

The Metropolitan Toronto and Region Conservation Authority v. Valley Improvement Company Limited, [1963] S.C.R. 15

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Commentary

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The land involved was the low-lying strip along the Humber River, part of a larger tract of land owned by respondent and on which it operated a restaurant, tennis courts and bowling greens. The "value to the owner"—the test adopted by the courts since the Supreme Court decision in *Woods Manufacturing Co. Ltd. v. The King*, [1951] S.C.R. 504—depended on the use to which the respondent planned to put that particular strip of land.

It also depended on the use to which the land retained by respondent could legally be put. "These expropriated lands could only have value to the owner of the amount assigned to them by the respondent if they remained part of the whole and were rezoned," as Judson J. said at page 34.

Compensation was proffered at a rate of \$739 per acre. The owner held out for about \$24,500 per acre. He stated in argument that were the lands rezoned to permit the construction of apartment buildings, the value would be even higher, viz., \$40,000 per acre. But the Court of Appeal was of the opinion that this value should be discounted by 33 $\frac{1}{3}$ % because of the "uncertainties and delays implicit in the necessity of obtaining appropriate rezoning." (p. 22)

The value to the owner thus depended largely on the speculative element of rezoning. The Ontario Municipal Board had come to the

conclusion that there was not a reasonable probability of the desired rezoning being realized and had added nothing to the compensation on the ground of possible rezoning. p. 22.

The Court of Appeal ([1961] O.R. 783, at 800, 801) wrestled with the problem of trying to express in percentage terms the "negative value" of zoning restrictions in force at the time of expropriation and affecting the land in question. It is submitted that this may be taken as an indication that the principles underlying valuation are not quite so simple and straightforward as would seem desirable.

With a view to some type of construction, probably consonant with permitted zoning uses, the owner had some soil sampling tests carried out and sketches and architects plans prepared, and had obtained cost-estimates on the proposed motel. Because of the expropriation, all these plans were abandoned.

In trying to arrive at the "value to the owner" it seems pointless to try to determine the sum of money which the owner, as a prudent man, at the moment of expropriation would have paid for the land rather than be deprived of it, as required by the *Woods* test, because it is virtually impossible to ban from the mind the awareness of actual facts, namely that expropriation has taken place. It is equally unhelpful for this purpose to direct the tribunal to take into consideration the probability or even the possibility of the rescission of any by-law restricting the use to which the property may be put. These latter considerations are certainly important factors for the determination of "market value".

However, it is submitted that the "value to the owner" must mean what he thinks he can get for his land. This entails the use to which he thinks he can put the land sooner or later, and his willingness to await favourable conditions.

The case was remitted to the Ontario Municipal Board to be dealt with in accordance with the directions of the Supreme Court.