required at the end of their assumed life expectancies. For this reason we are of the opinion that it is not appropriate to reserve the full amount required for replacement of some items at the end of their life expectancies but rather to reserve only a percentage of that amount.

2.6 Assumptions

Based on our discussions with the site superintendent and property manager, we understand that painting of the interior of the units is the responsibility of the tenant therefore costs associated with repainting the interior of the units have not been provided in the Reserve Fund table.

APPENDIX 'A'

Building Condition Assessment Data Sheets

APPENDIX 'B'

Reserve Fund Study Spreadsheets

APPENDIX 'C'

Photographs

APPENDIX 'D'

Glossary of Terms

1165

Jan 27/06

- Re-Financing
  - Cannot increase 1ST NHA problem
  - Construction liens - Ministerial Consent.

- MBS rates

Have to. + 20 $ 4.412

5.76

- Environmental, Fire Plan, Inspections
- Has to be 1st

OSIFIA.

Photograph 1
Cracks in the asphalt pavement.

Photograph 2
Cracks in asphalt paved walkways.

Photograph 3
Horizontal vinyl siding installed at links.

Photograph 4
Cracks in asphalt pavement forming the garage access ramp.

THE REGIONAL MUNICIPALITY OF YORK
Applicant (Respondent in Appeal)

v.

THORNHILL GREEN CO-OPERATIVE HOMES INC. et al
Respondents (Appellants)

Court File No. C50945

COURT OF APPEAL
FOR ONTARIO

Proceeding commenced at Toronto

EXHIBIT BOOK
VOL. 3 of 5

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