

**Draft 4: September 18, 2012**

From: Jeff Morris. President, Unionville Ratepayers' Association

To: Frank Scarpitti. Mayor, City of Markham

Copy: Members of City of Markham Council

The Unionville Ratepayers' Association "URA" at a members meeting on September 10<sup>th</sup> had an in depth discussion on the MSECC proposal. Deputy Mayor Jack Heath, Region Councillor Jim Jones, and Councillors Howard Shore and Don Hamilton were in attendance.

Two motions were presented and approved unanimously at the URA meeting.

The first motion is that the City of Markham be formally requested to release to the public all relevant documents and studies related to the MSECC project that can be legally released at this time.

This request is meant to include the Mason and Humphreys reports on economic benefits, the Province of Ontario's Tourism Regional Impact Model, the John McNeil report on the financial framework, and the Genivar report on transportation. We believe that it is appropriate for Markham residents to have access to all documents from these studies, so that we can independently assess the conclusions of the studies

I am writing on behalf of all URA members requesting the publication of these documents.

The second motion is that the City of Markham be formally requested to commission an independent review of the MSECC project, and to release a report from this review to the public prior to the final Council decision on the project.

I am writing on behalf of all URA members requesting that this study be initiated, as discussed in more depth below, and that a report be issued at least two weeks prior to the final Council vote on the project.

**Purpose of the Independent Review:**

The purpose of completing this review will be to provide Council and residents with an independent assessment of all aspects of this major project, so that the community can better understand the benefits, costs, and risks to the project over the next 20 years, outside of the political process.

**Reason for Requesting a full Report from this Independent Review:**

We recognize the vision of developing a major community asset intended to make Markham a more attractive place to live, work and play. We understand that this asset is intended to enhance the image of the community and help attract businesses and residents to the community.

We also recognize that the cost of creating this asset will be to take on financial liabilities that can reasonably be expected to be in the \$500 million range for principal and interest payments over the next 20 years, and that other liabilities may also be directly or indirectly associated with the project. As such it will in all probability be the largest investment ever made by the City of Markham for a discretionary project.

The project is discretionary in that it is intended primarily for entertainment and cultural purposes and is not a mandatory infrastructure project. Its size and scope are such that the City is planning to use significant amounts of

future developer taxing flexibility to fund it. This will of necessity place funding limitations on future Councils which could impact future community projects.

A great many questions and concerns have been raised in the community about this project, and we respect the fact that in such a complex project, with so many dynamics in play, that it is not practical or wise to have the community involved in the negotiations. However, this reality only leads to more concerns and speculation.

To give residents and Council comfort outside of the political process that this major asset and major liability make long term sense for the community it is our view that an independent review is needed to answer the community's questions without violating commercial disclosure concerns

**Requirements of the Independent Review:**

We would ask that the following mandate apply to this work:

1. That a consultant with a strong reputation in large scale transactions be sourced and appointed by City of Markham senior staff, independent of Council and the political process. We realize that this will add cost to the project, but we believe this cost to be negligible when measured against the financial magnitude of this proposal.
2. That the consultant be given independent access to:
  - a. all contracts as they are drafted and all working papers of the City of Markham,
  - b. all members of Council,
  - c. all City of Markham staff members who have had key roles on the project,
  - d. independent third party legal counsel when independent legal opinions are deemed necessary,
  - e. Certain principals of GTA Sports and other associates involved in this project.
3. That the final report be presented to Council and to the community in a public forum at least two weeks prior to the final Council vote on the transaction.

It is not our intention to be prescriptive as to the areas the review needs to focus on to give Council and the community comfort on the project; nor, do we want to limit the scope of the review. However, I have included as Appendix A, a number of questions that we believe are important to include in the final report.

I would ask to meet with you to discuss further.

Regards:

## Appendix A:

### Some Key Areas of Focus of the Independent Review:

#### ***Contract Provisions:***

1. Do the contracts provide assurance that the City of Markham will never pay more than \$325 million plus construction financing, even if the building cost is greater than \$325 million?
2. Do the contracts provide assurance that the City of Markham will pay less than \$325 million plus construction financing if the actual building cost is below estimate?
3. Do the contracts and the agreed to inspection process provide assurance that the City of Markham will be purchasing a building that meets the contracted specifications?
4. Is the City of Markham within its rights to sole source the deal without a public tender?
5. Are the loan agreements being entered into by the City of Markham at market rates and market terms?
6. Do the guarantees ( letters of credit, land rights, and building rights) being assigned to the City of Markham by GTA Centre LP and its affiliates; provide a high level of assurance that there will be liquid and realizable escrow to meet any loan defaults?
7. When Markham is assigned the 6 acres of land by Remington for the Centre, is it a fair deal for Markham?
8. Will the long term building operating lease signed with GTA Centre LP provide Markham with reasonable assurance that GTA Sports will pay for all operating costs, maintenance and repairs, and insurance and keep the building in good repair?
9. Does this operating lease contain reasonable clauses regarding upgrades to the building to keep it commercially viable and does it include reasonable end of lease clauses requiring GTA Centre LP to return the building in good merchandisable condition?
10. Will the City of Markham incur any operating costs during the term of the lease?
11. Is the designation of the building as a Municipal Capital Facility reasonable in the context of the entire deal structure; is it defensible if challenged; and is GTA Centre LP responsible for property taxes if the designation changes?
12. What's the City's process for validating that GTA Centre LP is a financially viable lessee for the Arena? Landlords always do due diligence on the ability of a tenant to keep paying the lease. (GTA Centre LP specifically, not Mr Braty)
13. Does the lease contain clauses that protect Markham in the event of payment defaults or failure to operate by GTA Centre LP, and are the clauses reasonable?
14. When looked at collectively, do the GTA Centre LP's loan repayment obligations, lease payment obligations, ongoing operating cost payment obligations, ticket surcharges, and property tax concessions reasonably approximate fair market value payments for their lease rights to the facility?

***Funding:***

15. What portion of Markham's annual loan repayments will be sourced from Development Contributions? Are these contributions legally enforceable at the current time, and over the life of the loan agreement?
16. What portion of Markham's annual loan repayments will be sourced from TIF like charges? Are these contributions legally enforceable at the current time, and over the life of the loan agreement?
17. What portion of Markham's annual loan repayments will be sourced from Section 37 Contributions?
18. Does the reliance for loan repayments to be sourced from Development Contributions, TIF like charges, and Section 37 contributions, create any risk of bias that may result in future Councils approving development policy exceptions in order to meet loan repayment obligations?

***Transportation, Infrastructure and Parking:***

19. Does the number of confirmed parking spaces reasonably meet the parking demand that could be expected to exist for a major event at the Centre?
20. With continued development in Markham Centre, is there a risk that current parking spaces could be lost to development, without adequate replacement parking?
21. Is two-way event based Go Train availability for events assured, or is this a risk to the viability of the Centre?
22. Are there other infrastructure costs in the surrounding area, primarily driven by the existence of the Centre that should be considered in assessing the overall costs of the project?
23. Has the Genivar report on transportation been peer reviewed and will the public see this review?
24. Will the required road, transit and pedestrian improvements as identified by Genivar be in place in time for the first major event at the Centre?

***Community Access:***

25. Is there sufficient access available for community use, festivals, and celebrations?
26. Is there too much duplication with MISTA, and should only one of these projects be pursued?

***Commercial Viability:***

27. From a sampling of the failure of other public-private major sports venues in North America, does this project have enough differentiation to give it a more reasonable chance of success?

28. From interviews with the principals of GTA Centre LP and certain of their key partners, is it reasonable to conclude that they have a well thought out business plan with a reasonable probability of success without an NHL team?
29. From interviews with key players from the City of Markham and GTA Centre LP, is it reasonable to conclude that nothing in this deal binds the City of Markham financially to a possible NHL franchise for the Centre?