

Injurious Affection Where No Lands Taken

Practical Lessons from Ontario

**BCEA 2012 Fall Conference
November 3, 2012**

Preliminary Issues

- Nature of the project, construction
- Timelines
- Potential impacts of construction
- Identify areas / properties that will be impacted
- Identify the nature of properties, businesses that will be impacted

Nature of Project

- Highway widening
 - Interchange construction
 - Bus Rapid Transit
 - Light Rail Transit
 - Subways
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Timelines

- Design – 30% 50% 100% - obviously, certainty makes for better planning
- Construction – starts, staging, phases, etc.
- Funding - shovel in ground
- Key: understand what other construction is going on in the same vicinity

Potential Impacts of Construction

- Anticipate
- Increased dust/debris, noise
- Increased vibration, EMF – baseline studies
- Loss of access
- Restricted use of properties (i.e. loss of parking)

Business Loss Protocol

- Roundtable meeting
- Municipal staff, project staff, negotiators, business loss valuers, lawyers
- Purpose is to outline a strategy to respond to and process to claims
- Identify properties for which early settlements will be considered (i.e. restricted use, loss for access to a business)
- Baseline financial information key

Business Loss Protocol cont'd...

- Delineate the roles of team members
- A clear protocol avoids redundancy confusion
- Assign specific areas and properties to negotiators, business loss valuers
- Create and maintain detailed records system - construction notices, complaints, photos, claims, responses, etc. - used at compensation hearings

Community Liaison Officer

- First line of defence, face of the project
- Communication line open – sometimes people just need to vent
- Responsible for project brochures, regular newsletters and construction notices
- Maintain site office, construction hotline

Community Liaison Officer cont'd...

- Mitigate construction issues as they arise and to the extent possible (i.e. blocked access, visibility issues, signage issues)
- Record and respond to incoming concerns from public
- Confirm construction complaints, photos
- If claims for compensation made, forward to municipal staff and compensation lawyers

Business Loss Valuator

- Confirm assignment to certain properties, businesses
- On-site meetings with impacted owners, claimant
- Preliminary investigation
- Request financial information to support allegations, claims (i.e. financial statements, tax returns, leases, permission to speak with accountant, etc.)
- Prepare a business loss memo / report to compensation lawyer

Dealing with Claimants

Onus is on the claimant

1. Need to establish losses
2. Need to establish that losses were caused by the construction for project
3. Need to establish that construction was unreasonable

Settlement?

Consider settlement if:

- Business / property was identified as candidate for settlement
- Business loss memo supports the losses claimed
- Community Liaison Office confirms unreasonable impacts by construction

Settlements

- Circulate terms for comments
- Settlement Agreement and Release
- Executed by the claimant first
- Executed agreement subject to final approval by Council, or delegate
- Pay settlement funds

Claims

- Alleged losses cannot be confirmed by business loss valuator
- Evidence suggests that construction was reasonable
(i.e. secondary access available, construction during the night, concerns mitigated by CIL)
- Advise Claimant that settlement not an option, and require that it advance claim in the normal course

Claims

- Section 22 Notice with particulars
- Notice of Negotiation or Notice of Arbitration / Statement of Claim
- Claimants should wait until construction at issue is completed before advancing formal claim

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