

IN THE MATTER OF THE ROADS LAW (2005 REVISION)

AND

AND IN THE MATTER OF THE LAND ACQUISITION LAW

AND

AND IN THE MATTER OF A COMPENSATION CLAIM

BY BUEL AND CAROL BRAGGS IN RESPECT OF BLOCK 4C

PARCELS 280, 281, 282, 283, and 284.

14.3.07

PRESENT

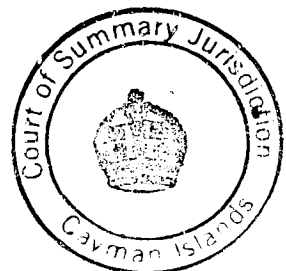
**Ms. Reshma Sharma for the National Roads Authority
Mr. Uchi Obi, Senior Valuation Officer, Lands and Survey
Mr. Buel Braggs, Claimant in Person
Mrs. Carol Braggs, Claimant in person
Mr. Leonard Prospere, Member of the Committee
Mr. Paul Aiken, Member of the Committee
Mrs. Grace Donalds, Chairman**

The Assessment Committee met on March 14th 2007 when the hearing was adjourned until March 28th 2007.

28.3.07

PRESENT

**Ms. Reshma Sharma for the National Roads Authority
Mr. Uche Obi, Senior Valuation Officer, Lands and Survey
Mr. Buel Braggs, Claimant in Person
Mr. Leonard Prospere, Member of the Committee
Mr. Paul Keys, Member of the Committee
Mrs. Grace Donalds, Chairman**



1. A declaration was made under section 3 of the Roads Law published in the Cayman Islands Gazette Issue No. 22/1996 dated 28th October 1996 to undertake road works, within the boundaries depicted in green on Boundary Plan Number 357.
2. The Gazette indicated that 0.05 acres were to be acquired from each of Parcels 280, 281, 282, and 283. The area to be acquired from Parcel 284 was 0.06 acres. The total area acquired from the aforementioned parcels was 0.26 acres.
3. At the date of the Gazette the registered owners of Parcels 280, 281, and 284 were Buel R. Braggs and Carol Braggs. Buel R. Braggs was the registered owner of Parcels 282 and 283.
4. Block 4C Parcel 25 adjoins the northern boundary of Parcel 280. 0.24 acres were also acquired from Parcel 25.
5. On 28th October 1996, Parcel 25 was registered to Irvin Hassell Smith and was subsequently transferred to the claimant, Mr. Buel R. Braggs some three years later on 20th August 1999.
6. The claimant, Mr. Buel R. Braggs did not have an interest in Parcel 25 on the declared date. Mr. Braggs' claim for compensation in respect of Parcel 25 must accordingly fail as he was not the registered owner of this parcel on the declared date.
7. The claimants submitted their claim for compensation and elected a two-stage assessment. They have claimed C\$116,392.00 as payment for the land taken. This figure includes compensation for Parcel 25 and is based on a valuation of the land provided by Mr. Richard Jones of BCQS Ltd as at February 2007.

8. The issue for determination by the Assessment Committee was the amount of compensation due to the claimants under Boundary Plan 357 published on 28th October 1996.
9. The total area of all parcels was 2.90 acres. After the acquisition for the road,
the remainder of the parcels would be 2.64 acres. There was a pedestrian right of way along the eastern boundary of each parcel. Parcel 281 had a pedestrian right of way over Block 4C Parcels 29 & 30.
10. At the declared date the subject parcels was landlocked and did not benefit from a vehicular right of way. Mr. Braggs' evidence to the Committee was that this land had been in the possession of his family for generations. He testified that his grandfather had farmed the land and raised his family there. The land, accordingly had great sentimental value for his family who valued the privacy of the land and intended to keep it for the enjoyment of future generations. Despite the testimony of Mr. Braggs that his family did not want a road to remove the privacy of the property; the Committee is unable to give weight to this concern as this is not a relevant consideration under the Roads Law.
11. Mr. Obi in his evidence to the Committee deducted the cost of providing a road from the estimated value of the parcels assuming that they had the benefit of road access. Mr. Obi's evidence was that the cost of constructing a 30' wide road with a length of 700' from Bankers Road to the Southern boundary of Parcel 281 was C\$ 108,500.
12. This cost was disputed by Mr. Braggs who failed to adduce any documentary evidence to support the lower cost which he had been provided by a representative of Island Paving Ltd. In default of any evidence to the contrary, the Committee was obliged to accept the evidence of the National Roads Authority.
13. Marl had not been excavated from the subject parcels which therefore, had higher elevations than comparable parcels. Mr. Braggs claimed for the value of the topsoil on his property. However, the claimant failed to adduce any evidence to provide the Committee with a basis in order to determine a value for this claim.

In the absence of written evidence to substantiate this claim, the value of the topsoil would be subsumed into the compensation awarded for the land taken and there would be no separate award made for the topsoil on the land.

- 14. The claimants submitted that the subject parcels are serviced by a paved private road. However this road was not in existence in October 1996 and cannot therefore be relied on by the claimants in order to increase the market value of the subject parcels.**
- 15. Mr. Obi relied on 4 comparable sales of land between October – December 1996 with road access between C\$1.00 and C\$1.68 per square foot in 1996.**
- 16. Mr. Obi's assessment of the market value of the land retained was C\$175,000.00. His evidence was that the cost of building an access road in 1996 would have been C\$108,500.00. Based on the value of the land with road access at C\$175,000.00, the value of the land without road access would be C\$ 0.58 per square foot. When adjusted to take account of the higher elevations and the greater size of the subject parcels, Mr. Obi's valuation was C\$0.80 per square foot. Thus the total value of the land acquired was C\$9,060.00.**
- 17. Under section 8 of the Roads Law the Committee must consider the question of the increase in the value of the remaining portion of the claimant's land.
By virtue of the principle of betterment, where the landowner from whom land has been compulsorily acquired, retains land which increases in value because of the scheme, that increase in value shall be deducted against the compensation to be paid for the land taken.
Where the betterment exceeds the compensation for the land taken, the excess cannot be recovered.**
- 18. In this case the cost of construction and maintenance of the road in perpetuity will be borne by the National Roads Authority. The road access will result in an increase in the value of the claimant's land. The market value of the land taken is C\$9,060.00. The cost of constructing the access road is C\$108,500.00. The gain to the claimant is C\$99,440 the difference between C\$108,500 and C\$9,060. The claimants, accordingly do not qualify for compensation because the advantage to them exceeds any loss they may suffer.**

19. Ms. Sharma on behalf of the National Roads Authority urged the Committee to make an award for costs in their favour if successful. Despite the fact that the Committee has rejected the claim of the claimants, the Committee declines to make any such order for costs in a case where the claimants did not have the benefit of legal representation as compared with the National Roads Authority.



Grace Donalds
Chairman
December 7th, 2007

