

Interim Decision of the Inquiry Officer, Sharon Roberts, June 21, 2021

IN THE MATTER OF the *Expropriation Act*, being Chapter E-13 of the Revised Statutes of Alberta, 2000, as amended (the "*Expropriation Act*");

AND IN THE MATTER OF the intended expropriation by the City of Edmonton of certain interests of lands registered under Certificate of Title Number 122 157 606:

DESCRIPTIVE PLAN 1222066
BLOCK3
LOT 1
EXCEPT THEREOUT ALL MINES AND MINERALS
AREA: 2.78 HECTARES (6.78 ACRES) MORE OR LESS

Municipally located at 14950 Yellowhead Trail NW, Edmonton, Alberta (YHT-016)

AND IN THE MATTER OF the Notice of Objection to the said intended expropriation filed by Yellowhead Motor Inn by its solicitor Paul Barrette of Prowse Chowne LLP

AND IN THE MATTER OF the Notice of Objection to the said intended expropriation filed by Husky Oil Operations Limited by its solicitor Shauna N. Finlay of Reynolds Mirth Richards & Farmer LLP

AND IN THE MATTER OF the Notice of Objection to the said intended expropriation filed by DS Classic Grill Ltd. by its solicitor Shauna N. Finlay of Reynolds Mirth Richards & Farmer LLP

AND IN THE MATTER OF the Notice of Objection to the said intended expropriation filed by PetroJaffer 116 Ltd. by its solicitor Paul Barrette of Prowse Chowne LLP

AND IN THE MATTER OF an Inquiry in respect thereof pursuant to the provisions of the said Act by Sharon Roberts, as Inquiry Officer appointed to conduct the said Inquiry by the Minister of Justice and Attorney General for the Province of Alberta, as represented by Lorne Merryweather, Q.C, Barrister and Solicitor

INTERIM DECISION OF THE INQUIRY OFFICER
SHARON ROBERTS
June 21, 2021

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I. STATUS OF INQUIRY PROCEEDINGS

1. The Inquiry hearing in this matter commenced on June 16, 2021 and is ongoing.
2. This Inquiry is proceeding in a hybrid hearing format. Counsel for all parties, and the Inquiry Officer, are attending in person at the Edmonton Tower located at 10111 104 Street in Edmonton, Alberta and following the Chief Medical Officer of Health guidelines in the context of the ongoing global COVID-19 pandemic. Lay and expert witnesses have attended by videoconference (Zoom, hosted by the attending Court Reporter).

II. ISSUE FOR INTERIM DETERMINATION

3. On June 18, 2021, in advance of the objecting parties calling any of their expert witnesses, counsel for the expropriating authority, The City of Edmonton ("COE"), objected to certain of the objecting landowner's and tenants' expert opinion evidence being admitted.

III. SUMMARY OF ARGUMENTS

4. The bases of COE's objections are that the impugned expert evidence is not relevant, goes to issues beyond the scope of my jurisdiction as Inquiry Officer, and will prejudice the proceedings if admitted. Specifically, the COE argued that the impugned expert evidence goes to issues of compensation and, as such, are outside my jurisdiction.
5. Counsel for the COE correctly noted that compensation for expropriation decisions, *once made*, must be determined elsewhere. Notably, the "where" will, on a go forward basis, be the Land and Property Rights Tribunal, having jurisdiction as a successor by legislative amalgamation (for lack of a better term) to the Alberta Land Compensation Board for compensation claims under the *Expropriation Act* going forward.
6. Counsel for the land owners and counsel for the tenants, as Objectors, argued, in more precise terms that, for sake of brevity, I summarize in broad strokes as follows.
 - a. The question of how much land the expropriating authority ought to take goes to core issues before me on this Inquiry, namely, whether the intended taking is fair, and whether it is sound.
 - b. The COE has cast too narrowly the threshold question of relevance.
 - c. If relevant, evidence ought to be admitted and questions of weight are within my jurisdiction to determine in my final Inquiry Report to City Council.

IV. DECISION

7. I accept the COE's argument that I have no jurisdiction as Inquiry Officer under the *Expropriation Act* to determine matters of compensation. However, this does not conclude the analysis of

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relevance where issues of how much land the expropriating authority ought to take (or not take) are raised on the basis of whether an intended taking is fair, sound and reasonably necessary.

8. I further agree with the COE's counsel that I must find the intended taking at issue in this Inquiry to be not only reasonably necessary, which has been conceded by each of the objecting owners and tenants (collectively, the "Objectors"), but also that the intended taking be both fair *and* sound.
9. Further, I appreciate and agree with the concession by counsel for the COE that I am not bound by the rules of evidence and am able to make my own determinations of what is admissible into evidence before me, just as I have jurisdiction to admit evidence and give it greater or less weight depending on the circumstances.
10. I do not believe the parties argued this before me, but I take notice of the fact that even in venues where the rules of evidence do apply, relevance is, in both practical and relative terms, a fairly low bar. In public interest legislation – which, arguably, the *Expropriation Act* is, by its nature – the process engaged to determine private ownership rights and public obligations must not only be fair, but be seen to be so. This principle guides my analysis of the issues before me on this objection.
11. I am persuaded by the Objectors' and COE's arguments, respectively, in the following respects.
 - a. First, if the impugned expert evidence is relevant and may assist me in determining the issues in dispute, its admission cannot be substantively prejudicial to my decision making process.
 - b. Second, I can decide weight upon having heard all of the evidence (credit for this argument is given to the COE, who advanced this as alternate relief).
 - c. Third, the size of the parcel of land to be taken, whether it is appropriate to consider the purpose and objective for which the intended taking is proposed (agreed by all counsel as being the "Project", namely the Yellowhead Trial Freeway Conversion Program or Project and all work and matters ancillary thereto), and how a partial taking relative to a full taking factor into those purposes and objectives, are all at play in my impending determination of whether the intended taking is fair, sound and reasonably necessary.
12. Further to the arguments advanced by counsel for the parties, I note that compensation decisions are the purview of another decision maker only *after* an intended taking is approved. That has not yet occurred, and the issue of whether what is being proposed by the COE on this intended taking is fair and sound is at issue before me, and within my jurisdiction to determine.
13. By reason of the foregoing, I admit the objected-to expert evidence tendered by the Objectors. I expressly reserve my right to make determinations of weight in my final Inquiry Report.

Dated at the City of Edmonton, in the Province of Alberta, this 21st day of June, 2021



Sharon Roberts
Inquiry Officer

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