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STATEMENT OF A CASE

**ARISING OUT OF A CLAIM BY MARK AND ANNE RICE FOR COMPENSATION
IN RESPECT OF BLOCK 44B PARCEL 251 BODDEN TOWN**

TO: HIS EXCELLENCY THE GOVERNOR

**FROM: THE CHAIRMAN, ASSESSMENT COMMITTEE
ROAD ASSESSMENT COMMITTEE**

REPORT

- Mr. Colin Obi, Valuation Officer, Dept. of Lands & Survey**
- Mr. Mark Rice**
- Mrs. Anne Rice**
- Mr. Rex Crighton, J.P. Member of Committee**
- Mr. Danny Owens, Member of Committee**

The Roads Assessment Committee met at 10:00 a.m. on Wednesday the 9th day of July 2003 in Courtroom No.3 of the Courts building.

The matter dealt with was a claim for compensation by Mark and Anne Rice proprietors of land registered as Bodden Town, Block 44B, Parcel 251.

The right to compensation arises under Section 8 of the Roads Law (2000 Revision). This claim arises from the widening of a 9 foot right of way on the northeastern portion of the claimants' parcel to a 30- foot public road.

On 28th April 1997, a section .3 Notice under the Roads Law (Revised) was published in the Cayman Gazette detailing the Government's intention to undertake road works in Mijall Road in Bodden Town. As a result of the road-widening scheme a total of 0.21 acres were taken from Mr. and Mrs. Rice's property which formerly consisted of 0.62 acres and which had been developed into a two-storey building consisting of apartments.

On 14th June 1999, the claimants submitted a claim for compensation of CI\$122,166.00 and under Section 11(1) of the Roads Law (Revised) elected to have a two-stage assessment.

In a letter dated 21st January 2003, the claimants increased their claim from CI\$122,166.00 to CI\$350,469.42. It was argued for the Government that the increased claim should be disregarded because it was not completed in accordance with section 9 of the Roads Law (2000). The Assessment Committee rejects this argument and holds that the Government is estopped from denying the validity of the increased claim despite the failure of the claimants to submit the correct form required by Section 9 of the Roads Law (2000), because the claimants were apparently induced to believe that they were able to amend their original claim in this manner.

It was argued for the Government that no compensation should be paid for the 9-foot right of way because it could not be developed in isolation and hence has no market value. It was further argued that the claimants have derived a benefit since the Government has taken over the maintenance of this road. This argument is not accepted.

This Road Assessment Committee has determined that the claimants should be compensated for all the land taken and not just compensated for their net loss excluding the area of the right of way which apparently amounted to 0.08 acres. The reason for this was because of evidence from Mrs. Rice that in the past her family had spent money on the building of this 9- foot Right of Way. Further, the land taken comprises approximately one-third of the area of the claimants' parcel and as such cannot be considered to be negligible.

The Committee will examine each head of claim for compensation.

(a) "Land Take" on the declared date 28th April 1997. The Committee has decided to award an amenity value of CI\$2 per square foot.

0.21 acres at amenity value of CI\$2 per square feet CI\$18,295.00.

(b) Loss of Crops/trees

This item was agreed between the parties at CI\$10,000.00.

(c) No compensation is to be awarded for the removal of boundary markers causing the property not to be sold. The claimants have a duty to mitigate their loss. This item is rejected as being too remote.

(d) CI\$12,1000 for replacement of water supply.

The claimants have agreed to Public Works replacing the well affected including the plumbing and pump. With regard to the other two wells under the public road, the claimants have agreed to the offer by the Government to relocate them.

No compensation is to be awarded for replacement of the garbage container since there was no supporting documentation to prove that this item was lost. No compensation is accordingly to be paid under this head.

(e) CI\$4,000 damage

The Public Works Department has offered to replace the wall that was removed during the road construction. The destroyed boundary wall will be rebuilt with a concrete block wall 2 feet 6 inches high.

The Government has also offered to compensate the claimants for the cost of two 20 ton loads of boulders at CI\$9000.

(f) Loss of Profits CI\$50,000/CI\$200,000.00

The evidence before the Committee was that as a result of the road widening scheme, the front four apartments had become exposed to the public road, lacked a water supply and it was not possible to have the septic tank pumped.

For all the foregoing reasons the claimants' evidence was that they were unable to rent these front four apartments. The original claim contained a claim of \$50,000 for loss of profits which had increased to CI\$200,000.00 in the amended claim.

The claimants have a duty to mitigate their loss. The evidence was that these apartments were rented for CI\$600.00 per month.

In the opinion of the committee four months should have been an adequate period for the claimants to rectify and improve the situation of these apartments so that they could again be rented. However, it is unreasonable for the claimants to wait some six years and now claim the loss of rental income over this entire period. The claimants will be awarded the loss of rental of the four apartments at \$600 per month for a period of four months only or CI\$9,600.00.

(g) CI\$20,000. Cost of building the easement

Compensation has already been awarded for this item under (a) land take.

(h) CI\$4,369.42 Legal fees

This item has been agreed between the parties.

(i) CI\$4,000.00 for the cost of connecting City Water.

The claimants have accepted the Government's offer to relocate the wells as such no compensation should be awarded for this item.

(j) CI\$8,000 for rewiring the building

The claimants have accepted the Government's offer to move the electricity pole.

The claimants failed to produce any invoice to support this claim hence this claim is rejected.

(k) CI\$4,000 for loss of income

It was argued that this claim should be rejected because it was not a claim for professional fees.

The evidence before the Committee was that the claimants had spent many hours over the period of seven years in an endeavour to have this compensation claim settled. As such, the claimants should be compensated for their time spent in dealing with the compensation claim.

The Committee has decided to award \$20,000 for this item.

Accordingly the preliminary amount assessment is CI\$66,291.75 plus the accommodation works listed below of which 75 percent is hereby approved by the Committee to be paid to the claimants as an interim award

- (1) One well with plumbing and pump is to be provided.
- (2) The CUC electricity pole will be relocated.
- (3) The destroyed boundary wall will be rebuilt with a concrete block wall 2 feet 6 inches high.
- (4) The two wells, which are presently in the road, will be relocated within the parcel.

Dated this 15th day of September, 2003.


Grace Donalds
Chairman

- Cc: Mr. Colin Obi, Valuation officer, Dept. of Lands and Survey
- Mr. Mark Rice and Mrs. Anne Rice
- Mr. Rex Crighton, J.P. Member of Committee
- Mr. Danny Owens, Member if Committee