

Planning for the Costs of Expropriation

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published 10/21/2015

Municipalities are granted powers of expropriation under *The Municipal Act* and other empowering legislation. Expropriation is the taking of land that belongs to another. In the United States this is called “eminent domain”. The law (in Manitoba, *The Expropriation Act*) requires that the municipality or other expropriating authority pay compensation to the owner for the land that is being taken. Under our system of government (at least since *Magna Carta* in 1215) this is seen as only fair.



So, if a municipality requires ten acres of land belonging to a resident property-owner and land generally sells for \$1500/acre in the municipality, the municipality should be able to budget about \$15,000 for the land acquisition in its capital budget, right? Well, not always.

Budgeting for expropriation requires some careful planning and consideration and usually expert advice. It has to be remembered that the whole purpose of expropriation law is, to the extent possible, to put the property owner back in the same position that they would have been in had the expropriation not taken place. To paraphrase Will Rogers, because they stopped making more land, this is usually done by the payment of money (although there can be creative swaps of land and other compensation where it makes sense). Making a property owner whole can involve a lot more than just paying them the bare land value.

First off, the property owner may not agree that their land ought to be expropriated. The Act allows any person having an interest in the property (including, say, a tenant) to object to the intended expropriation. In that case, the Minister of Justice is required to appoint an inquiry officer to carry out an inquiry. The inquiry will typically consider whether the expropriation is reasonably necessary. The costs of running the inquiry are costs to the expropriating municipality, as are the legal and expert fees of the property owner and those of the municipality. It is easy to see how legal, inquiry and expert costs of \$10,000 or \$20,000 per day of hearing can quickly eclipse the land value in our little example.

What if the ten acres runs right through the middle of a farmer’s field? If the remaining land is made less valuable by reason of the taking, then the property owner is entitled to compensation for that loss in value. This compensation falls under the heading of “injurious

affection". In fact, in certain circumstances, a property owner may be able to claim damages for injurious affection related to a municipality's works even if none of their land is taken.

Compensation is also payable for "disturbance costs". This includes the loss experienced by the landowner for having to vacate the expropriated property. Will they have easy access to the remainder of their land? Will it have to be re-fenced? Will the new land configuration affect the economics of farming the two remaining parcels? Will there be more weed control expenses? Will the farmyard be cut-off from road access, requiring a new roadway to be built? Will the use for which the property is being expropriated create any drainage or other issues?

Using a different example, suppose a property owner recently spent \$100,000 upgrading a home to make it wheelchair accessible. The improvements might not add any market value. The home would be of "special value" to that owner. The courts have held that compensation can be required for special value. Generally the home owner would be able to claim all or a portion of this cost. Add to that relocation costs, a prepayment penalty on the owner's mortgage, interim accommodations, acquisition costs of a new residence, including transfer taxes, survey costs, title insurance and legal fees, and the compensation amount can increase significantly above the market value of the property itself. Suppose the compensation payment triggered a tax cost to the property owner; there could be a claim there too.

What if the property being expropriated includes a business? What is the availability of similarly situated land? What if relocation will require a business operator to incur increased operating costs going forward? What if the land being taken reduces available parking, making a rental property unsuitable for certain business uses? All of these questions can go into the compensation mix. If the property owner is approached in advance in the context of a voluntary taking, it may be possible to identify these and other unanticipated costs in advance, allowing other alternatives to be explored.

Property owners are also entitled to compensation for the costs of obtaining advice in negotiating a settlement. This will usually involve an appraiser and a lawyer. In some cases other experts, such as a certified business valuator, may be required to advise the property owner as to whether the municipality's offer of compensation adequately covers the losses.

If there is no agreement on the amount of compensation, the issue goes to the Land Value Appraisal Commission. The LVAC will hold a public hearing for the purpose of determining the amount of compensation that ought to be paid. All of the items referred to above (and more) may be presented as evidence before the LVAC. It will hear from the parties and their respective experts. Parties, including the expropriating authority, are generally represented by legal counsel. The property owner is entitled to be compensated for all of these costs, provided that they are not incurred wastefully.

The bottom line is that the ten acres of land or \$100,000 home or business, when expropriated, may make a bigger dent in the municipality's capital budget than might first be expected. It is important to take a careful look at the likelihood and magnitude of these additional costs when budgeting for projects where the expropriation of land is required. Take the time and engage the advice needed to find the realistic range of costs. This will avoid surprises and likely smooth the negotiation process.

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