



Ben Lansink, March 2021
Shergar Development Inc. v. City of Windsor

Background

Supreme Court of Canada, Case# 39399, March 11, 2021: This appeal has been ongoing for several years and arises from a proceeding wherein the respondent, City of Windsor, expropriated certain property along the Detroit River in Windsor owned by the applicant, Shergar Development Inc. The initial Ontario Municipal Board (OMB) decision awarded Shergar all costs related to the expropriation. At the rehearing decision, the OMB exercised its discretion and denied Shergar its costs from the date of the 2015 offer and found the City to be entitled to its costs from this date forward. The Superior Court agreed with the OMB's rehearing decision and dismissed Shergar's appeal. The Court dismissed the appeal ending the Shergar saga.

Ontario Municipal Board Case LC130023/24 May 25, 2016

Decision delivered by J.E. Sniezek and M. Carter-Whitney stated it was "*concerned*" Lansink and a second valuer did not fulfill their duties which was held to be "*not fair, objective and non-partisan*". Given Lansink had not deviated from his normal reasonable, appropriate, fair, objective, and nonpartisan work, the "*concerned*" statement was unexpected.

Lansink's Response to LC130023/24

Shergar was unique. Shergar had initiated numerous collateral proceedings that effectively delayed the determination of compensation.

As the author of valuation reports, Lansink has a duty to a tribunal or court and such duty prevails over Lansink's duty to his own client. Lansink understands that it is his duty to provide opinion evidence that is fair, objective, and nonpartisan.

Having extensive expert witness experience, Lansink also understands that not all decision makers accept his work. Since the early 1980s, over 96% of decision makers have accepted Lansink's work. Lansink has never deviated from providing valuations and opinion evidence that are fair, objective, and nonpartisan.

Lansink completes each valuation assignment pursuant to the rules found in Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP), Appraisal Institute of Canada.

Lansink's Ontario Municipal Board LC130023/24 comments April 2021

Shergar: Ontario Municipal Board LC130023/24 page 15:

[33] In his analysis of Mr. Lansink's chosen comparable properties, Mr. Bower provided his opinion that none of them were similar or competitive properties. He noted a number of ways in which the properties were not comparable, including physical characteristics (such as location, size, shape and accessibility), as well as legal and economic characteristics. He also indicated that, in the case of two of the properties, the sale date occurred after the date of sale of the subject property. This means that under the CUSPAP those sales should have been treated as confirmation of Mr. Lansink's conclusion as opposed to being analyzed prior to his conclusion, and the appraisal should have made this distinction clear pursuant to s. 17.16.1 of the CUSPAP.

The last sentence of [33] states:

"This means that under CUSPASP those sales should have been treated as confirmation of Mr. Lansink's conclusion as opposed to being analyzed prior to his conclusion, and the appraisal should have made this distinction clear pursuant to s.17.16.1 of the CUSPAP."

LC130023/24, J. E. Sniezek and M. Carter-Whitney were wrong:

There is no "s.17.16.1" in Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP) 2015.

CUSPAP, in effect on December 14, 2015, Lansink's Sherger Report Date:

7.6.2 *Retrospective Value Opinion [see 14.17, 14.28.2] refers to an effective date prior to the date of the report. The use of clear language and consistent terminology in a retrospective report (i.e. past tense throughout) is necessary for the reader not to be misled and to understand market conditions as of the retrospective effective date. **Data subsequent to the effective date may be considered as confirmation of trends evident at that date. It is up to the appraiser to determine an appropriate cut-off date. In the absence of such data, the effective date is the cut-off date.*** (bold by Lansink)

14.35.9 *Sales occurring after the effective date of valuation may be useful in the analysis but are subject to appropriate weight.*

It is reasonable to assume that J. E. Sniezek and M. Carter-Whitney concluded their "concern" based on incorrect facts:

[44] The Board is concerned that neither Mr. Lansink nor Ms. de Jong fulfilled their duty to provide the Board with opinion evidence that is fair, objective and non-partisan.

Lansink's treatment of a sale that occurred after the effective value date was pursuant to the rules of CUSPAP:

- a) 7.6.2 Data subsequent to the effective date may be considered as confirmation of trends evident at that date; and
- b) 14.35.9 Sales occurring after the effective date of valuation may be useful in the analysis but are subject to appropriate weight.

Clearly CUSPAP does NOT support the incorrect J. E. Sniezek and M. Carter-Whitney [33] statement.

On page 37 and 41 of his December 14, 2015 report, Lansink wrote in reference to SP4, which sold December 1997 / December 1999 for \$2.12 million and again on May 28, 2000 for \$3.775 million, effective value date was April 29, 1998:

“The property previously sold for a total sale price of \$2,120,000 or \$10.60 per sq. ft.: PIN 01053-0158, the west portion, was purchased December 1997 for \$1,320,000 on Deed R1410119, and PIN 01054-0120, the east portion, was purchased in December 1999 for \$800,000 on Deed. On Detroit River with a distant view of the Detroit Skyline. About 40-45% is waterlot in the Detroit River. West site sold Dec 1997, east site December 1999.”

Lansink's Dec 14, 2015 Report, the following facts are from pages 38-46:

PIN	Date Sold	Price	Land Sq. Ft.	\$/Sq. Ft.
7880 Riverside	Dec 17, 1967	\$1,320,000	146,960	\$8.98
7910 Riverside	Dec 07, 1999	\$800,000	52,980	\$15.10
Land Assembly 4.59 Acres		\$2,120,000	199,940	\$10.60
7880-7910 Riverside	Jan 15, 2001	\$3,775,000	199,940	\$18.88
775 Riverside	Apr 01, 1996	\$625,000	29,926	\$20.88
480 Riverside	Nov 03, 1998	\$3,475,000	148,104	\$23.46
480 Riverside*	Mar 23, 1999	\$4,900,000	148,105	\$33.08

Shergar Riverside Drive Consisted of 257,688 sq. ft.

[48] OMB	Value Date	Board Value	Land Sq. Ft.	\$/Sq. Ft.
	Apr 29, 1998	\$710,000	257,688	\$2.76

*Land 'Flipped' to Buyer, City of Windsor

On page 42 of his December 14, 2015 report, Lansink wrote in reference to each sold property:

“While 3 of the sold properties sold for an adjusted price of \$24.13, \$22.48 and \$23.46, only one sold for less than \$20.00, SP4 at \$18.38 per Sq. Ft. of land area. There will be a cost to demolish and remove the worn-out building situated on this site.”

Lansink’s Conclusion

The valuer for the City did not consider a single sold property on Riverside next to the Detroit River, the location of the expropriated lands. With very strong evidence that Riverside properties sold for amounts much greater than the J. E. Sniezek and M. Carter-Whitney Ontario Municipal Board conclusion of \$2.76/Sq. Ft., the Ontario Municipal Board compensation conclusion is questionable.

CUSPAP is clear. After the fact evidence may be used if it is consistent with the data as of the effective date. Lansink considered the sale of 7880-7910 Riverside prior to the effective date and after the effective date – same property -- no change to the property.

The Supreme Court of Canada in *Canada v. Tabco Timber Ltd.* [1971] S.C.R. 361 stated:

“The rule should allow the court to admit evidence of such sales as it finds, in place, in time and in circumstances to be logically probative of the fact to be found.”

In my experience, Tribunal hearings have biased lawyers and non-biased witnesses. In *Shergar v. Windsor*, Windsor had one of the most experienced expropriation lawyers in Canada. Windsor’s lawyer set out to complete his client’s goals with great success.

Lawyers are not equally competent, not all have Expropriation experience.

Lansink is respectful of Tribunal and Court decision makers, however Lansink does not believe political appointed decision makers are equally competent.

A court and tribunal are also expected to be “fair, objective and non-partisan”.