

Issues & Problems

In Relocating Operating Businesses

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Issues & Problems in Relocating Operating Businesses

Introduction

The acquisition of property and property interests for public purposes often involves more than the land and buildings. Generally, such lands are being used in some manner and in the commercial and industrial context these business uses must also be considered in the acquisition and compensation process.

This presentation is intended to overview the statutory basis or backdrop for relocation of an operating business resulting from a compulsory taking. There are numerous elements that come into play and require appropriate review, analysis or scrutiny relative to statutory requirements in the pursuit of a successful relocation. A review of several real life case examples will be used to more directly illustrate some of the issues, challenges and possible solutions to the business relocation problem.

It is the intent of this review and discussion to highlight the key issues and elements that can be encountered within a business relocation process as well as illustrate some practical actions and responses to actual situations. The latter become useful points of discussion as to Authority and/or Owner duty or desirable courses of action to attain the most satisfactory result, a successful relocation.

Part 6 of B.C. Expropriation Act – Basis for Compensation

This is the operative part of the Expropriation Act for purposes of this dissertation. Not all sections apply to the business relocation/compensation issues. There are some key clauses to consider:

Section 30 (1) Every owner of land (or interest in land) is entitled to compensation.

What is an OWNER?

- the definition of “Owner” under the Expropriation Act can be different than other legal definitions.
- making a clear determination of who the “Owners” are (under a taking) is both very necessary and fundamental to subsequent categorization and quantification of compensation.

Section 31 (1) The court must awardplus reasonable damages for disturbance

(3) If there is more than one interest in the land expropriated, the value of each interest must, if practical, be established separately.

Sections 32 & 33 Have applicability to the extent that the business relocation concept and process has market value of the business as a pivotal element of the relocation considerations. The definition and limitations of market value consideration apply to the business valuation process.

Section 34

This is probably the most substantive section of the Act pertaining to business relocation. The words provide a lot of scope (and room for dispute) as to what is "reasonable costs", distinction between financial losses and "non-financial losses" and what does "directly attributable" mean? (in whose eyes?)

- (2) Relates to timing and reimbursement of costs and expenses and can cause a lot of difficulty.
- (3) Creates a limitation for payment of business losses to a period after expropriation and after a period of operation at new location. At times, this is not practical. Claimant and authority may agree to bypass limitation of this section

Section 36

This section deals with leases which may be de facto existing leases, registered or unregistered or potentially "implied leases". Leases may be with a third party landlord or where owner of land operates business as proprietor or separate legal entity.

Section 39

Deals with disturbance damages for lessee with specific regard to terms of the lease if one exists. Note the generality of the words "nature of the business" under (d) and the consideration of amortization period for the leasehold improvements under (e).

Section 40

This section is referenced as "Partial Takings", but has applicability for business relocation in a number of areas.

- (1)(ii) Reasonable personal and business losses.
- (2) A potential limitation on timing for payment of compensation.
- (3) Application of "Larger Parcel Theory".

Section 43

May have applicability if the parties agree that it would be advantageous.

Section 45

This section focuses primarily upon legal and appraisal costs, however, in a relocation scenario there will likely be many other costs such as accounting and business valuation fees, engineering and code consultants' fees, realty finder fees.

Subsection (7)(a) covers this by mere reference to "and other costs".

The Negotiations Task/Challenge

The operating business that is impacted by a taking is rarely, if ever, in a state or structure that readily aligns with valuation principles and process or the compensation principles of the Act. A business has typically evolved and adapted to its circumstances of the market, economics, management skills, personality of the owners/principals, etc. the business is not being carried on in a fashion that anticipates a taking. It is necessary for the Taking Authority to recognize and understand the challenges that a taking thrusts upon the business owner.

For there to be a potential for a successful relocation of a business, there is a need for relatively quick development of understanding and trust:

- The Land Agent needs to quickly learn as much about the business as possible, in order to properly and adequately understand the owner needs and requests.
- The agent needs to ensure that the owner adequately understands the legislative/compensation principles for the relocation process.
- Full and complete disclosure of the structure and ownership arrangements in the business. Who owns the land? Who owns the business? Are there silent partners? Bank loan and personal loans, if any?
- Review discussion and understanding of lease arrangements if there is a de facto lease or the implied lease arrangements as this will lead to clearer and more proper valuation of land and business interest.
- There will likely be a need to have the business financials reviewed and restated on a normalized basis to allow both the Authority and the owner to better assess the potential for a proper and successful relocation.

Why Relocate?

The desire and inclination to relocate when faced with a taking is probably natural and obvious as an initial response. Prior to the taking, there was a business enterprise that supported a number of livelihoods and potentially provided some further benefits and profitability. The desire to maintain that and potentially enhance the future potential is strong. It needs to be recognized that a relocation resulting from a taking may not result in a proper or satisfactory maintenance of economics and potential.

There are several key factors at play in a relocation process:

- The Authority and business owners are NOT partners in the relocation process. They certainly have to work very closely together, but the owner must make the final decisions on his own.
- The Act deals only with monetary compensation at the end of the day. There is not legislative mandate for relocation such as in the U.S. (Uniform Relocation Act).
- There is a need to act (make commitments and enter into contracts) at an early point in the process which may not align with Authority's ability to advance funds nor owners cash flow or borrowing capability.
- Owner has a duty to mitigate and a decision to not relocate is not unilaterally the owners. The Act states it is determinable by the court in the end.
- The concept and consideration of "betterment" is constantly arising in the relocation process and must be dealt with.
- There is normally a very strong "political" (on a number of levels) desire to have successful relocation within the same jurisdiction.
- Relocation usually requires substantial timeframes to structure, analyze, quantify and implement which tend to run counter to the limited timelines available under Design/Build projects.
- Difficult to overcome tendency by Claimant to look for or expect a "blank cheque" arrangement due to the cause of the relocation being a compulsory taking.
- The balance of economic factors will likely change in the relocation alternate. The combination of added risks (in pursuit of potential) needs to be identified and weighed.

CASE #1 – Collision Repair Shop

Background Data:

This business was comprised of a large scale collision repair business located on three separate legal lots totaling 54,690 square feet, siting 5 separate buildings with a combined area of 24,280 square feet.

The business was in second generation hands with more than 25 years of operating history. The parent was no longer actively involved in the business, but there were financial ties and support to the business. The improvements were of varying age ranging from 18 years to over 30 years old. There were 29 people employed by the business.

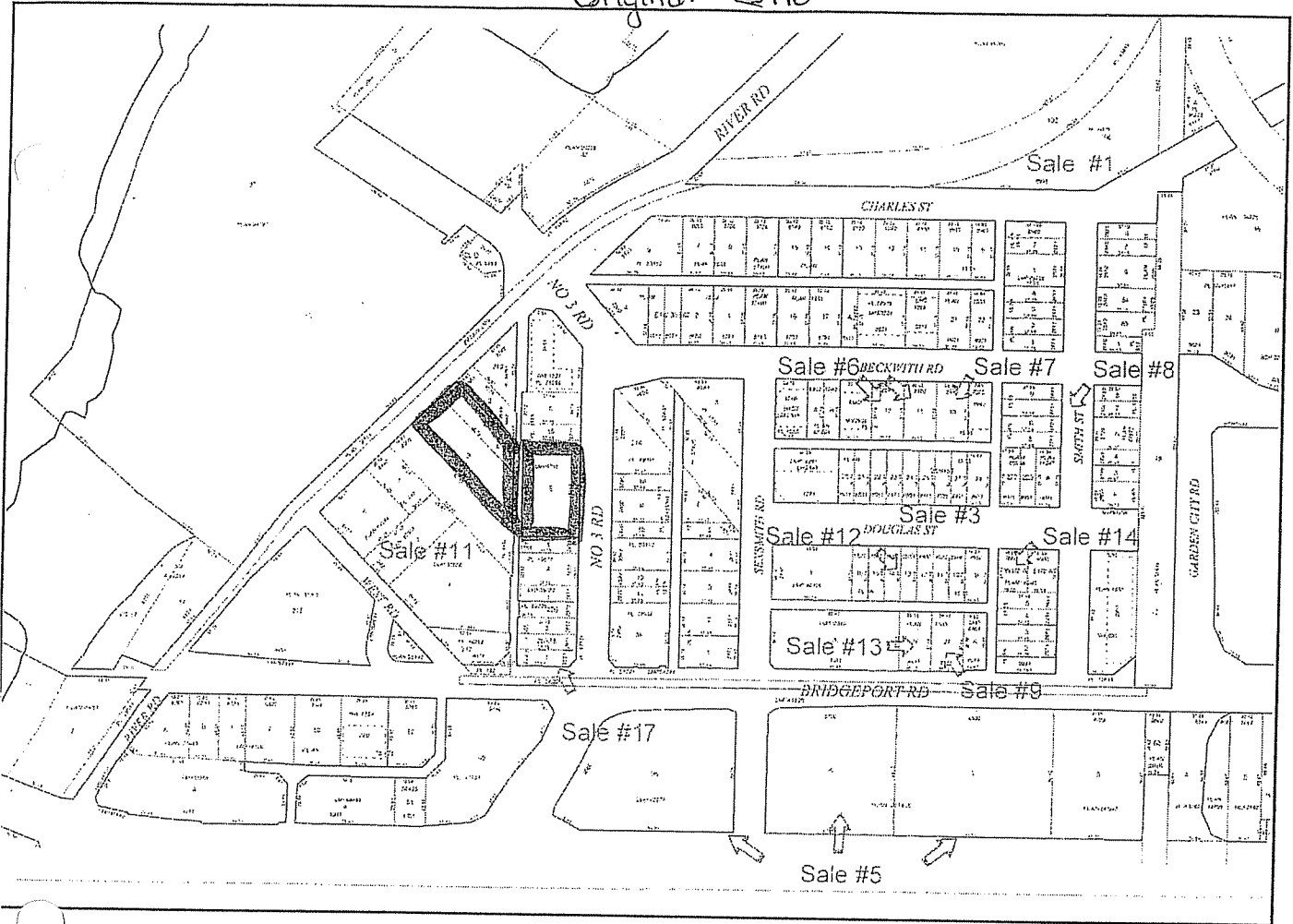
Relocation Issues:

- Taking required only one of the legal lots so technically only a partial taking was required, however this partial taking would cripple the business operation.
- Considered as total take to provide more money to owner to purchase replacement property.
- “Hot market” created problems of limited supply and little time and flexibility to react.
- Operating margins of industry created limitations on carrying capacity of business to underwrite significant additional financing.
- Business structure and economics based on major amount of work with several local new car dealers as well as good relationship with area ICBC centre.
- Narrow profit margins necessitate high level of active management leaving limited time to deal with relocation considerations.
- Code changes for paint booths create extra cost impact.
- Code issues on land use such as parking ratios and setbacks create added costs beyond M.V.

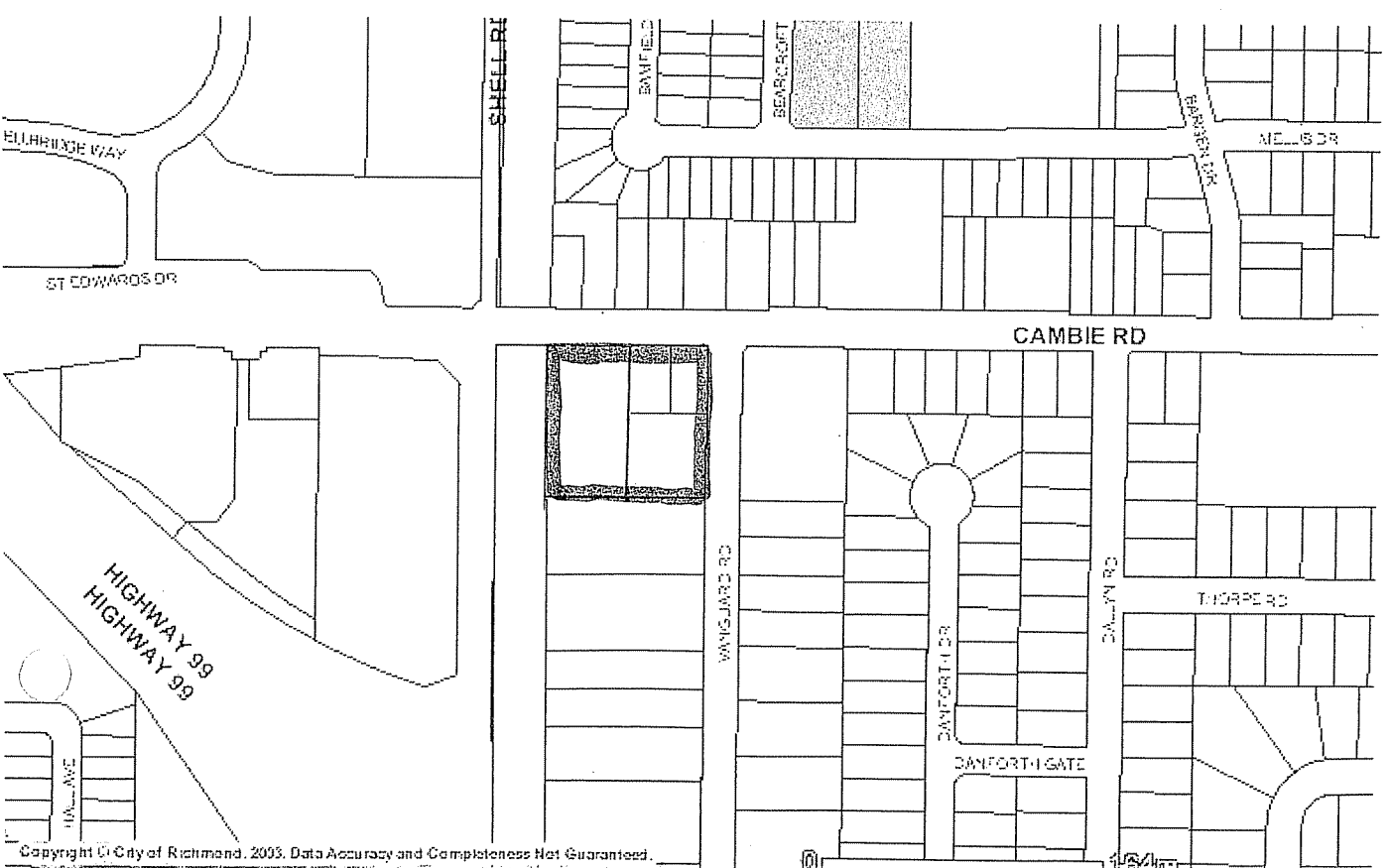
Final Result:

The business operation did not relocate to the purchased “replacement property”, but did relocate into a joint venture arrangement in the same community. The “replacement property” was sold at a profit by claimant. Consensual settlement.

Original Site



"Relocation Site"



CASE #2 – Heavy Duty Machine Shop

Background Data:

This operating business was a heavy duty, specialty machine shop that had evolved over 30 years of operation to its present operation over 9 legal lots, one of which was leased from the City. The titled land contained 71,580 square feet with about 28,835 square feet of multi-height industrial buildings, at one end of the site. The operation had 45 long term employees, many who were highly skilled machinists. The plant was a union operation with a collective agreement nearing renewal.

The business was focused on the pulp and paper industry as it serviced many of their large and critical components. Many of the workers reportedly lived in the Richmond area, in proximity to the shop. This was a family business that the founder and patriarch was still involved with and three adult children were actively involved in the management and operations.

The shop contained several large tonnage presses, 13 overhead cranes and a multitude of other machine shop equipment. Due to the industry it served the shop would need to operate 24/7 at times, to minimize customer downtime.

The operational economics were very good indicating a bottom line return of over 18% on gross revenues of over \$7 Mil per annum.

Relocation Issues:

- Specialty equipment and uses mitigated against finding or adapting existing replacement facilities.
- The need for new construction creates cost pressures.
- Specialty equipment necessitates staged relocation concept to minimize business disruption.
- Nature of business has high power requirements necessitating advance order of high capacity transformer.
- Fast moving realty market limited options and flexibility.
- Specialty nature of business created concern as to “fit for purpose” capability of replacement facility.
- Differing needs and wants of the “family group” created blockage to firm decisions.

Final Result:

Chose not to relocate, change taking to partial take and liquidated business.

CASE #3 – Manufacturing & Distribution Facility

Background Data:

This manufacturing and distribution facility operated from leased premises so the property valuation and compensation was with a separate party. This business was a long established operation that held a ten year lease expiring at the end of 2012. In total, the business operation leased 54, 558 square feet of space which was used for office, processing and storage.

Overall, there were over 50 staff employed in the various office, production and warehousing functions. The operation involved extra shift work for certain production runs such that there was a constant level of high activity. The nature of the operation entailed substantial trade fixturing in the form of automated mixing and bottling lines as well as bulk handling of various chemicals, in large tanks.

Relocation Issues:

- Large scale integrated operation evolved in this location through expansion over time and “hot market” created limited replacement supply of space.
- Specialized nature of fixed equipment required consideration on replacement cost basis.
- Code changes created implications for reuse of industrial shelving and large tankage.
- 13 storage tanks of sizes varying from 10,000 liters to 50,000 liters needed to be sourced or fabricated creating both a timing and cost issue.
- Increases in market rents over contract rent created substantial gap such that Profit Rent estimated to over \$1.1 Mil.

Final Result:

Tenant relocated successfully based on consensual agreement. Due to tight market, ended up committing to a build-to-suit solution.

Disturbance damages generally

- 34 (1) An owner whose land is expropriated is entitled to disturbance damages consisting of the following:
- (a) reasonable costs, expenses and financial losses that are directly attributable to the disturbance caused to the owner by the expropriation;
 - (b) reasonable costs of relocating on other land, including reasonable moving, legal and survey costs that are necessarily incurred in acquiring a similar interest or estate in the other land.
- (2) If a cost, expense or loss is claimed as a disturbance damage and that cost, expense or loss has not yet been incurred, either the claimant or the expropriating authority may, with the consent of the court, elect to have the cost, expense or loss determined at the time, not more than 6 months after the date of expropriation, that the cost, expense or loss is incurred.
- (3) If an owner whose land is expropriated carried on a business on that land at the date of expropriation and, after the date of expropriation, relocates the business to and operates it from other land, reasonable business losses directly attributable to the expropriation must not, unless that person and the expropriating authority otherwise agree, be determined until the earlier of
- (a) 6 months after the owner has operated the business from the other land, and
 - (b) one year after the date of the expropriation.
- (4) If the court determines that it is not feasible for an owner to relocate his or her business, there may be included in the compensation that is otherwise payable, an additional amount not exceeding the value of the goodwill of the business.