

EXPROPRIATION: Lansink Vacant vs Improved Land Sep 2024

Ben Lansink Case Study

Introduction

This paper investigates the approach to consider in order to value a portion of improved land expropriated from a larger improved land area. **LPAT** - <https://olt.gov.on.ca> - **Case LC160015** - decision May 22, 2018 will be referenced and the costs decision is dated Feb 6, 2019.

The Property

10 Bridge Street is located in Dorchester, Ontario and consists of a single dwelling on a 26,258 square foot land lot that was purchased on September 27, 2012, for \$159,000.

Land Use Controls on the Property – Zoning Symbols

By-Law 75-2006

EP - Environmental Protection

I-3 - Institutional

OR - Office Residential

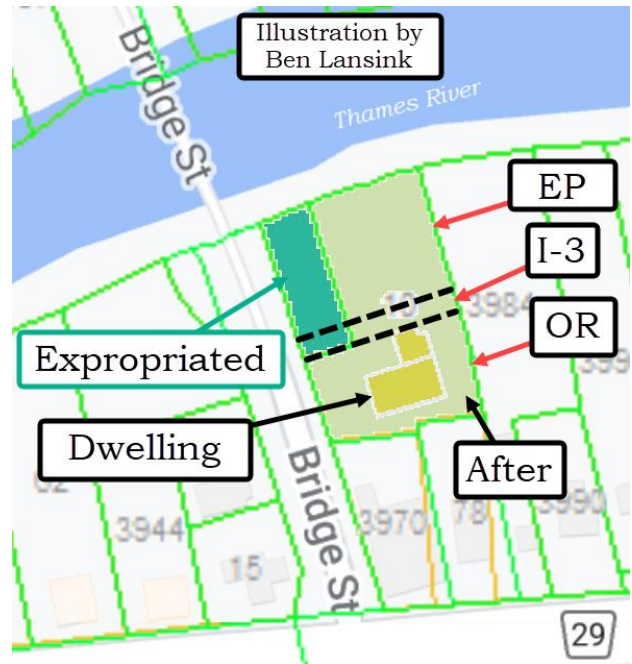
The EP and I-3 amenity space and related privacy land areas were lawn, garden, and parking area in use and a portion was traversed by the existing buried septic seeping tile system.

Expropriation

On January 28, 2014, the County of Middlesex expropriated 4,678 square feet or 17.6 percent of the 26,528 square foot land area from 10 Bridge Street. The 4,678 square feet were located within the zoning symbols EP and I-3.

Appraisals of the Expropriated Portion

The valuer for the County based market value as though the expropriated portion was vacant unimproved land isolated from the whole property. (The 5,000 sq. ft. was an error.)



	Time	Sq. Ft.	\$/Sq. Ft.	\$ Value
Estimated Value by Metrix	Before	26,528	\$0.00	\$0
	Expropriated	5,000	\$0.25	\$1,250
	After	21,528	\$0.00	\$0

Lansink valued the land recognizing that the EP and I-3 amenity space and the related privacy lands, lawn, garden, and parking areas as well as the portion traversed by the existing buried septic weeping tile system were integral parts of the property. The OR area was single dwelling in use and had future development potential as permitted by land use controls. The EP, I-3 and OR lands contributed equally to the improved site value.

Estimated Value by Ben Lansink	Time	Sq. Ft.	\$/Sq. Ft.	\$ Value
	Before	26,528	\$7.00	\$185,696
	Expropriated	4,678	\$7.00	\$32,746
	After	21,850	\$7.00	\$152,950

Vacant Undeveloped Unimproved Land vs Developed Improved Land

Municipalities enter into development agreements as a condition of land use approval. These agreements are used to ensure that conditions imposed by the municipality in granting the development are fulfilled. These agreements may include site plan agreements.

A Site Plan is a type of development control in addition to zoning that is used when vacant undeveloped land is to be developed. A Site Plan allows a municipality to control development details. Zoning is a method of regulating the use of vacant undeveloped land by detailing a specific range of permitted uses and functions.

Zoning by-laws regulate how land and buildings are used. Zoning regulations determine the location of buildings and structures, footprint lot coverage, building heights, driveways, parking, green open space areas such as lawns and gardens, patios, decks, storm water management, and buried service infrastructure. Once vacant undeveloped land has been developed, each land use area becomes an integral part of the whole developed improved land area.

When a Municipality is satisfied with a proposed development on vacant undeveloped land, it issues a Building Permit that authorizes development of the whole parcel. Once constructed the property is no longer vacant undeveloped land. The entire "As Approved" site becomes developed improved land pursuant to the issued Building Permit. Typically, all construction work is inspected by the Municipality to ensure building permit compliance.

When a portion of land is expropriated, it is an integral part of the whole property that includes building footprints, green space, gardens, lawns, pavement, driveways, etc., and is Building Permit "As Approved" Whole Developed Improved Land.

Conclusion

When a portion of an improved property is expropriated, the estimated open market value is based on the value of the whole improved property and not on vacant unimproved land sold on the open market.

The conclusion is supported by **LPAT** - <https://olt.gov.on.ca> - **Case LC160015** - decision May 22, 2018.

PORTIONS OF THE DECISIONS FROM LPAT CASE LC160015 FOLLOW:

[12] The appraisal (“Metrix Appraisal”) relied upon by the County was prepared by Metrix Southwest Inc. (“Metrix”) and the appraisals (“Lansink Appraisals”) relied upon by the Claimants were prepared by Ben Lansink, of Lansink Appraisals and Consulting, a division of Wellington Realty Group Inc. The valuations prepared by the respective appraisers varied dramatically.

[13] The Metrix Appraisal compared the Expropriated Parcel to much larger parcels of land, flood plains, or agricultural land. This appraisal considered an adjustment of \$0.25 per square foot to be reasonable for market value purposes and concluded that since the partial taking comprised approximately 4904 square feet, the appropriate market value to be paid was \$1,250.00.

[16] The County argues that because the Taking was developmentally constrained by the EP (Environmental Protection) and I-3 (site specific Institutional) zoning, conservation authority regulations and top of the bank setback requirements, I should reject the Lansink market value figure of \$32,746.00 which is based on \$7.00 per square foot of land taken. I disagree.

[17] It is true that if one looks at the zoning for the Expropriated Parcel in isolation, there are development impediments. However, the Taking formed part of a much larger lot located on the river. It formed part of a much larger area of amenity space. In view of its amenity space characteristics along the water, treating it as an independent parcel of land or a parcel which is to be developed is not, in my view, appropriate.

[18] Many parcels of land that abut water in Ontario, whether they abut rivers or lakes, are constrained, to a greater or lesser degree, by zoning by-laws and conservation authority regulations. And to the extent such parcels are elevated or, as is the case with the Expropriated Land, enjoy a top of bank feature, development constraints are often enhanced, as a result. Therefore, to emphasize and underscore the non-developable character of the Expropriated Parcel because of zoning and other regulatory limitations is, in my opinion, ill-advised.

[19] The real question, in my view, is to what extent has the expropriation reduced or diminished the amount of amenity space and related privacy enjoyed by the Spragg Lands. In this case, I believe that such a reduction or diminution has occurred and that the compensation payable should be greater than \$0.25 per square foot.

[20] I am satisfied that the amount attributed to the market value of the Taking by the Lansink Appraisals, namely, \$32,746.00 is reasonable and should be paid. This, in my view, is fair compensation for the loss of amenity space by the Claimants.

Analyses by Ben Lansink

In **Item [17]** of the LPAT Decision, the presiding member wrote: *“It is true if one looks at the zoning for the Expropriated Parcel in isolation, there are development impediments.”*

The 17.6 percent of land expropriated and abutting the EP and I-3 land had development obstacles and were not suitable for erecting buildings. However, the EP and I-3 land were an integral part of the total land area. Zoning by-law regulations state the maximum coverage for building footprint, parking, driveways, etc., as a percentage of the whole property and most by-

law regulations call for some eco-sensitive green area/open space as a minimum percentage of the whole, resulting in these areas having “*development impediments.*”

Lansink treated the expropriated 4,678 square feet as being an integral part of the whole 26,528 square feet of improved land and not as an isolated vacant unimproved portion. This was supported by the presiding member who accepted Lansink’s value of \$7.00 per square foot as the value for the whole parcel and also \$7.00 as the value per square foot of the expropriated portion.

In **Item [19]** of the LPAT Decision, the presiding member states: “*The real question, in my view, is to what extent has the expropriation reduced or diminished the amount of amenity space and related privacy enjoyed by the Spragg Lands. In this case, I believe that such a reduction or diminution has occurred and that the compensation payable should be greater than \$0.25 per square foot.*”

The LPAT decision confirmed that the loss of 4,678 square feet impacted the space and privacy the Spragg Family enjoyed and supported Lansink’s conclusion that the EP, I-3 and OR lands contributed equally to the whole improved site value.

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The expropriated land was *not* considered to be vacant undeveloped land. It was an integral part of the Whole Developed Improved Land.

Conclusions

A Whole Developed Improved Property wherefrom a non-building land area has been expropriated does not render the expropriated portion vacant undeveloped land.

Comparing open market sold vacant undeveloped lands that have not been developed to Building Permit Approved Whole Developed Improved Land would not be correct and will result in an unreasonable analysis that will materially alter value and compensation estimates.

To determine a Whole Developed Improved Property’s Value Per Square Foot, the open market sold price for the whole developed improved property is divided by the whole developed improved land area. For example, if the price was \$1,000,000 and the Whole Developed Land Area was 10,000 square feet, then...

$$\$1,000,000 / 10,000 = \$100.00 \text{ per Whole Developed Improved Square Foot.}$$

The square foot value of the whole developed improved site is then applied to the whole developed improved property and also to the expropriated portion.

Land expropriated from a developed improved land area should be valued as an essential part of the whole developed improved land area. Valuing an expropriated portion of the whole developed improved land utilizing open market sold *vacant undeveloped land* results in a hypothetical valuation.