BRITISH COLUMBIA EXPROPRIATION ASSOCIATION

FALL SEMINAR - 2003

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415528 BC Ltd. v. GVS&D - ECB
Dated: December 19, 2002

1) This is one of those situations where the "interest" of the Respondent was noted on the Miscellaneous Notes in the Land Title Office, but was not shown on the title and as a result did not convey any legal interest in the lands against the interests of a third party purchaser. Presumably this situation arose by the depositing of the plan showing the sewage works without their being tied to a statutory right of way granted over the subject property.

2) The existence of the sewer lines on the subject property, from the point of view of the Claimant, interfered with efficient development of the property, and created pre-taking delays in the subdivision and development process. With respect to the pre-taking delay issues the Claimant relied on Dell Holdings, and as well on the Sequoia Springs decision of the ECB with respect to the claim for disturbance damages incurred prior to the regularization of the Respondent's title to the sewage works by the registration of the statutory rights of way as an adjunct to a Section 3 Agreement entered into between the parties.

3) The Board found that a two month pre-taking delay in the completion of the subdivision and development was caused by the Respondent's activities.

4) Post-taking delay, attributable to the Respondent's actions, was also two months. This portion of the claim was asserted as a business loss, whereas the pre-taking delays were dealt with as part of the value of the interest in land acquired.

5) The Board awarded $20,000.00 for "extra administration and management costs". The factual circumstances, including an invoice rendered by a related company differentiated this claim from an executive time claim of the sort which the Board has in most cases held not to be compensable.

6) The Board found that a further lot could have been developed on the subject property had the sewer works not been present. The reduction in profit earned by the Claimant as a result of the impact of the project on the developablility of the property was treated as a business loss, an element of disturbance damage, as opposed to a component of the value of the interest in land taken.

Delta v. Jamaica Developments Ltd. - ECB
Dated: November 25, 2002
The District of North Vancouver v. 2725312 Canada Inc. - ECB
Dated: August 6, 2003

1) The District of North Vancouver case (the authority is named first in the case name as the proceedings resulted from an application brought by it by Notice of Motion claiming an order that the request for an inquiry filed by the Respondent landowner be struck out) outlines the statutory framework relevant to inquiry issues, and in doing so sets out fairly clearly why applications for inquiry are, in general, a waste of time and money.

2) The Delta case deals with the "usual suspect" issue raised in opposition to an application for the appointment of an inquiry officer, and that is that the project giving rise to the expropriation is a linear development, which is an exclusion to the right of an owner to apply for an inquiry in the *Expropriation Act*. In North Vancouver v. 2725312 the project was pretty clearly not a linear development – the new Lynn Valley Library and Town Center.

Kwun Construction Ltd. v. City of Richmond - ECB
Dated: June 16, 2003

1) This case involves the total taking of an improved parcel with development potential. The claim was for some $351,000.00 in excess of the amount of the advance payment.

2) One of the issues before the Board was whether or not three properties purchased, ostensibly as replacements for the land acquired, were in fact replacement properties. The total purchase cost of the first two replacement properties was almost identical to the market value of the subject property as determined by the Board. The third replacement property had a purchase value of $3,275,000.00. The Board held the third property not to be a replacement property for the one taken.

3) In this case as well a related corporation (related to the Claimant) provided management services to the Claimant company. The extraordinary management expenses were in fact ordered compensated by the Board, with the exclusion of those incurred with respect to replacement property number three.

4) The total award was 106.4% of the advance payment but the Board exercised its discretion, finding it reasonable for the Claimant to proceed to hearing, and awarded reimbursement of costs at Scale 2, but reducing reimbursement of appraisal costs to 75% of them, based on criticisms by the Board of the approach taken by the Claimant's appraiser.

Chivers v. Min. of T. - ECB
Dated: August 12, 2003

1) This is a partial taking case, the acquisition being from an agricultural property north of Kamloops.

2) This is an interesting case in terms of the issues given rise to by a partial taking impacting an agricultural property. In this case the 208 acre parcel was originally bisected by the Yellowhead Highway, and the subject takings were for the purpose of widening the original highway to add passing lanes. The case also raises interesting issues in terms of the application of Section 54 of the *Highway Act*, requiring a permit for access to a controlled access highway.

3) Comments are made with respect to the prospect of subdivision, and the contingencies in the face of successful completion of a development, including ALR issues, and approving officer issues.

4) The value of the land taken was agreed between the parties.

5) Injurious affection remained an issue, as well as disturbance damages including business losses. The Board found no injurious affection (injurious affection having been claimed in the amount of $250,000.00) and reduced disturbance damages from the sum of $91,630.00 claimed to $6,000.00 for the replacement of some fencing. An earlier claim for loss of $140,000.00 as the royalty value of gravel that was taken by the Respondent and used in the project was dismissed by the Chair as a result of an interlocutory application the decision for which is dated December 28, 2001.

6) Costs were awarded to the Claimants, at Scale 2, on the basis of the discretion of the Board. It appears on my reading that the Board inappropriately weighed the amount of the ultimate total awards, $6,000.00, against the advance payment made although the advance payment appeared to reflect settled issues which were not claimed at the hearing. The Board went on to make specific comments about the appropriateness of a business loss report in the circumstances of this case, as "guidance" for the officer of the Board that may preside over a costs hearing as to reasonableness.

Rock Resources v. B.C. – B.C. Court of Appeal
Dated: June 3, 2003

1) This is a case which deals with all of the previous authorities relating to the acquisition of land by an authority, when there is a pre-existing statutory interest for exploitation of a resource existing on or with respect to that land.

2) With respect to mineral interests the previous law has been clearly established to say that a mineral claim as opposed to a mining lease, is not an interest in land and as such the acquisition of property subject to a mineral claim cannot give rise to a right to compensation on the part of the claimholder.

3) This is a case well worth reading by anybody consulted by a client whose mineral interests or other resource interests may be affected by a taking or legislative change restricting the use of that interest.

4) The Court of Appeal reviewed Cream Silver #1 and held it to be correct, on the narrow ground that the legislature had specifically determined a mineral claim to be personalty, and as such it could not be a profit á prendre and accordingly an interest in land.

5) The Court held the *Park Amendment Act* (1995) which prevented the government from that time forward being able to issue a park use permit for mining purposes, as the statute authorizing the deprivation of mining rights. The Court then relied on the presumption that compensation is intended and there is a deprivation of rights (a taking) in the *Park Amendment Act* (1995).

6) The decision, supported by four judges on the five judge panel (Madame Justice Huddart essentially on the basis of the presumption in favour of compensation relied upon by the majority) resolved what many view as an artificial distinction between a mineral claim and a mineral lease resulting from the wording of Section 21 of the *Mineral Act*, 1977, which deemed a mineral claim to be a chattel interest.

7) The case turns to a great extent on a very complex, and not smoothly interrelating, set of statutory provisions enacted to attempt to deal with the loss of mining rights in the face of new and expanded park designations. To the extent that the legislature may be uncomfortable with the conclusion it remains open to it, and advisable in my view, to properly pull together the patchwork amendments into a cohesive acquisition and compensation scheme, whether mineral claims or leases are in issue.

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