

ISSUE DATE:

**Apr. 14, 2005**

DECISION/ORDER NO:

**0937**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

LC980006

The Estate of Alexander Shypka and Julia Shypka (Claimants) have made an application to the Ontario Municipal Board under section 26 of the *Expropriations Act*, R.S.O. 1980, c. 148, as amended for determination by the Board of the compensation to be paid by Her Majesty the Queen in Right of Ontario as Represented by the Chair of the Management Board of Cabinet (Respondent) for land known as Part of Lot 1, Concession 9, New Survey, in the geographic Township of Trafalgar, now in the Town of Milton, in the Regional Municipality of Halton, and more particularly described as Parts 1 and 2 on Plan of Expropriation ES-164 Registered in the Land Registry Office for the Registry Division of Halton (No. 20) on April 12, 1996

- and -

for injurious affection for land known as Part of Lot 1, Concession 9, New Survey, in the geographic Township of Trafalgar, now in the Town of Milton, in the Regional Municipality of Halton, and more particularly described as Part 13 on Referenced Plan 20-R-11932  
OMB File No. L980006

- and -

The Estate of Alexander Shypka and Julia Shypka (Claimants) have made an application to the Ontario Municipal Board, under section 26 of the *Expropriations Act*, R.S.O. 1980, c.148, as amended, for determination by this Board of the compensation to be paid by Her Majesty the Queen in Right of Ontario as Represented by the Chair of the Management Board of Cabinet (Respondent) for land known as Part of the East Half of Lot 12, Concession 9, New Survey, in the geographic Township of Trafalgar, now in the Town of Milton in the Regional Municipality of Halton, and more particularly described as Part 1 on Plan of Expropriation EX-154 registered in the Land Registry Office for the Registry Division of Halton (No. 20) on April 11, 1996

-and -

for injurious affection for land known as Part of the East Half of Lot 12, Concession 9, New Survey, in the geographic Township of Trafalgar, now in the Town of Milton, in the Regional Municipality of Halton and more particularly described as Parts 2, 3, 4, 5, and 6 on Plan of Expropriation EX-154 registered in the Land Registry Office for the Registry Division of Halton (No. 20) on April 11, 1996  
OMB File No. L980007

## APPEARANCES:

### Parties

Estate of Alexander Shypka and  
Julia Shypka

### Counsel

Roger T. Beaman  
Al Burton

Her Majesty the Queen in Right of Ontario  
as represented by the Chair of the  
Management Board of Cabinet

Thomas C. Marshall  
Connie Vernon

**DECISION DELIVERED BY R. A. BECCAREA AND ORDER OF THE BOARD**

This is a hearing to determine the appropriate compensation payable to the Claimants, the Estate of Alexander Shypka and Julia Shypka ("Shypka"), as a result of the partial takings of its lands, municipally known 1613 Lower Baseline Road East in the Town of Milton for the construction of the westerly section of Highway 407 in the Town of Milton.

The Claimants also own land municipally known as 7248 Ninth Line in Milton where a partial taking occurred for the similar purpose on April 11, 1996.

For convenience both matters were heard one after the other, with the Ninth Line property being heard first, followed by the Lower Baseline property.

The Claimants, in that two separate Notices of Arbitration and Statement of Claims were given, wished the Board to issue two decisions.

The Board reiterates all of the evidence and findings it has made in its decision respecting 7248 Ninth Line, Milton.

The date of the taking respectively the Lower Baseline Road property was one day later, on April 12, 1996, which the Parties agreed would have no influence on the outcome.

**BACKGROUND**

The Lower Baseline Road property is located on the west of Highway 407 and prior to the taking comprised 9.958 acres. The area expropriated from the subject property totalled 3.76 acres. The area of the site remaining is 6.232 acres.

The parcel prior to the taking had a long rectangular configuration, with frontage of about 220 feet on the north side of the Lower Baseline Road. The western boundary of the property is formed by a hydro corridor.

The takings reduced the site area to 62.6% of its original size, the construction of the elevated Baseline Road rendered the remaining lands below road grade and the triangular configuration of a portion of the taking, alters the remaining lands to an irregular shape, tapering to a narrow tip at its northerly or rear limit.

### **APPRAISAL EVIDENCE**

Mr. Pestl, the Claimants' appraiser estimated the Before Value of the lands as at April 12, 1996 in the amount of \$797,000.00. He valued the After Value of the remaining lands, after the taking, in the amount of \$145,000. The loss in market value occasioned by the taking is the difference or \$652,000.00. The land component of the loss is \$298,000.00 (3.726 acres at \$80,000 per acre), with the difference being the injurious affection to the remainder of \$354,000.00

Mr. Pestl, relying on the planning opinions of Ms Victor and Mr. Dragicevic that urbanization of the lands would be achieved over a period of about 5 years added 4 years to that development timing in the Before instance. In Mr. Pestl's view the probable development of the subject lands, as of April 12, 1996 was some 9 years away.

The reason for the 9-year development horizon was that the subject lands would need to develop in conjunction with the abutting parcels of land, held under different ownership, that fronted onto the Ninth Line

As a result of the taking, Mr. Pestl indicated that the remaining lands are limited to a continuation of their existing residential use or the redevelopment of the site with a replacement residence.

The proximity to the highway creates noise, and the very high light standard of the new highway causes a significant nuisance after dark as does the Highway 407's southbound traffic.

According to Mr. Pestl all of the characteristics of the highway create undesirable features for the development of the remaining lands for estate residential purposes.

Mr. Bedford, the Respondent's appraiser estimated the loss in market value in the amount of \$58,862.00. He estimated the Before Value in the amount of \$149,790

(equating to a "bulk" of value of \$15,042 per acre). He estimated the After Value in the amount of \$90,928.00 (equating to a "bulk" value of \$14,591 per acre).

Mr. Bedford employed a methodology of discounting in the Before scenario 8.958 acres of the subject lands, beyond what he called the primary 1 acre section of site on the basis of it having only 220.31 feet that fronted onto Lower Baseline Road. He indicated that the excess lands comprising 8.958 acres only contributed \$5,000 in value to the subject lands. He valued the primary 1-acre unit price at \$105,000.00.

In his After Value Mr. Bedford applied a similar methodology, valuing the primary 1 acre at \$70,000 and the excess lands at \$4,000.00 per acre.

Mr. Bedford attributed no damages or injurious affection to the existing residence as a result of the acquisition except for the sum of \$2,800.00 which he said reflected an additional reduction in value because of its shape. He was of the opinion that other than the loss of site area, the existing use and the development potential of the subject lands were unaffected by the takings.

#### **FINDINGS RESPECTING THE APPRAISAL EVIDENCE**

The Board does not accept Mr. Bedford's methodology as properly reflecting the market value of the subject property in either the Before or After scenarios.

Despite the fact that the subject parcel in the Before scenario was nearly 10 acres, Mr. Bedford was of the view that since the by-law set out a certain requirement that a rural residential lot be 1 to 2 acres in size, to build upon, after subtracting that primary element, the additional acreage value does not contribute at the same level. Mr. Bedford did not satisfy the Board as to his rationale as to why he reduced that land from \$105,000 per acre down to \$5,000 an acre in the Before scenario and \$4,000 per acre in the After scenario.

Mr. Beaman asked Mr. Bedford why he did not look to find 10-acre parcels to compare the subject to. Mr. Bedford advised the Board that in a perfect world, he would like to have done that. He chose however to proceed to what Mr. Beaman submitted was a not so normal way of appraising the Lower Baseline property.

Mr. Bedford did not view the impact of the highway in the same way as Mr. Pestl did. He was of the view that because of the hydro lines to the west, the subject property in the Before scenario was a marginal lot to begin with. The additional impacts of the 407 highway only provided further marginal impacts.

The Board finds Mr. Bedford's reduction in the value of the excess land in the Before Scenario, in particular, to be too severe.

The Board prefers the opinion and methodology of Mr. Pestl, but finds that a 15-year development scenario is probable, for the reasons contained in its decision respecting 7248 Ninth Line.

Adopting a 15-year development scenario at 12% produces a loss in market value occasioned by the taking as at April 12, 1996 in the amount of \$259,000.00 using Mr. Pestl's methodology.

Attachment "1" to this decision reflects the Board's calculation of the loss and is subject to confirmation by the Parties.

### **INTEREST AND COSTS**

The Board Orders that interest be calculated at the rate of 6% per annum on the unpaid amounts from April 12, 1996 and that the Respondent pays the reasonable legal costs on a substantial indemnity basis, and the appraisal and other costs actually incurred.

### **AWARDS**

In Summary, the Board has determined compensation as follows:

Market value of the lands taken, including injurious affection \$259,000.00

Interest to be calculated 6%  
from April 12/ 1996

**Costs**

**on a substantial indemnity  
basis, and appraisal and  
other expenses as actually  
incurred.**

**The Board so Orders.**

**"R. A. Beccarea"**

**R. A. BECCAREA  
MEMBER**

<b>ATTACHMENT "1"</b>			<b>BEFORE ANALYSIS</b>					
<i>Discount Term and Rate (Factor)/ Value Rate per Ac. and Indicated Value</i>								
<i>Pestl</i>			<i>Alternative Periods</i>					
<i>9 yrs @ 12% (0.36061)</i>			<i>10 yrs @ 12% (0.32197)</i>		<i>15 yrs @ 12% (0.18270)</i>		<i>20 yrs @ 12% (0.10367)</i>	
<i>9.958 Acres</i>	<i>\$80,000</i>	<i>\$796,640</i>	<i>\$71,428</i>	<i>\$711,280</i>	<i>\$40,531</i>	<i>\$403,608</i>	<i>\$22,999</i>	<i>\$229,024</i>
<i>Indicated Before Value</i>		<i>\$797,000</i>		<i>\$711,000</i>		<i>\$404,000</i>		<i>\$229,000</i>
<b>AFTER ANALYSIS</b>								
<i>After Value 6.232 Acres As Per Pestl</i>		<i>\$145,000</i>		<i>\$145,000</i>		<i>\$145,000</i>		<i>\$145,000</i>
<i>Indicated Loss in Value</i>		<i>\$652,000</i>		<i>\$566,000</i>		<i>\$259,000</i>		<i>\$84,000</i>