

TAKE TOO LITTLE TAKE TOO MUCH

Damned if you do, damned if you don't (and you may be sued!)

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What is the taking power?

• The key limiting word is... **PURPOSE**

- * The power can only be used for the **PURPOSE** of the authority's business or undertaking
- * Does this mean ONLY what is **REQUIRED** for the **PURPOSE**?
- * **REQUIRED** for the highway?
- * **REQUIRED** for an elevated guide-rail?

- * Is there any power to take more than what is required?
 - * Fee simple when a statutory right of way will suffice?
 - * Full take when a partial will suffice?
 - * Does the purpose include permanent take when the area is only **REQUIRED** for construction?

Statutory Power

A Few Examples

TRANSIT

- * 6(2) Without limiting subsection (1) and in order to carry out its **purpose**, the authority
 - * (a) subject to the *Expropriation Act*, may expropriate land within the meaning of that Act from a person or municipality,

HIGHWAYS

- * 10 The minister may expropriate land for any of the **purposes** in section 8 (2) (a) or (c).
- * 8(2)(a) acquire, hold, construct, use, operate, upgrade, alter, expand, extend, maintain, repair, rehabilitate or protect any improvement or other work of public utility, including, without limitation, improvements or works referred to in paragraphs (a) to (d) of the definition of "provincial public undertaking" in section 1,
 - * (c) protect any animal, bird, fish or plant species or habitat, or the environment, from the effects of a provincial public undertaking, or

MUNICIPAL

- * 31 (1) For the **purpose** of exercising or performing its powers, duties and functions, a municipality may expropriate real property or works, or an interest in them, in accordance with the *Expropriation Act*.

Could you justify a full taking for this road widening?



Can the appraiser's economic analysis be considered in determining what is REQUIRED?

The economic analysis:

- * Assume a 1 hectare parcel valued at \$1 million;
- * Assume the “works” occupy 40% of the area;
- * Assume in a partial taking \$400,000 in injurious affection;
- * BUT → the residual parcel after project completion is 60% of the original land area

Full Take – Partial Take The Comparison

	Full Take	Partial Take
Land Value	\$1,000,000	\$400,000
Injurious Affection	\$0	\$400,000
Acquisition Cost	\$1,000,000	\$800,000
“Value” left to owner	\$0	\$200,000
Residual Value to Authority	\$600,000	\$0
TOTAL COST TO AUTHORITY	\$400,000	\$800,000

What if the project confers a specific benefit on the property?

- * After construction the excess land may be worth substantially more. What would be the value of the retail areas outside these transit stations? (After a rezone?)

	Full Take	Partial Take
Land Value	\$1,000,000	\$400,000
Injurious Affection	\$0	\$400,000
Acquisition Cost	\$1,000,000	\$800,000
“Value” left to owner	\$0	\$200,000
Residual Value to Authority	\$1,000,000	\$0
TOTAL COST TO AUTHORITY	“FREE”	\$800,000



What if an Owner prefers a full take?



Partial Taking Case Study



- * Road extension through a residential development parcel
- * Partial taking, Cut-off portion, Significant injurious affection

Partial Taking Case Study

Parent Property:

1 acre residential site with older single family dwelling - subdividable

Taking:

40% of site area creating severance and leaving inferior site for subdivision

Highest and Best Use – Before:

For subdivision to 5 lots retaining house on one lot

Highest and Best Use – After:

For subdivision to 3 inferior lots (with difficulty) retaining residence impacted by the taking

Value Before:		Value After:	
Land Value – 5 raw lots @ \$175,000	\$875,000	Land Value – 3 raw lots @ \$150,000	\$450,000
Residence - Say	\$150,000	Residence - \$150,000 – 2/3 injurious affection	\$50,000
Total Before Value	\$1,025,000	Total After Value	\$500,000



REVISIONS				DESIGNED
				DRAWN
				CHECKED
				DATE
				B.M.
				ELEV.
				SCALE
No.	DESCRIPTION	DATE	SIGN.	INIT.

Economic Analysis

Partial Taking

Before Value	\$1,025,000
After Value	<u>(\$500,000)</u>
	\$525,000
Plus Damages + disturbance (restoring access, etc.)	<u>\$175,000</u>
Net Total Cost	\$700,000

Total Taking

Before Value	\$1,025,000
Less: Sale of Subdividable Remainder	<u>(\$450,000)</u>
Less: Sale of Severed Remainder	<u>(\$100,000)</u>
Net Total Cost	\$475,000

THE CONCLUSION: The **total taking** makes economic sense for the Expropriating Authority

Other Considerations

- * Divesting – *Expropriation Act, Sec. 21*. Is there a requirement to return when “the land is no longer required”?
- * Inquiry Procedure – *Expropriation Act Sec. 10, 14*. Does the additional take allow an owner to argue it is not for a “linear development”?
- * Benefit – *Expropriation Act Sec. 33*. “increase or decrease in the value of the land resulting from the development or prospect of the development”



QUESTIONS ?