

LAND COMPENSATION BOARD  
FOR THE PROVINCE OF ALBERTA

**ORDER NO. 396**

**FILE NO. 10864.0**

September 27, 2000

An Application to Determine Compensation payable for the expropriation of land, filed with the Land Compensation Board, pursuant to the Expropriation Act, R.S.A. 1980, Chapter E-16.

**BETWEEN:**

WALTER KOEBERNICK AND ELAINE KOEBERNICK

Claimants

- and -

THE CITY OF EDMONTON

Respondent

**BEFORE:**

THE LAND COMPENSATION BOARD FOR THE PROVINCE OF ALBERTA

**SITTING MEMBERS:**

- F. Weber, Presiding Member
- J. E. Logan, Member
- S. S. Schumacher Q.C., Member

**APPEARANCES:**

For the Claimants: - D. P. Mallon, Legal Counsel

Witnesses:

- Brian Gettel, Gettel Appraisals Ltd.
- Elaine Koebernick, Landowner
- Donald Pearson
- Joe Hoshowski with St. Francis Lumber

For the Respondent: - L. A. Reynolds, Legal Counsel

Witnesses:

- George Tarnawsky, Property Agent  
Asset Management and Public Works, City of Edmonton
- Bruce R. Simpson, Serecon

**PLACE:** Held at the City of Edmonton in the Province of Alberta on June 19, through to June 22, 2000, at the Office of the Land Compensation Board.

**APPLICATION**

The Application for Determination of Compensation (“the ADC”) was filed with the Land Compensation Board (“the Board”), on the 25th day of August, 1998, by Walter and Elaine Koebernick (“the Claimants”), pursuant to the provisions of the Expropriation Act, R.S.A. 1980, Chapter E-16, (“the Act”) for an Order of the Board fixing the compensation to be paid by the City of Edmonton (“the Respondent”) as a result of the expropriation of land, legally described as follows:

**FIRST:** MERIDIAN 5 RANGE 3 TOWNSHIP 50  
SECTION 13  
QUARTER NORTH EAST  
EXCEPTING THEREOUT ALL MINES AND MINERALS

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AND THE RIGHT TO WORK THE SAME  
AREA: 64.7 HECTARES (160 ACRES) MORE OR LESS

**SECOND:** ALL THAT PORTION OF THE SOUTH EAST QUARTER OF  
SECTION THIRTEEN (13)  
TOWNSHIP (50)  
RANGE (3)  
WEST OF THE FIFTH MERIDIAN  
WHICH LIES WEST OF A LINE DRAWN THROUGHOUT AND  
AT RIGHT ANGLES TO THE SOUTH BOUNDARY FOUR  
HUNDRED AND TWO (402) METRES WESTERLY FROM THE  
SOUTH EAST CORNER THEREOF; CONTAINING 32.4  
HECTARES (80 ACRES), MORE OR LESS.  
EXCEPTING THEREOUT ALL MINES AND MINERALS AND  
THE RIGHT TO WORK THE SAME

(hereinafter referred to as “the Expropriated Land”).

The Parties entered into a consent expropriation agreement under Section 30 of the Act, which became effective the 5th day of January, 1998, when title to the Expropriated Land was registered in the name of the Respondent.

The Claimants seek compensation for the following:

- |       |   |              |
|-------|---|--------------|
| (i)   | the market value of their<br>240 acre farm and improvements   | \$374,500.00 |
| (ii)  | the costs of upgrading the replacement<br>home to make it similar to the home<br>taken under expropriation                  | \$30,969.00  |
| (iii) | the value of the inconvenience and costs of<br>finding a replacement residence<br>pursuant to Section 50 (a)(i)A of the Act | \$ 7,180.00  |

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(iv)	the cost of moving and related damages	\$27,889.00
(v)	auction expenses and loss on sales	\$24,929.43
(vi)	loss on sale of lumber	\$10,641.00
(vii)	loss of calf crop	<u>\$ 4,126.00</u>
	TOTAL CLAIM:	\$480,234.43

**BACKGROUND AND FACTS NOT IN DISPUTE**

Prior to the expropriation the Claimants operated a mixed farm on the Expropriated Land and had done so since acquiring the home quarter from Mrs. Koebernick's mother in 1968 and the adjoining 80 acres from the estate of Mrs. Koebernick's uncle in 1991.

During the Claimants' occupancy of the land they made several significant improvements including the construction of two water ponds where fish were grown, the planting of some 1247 trees of which several were fruit trees and the construction of a new house in 1985.

At the time of the expropriation Mr. Koebernick was 72 years of age and Mrs. Koebernick was 62. Because of their ages the Claimants decided to acquire an acreage residence rather than to relocate to another farm site. After viewing some 40 properties, they purchased a 3.48 acre property on the Battle River, 18 kilometres south east of Wetaskiwin.

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**ISSUES AS DEFINED BY THE BOARD**

1. What was the market value of the Claimants' farm at the date of the expropriation?
2. Are the Claimants entitled to compensation with respect to acquiring a replacement home?
3. Are the Claimants entitled to disturbance damages?

1. **What was the market value of the Expropriated Land at the date of Expropriation?**

**Highest and Best Use:**

A basic difference between the two appraisals was the finding on the highest and best use of the Expropriated Land. Mr. Gettel, the Claimants' appraiser, valued the farm site as having been notionally subdivided from the home quarter. He valued the farm land separate from the building site as he found that local competition for agricultural land was high between the Warburg Hutterite Settlement and other area farmers wishing to add to their existing farms. None of these parties would place much value on the farm site and improvements.

On the other hand, Mr. Simpson, the Respondent's appraiser, valued the whole property as a hobby farm. He argued that this approach was supported by the practice of

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vendors and purchasers in the market place. However, during cross examination Mr. Simpson conceded that a savvy vendor would subdivide the property and sell it separately from the bare agricultural land.

The Board accepts Mr. Gettel's opinion that the highest and best use of the Expropriated Land was a joint rural/residential and agricultural use. By selling the rural/residential use separate from the agricultural land the vendors would maximize their proceeds. The Board finds that the bare land value of the Expropriated Land is as follows:

- (i) \$42,000.00 (\$525.00 per acre) for the W1/2 of SE 13;
- (ii) \$130,000.00 (\$856.00 per acre) for the NE 1/4 13; and
- (iii) \$18,500.00 (10 acres at \$2,000.00 per acre less \$1,500.00 in subdivision costs) for the rural/residential acreage.

**Value of improvements:**

Mr. Gettel submitted that if the Expropriated Land sold as one parcel the vendor would not receive full value for the improvements. He utilized the cost approach to value to determine the value of the improvements as at January 5, 1998.

Mr. Simpson relied on the direct comparison approach to determine the market value of the Expropriated Land. He felt that the sale of comparable properties more accurately

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reflected the value of the improvements. In arriving at the final estimate of value, he made numerous adjustments to each sale for time, motive, location, size, soil type, cultivated area and the difference in the improvements.

The Board accepts Mr. Gettel's cost approach to valuing the improvements because it more accurately reflects their value. The Expropriated Land was somewhat unique as the Claimants had developed the property to their specific needs over many years of occupation. They planted over 1000 fruit, ornamental and shelter belt trees, developed two fish ponds, and raised fowl for their domestic use. The sales relied upon by Mr. Simpson required significant adjustments. Each adjustment is somewhat arbitrary and given the size of the adjustments the final indicator of value is susceptible to error.

The Board fixes the value of all the improvements at \$184,000.00.

In summary, the Board finds the value of the Expropriated Land at the time of the taking to be \$374,500.00.

2. Are the Claimants entitled to compensation with respect to acquiring a replacement home?

The disagreement between the parties under this head results from the Respondent's

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position that it should not be responsible for any costs flowing from the Claimants’ decision to change their lifestyle by retiring from farming. In this regard it is argued on behalf of the Claimants, that because of their age and health it was only natural for them to decide to retire as a result of the disruption to their life caused by the Respondent's expropriation of their property.

The Claimants maintained that they replaced their country residence with another country residence similar to the former but did not replace the agricultural land.

Comparison of Expropriated and Replacement Residences

	Expropriated Accommodation	Replacement Accommodation
Site Area	5.0 Acres	3.48 Acres
Residence Size	1148 Sq. Ft.	1490 Sq. Ft.
Basement Development	Partial	Majority
Decks	2 - 268 Sq. Ft.	1 - 88 Sq. Ft.
Porch	76 Sq. Ft.	None
Age	15 years	23 Years
Garage	Detached - 408 Sq. Ft.	Attached - 728 Sq. Ft.



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Shop	(49 years old) 1644 Sq. Ft. (7 years old)	(23 years old) None
Landscaping	Extensive, 2 ponds, Large Gardens	River View, Small Garden
Services	Typical Rural Standard	Typical Rural Standard

The upgrades required to make the replacement comparable to the expropriated home included: replacing the crumbling sidewalk, constructing a deck, installing window coverings, cleaning the furnace, installing a telephone line and constructing the shop.

Exhibit 3 compared the costs of the replacement property with the accommodation on the Expropriated Land and is repeated here.

Replacement Property	Cost	Existing Property Value	Cost/Value
Purchase price	\$130,000.00	Site (5 acres)	\$10,000.00
Replace sidewalk	\$1,700.00	House, porch, decks	\$59,028.00
Construct deck	\$2,922.00	Garage/shop	\$27,126.00
Install draperies	\$3,852.00	Garage	\$441.00
Install phone line	\$412.00	Garden, yard	\$2,000.00

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Clean furnace	\$205.00	Trees, ponds	\$25,000.00
Construct shop	\$35,473.00	Utilities, services	\$20,000.00
TOTAL COSTS	\$174,564.00	APPRAISED VALUE	\$143,595.00

The difference in cost between the replacement property and the market value of the accommodation on the Expropriated Land is \$30,969.00. The Claimants requested this amount pursuant to Section 47 of the Act.

The Board accepts the arguments and evidence by the Claimants with respect to the acquisition of the replacement property. Section 47 authorized the Board where necessary to award compensation to enable the owner to locate to accommodation “...*that is at least equivalent to the accommodation expropriated...*”. The test of equivalent accommodation is whether the replacement home was reasonably similar to the expropriated home. The Board is of the opinion the Claimants acted reasonably in selecting the replacement accommodation they did. As no two properties are ever identical, the improvements and repairs made to the replacement were reasonable and necessary to bring the replacement accommodation to a condition and utility similar to that of the former home.

In the result the Claimants are entitled to damages pursuant to Sections 47 in the

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amount claimed, \$30,969.00.

**3. Are the Claimants entitled to disturbance damages?**

**Section 50(a)(i)(A);**

With respect to the claim for the costs and inconvenience of finding replacement accommodation, the difference between the two appraisers is only in the value attributed to the house and accompanying improvements. As the Board accepted Mr. Gettel's valuation of the house, the allowance of 5% in accordance with Section 50 is fixed at \$7,180.00.

**Section 50(c);**

With respect to the cost of moving, the Claimants claimed \$27,889.00 for numerous costs including legal fees, house inspection, moving the household, moving 7 trees, moving grain and the cost of a new roof on the expropriated house.

The Respondent did not provide evidence refuting these costs but argued that it was not liable for any costs associated with the Claimants' change in lifestyle.

The Board denies the \$600.00 claim for the new roof on the expropriated house as the cost is not attributable to the expropriation. Property insurance normally covers repair costs arising from hail or storm damage. If the new roof was due to the normal deterioration over

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time, the cost is associated with the typical maintenance and upkeep required of any property owner.

The Claimants estimated \$21,400.00 for the cost of moving the household effect based on a quotation they obtained from a professional mover. In the end the Claimants decided to move themselves with help from friends and family members.

The Board fixes the cost of moving and related damages at \$27,289.00.

**Other Section 50 Disturbance Damages:**

The Claimants claimed \$14,009.43 for the cost of holding an auction sale and \$10,920.00 for the loss incurred by selling the equipment through an auction instead of through a farm machinery dealer. They argue that the expropriation forced them to dispose of the equipment when they would otherwise have either continued to farm and possibly pass the farm on to their children or grandchildren. The expropriation in effect forced them to accelerate a typically slower and more gradual change in lifestyle as they grew older.

The Respondent argued that the only cost the City is liable for is the moving costs to a replacement hobby farm. No evidence was led to indicate what these costs would be.

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The Board accepts the Claimants' argument that the expropriation accelerated the Claimants' lifestyle change. They were too old to start over again at another location for a few years before completely retiring. At some future time, the Claimants may have decided to stop farming and dispose of their equipment. If so, they would have done it at a pace and in a manner which would have maximized their proceeds. As a consequence they would have incurred a portion of the auction costs now claimed. The Board fixes this disturbance damage at \$11,207.54.

The Board rejects the claim that selling farm equipment through an auction caused a loss of sales proceeds. It is very customary for farmers in the normal course of business to dispose of equipment and supplies through farm auctions instead of through an equipment dealer. The claim for \$10,920.00 is hereby denied.

The Claimants argued that they were forced to sell a considerable supply of lumber intended for use in their farming operation. They were unable to sell it through a local lumber retailer because of the timing of the expropriation and the lack of storage space at the lumber retailer's premises. Therefore, they were compelled to sell it quickly at the auction sale, thereby suffering a loss in sale price. The Lumber retailer provided estimates of the prices he would have obtained by selling the lumber through his business which was \$10,641.00 higher than the Claimants actually received through the auction.

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The Board accepts the Claimants' argument that they suffered a loss by the quick sale of the lumber. If they sold the lumber through a retailer, they would have incurred some expenses. The Board fixes this disturbance damage at \$8,512.80.

**Section 53, Business Losses;**

The Claimants claimed the loss of one calf crop of 22 calves valued at a net loss of income of \$4,126.00 for 1998. They argued that they had to sell their bull prematurely to facility the disposal of their property and relocation. They felt they did not have the time and energy to both maintain their cow-calf operation and prepare to relocate.

The Board accepts the fact the Claimants had to wind up their operation at some point in time and preparation to move. However, to minimize their losses and increase the value of the cows when sold, the cows could have been bred in the fall of 1997. This would have reduced their loss of revenue on the calf crop.

The Board fixes this disturbance damage at \$3,000.00.

In summation, the Board makes the following awards:

- |     |  |              |
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| (a) | the value of the expropriated property | \$374,500.00 |
|-----|--|--------------|

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(b)	the reinstatement costs (Section 47)	\$ 30,969.00
(c)	value of inconvenience and costs of finding a replacement home (Section 50)	\$ 7,180.00
(d)	cost of moving and related damages (Section 50)	\$ 27,289.00
(e)	cost of auctions (a 20% reduction of the actual cost of \$14,009.43, in recognition that at some time in the future the Claimants would have had some expense in this area)	\$ 11,207.54
(f)	loss on sale of lumber (a 20% reduction from the amount claimed of \$10,641.00 for the same reason as expenses in (e) above)	\$ 8,512.80
(g)	loss of 1998 calf crop	<u>\$ 3,000.00</u>
		\$462,658.34

The Board hereby orders payment of \$462,658.34 by the Respondent to the Claimants less the amount paid under the Section 30 Agreement, together with interest calculated at the rate 4.5% per annum, compounded annually from January 5, 1998 to the date of payment.

The Board acknowledges the parties have reserved the right to return to the Board with respect to the matter of costs.

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**F. Weber, Presiding Chairman**

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**J. E. Logan, Member**

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**S. S. Schumacher, Q.C., Member**