

ISSUE DATE:

June 25, 2013



LC120037

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

Fred Spencer (Claimant) has 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 Hamilton and Brian McHattie (Respondent) for land municipally known as 0 Locke Street and 0 Crooke Street in the City of Hamilton
OMB File No: LC120037

APPEARANCES:

Parties

City of Hamilton and Brian
McHattie

Fred Spencer

Counsel

Ken Strong

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

BACKGROUND

[1] This is a decision from a pre-hearing conference (“PHC”) regarding an application for compensation by Fred Spencer (“Claimant”) against the City of Hamilton (“City”) and Brian McHattie related to possible damages involving works undertaken by the City on road allowances adjacent to properties with addresses of 0 Locke Street and 0 Crooke Street, Hamilton.

[2] The Board heard that the City has constructed a parkette and related works which, according to the City’s submissions, are located in unopened road allowances adjacent to the Claimant’s lands.

[3] The Claimant has filed a Statement of Claim in which he has alleged damages for injurious affection for the reduction in use of his property resulting from the City’s works. The Claimant maintains that the works have blocked potential vehicular access to his lands.

[4] The Claimant is also pursuing an action against the City and Mr. McHattie in the Ontario Superior Court of Justice with regard to this same matter. As a result of a motion to strike brought by the City, in March of this year the Court struck the Claimant's Fresh as Amended Statement of Claim and dismissed the Claimant's action. The Claimant is appealing the Court's decision.

[5] Ken Strong provided the Board with copies of Mr. Spencer's Statement of Claim for the Court Action, the Fresh as Amended Statement of Claim, the City's Statement of Defence, an Order of the Court dismissing Mr. Spencer's action and the Justice's endorsement. In the endorsement the proceeding before the Board and the Board's jurisdiction to deal with the matter were acknowledged.

[6] The Claimant indicated that he wanted the hearing to be scheduled as soon as possible so that there could be some resolution to the matter. However, the Claimant was not certain that he would retain counsel for the hearing or present any expert evidence to support his claim.

[7] The City raised questions about the timing of the Statement of Claim submitted for the Board's hearing, noting that s. 22(1) of the *Expropriations Act* requires that claims for injurious affection must be filed within one year after the damage was sustained or it became known. Mr. Strong also questioned whether the Board of Negotiation requirement had been met by the Claimant. His position was that setting dates for a hearing would be premature and the hearing should be delayed until the Claimant's appeal of the Court action had been determined. Mr. Strong indicated if the Board were to schedule this matter, he would like a motion date set to deal with the above outstanding issues.

[8] Mr. Strong also contended that it was not appropriate for Mr. McHattie, a Hamilton City Councillor, to be named in the Statement of Claim before the Board.

[9] The Claimant agreed that Mr. McHattie could be removed from the Board proceeding. He maintained that the Statement of Claim was filed appropriately and that he never received notice from the City regarding the passing of a by-law. He indicated that he would drop the Superior Court appeal if the Board's hearing were scheduled.

ANALYSIS AND DETERMINATIONS

[10] The Board has considered the submissions of the parties. Based upon the consent of the parties Mr. McHattie is hereby removed from the Claimant's action before the Board.

[11] Furthermore, the Board agrees with the City that setting a hearing date at this time would be premature. A number of matters are unclear to the Board, including the issue of compliance with s. 22(1) of the *Expropriations Act* and whether the Claimant has complied with requirements related to the Board of Negotiation.

[12] In order to resolve these matters the parties are directed to contact Leesa Kwong, the Board's Case Co-ordinator for this appeal to establish a date for another pre-hearing conference which will also serve as a date for hearing motions regarding the above matters and any other issues that are appropriate. All motions must be brought according to the Board's rules.

[13] The Board has some sympathy for the Claimant's desire to have the hearing scheduled for this appeal. At the next PHC the Board is prepared to consider matters related to the hearing including setting at least tentative dates. However, moving forward with the hearing will depend upon the Board's determination on the motions that may come forward.

[14] The Board is concerned that the Claimant may be facing substantial motions without representation. Furthermore, without making any determinations on this matter, going into the appeal and trying to substantiate claims of injurious affection without calling expert evidence may be difficult. The Board is raising these points only to note that the Claimant may benefit from seeking professional advice.

[15] The member is not seized, but will continue case management of this appeal subject to the requirements of the Board's hearing calendar.

[16] No further notice is required.

"C. Conti"

C. CONTI
MEMBER