July 6, 2010

REPORT OF THE FACILITATOR

City of Hamilton / Hamilton Tiger-Cats discussions on the location of Hamilton stadium facilities for the 2015 Pan Am Games and subsequent uses

Subject I. Report of the Facilitator

Section 1.01 - These are the findings and recommendations of the Facilitator appointed jointly by the Hamilton Tiger-Cats and the City of Hamilton, in respect of the options for locating stadium facilities in Hamilton, to accommodate the Pan American Games, the Canadian Football League, and other uses, for the benefit of the residents and the economy of the Hamilton region.

Subject II. Requirements of Terms of Reference

Section 2.01 - The Terms of Reference for the Facilitation, approved by the City of Hamilton (June 7, 2010, item 7.1, from Committee of the Whole Report 10-015) and the Hamilton Tiger-Cats, provide as follows:

> *"...The mandate of the Facilitation process and the goal of the Parties is to produce a result that reflects a strong business case for the stadium and its tenants, while supporting the community-building objectives of the City of Hamilton, benefitting Hamilton residents and taxpayers, and providing a positive legacy for the Hamilton community." [Page 1]*

Section 2.02 - The Terms of Reference also provided, as follows:

> *"...3. In Week Three (June 16-22), the Parties would engage in a series of direct and indirect (through the Facilitator) discussions, focusing on developing the best option for the West Harbour / Downtown venue, and the best alternative (or limited number of alternatives) within the boundaries of the City of Hamilton, along with a summary of the significant shortcomings of each. This process would include consideration of physical location and facility design, as well as related commercial and land-use development potential, complementary venues, transportation connections, financial parameters / assumptions, 'approvals' and time-lines, and so on. These options might include proposals to modify the intended use of the stadium facility, both for the Pan Am Games and for other future purposes, including professional sport and other spectator entertainment uses..." [page 4]*
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> *"....4. In Week Four (June 23-29), the Parties would continue the effort to find a single set of proposals that meets their main requirements, recognizing that some modification of their existing corporate positions and preferences may be required to secure the funding for the stadium and related facilities and / or to realize the full economic potential of a recommended site...."[pages 4-5]*
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> *".... At the end of Week Four (June 29) or within several days thereafter, the Facilitator will develop a short draft Facilitator's Final Report, for consideration*

by the Parties...The Facilitator's Report will detail the progress in the facilitated discussions, the remaining items in dispute or unresolved, and proposals for moving forward. The Report will be written for public disclosure, with a confidential appendix containing any matters of commercial sensitivity or where the public interest must be protected (e.g., property acquisition). The draft Facilitator's Report will be reviewed by the Parties and any other appropriate entity, prior to its release in its original or amended form, to the ownership of the Tiger-Cats and to City Council."[page 5]

Section 2.03 - The Terms of Reference also provided for the option of creating a reference group of City Council members, to provide advice to the City's "primary contacts"/ "lead negotiators": City Manager Chris Murray and Tourism Director David Adames. It is the Facilitator's view that this group of individual "advisors to the facilitation process" (Eisenberger, Bratina, Duvall, Ferguson, Jackson, Pearson, Powers, Whitehead) has proved to be a very constructive element in the facilitation process. Their willingness to adjust their schedules with little notice to attend and query technical presentations was appreciated by all involved.

While their attendance rate was inevitably variable due to other public commitments, the active involvement of the Council advisors in the facilitation process was seen as evidence of their commitment to finding a mutually acceptable solution to the matters in disagreement.

The questions of Council members on key issues and the discussions to which they contributed also proved to be illuminating, especially to the Facilitator, notably the discussion of key and unfamiliar sports-industry concepts, such as "committed obligated income" ("COI").

Section 2.04 - The Terms of Reference also detailed and provided for the option of creating an Advisory Panel of Experts, consisting of technical experts and conversant community leaders, to assist the parties in resolving specific issues. The parties did not choose to employ that device.

Subject III. Criteria for locating a stadium complex

Section 3.01 - The parties heard technical advice from a variety of recognized experts from within Ontario and across North America.

Section 3.02 - <u>Timely decision and legacy uses</u>:

The parties recognized the importance of a timely decision and clear choices on Pan Am events, in order to meet the timetable and requirements of the Pan Am Games. However, the focus of the discussions between the parties was on measures that would ensure the long-term financial and operational viability of the stadium facilities for the City and for the Tiger- Cats (so-called "legacy facilities").

Section 3.03 - Operational and financial sustainability:

While the primary, high-profile users of a post-Pan Am legacy stadium facility in Hamilton would be the Hamilton Tiger-Cats of the Canadian Football League, the Tiger-Cats represent only ten assured home games each year. This level of stadium use will make neither the team nor the stadium financially self-sustainable. Without additional stadium-complex uses producing significant net revenues, a Hamilton stadium – at any location – appears destined to face operating losses. Without additional stadium-related revenues, the financial viability of the Tiger-Cats franchise in Hamilton is also impaired.

Section 3.04 - Potential stadium-related revenues:

In other cities, the capital and operating costs of stadium complexes and professional sports franchises are offset from a variety of income sources, such as promotional revenues and sponsorships, retail and hospitality sales on the property and in the precinct, parking revenues, revenues from extraneous sources (such as broadcasting revenues), and / or from related property-development opportunities. (It is important to note that individual teams in the Canadian Football League do not currently enjoy significant broadcasting or internet revenues, despite the growing popularity of Canadian professional football in many Canadian regional markets).

Section 3.05 - Committed obligated income:

The experts who made presentations were queried by the parties about the sports-industry concept of "committed obligated income". Since few major sports teams could exist solely on basic ticket-sale revenues, professional sports franchises aim to combine a range of revenues that trade on both the team's broad market acceptance and its event attendance. This list of potential revenues is materially influenced by whether the sport franchise also manages (or has an ownership stake in) the stadium facility / complex.

Potential income is also influenced by the range of stadium-complex revenue-generating opportunities in which the team franchise can share: stadium 'naming rights', commercial signage and promotional revenues; adjacent commercial / retail / hospitality-trade income; commercial, residential or institutional property development opportunities and lease-revenues associated with the site; seat-licenses, corporate boxes and prestige ticketing; incentives for more repeat ticket sales and other events ticket sales among existing clients; preferred and proximate parking revenues; gaming revenues; et cetera.

In many venues, the fact that the major user of a facility was also responsible for operating the facility seemed to provide an opportunity to maximize net-revenues for both entities. In those situations, it was not uncommon to see the team owners as co-investors.

Section 3.06 - There is an inevitable competition over limited and often unpredictable stadium-related revenues among the three classes of interests in any stadium or stadium complex:

i) Primary stadium users (e.g., professional sports teams, which generate the event revenues and a variety of team-related or event-related sales and sponsorships);

ii) Stadium-builders and stadium-owners (who seek a return on their capital investment); and,

iii) Stadium-operators (who assume the risks of managing, maintaining and marketing the facilities, with an expectation of a financial return)

In many locations, this inherent competition over finite revenues has been overcome with a mutually acceptable joint risk-reward agreement. However, these risk-reward agreements are volatile and may unravel with time and changing economics.

Alternatively, many stadium ventures have adopted a 'vertically integrated' format, melding the economic interests of primary stadium users, facility operators and facility owners / builders. In this latter format, a single business entity simultaneously advances the interests of one or more of the primary users of the stadium facility (teams), the operator of the facility, and in some cases, especially where related property development is part of the business arrangement, the builders / owners of the facility or complex.

Section 3.07 - Designing / constructing Pan Am Stadium facilities to optimize legacy uses:

The size and design of the Hamilton stadium must accommodate a range of compatible uses to be an economic success. This is a matter of specific concern to Hamilton, as the Pan Am Games events currently proposed for the stadium (specifically, track-and-field) may result in a stadium with sightlines and dimensions that are not as attractive for team-sports spectators, in contrast with those of, for example, Ivor Wynne Stadium or BMO Field. Incorporating a permanent 'sanctioned' athletics track within the confines of a new stadium, as was done for the Commonwealth Stadium in Edmonton or the Olympic Stadium in Montreal for similar reasons, has arguably come at the expense of the spectator experience for professional team sports in those venues.

Reconciling these two differing preferred stadium alignments / dimensions might be achieved in several ways:

- by reconfiguring the Pan Am stadium for team sports following the Pan Am Games
- by negotiating a modification of the Hamilton-based Pan Am Games events, to provide equivalent, high-profile events for the Pan Am Games within Hamilton, but that would not require a sanctioned track within the stadium confines
- by building the stadium in two phases, before and after the Pan Am Games.

Section 3.08 - Stadium requirements:

Pan Am Games officials have indicated a willingness to approve and fund a Pan Am Games stadium for track-and-field events, to accommodate ~15,000 spectators. The City has rightly seen the Pan Am Games commitment as an opportunity to build a stadium to replace the obsolescent, municipally-owned Ivor Wynne stadium, with capital funding that would not otherwise be available. The Tiger-Cats share this view.

To that end, the City has asked its consultants to explore the feasibility of building a stadium with an additional ~10,000 seats, along with an estimate of the associated cost and operational implications and impacts.

Section 3.09 - The parties agree that a new stadium should be designed in a manner that maximizes the 'event experience' of customers and that projects a realistic estimate of the ticket sales potential of the greater Hamilton region. The parties also recognize that ticket sales, and associated on-site revenues, will determine the financial viability of both the Tiger-Cats and the stadium facility.

Section 3.10 - In any "fixed cost" business, marginal sales are inevitably the most profitable and thus, additional or marginal ticket sales represent a significant net-revenue opportunity for all CFL teams. For stadium builders and operators, marginal

ticket sales opportunities can justify a capital investment in additional seating capacity, but only when those seats can realistically be sold on a routine basis.

The Tiger-Cats would prefer to see a facility that accommodates 28,000-30,000 in a combination of stadium seating and in-stadium hosting / hospitality facilities, along with a capacity to expand seating on temporary basis to 45,000 for those years when Hamilton hosts the Grey Cup.

Section 3.11 - There is also a well-reasoned argument for fewer stadium seats than might be justified by peak seasonal attendance. This approach has influenced professional soccer and some CFL venues with their stadium design decisions. While more seating might be desirable, an element of scarcity in seating availability is potentially positive from a marketing viewpoint and it reduces avoidable capital costs.

The availability of additional but routinely unsold seating comes at a not-insignificant added capital cost. Large numbers of routinely unsold seats also undermine the attractiveness of the stadium for spectators, vendors, broadcasters and investors.

Section 3.12 - A Hamilton Grey Cup:

There is also merit in considering the ability of any stadium to be expanded on a temporary basis, in order to accommodate major, short-duration spectator events, such as the Grey Cup. The Tiger-Cats would see as ideal an ability to expand seating by approximately 15,000 seats. The ability to provide seating in the range of 45,000 seats would strengthen any future Hamilton to bid to host a Grey Cup. Hosting a Grey Cup on a periodic basis would be very beneficial for the economy and reputation of Hamilton. It would also represent significant one-time revenues for the Tiger-Cats organization, helping to offset lean years.

Section 3.13 - Stadium Procurement:

Under Pan Am Games funding rules, the stadium would be constructed using the Ontario Government's Infrastructure Ontario procurement process. The Infrastructure Ontario model would likely entail awarding to a successful bidding consortium, a contract for constructing and potentially operating a stadium facility, following a competitive procurement process. The procurement process typically involves an initial RFQ (request for qualifications) phase, through which bidding consortia are qualified and "short-listed", based on their demonstrated ability to deliver the project in question. To meet the Pan Am Games timetable, this RFQ process would have to begin very soon.

The next stage of the Infrastructure Ontario procurement program involves a formal, extensive and expensive RFP (request for proposals) process. The RFQ process might be undertaken without a specifically designated stadium site, if the other parameters were

very clear and specific. The RFP process would necessarily require a specific stadium site being identified, ideally with land-ownership and all requisite approvals in place.

Section 3.14 - Accommodating automobile traffic is crucial to stadium success:

Based on the evidence presented by a range of experts, it would be reasonable to conclude that any Canadian (or North American) regional spectator sports venue – with the exception of concentrated urban markets supported by extensive rapid transit, such New York, Montreal, Seattle or Toronto – will continue to depend on automobile access for the vast majority of its attendees, for the foreseeable future. It was noted that over 80% of the Tiger-Cats' current market, and its projected expanded regional market, arrive by automobile.

With an aggressive promotion of transit and walking, particularly in an urban location, it may be possible to reduce the "modal split" between automobile and other forms of transportation. There may also be some potential for a deeper sales penetration within the Hamilton urban market, for repeat ticket sales or new spectator events.

Given the size and demographics of the sports and entertainment market within Hamilton, however, additional scope seems limited. The broader regional market centred on Hamilton appears to have greater and more sustainable market potential than ever-greater in-town sales efforts. Future success appears to depend on increased suburban and ex-urban attendees and more ticket sales in the higher-priced segment of the market.

Despite planned measures to install and promote transit and walking facilities in the West Harbour site, most of the football patrons – including important new customers from outside Hamilton – will likely arrive by automobile. Under the most optimistic of modal-split projections, it appears reasonable to expect that 75% of the ~25,000 patrons at football events will arrive by car (~18,750).

In any event, it certainly appears likely that the majority of stadium spectators will continue to arrive by automobile, irrespective of the stadium's location or transit proximity.

Section 3.15 - The willingness of a regional, automobile-based spectator market to attend a sporting event therefore materially depends on the "driveway-to-driveway" experience of attendees. The attendees' experiences can be influenced by highway congestion, local-area congestion and / or parking availability within reasonable walking distance, particularly following events or in inclement weather. A combination of traffic-management measures, pre-event and post-event attractions, highway and roadway infrastructure improvements, and adequate, convenient parking may overcome these obstacles. Realistically, however, remedial measures are constrained by considerations of potentially significant cost, uncertain approval requirements, space-extensive parking requirements, and the extent of justification for designing and

investing in measures that primarily serve a limited number of episodic surges of traffic each year.

Many of these issues can be addressed and answered through further technical analysis. Sufficient macro-level technical work was done to satisfy the City that it could recommend the West Harbour site, but some of the findings remain inconclusive or unpersuasive to others, without further detailed analysis, which analysis is now being undertaken by the City. It is the Facilitator's view that City Council and the Tiger-Cats should have this information available to them, before they make their final decisions on an optimum stadium location. It is work that can be completed fairly quickly, and it should be done, at least to a confidence-level on which decision-makers could rely.

Subject IV. West Harbour precinct stadium location

Section 4.01 - The parties disagreed on the ability of the West Harbour site to provide the appropriate level of local roadway access, despite the macro-level analysis provided by transportation consultants IBI Group indicating that the site could meet transportation demands. Similar lack of agreement continues between the parties in respect of the adequacy of highway access and the availability of parking, both volume and convenience.

Section 4.02 - The Tiger-Cats do not appear to accept that parking is sufficiently available within a walking distance that an expanding fan base would find acceptable. This is an understandably an important issue for the Tiger-Cats. There is also an important causal relationship among convenient parking, parking revenues and ticket sales. To the extent that parking is not available, or its revenues cannot be "captured" for use in reducing team and stadium operating losses, lack of stadium-related parking is a significant obstacle to the financial success of both the stadium and the team. Also unresolved is whether any such parking revenues would be consigned to the Tiger-Cats, or to the stadium operators / builders / owners, or possibly to the City or private parking providers.

Section 4.03 - The City produced reports and experts that made the case for the West Harbour site, particularly addressing concerns in relation to transportation, transit, traffic and to a lesser extent, parking. The City's reports also posited a significant potential allocation of stadium-related revenues to stadium financing and operations, rather than for team-focused purposes.

Section 4.04 - Both parties acknowledged, however, that the level of analysis was not yet sufficient to answer all the operational and financial questions that would need to be answered, including those raised by the Tiger-Cats. The City plans to undertake further transportation and traffic studies to refine its analysis and to support any required roadway, transit and traffic improvements and modifications. Until such analysis is available, however, the Tiger-Cats make the case that they cannot reasonably

be expected to make a major financial commitment to a West Harbour stadium location. The Tiger-Cats' prior public statements and subsequent Facilitation presentations made that plain.

Section 4.05 - The City is also exploring the potential for an integrated approach to sports facility operations in the West Harbour / Downtown precincts, although the Tiger-Cats have evidently yet to participate in those discussions. These latter discussions with the Katz group are scheduled to reach a further decision point by the end of August 2010.

Section 4.06 - Technical information and business proposals may be produced that will persuade both the Tiger-Cats and the City of the opportunities and limitations of the West Harbour site, but that case would need to be produced within a very tight time frame. If the public comments of leading Pan Am Games officials are considered, there is apparently a very real risk of losing the potential Hamilton Pan Am investment, as well as the Hamilton stadium and Pan Am events, if a sustainable stadium-location choice is not made in the very near future or the West Harbour site's suitability is not confirmed. It may therefore be unwise to commit to a single site with no viable alternative, unless and until these outstanding questions are addressed in a more complete manner. In other words, there may be merit in having a viable 'Plan B', as an "insurance policy".

Section 4.07 - While there may be difficulties arising from recent developments, it is in the interests of both the parties and the people whom they represent – who are ultimately the same (the residents of Hamilton and region) – to make the effort to prove or disprove the assertions about the adequacy of highway access, local traffic congestion, adjacent and local parking, transit potential, and construction limitations, of the West Harbour site.

Section 4.08 - There is likewise merit in exploring the options to meld the business interests of the Tiger-Cats with the operation of the stadium and related facilities, and the potential for ancillary development, before a final choice is made.

Subject V. A viable alternative to the West Harbour site?

Section 5.01 - While the Tiger-Cats expressed concern over the limitations of the West Harbour site, neither the City nor the Tiger-Cats were in a position to produce a detailed proposal for an alternative location, as proposed in the Terms of Reference. Citing their criteria, the Tiger-Cats showed particular interest in a stadium location along the QEW / 403 corridors, including a site in the Confederation Park vicinity for either stadium location or parking facilities or both. For its part, the City had previously examined sites in the airport vicinity and within Confederation Park, but both sites were deemed unacceptable by City Council for public policy reasons.

Section 5.02 - Over the course of the Facilitation process, the parties reviewed, without firm conclusions, a wide range of potential sites. All were within the urban envelope of

the City of Hamilton. A number of sites offered promising opportunities or specific advantages. However, most were uncertain or constrained for one or more significant reasons. Some had potential, but could not be conveniently acquired, such as commanding a purchase price that would adversely affect the overall cost envelope for the stadium project. Others were dependent on uncertain and unfinanced 400-series highway infrastructure modifications. Others had uncertain requirements for soil remediation or other environmental factors.

Section 5.03 - At a mature stage in the process, the Facilitator noted that the agreed Terms of Reference called for the parties to examine one or more specific alternatives to the West Harbour site during the course of the Facilitation process. The Facilitator suggested that the most viable approach would be to select and explore a specific option that would be a viable alternative to the West Harbour site, given the timetable for the Pan Am Games and the risk of losing the stadium altogether if the West Harbour site could not proceed in a timely fashion, for whatever reason.

Section 5.04 - The criteria for such an alternative site were agreed to include such considerations ("criteria") as:

(a) Meeting as many as possible of City Council's public policy goals (fiscal, community redevelopment, economic development);

(b) Not coming at the expense of West Harbour development, but rather contributing to and accelerating the redevelopment of the Hamilton core and waterfront;

(c) Meeting as many as possible of the Tiger-Cats strategic objectives, including the alternative site's potential to expand the team's regional market:

i. ready highway access, "surge" capacity of local roadways, substantial and convenient proprietary parking, and access to regional transit;

ii. seating for ~30,000, with capacity for Grey Cup and special event temporary expansion to ~45,000;

iii. the potential to provide increased revenues, including the option of a business model that would integrate team-related revenues, facility-related revenues, and site-related revenues, in order to optimize them all;

iv. prominent visibility for enhanced 'naming rights' opportunities, the potential for contracted stadium operation, associated property-development and commercial development opportunities, and so on.

(d) Avoiding the time-consuming uncertainty of land-use and environmental approvals, along with allaying neighbourhood impacts and the potential for associated litigation from opponents of the stadium project; and,

(e) Assembling the requisite land quickly and at a reasonable price (by transfer, option, conditional sale, or outright purchase), without prejudicing or compromising the City's West Harbour land-acquisition process or, indeed, its ongoing negotiations with respect to downtown sports and entertainment facilities.

Section 5.05 - Potential 'East Mountain' stadium complex site:

Following a presentation by officials of Metrolinx and the Ontario Realty Corporation late in the process, the parties indicated special interest in the lands located at the intersection of the Red Hill Creek Parkway and the Lincoln Alexander Parkway, at the Mud Street West / Stone Church Road East interchange. The site appeared to have the potential to meet the foregoing criteria.

Section 5.06 - For this 'East Mountain' option to be considered, there should be an examination of the potential for reducing the City's anticipated contribution to the capital cost of the stadium facility, in favour of investments being redirected to downtown and waterfront projects. There should also be consideration of the scope for investment by the Tiger-Cats, contingent on securing a greater participation in a project and site that more fully meets their business objectives and avoids the business risks that they projected for with the West Harbour site.

Subject VI. Making the choice on a stadium site

Section 6.01 - It is the recommendation of the Facilitator that the City consider immediately advising the Pan Am Games officials, and the Governments of Ontario and Canada, as follows:

(a) That Hamilton will participate in the Pan Am Games, with a stadium facility that will ultimately accommodate 24,000 to 26,000, at one of two definite locations, with the final location to be selected by City Council by August 31, 2010.

(b) That the City wishes to consult with the Pan Am Games officials about the design of the stadium facilities, to determine the ways in which a sanctioned track for athletics events might be accommodated within a stadium design or phased construction, with a view to producing an outstanding legacy facility for football, soccer and concert events. An ability to accommodate additional temporary seating for 15,000 for future special events, such as the Grey Cup, should be part of the stadium design.

Section 6.02 - It is the recommendation of the Facilitator that the City also consider:

(a) Completing the next level of technical analyses on the West Harbour site by August 12, 2010, in order to address to a greater degree the outstanding issues and constraints of the West Harbour site, both for its own due diligence and in an effort to address the concerns raised by the Tiger-Cats

(b) Inviting the Tiger-Cats and other affected parties to participate on any steering group overseeing those technical analyses

(c) Also before August 12, 2010, completing a similar range of technical analysis on the alternative site (East Mountain), and also involving the Tiger-Cats in any steering group overseeing those technical analyses

(d) Beginning immediately, involving the Tiger-Cats' ownership in existing or parallel discussions aimed at exploring the prospects for third-party operation of a stadium complex and / or involvement in related property development, both at the West Harbour site and at the alternative site

Section 6.03 - It is the recommendation of the Facilitator that the City give consideration to advising Infrastructure Ontario, as follows:

(a) That Infrastructure Ontario should proceed with its RFQ for a Pan Am Games stadium facility in Hamilton, with the parameters indicated, and with the specific site being finalized within ninety days and in any event, well before its RFP being issued.

(b) In developing its RFQ and its RFP, Infrastructure Ontario should also include a discussion with the City, on a procurement model that allows for a melding of the interests of the primary users of the stadium, the operators of the stadium, the builders / financiers of the stadium, and the owners of the stadium complex.

Section 6.04 - It is the recommendation of the Facilitator that the City give immediate consideration to acquiring (by transfer, option, conditional purchase or outright purchase, or some combination thereof) the Ontario Realty Corporation lands and related lands, at the previously mentioned "East Mountain" site. In taking these actions, the City should also continue with its program of land-acquisition in the West Harbour precinct, as the West Harbour property portfolio will be required for redevelopment purposes irrespective of the stadium decision.

Section 6.05 - It is the recommendation of the Facilitator that the City give immediate consideration to initiating discussions with the Governments of Ontario and Canada and their agencies, with a view to linking its plans for a stadium for the Pan Am Games with:

(a) measures to support and accelerate specific initiatives to develop the Hamilton waterfront;

(b) measures to support the installation of GO Transit regional rail transit terminals in the West Harbour / LIUNA are and in the QEW eastern gateway vicinity, and refining the City's urban rapid transit proposals; and,

(c) measures that might be taken by senior levels of government and others, to offset the cost of expanding the seating capacity of the Pan Am Games stadium beyond the requirements of the Pan Am Games (originally suggested as seating for approximately 15,000), to produce an outstanding legacy facility for use by the Hamilton Tiger-Cats, professional soccer, spectator entertainment events and other purposes, serving Hamilton and its regional market.

Query: Should some or all of the information in sections 5.05, 5.06, 6.02(c), and 6.04 be excised and placed in a confidential appendix? Since the lands in question are effectively in public ownership, this may not be necessary and it might project a more transparent message than has been the case to date. But it might also affect adjacent landowners or other parties, especially if some additional lands are required to round-out the site and access. There may also be legal issues at play here about which I am unaware.