

LAND COMPENSATION BOARD
FOR THE PROVINCE OF ALBERTA

ORDER NO: 450

FILE NO: 10966.1

July 9, 2008

A Notice of Motion dated May 27, 2008, to compel answers to questions put during an examination for discovery on a claim pursuant to the *Expropriation Act*, R.S.A. 2000, Chapter E-13.

BETWEEN

FARREL JAMES

Claimant

- and -

THE VILLAGE OF FORESTBURG

Respondent

BEFORE

THE LAND COMPENSATION BOARD FOR THE PROVINCE OF ALBERTA

MEMBER - Julian Martin, Presiding Member

APPEARANCES

For the Claimant: - Donald P. Mallon, Q.C.
- Veronica C. J. Alexander, Esq.

For the Respondent: - Darren W. Moroz, Esq.

PLACE Held in the City of Edmonton, in the Province of Alberta, on Tuesday, June 17, 2008, at the office of the Land Compensation Board.

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ISSUE

Shall the Claimant be compelled to provide answers to questions posed by the Respondent?

BACKGROUND

During an examination for discovery held on January 17, 2007 in accord with a matter between the parties under the *Expropriation Act* (the *Act*), the Respondent sought answers to several questions but the Claimant took them 'under advisement'. The Claimant has not, subsequently, answered. The present Notice of Motion was brought by the Respondent in order to compel response by way of documents to two specific requests.

The Respondent seeks, first, records of insurance coverage maintained by the Claimant for the building on his property at issue under the *Act*, and, secondly, copies of Income Tax returns (in particular, the capital depreciation figures) for the period of time of the Claimant's ownership of the property and building.

EXHIBITS FILED

Exhibit One: The *Notice of Motion* of May 27, 2008.

Exhibit Two: The *Examination for Discovery of Farrel James* of January 17, 2007.

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CLAIMANT'S POSITION

Mr. Mallon stated that the requested documentation is not relevant to the main issue at dispute between the parties, namely, the market value of the Claimant's property (a small parcel of land with a small building on it), since neither kind of information has probative value. Replacement dollar amounts found in an insurance policy for a building are not to be relied upon as indicative of expert appraisal opinion nor indicative of market value for a building nor indicative of the market value of the taking in question (land including a building). Capital depreciation amounts in Income Tax returns are a function of accounting principles and formulae (particularly for cost calculations) and not to be relied upon as indicative of a market value for a building.

Mr. Mallon submitted that expert appraisers of market value would not put any weight on these two factors. Mr. Mallon suggested that both parties should rely on expert appraisal testimony rather than documents such as these. "It's simply not probative; it's not relevant; it's not good, cogent evidence" [June 17, 2008 transcript, p. 15 at lines 7-8].

RESPONDENT'S POSITION

Mr. Moroz outlined the specific requests of the present Notice of Motion and outlined the reasons why he believes it important to receive answers to the questions posed during the *Examination for Discovery* [Exhibit Two]. He submitted that insurance coverage records would be "cogent and relevant evidence as to the condition and value of the building" and "a relevant factor as one of the indices of the building's value and condition" [June 17, 2008 transcript, p. 9

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at lines 22-23 & p. 10 at lines 2-4]. Income Tax information about capital cost depreciation “would be another indicator of the building’s value and condition” [June 17, 2008 transcript, p. 11 at lines 3-4]. Mr. Moroz believed these two factors indeed would be weighted significantly by expert appraisers of market value and he therefore requested that the Claimant be compelled to provide the information.

STATUTES AND REGULATIONS CITED

Expropriation Act, R.S.A. 2000, c. E-13.

DECISION

The Claimant shall not be compelled to provide the information sought by the Respondent.

REASONS

1. The Board is not persuaded that the information sought is relevant and material to a matter dealing centrally with the market value of a property. Insurance records and capital depreciation records are cost calculations which provide no clear link to a determination of market value at the time of an expropriation and which, therefore, have little if any probative weight.

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2. The Board is not persuaded that expert appraisals of market value need to (nor in fact do) regard factors such as these as significant when coming to a professional and defensible assertion of market value.

3. The Board is persuaded that the absence of the information sought after here will not prevent the Respondent from advancing a case for a market value of the taking which rests on expert appraisal.

COSTS

The Parties agreed that section 39(1) of the *Act* shall apply here.

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Julian Martin, Presiding Member