

IN THE MATTER OF CLAIMS FOR COMPENSATION
BY MR. PAUL BODDEN, RE- BLOCK 4C,
PARCEL 285, WEST BAY, GRAND CAYMAN



AND
IN THE MATTER OF THE ROADS LAW 1974 AND THE LAND
ACQUISITION LAW

TO: HIS EXCELLENCE THE GOVERNOR
FROM: THE CHAIRMAN, ASSESSMENT COMMITTEE.

REPORT

The Assessment Committee met at 3:00 p.m. on 2 November 1990, in the conference room of the Courts Building. The matter dealt with was a claim for compensation by Mr. Paul Bodden, son of the proprietor of a property at West Bay North, Block 4c, parcel 285, Grand Cayman. Present were the Chairman and two members of the Committee, Messrs. Vernon Jackson and Rene Hislop. Also in attendance was, Mr. Paul Bodden the claimant and Mr. R. C. Buchanan the Lands Officer who valued proceedings on behalf of the Government and the Land and Survey Department. Boundary Plan No. 167 and registry Map/Topographic Sheet of the area were referred to for identification purposes. The statutory guidelines which determine the assessment of compensation are now consolidated in the Roads Law (revised) which contains- The Roads Law, 1974 (Law 18 Of 1974) as amended by Law 24 of 1983 and Law 6 of 1988.

Section 8 (2) provides inter alia -

"A claimant does not qualify for compensation as having suffered a net loss unless, at the time of dispossession of such portion of land under this law, any damage attribute to-

- (c) the injurious effect on the claimant's other land of the dispossession of such portion land; and
- (d) the loss of such portion of land, assessed at its market value, exceeds the value of the advantage to the claimant gained by the presence of the new or improved road adjacent to his land."

Section 6 (1) of the Second Schedule of this Law provides, inter alia-

(1) In determining the amount of compensation to be awarded in respect of any portion of land under this Law the Committee shall take into consideration--

- (a) the market value of the land at the declared day;
- (c) any damage sustained by the claimant at the time of the taking possession of the land, by reason of the severing of such land from his other land;
- (f) any damage bona fide resulting from diminution of the profits of the land between the declared day and the time of taking possession of the land;
- (g) any increase in the value of the claimant's interest-
 - (1) in any remaining portion of the land in respect of which the claim is made; and
 - (11) in other land contiguous or adjacent to (whether or not actually touching) any land mentioned in sub-paragraph (1) to which the claimant was entitled in the same capacity on the declared day, which is likely to accrue from the use to which the land subject of the claim will be put.

No loss of any standing crop or trees has been claimed.

This claim is being made under Subsection 2 (b) which deals with the severance of the land and Section 2 (c) injurious effect on the

claimant's other land. It arises from the construction of a new road at Mount Pleasant, West Bay. As a result of this project ^{0.05} ~~0.5~~ of ^{0.05} ~~0.5~~ of '00 an acre was taken from Mrs. Bodden's property which consisted of approximately 0.30 acres of land. d

Mr. Paul Bodden for the Claimant told committee that, when he was informed that on an acquisition order a road was put through his mother's property, he checked and discovered that approximately 25 feet of land had been used to make the roadway. He therefore, on behalf of his mother submitted a claim for severance and injurious effect. He submitted that as a result of the acquisition the land which is a house lot, had been reduced from 0.30 acres to 0.25 acres which was approximately a 16% loss. This, he pointed out, had severely reduced the usefulness of the lot. With these facts in mind, compensation is being sought to reflect the loss incurred which he put at 25%. He estimated that in 1988, the value of the property was Ten Thousand dollars (\$10,000.00). He said that the value of the property has gone up quite a bit since then, and as a result the lot is now worth approximately Fourteen thousand dollars (\$14,000.00). He urged that the claim reflect the increase in the value of the property, putting the amount claimed at Three Thousand five Hundred C.I. (\$3,500.00), instead of the C.I. Two Thousand Five Hundred (\$2,500.00) originally claimed. In support of this additional claim he submitted that waterlines are now going into that area making the land more valuable. He concluded his submissions by urging the Committee to consider the claim favourable as his parents were not wealthy and with the road decreasing the size of their property, they were entitled to compensation.

By a declaration in gazette No. 21 of 1985, which was exhibited at appendix 2 of the Report of the Department of lands and Survey, notification was given of the new road. The market value of the property must therefore be of that date, and not of 1988, or any future time as determined by the claimant. A valuation of the land by the land officer based upon the comparative evidence set out in appendix 4 of the report puts the value of the land 0.30 acre before the scheme at C.I. \$6,500.00. Based on this valuation the value of the land after the loss of 0.5 acre would be \$5,500 C.I. making the

apparent loss \$1,000.00 C.I. However, the Lands Officer was of a view that this valuation was too simplistic since it ignores the fact that before the scheme the property had no real access, and after the scheme it fronted an excellent metalled road. The apparent loss must therefore be balanced against the advantage gained.

The Committee then considered what if any damage was sustained by the claimant at the time of the taking of possession of the land. As Mr. Bodden pointed out the size of the parcel has been reduced from 13.068 sq. ft. to 10.890 sq. ft. The committee though sympathetic to his submission that this has severely reduced the usefulness of the property, came to the conclusion that the present size is sufficient to accommodate an average size dwelling house and garden although insufficient for the construction of a duplex. However, as no plans have been contemplated or submitted for such a development, there could be no compensation for the loss of such a facility.

The Committee then considered the question of the increase in the value of the remaining portion of the claimant's land. In looking at the Topographic Survey Map at appendix 5, it would appear at first sight that the claimant's land enjoyed some form of access from the main road before the scheme. However, the committee was advised that the surveyor who carried out the work found that this 'access strip' was in fact overgrown with bush and no physical access actually existed on the ground. This was also confirmed by the executive engineer by letter, (Exhibited at appendix 5) which states that this strip was overgrown with logwood trees and dense bush. It was therefore accepted by the committee that the land had benefitted from having its informal and apparently non-existent access strip upgraded to a 30 ft. metalled road.

The committee also looked into the claimant's allegation that parcels of land in the area have been selling at \$10,000.00 C.I. The report of the Lands Officer however, indicates that these parcels are probably in the neighboring subdivision and enjoy a 30 ft. Tarmac access road. There is also the fact, which is not disputed by the claimant, that these are current prices, and not attachable to lot 285 as it was in 1985, before the acquisition.

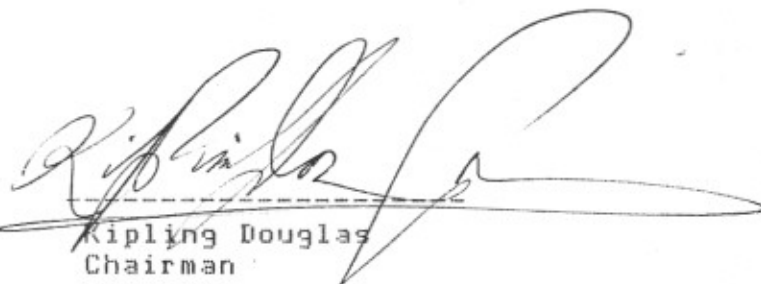
It was also accepted by the committee that in addition to the

advantage gained of having his access road upgraded substantially, the claimant also now has a post and wire fence where, none existed before. The committee accepted that the loss due to severance and injurious affection amounted to \$1,000.00 C.I. In order to arrive at the amount of compensation payable if any, the committee examined the Land's Officer valuation of the advantages gained which are as follows;

1)	Approximate 270' of metalled road	
	30' wide say \$20.00 C.I. per ft.	\$5,400 C.I.
ii)	Post and Wire Fence	<u>\$- 500 C.I.</u>
	say 100' @ \$5.00 C.I.	
	Net Loss	nil
	Net Gain	<u>\$4,900.00 C.I.</u>

Although the committee felt that the above valuation placed the entire cost of the metalled road on the shoulders of the claimant, it was felt that in any event the cost to the claimant would have exceeded the estimated loss of \$1,000.00 C.I.

The committee therefore, concluded that the increase in value of the claimant's interest far exceeded the loss sustained, and accordingly, the committee recommends that no payment of compensation be made to the claimant.



Kipling Douglas
Chairman



Vernon Jackson
Member



Rene Hislop
Member

DATED THIS 28th DAY OF Nov. 1990