

Caselaw Update 2022



Salim M. Hirji
October 21, 2022

Springman v Surrey (City), 2021 BCSC 1804

(aka The One with the Car Dealership)

▶ Parties:

- ▶ The Springmans had a car dealership on the Langley Bypass in Surrey. Part of their property was expropriated in 2012 by the City of Surrey.

▶ Issues:

- ▶ Market Value
- ▶ Injurious Affection (to the remainder)
- ▶ Loss of Opportunity (the “Ongoing Land Claim”)
- ▶ Business Loss

...The One with the Car Dealership...

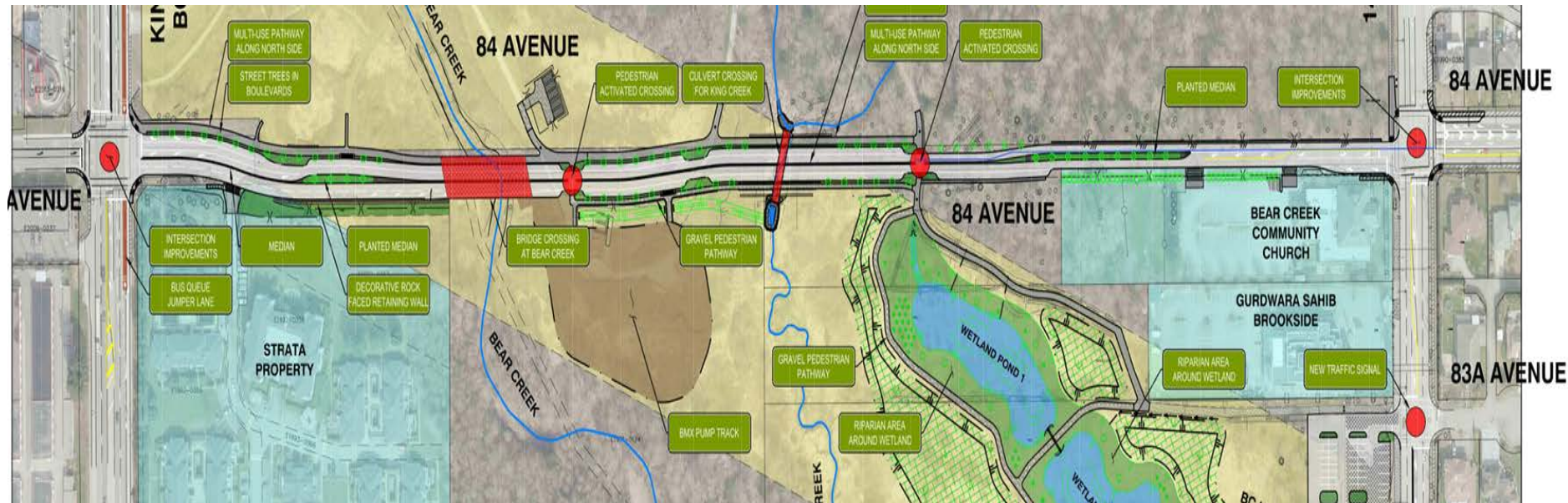
[84] I sympathize with the anxiety, uncertainty and disruption the Springman brothers had to endure over the course of the Overpass Project. I accept that they were frustrated and exhausted. However, that does not make the sale a forced sale. Even if I were to find that the plaintiffs sold the Property at less than fair market value (which I do not), it was because they did not have the appetite or energy to maximize their economic interests, not because of the expropriation. As there is no evidence of what else was going on in their lives over that period, a causal connection is speculative.

...The One with the Car Dealership...

- ▶ Counsel:
 - ▶ For the Plaintiffs:
 - ▶ Ted Hanman
 - ▶ Aurora Faulkner-Killam
 - ▶ Sandeep Uppal
 - ▶ For the City of Surrey:
 - ▶ Evan Cooke
 - ▶ Andrew Schleichkorn
- ▶ Experts:
 - ▶ Larry Dybvig (Appraisal)
 - ▶ David Kirk (Appraisal)
 - ▶ Garnett Wilson (Appraisal)
 - ▶ John Voss (Transportation Engineering)
 - ▶ Donald Spence (Business Valuation)
 - ▶ Richard Crosson (Business Valuation)

Force of Nature Society v City of Surrey, 2021 BCSC 2511

(aka The One Connecting 84th Avenue)



...The One Connecting 84th Avenue...

▶ Parties:

- ▶ The Force of Nature Society - An environmental advocacy group with some 140 members
- ▶ The City of Surrey

▶ Issues:

- ▶ Was the City's Council Resolution valid?
- ▶ Did the Resolution offend existing park dedications or existing trust agreements?

...The One Connecting 84th Avenue...

- ▶ Counsel:

- ▶ For the Petitioners:

- ▶ Kevin Smith

- ▶ Catherine George

- ▶ For the City of Surrey:

- ▶ Paul Hildebrand

- ▶ Matthew Voell

- ▶ For the Province:

- ▶ Sointula Kirkpatrick

- ▶ Ira Tee

Rosewall v Sechelt (District of), 2022 BCSC 20

(aka The One with the Sinkholes)

▶ Parties:

- ▶ Carole Rosewall, Geraldine and Gregory Latham (homeowners)
- ▶ The District of Sechelt
- ▶ The Province (Minister of Public Safety)

▶ Issues:

- ▶ Nuisance
- ▶ Injurious Affection (no land taken)
- ▶ Defence of statutory authority

...The One with the Sinkholes...

- ▶ Counsel:
 - ▶ For the Plaintiffs:
 - ▶ Jason Gratl
 - ▶ Toby Rauch-Davis
 - ▶ Laura Mars (Articled Student)
 - ▶ For the Province:
 - ▶ Micah Weintraub
 - ▶ Jack Ruttle
- ▶ Experts:

[48] A curious feature of the proof in this case is that neither party tendered expert opinion evidence concerning the geological instability and the risk of sinkholes in Seawatch and on the plaintiffs' property. A number of geotechnical reports are in evidence, but not for the truth of the opinions stated by their authors.

Squamish (District) v. 0742848 B.C. Ltd., 2022 BCSC 379

(aka The One with the Foreclosure)

▶ Parties:

- ▶ District of Squamish (Expropriating Authority)
- ▶ 0742848 B.C. Ltd. (the Previous Owner)
- ▶ 426008 B.C. Ltd. and 0714185 B.C. Ltd. (the New Owners)

▶ Issue:

- ▶ Who is entitled to the Advance Payment, the Previous Owner or the New Owners?

...The One with the Foreclosure...

[31] Put in simple terms, the applicants had a mortgage over the entire property prior to the expropriation. They now would have the entire property, absent the expropriation, by virtue of the Order Absolute. Part of the property, however, and hence part of their security, was removed by the expropriation. The applicants are entitled to the Advance Payment as compensation for that loss.

[32] As in *Campbell Sharp*, the applicants are, “to be treated as an owner who has sold to the expropriating authority”.

Hanlon v. North Vancouver (District), 2022 BCSC 353

(aka The One with the Spera Comparable)

▶ Parties:

- ▶ Juanna Hanlon
- ▶ District of North Vancouver

▶ Issues:

- ▶ Market Value
- ▶ Treatment of the “Spera Comparable”

...The One with the Spera Comparable...

[43] Overall, however, the Court finds that the Plaintiff Reports provide a more persuasive and justified valuation of the Property. In his review report, Mr Wong presented four paired sales that would reflect a time adjustment of 4.17 percent per month, or 56.4 percent per year, during the relevant period. The most relevant Spera Comparable represents an increase of 42.3 percent. Reasonable appraisers will differ on the appropriate time adjustments, just as they will in their ultimate valuation, after qualitative adjustments. What is clear, however, is that the 15 percent figure used in the District Reports, based, out of necessity, on unspecified paired sale comparisons and the HPI, downplayed the significant rise in demand and value of real estate in the Lynnmour neighbourhood during the relevant period, and resulted in an undervaluation of the Property.

...The One with the Spera Comparable...

- ▶ Counsel:
 - ▶ For the Plaintiff:
 - ▶ Salim Hirji
 - ▶ For the Defendant:
 - ▶ Barry Williamson
- ▶ Experts:
 - ▶ Vanessa Fenton (appraisal)
 - ▶ Ryan Wong (appraisal)
 - ▶ Lindsay Black (appraisal)

Howes v. FortisBC Inc., 2022 BCSC 1797

(aka The One with the Transmission Line)

▶ Parties:

▶ Beverly Howes

▶ Fortis BC

▶ The Attorney General and various other Provincial Ministries

▶ Issues:

▶ Judicial Review of the AG's determination that he could not order an Inquiry (under s.10) because this was a "linear development"

...The One with the Transmission Line...

- ▶ Counsel:
 - ▶ For the Petitioner:
 - ▶ David Aaron
 - ▶ For Fortis BC:
 - ▶ Rod Urquhart
 - ▶ Hailey Pattenden
 - ▶ For the AG and the Provincial Ministries:
 - ▶ Phong Phan
 - ▶ Timothy Quirk

Thank You!



Salim M. Hirji
October 21, 2022