

Note: Comments of the Lands & Survey Department have been removed from this copy decision so as to provide the reader with an unedited version.

STATEMENT OF A CASE ARISING OUT OF A
CLAIM FOR COMPENSATION UNDER THE
ROADS LAW BY H.O. MERREN & CO.
IN RESPECT OF:
BLOCK 13E PARCEL 85,
GEORGE TOWN.

TO: HIS EXCELLENCE THE GOVERNOR
FROM: THE CHAIRMAN, ASSESSMENT COMMITTEE.

ROAD ASSESSMENT COMMITTEE
REPORT

MR. Clarke Buchanan, Land Assessment Officer
Ms. Lorna Dilbert form Legal
Mr. Richard Findlay appearing for Applicant H.O. Merren & Co. Ltd.
Mr. Dalkeith Bodden Representative of H.O. Merren
Mr. Vernon Jackson, Member of Committee
Mr. Carlyle Ebanks, Member of Committee.

The Roads Assessment Committee met at 3:00 p.m. on Thursday 10th December 1992, and again at 10:00 a.m. on Wednesday 27th January 1993, in the Summary Court. The matter dealt with was a claim for compensation by the firm of H.O. Merren & Co. Ltd. proprietors of land registered as George Town Central, Block 13E, Parcel 85.

Boundary Plan No. 232 and all the relevant engineering drawing and photographs showing the state of the property prior to and after the acquisition were referred to along with certain relevant case law. The statutory guidelines which determine the assessment of compensation are now consolidated in the Roads Law (Revised) of 1989.

Section 8 (2) provides, inter alia -

"A claimant does not qualify for compensation as having suffered a net loss unless, at the time of dispossession of such portion of land under this law, any damage attribute to -

- (a) loss of any standing crop or trees on the portion of land;
- (b) the severance of such portion of land from the claimant's other land;
- (c) the injurious effect on the claimant's other land of the dispossession of such portion land; and
- (d) the loss of such portion of land, assessed at its market value, exceeds the value of the advantage to the claimant gained by the presence of the new or improved road adjacent to his land".

Section 6 (1) of the Second Schedule of this Law provides inter alia -

- (1) In determining the amount of compensation to awarded in respect of any portion of land under this law the Committee shall take into consideration -
 - (a) the market value of the land at the declared day;
 - (c) any damage sustained by the claimant at the time of the taking possession of the land, by reason of the severing of such land from his other land;
 - (f) any damage bona fide resulting from diminution of the profits of the land between the declared day and the time of taking possession of the land;
 - (g) any increase in the value of the claimant's interest -
 - (i) in any remaining portion of the land in respect of which the claim is made; and
 - (ii) in other land contiguous or adjacent to (whether or not actually touching) any land mentioned in sub-paragraph (i) to which the claimant was entitled in the same capacity on the declared day, which is likely to accrue from the use to which the land subject of the claim will be put.

The area of land acquired was approximately 0.03 acre of verge and tarmac'd parking circulation space.

The parties agreed on the amount of compensation for loss of trees and foliage, the claim for replacement of chain link fence, and that the claimants professional fees would be met by the Government. (Please see Sect. 8 (2) (a) Supra).

Not agreed were the amount claimed for injurious affection and the market value of the subject land. Mr. Findlay advised the committee that they were not relying on the claim as originally submitted but on that filed on 23rd October 1992.

In presenting the claim Mr. Findlay submitted that the method to be used in determining market value of the relevant land is by way of sales comparison. He emphasized that the choice of method of valuation is between the above mentioned, which is advocated by the applicant or an approach described as "amenity or spot value" which is advocated by the Lands and Survey Department. He submitted that the Survey Department method is wrong and illconceived. He pointed out that a smaller parcel of land immediately adjacent to the subject land fetched \$22.22 per square foot, whereas by the spot valuation, Government was offering a mere \$1.72 per sq. ft.

To this argument Mr. Buchanan demurred, though conceding that his spot figure valuation of \$2,500.00 could be interpreted as one of \$1.72 per approximate square ft. he argued that the sales comparison approach was not applicable. This he said was due to the fact that there was no direct comparable as no sales transactions could be found where the land concerned was the same size and shape. He submitted that the method of valuation is one for the valuers, and that where it was not possible to use the sales comparison method, there being ~~no~~ market value to the subject land, the only other method, that of an amenity or spot ~~value~~, must be adapted.

Both parties urged the committee to make a specific ruling on this issue. The law provides that an owner compelled to sell is entitled to be put, so far as money can do it, in the same position as if his land had not been taken from him. It is also the law as held in *Cooke v Sec. of State* (1974) 229 E.G. 1117 AT, that the land is to be valued as a separate holding and not as a part of the larger holding of the actual owner where he owns the

land acquired with other land. This being so, many of the claimants' arguments regarding this acquisition would be more pertinent to the question of injurious effect than to the market value.

After assessing all the matters placed before it, the committee are of a view that there being no market value to the subject land due to its size, location and configuration, the only method left to be applied was that of a spot or amenity valuation.

It is however obvious to the committee that this method does not find favour with most claimants, and we are of the opinion that in such matters there ought to be an alternative method of valuation, preferably one that is mathematically quantitative. It is accepted that the valuer testifies as an expert witness, and as such, must to look at the subject land in isolation, assessing its use and potential. By such a procedure, his calculation, although not based on a mathematic calculation, is derived from a procedural formula and not merely a figure "drawn out of the air" as has been submitted. Nevertheless the committee are of the opinion that when the necessity arises for a spot or amenity valuation a minimum sum per acre or part thereof, according to the classification of the land, ought to be provided by law. The ~~unworkable~~ committee would then be left to determine whether that, or any valuation in excess of such, is an adequate compensation. This committee are of the opinion that, for the time being, if any claimant is entitled to compensation for "land take", the amount should not be less than \$2.00 per approximate square ft. for commercial land, and \$1.00 for residential. This principle should be followed until legislation provides otherwise. No doubt there will be several such claims involving subject lands which possess no, or very little market value, necessitating the usage of a spot or amenity valuation.

However the committee urge that this method of valuation be used sparingly, and will only be accepted when this committee is

satisfied that no other method is appropriate. 1306 square ft. in area, the compensation awarded should be \$2,612.00 a figure slightly higher than that assessed by the Lands Officer.

As has been already stated, the loss of crops and trees as agreed at is \$1,100.00. The committee accepts the recommendation of the Lands Officer regarding the reduced parking space and the depreciation thereof. The Committee are therefore of a view that the amount of \$1,500.00 estimated for severance is a fair and reasonably one. The cost of replacing the chain link fence has been agreed at \$375.00.

Regarding the claim for injurious effect, Section 6 (3) (a) of the Second Schedule has been cited by the claimant in support of their claim for injurious effect.

It provides that-

The following assumptions shall be made in assessing the value of any interest in respect of which the claim is made-

(a) "it shall be assumed that planning permission would be granted in respect of the land in which the interest subsist ("the relevant land") for a use which conforms with the planning use outline in the development plan for that location and for which it is reasonable to assume that planning permission would have been granted".

However Section 6 (1) (d) provides that-

In determining the amount of compensation to be awarded in respect of any portion of land under this Law the Committee shall take into consideration-

(d) "any damage sustained by the claimant at the time of the taking of the portion of land, by reason of the dispossession injuriously affecting his other property, movable or immovable, in any other manner, or his earnings".

it must be noticed that the relevant time of the damage sustained must be at the time of the taking possession. Not on application for construction of a building at a future date as argued by the claimant. The plan must be in existence although not necessarily granted, at the time of the taken. There is not a scintilla of evidence before this committee of any such application being in existence. We therefore find no merit in this submission.

The Committee are of the opinion that it is unfortunate that the highest costs to the Government in this matter are the fees payable to the claimant for professional services, most of which could have been avoided. This committee appreciate that there were extenuating circumstances resulting in the incurring of these fees, but would urge that in future a firm offer based on the appropriate method of valuation be made to the claimant without prior obligation as to costs attached thereto. This would leave the committee unfettered as to the awarding of costs.

The fee billed by the valuer is C.I. \$2,600.00. That for legal services is \$4,200.00 for 25.05 hours of service. This represents some three days work. The committee are of the opinion that in view of the services listed, 2 1/2 days would be a reasonable period. The fee billed is therefore reduced by \$907.50 making a total of \$3,393.50.

Accordingly this committee find that the total amount of compensation to which the claimant is entitled is C.I. \$11,580.50

DATED THIS 2 DAY OF February 1993

[Handwritten Signature]
CHAIRMAN

[Handwritten Signature]
MEMBER

[Handwritten Signature]
MEMBER



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