



# LAND ACQUISITION OPTIONS

Strategic Tool-Box to Avoid  
Expropriation

Sean Foran  
4100 - 66 Wellington Street West  
TD Bank Tower  
Toronto, ON M5K 1B7  
416-947-5019  
[sforan@weirfoulds.com](mailto:sforan@weirfoulds.com)

July 21, 2016

# Municipal Powers

- *Municipal Act*
  - Section 9 – Natural Person Powers: A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority
  - Section 6 – Power to expropriate land

# Expropriation

- *Municipal Act, 2001, s. 6(1)* – "the power of a municipality to acquire land under this or any other Act includes the power to expropriate land in accordance with the *Expropriations Act*"
- *Expropriations Act, s. (1)* – "expropriate" means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers"

# Expropriation – Purpose

- Municipal purpose
  - road widening, infrastructure
  - other public projects
  - assembly of land for redevelopment and industrial parks (Brantford, Belleville)
  - economic development (Woodstock)

# Acquisition for Economic Development – Ontario

- Municipalities can pass by-laws respecting the "economic, social and environmental well-being of the municipality" – *Municipal Act, 2001*, ss. 10(2) and 11(2)
- Community Improvement Plans – *Planning Act*, s. 28
  - Process
    - Official Plan must contain provisions relating to community improvement
    - Council passes by-law designating the whole or any part of any area as a "community improvement project area"; may provide for the preparation of a "community improvement plan"

# Community Improvement Plans – Process

- Once a community improvement plan is approved, the municipality may, among other things, acquire land within the community improvement project area
- Includes acquisition by expropriation – *Re Yonge Street Regeneration Project*, (1998) 36 O.M.B.R. 321 (Joint Board); additional reasons 37 O.M.B.R. 426 (Joint Board)

# Acquisition for Economic Development – Ontario (cont'd)

- In Ontario, municipalities may use the power of expropriation together with the community improvement plan powers in the *Planning Act* to acquire land from a private land owner and subsequently convey, sell or lease the same land to a private interest – *Re Yonge Street Regeneration Project*

# Expropriation

- Time consuming – 8 to 13 months depending on whether an inquiry has been requested
- Expensive
  - s.32 – costs – municipality usually responsible for its costs and owners' costs
  - s.33 – interest – 6%
- Can be controversial and political
- Disturbance damages for delay – *Dell Holdings Ltd.* [1997] S.C.R.



# Expropriation (cont'd)

- Broad definition of “owner” – can affect multiple interests in the same land
- Multiple Interests in Compensation
- Compensation for Market Value = Pie (*Eat 'n Putt*)

# Determining Compensation

- Negotiation
  - formal (Board of Negotiation) or informal
  - parties must agree to dispense with negotiation proceedings – *Expropriations Act*, s. 26
  - without prejudice
  - if no settlement, proceed with mediation or arbitration

# Determining Compensation (cont'd)

- Mediation
  - Ontario Municipal Board ("OMB") or private mediation
  - parties can request OMB mediation or OMB can order
  - if no settlement, proceed with arbitration
- Arbitration
  - OMB hearing
  - right of appeal to Divisional Court – *Expropriations Act*, s. 31
  - expensive and time consuming

# Alternatives to Expropriation?

- *Planning Act* Dedication of Land
- Agreement of Purchase and Sale
- Section 30 Agreement
- Permission to Enter

# Alternatives To Expropriation

- Dedication requirements in *Planning Act*
  - site plan – as a condition of approval, municipality may require the widening of abutting highway, provided that the extent of the proposed widening is shown in the Official Plan – ss. 41(7)(a)(1), 41(8)(a)(1) and 41(9)
  - conveyance of land for park or other public recreational purposes – can be imposed as a condition of development or redevelopment of land (maximum 2% for commercial or industrial purposes, 5% in all other cases) – s. 42
  - Issue: Timing of development v. land requirements

# Alternatives To Expropriation – Dedication Requirements

- Plan of subdivision – as a condition of approval, municipality may require that:
  - land be dedicated for park or other public recreational purposes under s. 51.1 (maximum 2% for commercial or industrial subdivisions, 5% in all other cases) – s. 51(25)(a)
  - highways and public transit rights of way be dedicated, including land for commuter parking lots, transit stations and related infrastructure – s. 51(25)(b) and (b.1)
  - sufficient land be dedicated to provide for the widening of the abutting highway to such width as the approval authority considers necessary – s. 51(25)(c)

# Agreement of Purchase and Sale

- Conveyance of land or interest in land by owner for agreed price
- Release can be given as part of the agreement

# Agreement of Purchase and Sale (cont'd)

- Advantages?
  - No issue of multiple interests in land
  - Avoids time-consuming expropriation process
  - Compensation is certain
  - Less costly
- Disadvantages?
  - Time constraints may impair negotiating position
  - Uncertainty of owner, e.g. impact of construction



# Incentives

- Depending on nature of the project and land requirements, incentives can be used in a targeted way to get agreements
- Compensation premiums made available as an incentive to achieve timely resolution of land acquisition requirements

# Incentives (cont'd)

- Examples:
  - HONI – Bruce to Milton Transmission Line and Land Acquisition Compensation Principles
    - Consultations with owners and representatives to develop land compensation principles in advance of project
  - Metrolinx – Eglinton Crosstown for temporary construction easements
  - flexibility and choice for owners – i.e. voluntary buy-out, annual or lump sum payment for easements
  - don't always succeed, e.g. where there are multiple interests in land

# Section 30 Agreements

- Expedites the Acquisition Process but doesn't necessarily reduce compensation
- Formalities of *Expropriation Act* waived
- Timeline compressed
- Compensation claims preserved – without prejudice agreement

**QUESTIONS?**