

MATTER OF THE ROADS LAW (2005 REVISION)

2006 OCT 26 P 3: 27

AND

IN THE MATTER OF THE LAND ACQUISITION LAW

AND

IN THE MATTER OF A CLAIM FOR COMPENSATION BY CONCEPTS LTD  
BLOCK 12 PARCEL 195

**STATEMENT OF A CASE**

**ARISING OUT OF A CLAIM BY CONCEPT LTD  
FOR COMPENSATION IN RESPECT OF BLOCK 12  
PARCEL 195**

**TO: HIS EXCELLENCY THE GOVERNOR**  
**FROM: THE CHAIRMAN**  
**ROADS ASSESSMENT COMMITTEE**

**REPORT**

**Friday July 13<sup>th</sup>, 2006**

Present: Mr. Iain Franklin, Valuation officer, Dept. of Lands & Survey  
Mrs. Suzanne Bothwell, Crown Counsel for the Authority  
Mr. Colin Uche, Valuation officer, Dept. of Lands & Survey  
Mrs. Mitzi Callan  
Mrs. Magda Embury of Solomon & Harris  
Ms. Mina Dixit, Valuator of Deloitte & Touche  
Mr. JC Calhoun, Member of Committee  
Mr. Rex Crighton, JP., Member of Committee  
Magistrate G. Donalds [Chairman]

The Roads Assessment Committee met at 2:15p.m. on Friday the 13<sup>th</sup> day of July 2006 in Courtroom No.4 at Kirk House.

Mrs. Bothwell on behalf of the Highway Authority objected to Mr. Calhoun hearing this matter because it was believed that he had a conflict of interest.

Matter adjourned.

**Friday August 18<sup>th</sup> 2006**

Present: Mr. Iain Franklin, witness for the respondent  
Mrs. Suzanne Bothwell, Crown Counsel for the Authority  
Ms. Mitzi Callan  
Ms. Wanda O'Connor of Solomon Harris for claimant

Mr. Leonard Prospere, Member of Committee  
Mr. Rex Crighton, Member of Committee  
Magistrate G. Donalds, Chairman

The Roads Assessment Committee met at 11:00 a.m. on Friday the 18<sup>th</sup> day of August 2006 in Courtroom No.4 at Kirk House.

Mrs. Magda Embury was unable to be present.

Matter adjourned.

**Friday September 1<sup>st</sup>, 2006**

Present: Mr. Iain Franklin, witness for the respondent  
Mrs. Suzanne Bothwell, Crown Counsel for the Highway Authority  
Mrs. Mitzi Callan  
Mrs. Magda Embury of Solomon Harris for claimant  
Mrs. Mina Dixit of Deloitte & Touche

Mr. Leonard Prospere, Member of Committee  
Mr. Rex Crighton, Member of Committee  
Magistrate G. Donalds, Chairman

The Roads Assessment Committee met at 10:00 a.m. on Friday the 1<sup>st</sup> day of September 2006 in Courtroom No.4 at Kirk House.

The matter dealt with was a claim for compensation by Concept Ltd the proprietor of land registered as Block 12 Parcel 195

Boundary Plan 486 was published in the official Gazette on 5<sup>th</sup> May 2005 under section 3

of the Roads Law (2005 Revision). This included the acquisition of 0.25 acres (10,891 sq. ft.) of land forming part of Block 12C Parcel 125 held by Concept Ltd. The claimant's agent, Deloitte Property Consulting issued a claim for compensation in the amount of CI\$60.00 per square foot for a total of CI\$653,400 for the compulsory acquisition of this land.

The authority offered to settle the claim at CI\$10.00 per square ft for a total sum of CI\$109,000.00. This offer has been rejected by the claimant.

The claim was referred to the Assessment Committee for final determination.

The claimant has elected for a one-stage assessment of compensation. The land that is being acquired is zoned 'Neighborhood Commercial' in accordance with the Development Plan 1997.

The issue before the Assessment Committee is the amount of compensation for the land taken.

The Roads Law (2005 Revision) sets out the basis in which compensation is assessed.

Section 6(1) of the Second Schedule of this law provides:

- 6 (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;
  - (b) The damage sustained by the claimant by reason of the taking of any standing crops or trees which are on the land at the time of the taking possession thereof;
  - (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;

- (d) any damage sustained by the claimant at the time of the taking of the portion of land, by reason for the dispossession injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
- (e) if in consequence of the dispossession, the claimant is compelled to change his residence or place of business, the reasonable expenses incidental to such change;
- (f) any damage bona fide resulting from diminution of the profits of the land between the declared day and the time of the taking possession of the land; and
- (g) any increase in the value of the claimant's interest-
  - (i) in any remaining portion of the land in respect of which the claim is made; and
  - (ii) in other land contiguous or adjacent to (whether or not actually touching) any land mentioned in subparagraph (i) to which the claimant was entitled in the same capacity on the declared day; and

which is likely to accrue from the use to which the land subject of the claim will be put.

The issue before this Committee was the interpretation of what was meant by the 'land' in section 6 (1) (a). Should the land taken be valued as a separate holding or should the value of the land taken be assessed as a part of the entire holding?

On behalf of the Roads Authority it was submitted that the market value of the land taken should be valued without reference to the land adjoining it. Thus any diminution in value to the adjoining land as a result of the land being compulsorily acquired would be assessed under the heads of "severance" and "injurious affection".

In the HO. Merren Case, the assessment committee applied the decision in Cooke v. Sec. of State (1974) 229 E.G. 117. The committee held that the land is to be valued as a separate holding and not as part of the larger holding of the actual owner where he owns the land acquired with other land. Mrs. Embury on behalf of the claimant submitted that

these decisions were distinguishable and should not be followed because both cases dealt with claims for injurious affection whereas the claimant in the instant case has declined to make any such claim for “injurious affection”. The Committee rejects this submission which appears to arise from a misreading of these decisions, and will apply these cases valuing the land as a separate holding and not as a part of the larger holding.

The portion of the property that is being acquired is 0.25 acre of a parcel with a total acreage of 1.15 acres. This portion being acquired is located at the southerly end of the parcel. Although the severed portion does not have direct access to West Bay Road, the parcel is in fact directly accessed from West Bay Road. The portion of the property that is being acquired also has along it a 20 foot right of way. However the 20’ right of way has been incorporated into the landowner’s existing development scheme so that the value of the land to be taken should not be reduced by that amount.

Under Paragraph 6 (a) of the Second Schedule of the Roads Law, the open market value of the land has to be assessed as at May 5, 2005, the declared day i.e. the day when a declaration was made under section 3 of the law. This Committee accordingly declines to follow the case of Re Salt Rocks Dock (1990-91) CILR N18 which was relied on by the claimant. Mrs. Embury submitted that CI\$60.00 per square foot for the land taken is a fair assessment of the present day value of the land. However, the law is clear that the valuation should not reflect the present day value of the property but rather the market value of the property as at the declared day.

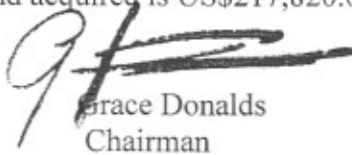
Under section 8 compensation should only be awarded where a claimant has suffered a net loss after considering the advantage gained by the road. However, the parcel already

had road access so that any loss is a net loss.

Both Ms. Mina Dixit, the valuator for Deloitte & Touche and Mr. Iain Franklin, the valuator on behalf of the Roads Authority agreed that the comparable sale at 12C Parcel 263, "The Mini Warehouse Land" was a good comparable given that it has the same zoning and is of a similar distance from West Bay Road. This was sold in 2003 at CI\$16.93 per square foot. Although it is on a busier road it was filled and sold 18 months prior to the declared date. These factors may be regarded as almost cancelling each other leaving approximately US\$20.00 per square foot or CI\$16.40 as the value of 12C 195.

No details were provided to establish claims under section 8(2)(a) i.e. for loss of standing crops and trees; or under section 8 (2)(b) for severance, or under section 8(2)(c) for 'injurious affection'. Accordingly the Committee declines to award compensation under these heads.

The assessment of the land acquired is US\$217,820.00 or CI\$178,612.40.

  
Grace Donalds  
Chairman