

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 30, 2014

CASE NO(S): LC120040
LC120041

Pizzardi Investments (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 the determination by this Board of the compensation to be paid by the York Region District School Board (Respondent) for land known as Part Lot 21, Concession 6, being Part 3 on Plan of Expropriation No. YR1600371, municipally known as 3936 Major Mackenzie Drive West in the City of Vaughan
OMB File No.: LC120040

Mary's Well Properties Inc. et al (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 the determination by this Board of the compensation to be paid by the York Region District School Board (Respondent) for land known as Part Lot 21, Concession 6, being Part 1 on Plan of Expropriation No. YR1600371, municipally known as 4020 Major Mackenzie Drive West in the City of Vaughan
OMB File No.: LC120041

Mary's Well Properties Inc. et al (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 the determination by this Board of the compensation to be paid by the Corporation of the City of Vaughan (Respondent) for land known as Part Lot 21, Concession 6, being Parts 1, 2 & 3 on Plan of Expropriation No. YR1584952, municipally known as 4020 Major Mackenzie Drive West in the City of Vaughan
OMB File No.: LC120042

Heard: January 14 to 17, 20 to 22, 2014 in Toronto,
Ontario

APPEARANCES:

Parties

Mary's Well Properties Inc.,
434738 Ontario Limited, George
Margie and Antoniette Margie
("Claimants")

The York Region District School
Board and The Corporation of the
City of Vaughan ("Respondents")

Counsel

Emilio Bisceglia

Stephen Waque and Robert Wood

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

[1] This is the decision for an action initiated by Mary's Well Properties Inc, 434738 Ontario Limited, George Margie and Antoniette Margie ("Claimants") regarding the expropriation by the York Region District School Board and the Corporation of the City of Vaughan ("Respondents") of property at 4020 Major Mackenzie Drive West, Vaughan. The Claim involves the expropriation by the Respondents of a 25.6 acre property on the north side of Major Mackenzie Drive for the purposes of developing a school site and associated lands.

[2] After dealing with an adjournment motion and hearing a substantial amount of evidence, the Board was informed that the parties had reached a tentative settlement.

[3] The Board heard that the settlement needed to be approved by City Council. The parties requested that the remainder of the hearing be adjourned. In view of the tentative settlement and the submissions of the Parties, the Board adjourned the hearing *sine die*.

[4] Subsequently, the Board has been informed that the settlement has been approved by City Council, and the parties have forwarded the executed Minutes of Settlement and a draft order. The parties have requested that the Board issue an order for the settlement.

[5] In view of the above, there is no need to provide details of the adjournment motion or of the evidence provided at the hearing.

[6] The Board has reviewed the submissions of the parties and finds that the claim is settled according to the provisions of the settlement. The Board has incorporated the provisions of the draft order into its order which is provided below.

[7] It should be noted that at the beginning of the hearing, the Board was informed that a separate claim which was to be adjudicated at the same time involving lands at

3936 Major Mackenzie Drive West under Board file LC120040 was settled prior to the commencement of the hearing.

ORDER

[8] The Board orders that the Claimants' claims shall be settled as follows:

1. In addition to the sum of \$25,407,285.00 on account of market value and interest, which sum the Claimants acknowledge having already received, the Claimants are entitled to reimbursement of their reasonable legal, appraisal and other costs actually incurred for the purposes of determining the compensation payable, such costs to be paid by the Respondents to the Claimants in accordance with s. 32(1) of the *Expropriations Act* and its regulations, and the Minutes of Settlement attached hereto as Schedule A.
2. The costs shall be assessed by an Assessment Officer of the Ontario Superior Court of Justice in the Toronto Region, in accordance with the Minutes of Settlement and s. 32(1) of the *Expropriations Act* and its regulations.

"C. Conti"

C. CONTI
MEMBER

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
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SCHEDULE A

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January 22, 2014

Delivered by Email

Emilio Bisceglia
Bisceglia & Associates
Barristers-at-Law
7941 Jane Street, Suite 200
Concord, ON L4K 4L6

Dear Mr. Bisceglia:

Re: O.M.B. File No. LC120041 / LC120042
Claimants: Mary's Well Properties, Inc., et al
Respondents: York Region District School Board and City of Vaughan

Our clients the Corporation of the City of Vaughan (the "City") and the York Region District School Board ("YRDSB"), and your clients Mary's Well Properties, Inc., et al ("Mary's Well") have settled the Mary's Well claims in principle, subject to final approval by the Council of the City of Vaughan and the members of the YRDSB. This letter will constitute Minutes of Settlement.

The parties agree that the specific terms of the settlement are as follows:

- 1) The City and the YRDSB (together "the Respondents") expropriated the entire Mary's Well property legally described as Parts 1, 2 and 3 on Plan of Expropriation YR1584932 and Part 1 on Plan of Expropriation YR 16000371 (the "Lands").
- 2) Mary's Well commenced an arbitration pursuant to the Act bearing OMB Case Nos. LC120041 and LC120042 to determine the market value of the lands (the "Arbitration"), and they commenced an application in the Ontario Superior Court of Justice bearing court file number CV14-117429-00 (the "Application") to seek a declaration that Mary's Well is entitled to the return of a portion of the Lands.
- 3) The Respondents will make a lump-sum payment to Mary's Well in full and final settlement of (i) all claims and entitlements that Mary's Well may have under the *Expropriations Act*, RSO 1990, c E. 26, as amended (the "Act") and (ii) all claims set out by Mary's Well in the Arbitration and the Application.
- 4) The area of the Lands is approximately 25.01 acres.
- 5) For purposes of settlement the parties have agreed that the Lands shall be deemed to include:

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- a. 5.0 acres that are designated for medium density uses under applicable planning instruments (the "Medium Density Lands"),
 - b. 14.282 acres that are designated for low density residential uses under applicable planning instruments (the "Low Density Lands"), and
 - c. 5.728 acres that are the subject of the Application (the "Application Lands").
- 6) The Respondents shall compensate Mary's Well for the market value of the Lands as follows:
 - a. Medium Density Lands at \$993,500 per acre, or \$4,967,500 in total,
 - b. Low Density Lands at \$843,500 per acre, or \$12,047,653 in total, and
 - c. Application Lands at \$1,177,435 per acre, or \$6,744,347 in total,for a total amount of \$23,759,500, at an average rate of \$950,000 per acre.
- 7) The Respondents previously disbursed \$14,400,000 to Mary's Well for the market value of the Lands. The balance payable to Mary's Well for the Retained Lands is thus \$9,359,500 (the "Market Value Balance").
- 8) The Respondents will pay interest on the Market Value Balance in accordance with the Act, commencing from March 31, 2011 through March 5, 2014 in the amount of \$1,647,785.
- 9) If the Market Value Balance is not disbursed to Mary's Well on or before March 6, 2014, the Respondents shall pay additional interest on the Market Value Balance in accordance with Section 33 of the Act.
- 10) The date on which the Market Value Balance is disbursed to Mary's Well shall be the "Closing Date" for purposes of this agreement.
- 11) The Respondents shall reimburse the reasonable legal, appraisal and other costs incurred by Mary's Well in accordance with Section 32 of the Act and the following terms and conditions:
 - a. Mary's Well shall submit a bill of costs to the Respondents within 30 days of the Closing Date,
 - b. The Respondents shall have the right, within thirty (30) days after receiving the Mary's Well bill of costs, to apply to have the costs assessed in accordance with the Act and applicable law, and this right shall survive the completion of the transaction contemplated herein. Mary's Well agrees to execute a consent, or other document as required to permit assessment of the costs, immediately upon request by the Respondents.

8 M₂

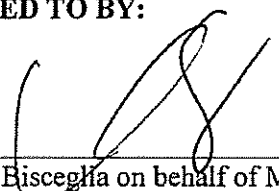
- c. The Respondents shall reimburse the reasonable costs claimed by Mary's Well within thirty day of receiving the Mary's Well bill of costs or within 30 days of the conclusion of the assessment process, if any, whichever date is later.
 - d. In the event the costs claimed by Mary's Well are assessed, the Respondents shall be entitled to disclose to the assessment officer the amount of costs paid to Mary's Well's lawyers and consultants in connection with the settlement of the Pizzardi expropriation.
- 12) Upon acceptance of this agreement by Mary's Well, Mary's Well shall forthwith adjourn the Application to a date that is on or after September 30, 2014.
- 13) Mary's Well acknowledges that the terms of this settlement agreement are subject to approval by the Council of the City of Vaughan ("Council") and the elected members of the YRDSB, in their unfettered discretion. In the event that either or both of Council and the YRDSB refuse to approve this settlement agreement, the terms of the agreement shall be without prejudice to the positions of the parties in the Arbitration and the Application.
- 14) In consideration for the Respondents' payment of the Market Value Balance and interest and costs, Mary's Well shall:
- a. in a timely fashion abandon the Application in accordance with the *Rules of Civil Procedure*, and for purposes of this agreement the Respondents hereby agree that such abandonment shall be on a without-costs basis, and
 - b. provide a release in the form attached hereto as Attachment 1.

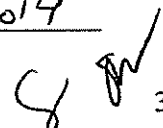
Please indicate your clients' agreement with the terms set out herein by signing and dating a copy of this letter and transmitting it to me by email in pdf format.

Yours very truly,
BORDEN LADNER GERVAIS, LLP


Stephen Waqué
SFW/
Attachment

AGREED TO BY:


Emilio Bisceglia on behalf of Mary's Well

Jun 22 / 2014
Date
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