

Land Use REPORTER

A THOMSON, ROGERS PUBLICATION

Expropriations: The Taking of Land

Municipalities often require the acquisition of private property in order to construct public works. Examples of these acquisitions include road widenings and sites for municipal wells and landfills. At times it is necessary for the municipality to acquire the land without the consent of the property owner through an expropriation. When there is such an involuntary land taking the private property owner has a number of procedural rights as laid out in the *Expropriations Act*. This checklist can serve as a useful guide to the necessary steps under the *Expropriations Act*.

Procedures under the Expropriations Act

1. Application for Approval to Expropriate

The *Expropriations Act* requires that application be made to the approving authority for approval to expropriate. The *Act* sets out the relevant form. A legal description must be attached. The most commonly used form of legal description is a reference plan. Accordingly, it is necessary for the expropriating authority to retain the services of a surveyor to prepare the reference plan, detailing the lands required by the expropriating authority.

2. Publication and Service of Notice of Application for Approval to Expropriate

The expropriating authority is required to serve Notice of the Application for Approval on each registered owner of the lands to be expropriated and also must publish the notice once a week for three consecutive weeks in a newspaper having general circulation.

The documents are to be served either personally or by registered mail to the registered owner.

3. The Right to an Inquiry

The *Expropriations Act* provides that an inquiry may be requested by an owner. This request must be made within thirty days after the first publication of the notice and, if by a registered owner, within thirty days after being served with the notice.

4. Where no Request for an Inquiry is Received

In this case, the approving authority may be so notified and requested to give its decision with respect to the approval of the expropriation plan.

5. Where a Request for an Inquiry is Received

The matter shall be referred to the Chief Inquiry Officer who shall assign an inquiry officer who shall fix a time and place for a hearing and shall cause notice of the hearing to be served upon each party to the inquiry.

6. The Inquiry (Hearing of Necessity)

At least five days before the date fixed for the hearing, each party to the inquiry shall be served with a notice indicating the grounds upon which the expropriating authority intends to rely at the hearing and shall make available for inspection by the parties any documents, including maps and plans, it intends to use at the hearing.

The Test to be considered by the inquiry officer is whether the taking of the land of the owner is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

7. Consideration of The Report

The inquiry officer reports to the approving authority. His report consists of a summary of the evidence, the finding of facts and his/her opinions on the merits of the application for approval together with his/her reasons.

The approving authority must consider the report and approve the proposed expropriation with or without modification or reject the expropriation. Essentially, as long as the approving authority considers the report, it can make any decision it deems proper. The approving authority must give written reasons for its decision and serve both the decision and reasons on all parties to the inquiry within ninety days after the date when the report of the inquiry officer was received. The approving authority must certify its approval of the expropriation on the requisite form.

8. The Plan of Expropriation

Where the expropriation has been approved, the expropriating authority shall register the plan of the land expropriated within three months of the granting of the approval. The plan utilized is usually the R Plan used in the initial stage. The land then vests in the expropriating authority. Where the land is required for a limited time only or where a limited interest is taken, the plan should so state.

9. Notice of Expropriation and Election

Where the plan has been registered and no agreement as to compensation has been made with the owner, the expropriating authority shall serve the registered owner within thirty days after the date of registration of the plan with a Notice of Expropriation. The registered owner then has thirty days to serve the expropriating authority with notice of the date that compensation is to be determined, which can be one of:

- (a) the date the notice of hearing before the inquiry officer was served;
- (b) the date of registration of the plan;
- (c) the date of service of the Notice of Expropriation.

10. Possession

The Notice of Possession may be served along with the Notice of Expropriation. The date

of possession shall be at least three months after the date of service of the Notice of Possession unless there is agreement to the contrary or a Court Order.

11. Offer of Compensation

Within three months after the registration of the plan and before taking possession of the land, the expropriating authority must serve the registered owner with an offer in full compensation of his interest taken and offer immediate payment of the amount. The offer must be served with a report appraising the market value of the land.

12. Determination of Compensation

Should compensation payable be disputed, the matter proceeds to the Board of Negotiation (which may be waived) and to the Ontario Municipal Board for determination of the compensation. The process is akin to the Court process with pleadings, discovery and production and a hearing.

NOTE:

THE ABOVE SETS OUT THE GENERAL PROCEDURE FOR EXPROPRIATIONS. SPECIFIC CIRCUMSTANCES MAY VARY FROM THE ABOVE.

JEFFREY J. WILKER

Reprinted December 2004

A publication of
Thomson

Rogers

BARRISTER AND SOLICITORS
SUITE 3100, 390 BAY STREET
TORONTO, ONTARIO M5H 1W2
TEL 416-868-3100 FAX 416-868-3134