



Corporate

 NO: R112

Report

 COUNCIL DATE: May 14, 2001

REGULAR			
TO:	Mayor & Council	DATE:	May 8, 2001
FROM:	City Solicitor	FILE:	4894-210
SUBJECT:	Thomas Keith Maddocks and Maddocks Farms Ltd. v. City of Surrey E.C.B. Control No. 17/97 and 07/98		

RECOMMENDATION

That the City accept the decision of the Expropriation Compensation Board of April 2, 2001 (the "decision") in respect of the above-noted matters and not appeal any part of the decision since the award falls within the range of compensation recommended by the City's own expert witnesses. The decision, in my opinion, represents a reasonable arbitration of the compensation payable by the City to the claimants as a consequence of the taking a right of way for a drainage canal.

BACKGROUND

On November 4, 1996 Council authorized the expropriation of 11.61 acres of land from three contiguous properties known as Maddocks' Farms, located between 168 Street and 176 Street and separated from Highway #10 by the existing railway line on the south side of Highway #10.

The purpose of the expropriation was to acquire a drainage right-of-way to accommodate a dyke and drainage canal designed to address flooding problems from the Nicomekl River to Highway #10 between 168 Street and 176 Street. The width of the statutory right-of-way acquired varies from 30.6 to 32.57 metres (100.3 to 106.86 feet) and runs the entire length of the north and west boundaries of the subject properties eliminating any productive use of the land taken. Attached as Exhibit "A" to this report is a sketch illustrating the subject properties and the land taken.

At the time of the taking, two of the three parcels were located in the ALR and zoned for agricultural use. The third parcel benefited from split zoning having light industrial zoning on the northern portion and agricultural zoning on the remainder. The agriculturally zoned portion of the third parcel was also in the ALR. Before the taking the combined area of the three parcels was 99.02 acres.

As compensation for the taking, the City made an advance payment in the amount of \$600,200 to Thomas Keith Maddocks, the registered owner of the parcels, and an advance payment of \$156,582 to Maddocks Farms Ltd., the proprietor of the vegetable farming operation on the lands. These advance payments were based on expert appraisal and business valuation reports prepared by Hooker Carmichael Property Consultants Ltd. and Arc Appraisals Ltd.

DISCUSSION

Despite these advance payments made by the City, Thomas Keith Maddocks and Maddocks Farms Ltd. filed claims with the Expropriation Compensation Board (the "Board") demanding additional compensation for a total of \$1,960,457.00, plus interest and costs. At the hearing Maddocks' appraiser advanced a further claim for accelerated depreciation of farm buildings and equipment on the theory that the farm operation is no longer at an optimum balance and that economies of scales would be lost because of the smaller acreage. The amount of this loss was calculated at \$122,518.00. The Board, however, (see decision p. 53 - 54) accepted my arguments on the depreciation issues and dismissed this part of the claim.

The claimants advanced numerous grounds in an attempt to justify an increase in compensation. These included:

- loss of direct access to the rail line along Hwy #10,
- loss of ability to connect to the GVRD sewer,
- loss of access to Highway #10,
- a less efficient configuration of the industrial lands and significantly higher servicing costs,
- diminished utility as site for direct farm marketing,
- increased visual separation from Hwy #10,
- perceived risk of flooding,
- increase of water fowl use leading to a perception of winter feeding by water fowl,
- increased environmental setbacks affecting development potential,
- reduced likelihood of exclusion from ALR in a future application since the Maddocks lands would be perceived as more separated from the urbanized fringe by the canal
- loss of use of vacant adjacent rail lands for farming headland purposes,
- accelerated depreciation of farm equipment; and
- reduced farm efficiency

After deducting the City's advanced payments, the net amount of the claims filed totalled \$1,360,257 plus costs and interest.

In response to these claims, City staff made numerous efforts to negotiate, however, the Claimants were not prepared to entertain any settlement. Consequently, a three week hearing before the Board resulted and on April 2, 2001, approximately one year after the hearing, the Board rendered a decision. A copy of this 59 page decision is available in my office upon request.

DECISION

In summary, the Board dismissed the claim of Maddocks Farms Ltd. for additional compensation in its entirety and ordered that the City be refunded in the amount of \$16,630. In coming to this conclusion, the Board accepted my submissions that new evidence obtained in cross examination established that Maddocks Farm Ltd. had in fact been overcompensated.

With respect to the claim of Thomas Keith Maddocks, the Board similarly discounted a majority of the grounds advanced. The Board did, however, nominally increase the market value of the 11.61 acres taking by \$29,890 and concluded that injurious affection in the amount of \$71,750 was payable for a perceived increase in flooding potential and environmental sensitivity resulting from the large drainage canal.

The Board also found that a further sum of \$90,810 was payable for injurious affection, primarily as a result of reduced commercial exposure and the loss of development potential of the industrial lands attributable to its narrowed configuration. This part of the award was within the range given by the City's experts in their testimony at the hearing. The Board's findings of injurious affection are discussed on pages 30 to 31 (paragraphs 136 to 144) and on pages 36 to 38 (paragraphs 166 to 174) of the decision, copies of these pages are attached.

CONCLUSION

The total award of \$175,820 plus applicable costs and interest represents a significant shortfall from the net claim of \$1,360,257 plus \$122,518 advanced by the Claimants. Moreover, based on the advice of the City's expert appraiser, an award of injurious affection of the nature awarded was anticipated and is reasonable under the circumstances. It is recommended, therefore, that the City accept the decision of the Expropriation Compensation Board and not pursue an appeal of these matters.

Craig MacFarlane
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