

ISSUE DATE:

**October 14, 2011**



LC080021

**Ontario Municipal Board**  
**Commission des affaires municipales de l'Ontario**

Anthony L.P. Rocco and Joseph D. Rocco have made an application to the Ontario Municipal Board under section 26 of the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended, for determination by this Board of the compensation to be paid by the City of Niagara Falls and the Regional Municipality of Niagara for land known as 4249 River Road in the City of Niagara Falls OMB File No.: LC080021

**APPEARANCES:**

**Parties**

**Counsel**

Anthony L.P. Rocco and Joseph D. Rocco  
carrying on business as Crystal Inn Motel

Z. Saskin

The Regional Municipality of Niagara

M. Kyne

The City of Niagara Falls

K. Beaman

The Niagara Parks Commission

**MEMORANDUM OF ORAL DECISION DELIVERED BY N. C. JACKSON  
ON SEPTEMBER 28, 2011 AND ORDER OF THE BOARD**

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The Claimants have, in a claim filed in 2008, claimed business disruption costs of \$82,461.00 and injurious affection in the amount of \$900,000.00. The claims are made in respect of the Claimant's property at 4249 River Road in the City of Niagara Falls and Region of Niagara. Initially the claim included the Niagara Parks Commission however, the Claim is now discontinued as against the Commission. Mr. Saskin confirms the Claim will be formally amended to focus on the business disruption costs to be approximately \$160,000.00.

The Claimants own a motel which they claim was affected by nearby road works between 2006 and 2008. There is no taking of land. The Claimant is considering discontinuance as against the City of Niagara Falls if an indemnity is provided.

The Parties have been through Board mediation unsuccessfully.

A Motion brought by the Region seeking dismissal of the Claim will not proceed on consent and is adjourned *sine die*.

The purpose of this prehearing is to set the terms for the hearing including the hearing date, disclosure of expert witness statements and the issues list.

Mr. Saskin has agreed to compile the Procedural Order from what has been agreed to today, circulate to counsel and remit it to the Board Planner (assistant) for issuance; such to include the following :

- 1) The Parties estimate a hearing of five days, perhaps with three witnesses each including expert testimony in accounting and engineering. The Parties will deal with preliminaries and be ready for a spring hearing in 2012. The City, if still in this proceeding at the time of trial, will make argument only. The Board on consent fixes the date of April 30, 2012 at 11:00 a.m. for the commencement of a five day hearing. There will be no further notice. The Hearing will be held at the Regional Offices. Mr. Kyne will confirm with the Board and the Parties the room location.
- 2) Discoveries will be scheduled and held before the end of the year 2011.
- 3) Witness Statements will be exchanged on or before the following dates:
  - a) The Claimants witness statements will be produced on or by February 1, 2012;
  - b) The Respondent will produce witness statements on or by February 15, 2012; and
  - c) The Claimants may reply on or by February 28, 2012.
- 4) The Issues will include the applicability of injurious affection and business disturbance; in particular the quantum of the business loss.
- 5) The Parties will confirm the issuance of Certificates of Readiness.

- 6) The order of evidence is to be the usual Claimants, then Respondent and reply to the Claimants.

This panel is not seized of the hearing.

This is the Order of the Board.

"N. C. Jackson"

N. C. JACKSON  
VICE-CHAIR