

LAND COMPENSATION BOARD
FOR THE PROVINCE OF ALBERTA

ORDER NO. 397

FILE NO. 10866.0

October 2 , 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:

LESLIE KOZIOL

Claimant

- and -

THE CITY OF EDMONTON

Respondent

BEFORE:

THE LAND COMPENSATION BOARD FOR THE PROVINCE OF ALBERTA

SITTING MEMBERS:

- Doug MacKenzie, Presiding Member
- Marilyn McAvoy, Member
- Ernest Stevens, Member

APPEARANCES:

For the Claimant: - Donald P. Mallon, Legal Counsel

Witnesses:

- Brian Gettel, Gettel Appraisals Ltd.;
- Leslie Koziol, Landowner;
- Dale Maughan, Husband of the Landowner; and
- Dale Wright, Cliff's Towing Service Ltd.

For the Respondent:

- Larry A. Reynolds, Legal Counsel

Witnesses:

- Bruce Simpson Serecon;
- Terry Capp, Pricewaterhouse Coopers Inc.; and
- George Tarnawsky; Property Agent,
Asset Management and Public Works, City of Edmonton

PLACE: Held in the City of Edmonton of Edmonton in the Province of Alberta on July 17, 18 and 19th , 2000 at the Office of the Land Compensation Board.

ORDER

INTRODUCTION:

Leslie Koziol ("the Claimant"), made application to the Land Compensation Board ("the Board") pursuant to the provisions of the Expropriation Act, R.S.A. 1980, Chapter E-16, ("the Act"), for an Order fixing compensation to be paid by The City of Edmonton ("the Respondent") as a result of the expropriation of the Claimant's lands described as follows:

MERIDIAN 5
RANGE 2
TOWNSHIP 50

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SECTION 17
QUARTER NORTHWEST
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 64.7 HECTARES (160 ACRES) MORE OR LESS
("the Expropriated Land")

The Claimant requests compensation for the following:

- (i) Market value of the Expropriated Land with interest from March 3, 1998.
- (ii) Pursuant to Section 47 of the Act an amount to enable the Claimant to relocate her residence in accommodation that is at least equivalent to the accommodation on the Expropriated Land.
- (iii) An amount for the inconvenience and cost of finding another residence.
- (iv) Moving and other related expenses.
- (v) Auction expenses.
- (vi) Economic loss on the forced sale of the mobile home.
- (vii) The present value of the damages referred to in (ii) - (vi) above.

BACKGROUND:

The Expropriated Land (160 acres) was part of a larger farm holding consisting of three quarter sections located north of Warburg in the County of Leduc No. 25. The Expropriated Land had been owned by the Claimant's parents for 65 years.

The Claimant moved to the Expropriated Land in 1992 into a mobile home purchased at that

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time.

The Respondent first contacted the then owner Sophie Koziol (Mother of the Claimant) in the late 1980's about acquiring the Expropriated Land for coal extraction for the Genesee Power Plant. Negotiations continued throughout the 1990's without success. Sophie Koziol died in 1997 and the Claimant inherited the Expropriated Land and another 1/4 section approximately 2 miles away. The Koziol land holdings are illustrated on a map found on page 7 of the Gettel Report [Exhibit 3].

The Claimant executed an agreement with the Respondent under Section 30 of the Act reserving her right to apply to the Board for further compensation. Under the agreement the Claimant received \$160,000.00 for the market value of the land, and \$7,300.00 for rent, legal and appraisal fees up to the closing date.

Title to the Expropriated Land transferred to the Respondent on March 3, 1998 and this was the valuation date used by both appraisers in these proceedings.

The Claimant relocated to property in Stony Plain (the Replacement Property) purchased in 1998 for \$112,000.00. The Claimant continues to own the second quarter section inherited from her mother.

ISSUES TO BE DETERMINED BY THE BOARD:

1. What was the market value of the Expropriated Land on March 3, 1998?

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2. Is the Claimant entitled to compensation under Section 47 of the Act.?
3. What are the damages attributable to the disturbance?
1. WHAT WAS THE MARKET VALUE OF THE EXPROPRIATED LAND ON MARCH 3, 1998?

Both parties submitted appraisal evidence of the market value of the Expropriated Land. Mr. Gettel, Appraiser for the Claimant, estimated the market value of the property as \$240,000.00. Mr. Simpson, Appraiser for the Respondent, estimated the market value of the property as \$185,000.00.

The areas of disagreement between the appraisers included:

- (i) The highest and best use.
- (ii) The methodology for valuing the Expropriated Property.
- (iii) The value of the dairy barn and site improvements.

Each of these areas will be examined in detail.

(i) **What is the highest and best use of the Expropriated Land?**

Both appraisers defined the highest and best use as "...the use which will result in the highest present value at the effective date of the appraisal."

Mr. Gettel was of the opinion that the Expropriated Land would achieve maximum profitability by a joint rural/residential and agricultural use. He testified

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that if he was counselling the Claimant as a “willing vendor” he would recommend the subdivision of a 10 acre site which would include the farm buildings and the house. The Expropriated Land would be marketed on the basis of a separate 10 acre rural/residential holding and a 150 acres for agricultural use.

Mr. Gettel acknowledged that on the valuation date the proposed subdivision had not occurred. However such a subdivision was permissible under the land use bylaw and could be done quickly and cheaply. There were a number of reasons why he felt the Expropriated Land lent itself to such a subdivision. It was sandwiched between two large expansionary landowners, the Respondent and the Warburg Hutterite Colony. There were also farmers in the area who wished to expand but found it difficult because of the demand for land. Local buyers did not need the improvements and thus a 10 acre hobby farm with improvements would appeal to a different purchaser.

Mr. Simpson concluded that the highest and best use of the Expropriated Land was agricultural. His analysis did not include a joint use. From his review of sales in the area he found that vendors sold their farms as a single unit.

Mr. Simpson did acknowledge that farms were sold both ways. He stated when a subdivision of land and improvements occurred, the improvements “were

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devalued” which negated the economic benefit of “subdividing out.”

BOARD’S DETERMINATION:

The Board accepts Mr. Gettel’s submissions on the highest and best use of the Expropriated Land. The Board recognizes that no subdivision had taken place on the valuation date. However, if the standard to be applied is that of a “willing vendor and purchaser” then the Claimant is entitled to the benefit of a practical scheme which would maximize her return on the sale of the Expropriated Land.

The Board bases its finding on the following evidence;

- (i) Mr. Simpson’s evidence that informed sellers sold land both ways.
- (ii) Messrs. Simpson’s and Gettel’s evidence that there was a significant competition for land north of Warburg because of the presence of two buyers, the Respondent and the Hutterite Colony. Neither of these purchasers would be interested in the improvements. Local farmers were also interested in and competing for land in the area. Mr. Simpson testified that adjacent farmers were the most likely purchasers of bare land. The forgoing supports Mr. Gettel’s conclusion that there was a distinct market for 10 acre improved sites.
- (iii) Mr. Maughan’s (Claimant’s husband) evidence that the Hutterites had approached him about a potential purchase of the Expropriated Lands.
- (iv) Mr. Gettel’s evidence that the land use by law permitted a first subdivision out of 10 acres.
- (v) Mr. Gettel’s evidence that there were a number of acreages in the area.

Based on the demand for land in the area the Board accepts Mr. Gettel’s conclusion that the 10 acre rural/residential site was a practical way of maximizing value. The finding of a dual or joint

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use as the highest and best use has been previously recognized by this Board in Stierle et al. v. The Queen in Right of Alberta 63 L.C.R. 171.

(ii) What is the preferred method of Valuation, Direct Comparison or Cost?

Mr. Gettel utilized the cost approach to valuation which involved valuing the bare land by direct comparison and then adding the depreciated cost of the improvements. He preferred the cost approach in valuing farm properties. He justified its use because of the difficulty in finding “truly comparable properties”. He stated:

It is difficult to find similar properties with the same land base. And even if you do have the same land base, there may be differences in cultivation or soil quality. And then the size scale and the age of the improvements. There is always wide -- I find wide swings. In other words, you may find a property with a similar home, but was set up as a dairy barn and it has a huge dairy barn and loafing barns. And we have a series of small barns on our property. And the age will often vary. There are a lot of things that come into play that make it difficult to adjust.

Mr. Simpson utilized both the cost and direct comparison methods of valuation. He testified that after analysing his direct comparison data there was no ideal

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comparable so he used the cost approach to support this data. However he placed the greatest reliance on the direct comparison approach which indicated a market value for the Expropriated Land of \$180,000.00

Mr. Simpson relied on 6 comparable sales. Each sale was adjusted for size, location, soil and topography, improvements and motivation. He did not classify the size adjustment as a “true adjustment” which would affect value. The adjustment merely brought the land base of the comparable back to the size of the Expropriated Land.

With respect to the improvements located on the comparables Mr. Simpson determined their depreciated cost and then subtracted \$76,000.00, the depreciated cost of the improvements on the Expropriated Land.

In cross examination Mr. Simpson testified that if a comparable required an adjustment of 100% he would discount that particular sale. He further stated he “was not happy” if an adjustment of 50% was required.

Mr. Mallon, solicitor for the Claimant, in cross examination summarized the adjustments, not including size, to Mr. Simpson’s comparables as follows:

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<u>Comparable</u>	<u>Adjustment %</u>
A	79
B	43.6
C	25
D	20.8
E	63.7
F	43

Mr. Simpson did not take issue with Mr. Mallon's summary.

THE BOARD'S DETERMINATION:

The Board in this instance finds Mr. Gettel's preference for the cost approach to valuation justified. The Board accepts Mr. Gettel's evidence that in farm properties it is difficult to find truly comparable sales because of the differences in land base, soil quality and improvements. Indeed even Mr. Simpson testified that he used the cost approach in this case because there wasn't an ideal comparable.

The Board also notes that Mr. Simpson was required to make large adjustments to the comparables and in his words in some instances these adjustments did not "make him happy". The Board takes this comment to mean that the comparables were less than satisfactory.

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Both appraisers acknowledged in farm communities and in this area the cost approach was extensively used. The Board as a consequence, prefers the value indicated by the cost approach.

Market Value of the Property using the Cost Approach

Mr. Gettel's estimate of the market value of the Expropriated Land broke down as follows:

[Exhibit 3, page 54]

Rural Residential Holding: Base Land Value: 10 acres @ \$2000.00 per acre = \$20,000.00 - subdivision cost of \$1,500.00	=	\$ 18,500.00
Agricultural Holding: 150 acres @ \$840.00 per acre	=	\$126,000.00
Depreciated Cost of Improvements:	=	<u>\$ 95,500.00</u>
	Total	<u>\$240,000.00</u>

Mr. Simpson's estimate of market value of the Expropriated Land using the cost approach broke down as follows:

Base Land Value: 160 acres @ \$745.00 per acre	=	\$119,200.00
Depreciated Cost of Improvements:	=	<u>-\$ 76,000.00</u>
	Total	<u>\$195,200.00</u>

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Base Land Value of Rural/Residential Holding

The Board having found that a joint use is the highest and best use accepts Mr. Gettel's opinion of \$2000.00 per acre for the land underlying the 10 acre rural/residential site. Mr. Simpson did not take issue with this.

The Board finds it appropriate to deduct the subdivision expenses of \$1500.00 from the total.

Market Value of the Agricultural Holding (Remaining 150 acres)

Mr. Gettel estimated the market value of the 150 acre agricultural holding as \$126,000.00 or \$840.00 per acre. He relied on 6 sales ranging in value from \$707.00 per acre to \$949 per acre.

Mr. Simpson estimated the market value of the 160 acre site as \$119,000.00 or \$745 per acre. He relied on 5 sales.

Three sales were common to the appraisals. Mr. Gettel's sales 1,3 and 5 corresponded to Mr. Simpson's comparables 4, 2 and 1.

Mr. Gettel's sale #1 carried an adjusted value of \$820.00 per acre. Mr. Simpson's

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adjusted value for the same sale was \$798.00 per acre. The difference in values turned on Mr. Simpson's 5% adjustment for location. Mr. Gettel's did not adjust for this factor.

Mr. Gettel's sale #3 had an adjusted value of \$838.00. Mr. Simpson's adjusted value was \$798.00. The difference in values turned on Mr. Simpson's adjustment for location (10%) and a larger adjustment for size. (5% Mr. Gettel, -15% Mr. Simpson).

Mr. Gettel's sale #5 had an adjusted value of \$854.00 per acre. Mr. Simpson's adjusted value was \$759.00. The difference in value turned on Mr. Simpson's larger adjustment for motivation and a 5% adjustment for soil quality.

Mr. Gettel's remaining 3 comparables indicated values of \$825.00 [sale #2]; \$771.00 [sale #4] and \$762.00 [sale #6].

Mr. Simpson's remaining 2 sales had adjusted values of \$718.00 per acre [sale #3] and \$743.00 per acre [sale #5].

BOARD'S DETERMINATION:

Turning first to the common comparables, the different values resulted from the appraisers adjustments for location, motivation and size.

Mr. Simpson testified that in his experience properties adjacent to highways benefited from a

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value standpoint. Mr. Gettel made no adjustments to his 6 comparables for location. He noted that all of the properties were within the same general agricultural area and proximity to a highway was more of a consideration for a rural/residential holding than agricultural.

The Board accepts Mr. Gettel's explanation with respect to location and finds it reasonable not to adjust the agricultural comparables for access to highways.

Mr. Simpson adjusted his comparable #2 [Mr. Gettel's Comparable #3], a 65 acre farm by 15 percent for size. Mr. Gettel felt that an adjustment of this magnitude was more appropriate to a smaller holding near Edmonton or Leduc where there was a market for 80 acre holdings. The Board accepts Mr. Gettel's explanation and finds that a smaller premium should be applied for size in a rural setting. The 5 percent adjustment applied by Mr. Gettel in the circumstance appears reasonable.

With respect to the small difference in the other adjustments, motivation, size and soil, the Board is at a loss to determine if 5 or 10% is the correct number. The Board finds in most instances the difference to be minimal and will rely on Mr. Gettel's deductions as reasonable in the circumstances.

The Board also is persuaded by Mr. Gettel's overall presentation with 4 sales indicating a

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range in values between \$820.00 - \$860.00 per acre. The sales are consistent with a value of \$840.00 per acre for the Expropriated Land. The Board accepts Mr. Gettel's finding that the remaining 2 comparables, 4 and 6, set the low end in value. Comparable #4 was a foreclosed property sold by the bank and comparable #6 had an irregular shape.

The Board observes that Mr. Simpson's sale #5 adjusted to \$743.00 per acre, was a sale to a tenant which was not exposed to the market. The Board finds that this sale would also indicate the low end of market value.

(iii) The Improvements:

The second part of the cost approach is to add the depreciated cost of the improvements to the bare land value.

Mr. Gettel's improvement value is approximately \$20,000.00 greater than Mr. Simpson's. The difference is a result of the valuation of the dairy barn and the site improvements. These areas will be examined.

Dairy Barn:

Mr. Gettel in his report referred to the cost of the improvements as "reproduction cost". Mr. Simpson utilized the term "replacement cost".

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With respect to the dairy barn Mr. Gettel used a reproduction cost of \$25.00 per square foot for 1,944 square feet or \$48,000.00.

Mr. Simpson, for the dairy barn, used a replacement cost of \$14.00 per square foot for 2,544 square feet or \$36,616.00. He utilized this cost because the dairy barn was not being used for its original purpose. Mr. Simpson felt that its most likely use was for a cattle barn. A building of \$14.00 per square foot would provide the same utility as the existing dairy barn.

In referring to the size of the dairy barn, the appraisers could add no additional evidence in support of their recorded measurements.

BOARD'S DETERMINATION:

The Board is at a loss on how to resolve the difference in the measurement of the dairy barn. The most appropriate finding in the circumstances is to split the 600 foot difference. As a consequence the dairy barn measures 2,244 square feet.

With respect to Mr. Simpson's replacement cost the Board notes that even though he substituted a cheaper building he still applied \$1,800.00 for functional depreciation. The Board finds it unfair to replace the building with one of lower cost and still deduct an amount for functional depreciation.

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The Board also recognizes that the dairy barn is over built for the market and its eventual use. Mr. Gettel indicated that in the event of a 10 acre subdivision the barn would be converted for the use of horses or beef cattle. As a consequence, the Board finds it appropriate to increase functional obsolescence to 15 percent.

After making the adjustment to the dairy barn for size and depreciation the Board finds its depreciated cost is \$10,098.00.

The Site Improvements:

The other significant area of difference between the two appraisers was their valuation of the site improvements. Site improvements included the gardens/landscaping, driveway, services (power, water, etc.) and fencing. Mr. Gettel valued the site improvements at \$25,000.00. Mr. Simpson, estimated their value as \$12,000.00. Each appraiser supported their estimate by saying that it was the number produced when sales were analysed.

THE BOARD'S DETERMINATION:

Other than the appraisers opinion there is no other evidence for the Board to analyse on this issue. In the circumstances the Board finds Mr. Simpson's value for site improvements too low. The Board also finds it unlikely that a vendor could recapture their entire investment. The Board finds the value of the site improvements on March 3, 1998, is \$15,000.00

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As previously noted, with the exception of site improvements and the dairy barn, there was very little difference in the appraisers opinion on the value of the remaining improvements. The Board accepts Mr. Gettel's determination of value of the remaining improvements. As a consequence the market value of the Expropriated Land is \$226,490.00 which reflects the following:

(1) Base Land Value - Rural/Residential

10 acres at \$2,000.00 per acre - \$1,500.00 for subdivision costs	=	\$ 18,500.00
- Agricultural Holding 150 acres @ \$840.00 per acre	=	\$126,000.00
- Depreciated cost of the Improvements	=	<u>\$ 81,990.00</u>
Total	=	<u>\$226,490.00</u>

2. IS THE CLAIMANT ENTITLED TO COMPENSATION UNDER SECTION 47 OF THE ACT?

Following the expropriation the Claimant purchased a replacement property in the Town of Stony Plain. The Claimant submits that the money advanced by the Respondent (\$160,000.00) was not sufficient to purchase a quarter section and house within the vicinity of the Expropriated Land. The purchase price of the Replacement Property was \$112,000.00 and the Claimant made upgrades to the house totalling \$26,524.00. A detailed list of the upgrades is found in Exhibit 7.

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Mr. Gettel valued the residential portion of the Expropriated Land at \$68,607.00. This sum included three acres of land at \$2,000.00 per acre, the depreciated cost of the house, storage shed, services and landscaping. [Exhibit 3, page 59].

Pursuant to Section 47 of the Act the Claimant requested the difference in value between the acquisition cost and upgrades to the Replacement Property and the residential value of the Expropriated Land. The difference is \$69,917.20.

The Respondent denied liability for this claim. It submitted that it is not possible to compare a farm house to a house in an urban setting. Section 47 of the Act contemplates a farm for a farm.

Mr. Simpson prepared a supplemental report which the Respondent submitted showed that there were at least five reasonable quarter section farm replacements available at the time the Claimant purchased the Stony Plain Replacement Property. The Respondent in argument stated that the \$185,000.00 appraised value of the Expropriated Land would provide the Claimant with a replacement farm property of equal or better value including any adjustments for deficiencies in the building component of the replacement property.

The Claimant responded to the Simpson Supplemental Report with Exhibit 14, prepared by Mr. Gettel. This exhibit illustrated that all of the Simpson replacement properties required sums additional to \$185,000.00 to be expended to make the residence equivalent to

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the Expropriated Land. The Claimant submitted that if the Board could not make a comparison between the expropriated residence and the Stony Plain Replacement Property it could award compensation based on Exhibit 14.

BOARD'S DETERMINATION:

Section 47 of the Act states as follows:

47(1) On application therefor, the Board shall, after fixing the market value of land used for the principal residence of the owner, award such additional amount of compensation as, in the opinion of the Board, is necessary to enable the owner to relocate his residence in accommodation that is at least equivalent to the accommodation expropriated, and in fixing the additional amount of compensation the Board shall include the increase in cost between the time of expropriation and the time when the new accommodation could reasonably be obtained.

(2) In this section "owner" means a registered owner or purchaser and does not include a tenant.

In Eric C. Todd's text, *The Law of Expropriation and Compensation in Canada*, he states that the first step in the home for a home calculation, "...is to determine the market value of the expropriated lands and the residence." This calculation is somewhat complicated in a farm setting because the house and the farm are often treated as a single unit. Mr. Gettel attempted to isolate the residential component of the farm and calculated the value as \$68,607.00.

Todd then states that the second step is to calculate the cost to the owner to relocate his residence in accommodation at least equivalent to the accommodation expropriated. If there is a

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difference between the first and second amount then the owner is entitled to additional compensation equivalent to that amount.

It is critical to the application of Section 47 to determine what is “equivalent accommodation”.

The Board finds that equivalent accommodation under Section 47 of the Act is restricted to the same basic parameters of the expropriated accommodation, in this case a farm residence. Equivalency Mr. Gettel concluded in his report is both quantitative (i.e. type and size of residence, support buildings, etc.) and qualitative (i.e. quality, condition of the residence, location, amenities, etc.). His statement is similar to Todd’s text which states that equivalency refers to functional utility and to the location of an actual or possible substitute residence.

The Board finds that the Replacement Property in Stony Plain is not an equivalent accommodation as that term is used in Section 47 of the Act. Mr. Gettel in his report admitted that the typical residential lots within Stony Plain were selling in the \$30,000.00 to \$35,000.00 price range and “hence the land element and servicing is more costly” than the expropriated accommodation. The Board finds that it is not possible to determine equivalency when comparing a rural house located on an agricultural quarter section to a house in town.

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The Board finds support for its interpretation of Section 47 in a decision of the Ontario Land Compensation Board, McGinnis v. Minister of Government Services 34 L.C.R. 375, where the landowner relocated from a small town adjacent to Toronto to downtown Toronto. The Board held that the “home for a home” provision should not apply to the replacement property because the properties were not comparable.

The Claimant submitted that if the Board cannot make a direct comparison between the Expropriated Land and the Replacement Property it is entitled to construct a hypothetical replacement.

The “Todd Formula” would apply to any claim based on a hypothetical replacement. The Board has determined the market value of the Expropriated Land to be \$226,490.00 of which \$68,607.00 is the residential portion (using Mr. Gettel’s calculation). Whether the former or latter sum is used the evidence does not show that the Claimant required additional funds to relocate to equivalent accommodation.

With respect to the Simpson Supplemental Report and Mr. Gettel’s response [Exhibit 14], only the Simpson comparables 1 and 2 exceeded the market value of the Expropriated Land. Alternative number 2 was larger by 75 acres and as a consequence is not comparable to the Expropriated Land.

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In alternative number 1 Mr. Gettel testified that to develop the basement to the utility that the Claimant enjoyed in the previous house would cost \$12,929.00. The market value of the alternative exceeded the value of the Expropriated Land by \$8,500.00.

Mr. Simpson's alternatives 3, 4 and 5, could all be purchased and the residences upgraded for far below the market value of the Expropriated Land.

The Board is not satisfied on the balance of the evidence that the Claimant required additional compensation to relocate to a residence equivalent to the accommodation expropriated.

If the Claimant moved to any one of the Simpson alternatives Mr. Gettel testified that there would be an increase in travelling time and costs to Ms. Koziol's employment and the second quarter section. Mr. Gettel calculated the present value of the increased costs using a 3% discount factor over 20 years. Using this formula Ms. Koziol's travel costs would be \$32,730.00 and extra farming costs, \$58,795.00.

First the Board is not satisfied that Ms. Koziol will teach another 20 years. At the time of the expropriation she was 42 and had been teaching for 21 years. In addition the Simpson comparable number 5 showed no extra travelling costs to Ms. Koziol's employment.

The increased farming costs assumes that the Claimant will farm the second quarter section.

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There was no evidence to indicate that the Claimant had any intention of farming that section. Both Ms. Koziol and her husband work full time. The Claimant and her husband had ceased farming operations prior to the expropriation partly because of their full time employment. Ms. Koziol testified that when the expropriation was over she would like to move on and buy a piece of land “by where I work”. Ms. Koziol teaches in Seba Beach several miles from the second quarter section.

The Board finds both these claims too speculative to entitle the Claimant to succeed.

3. WHAT ARE THE DAMAGES ATTRIBUTABLE TO THE DISTURBANCE?

Section 42(2)(c) of the Act requires the expropriating authority to compensate the Claimant for any damages attributable to the disturbance. Section 50 of the Act states as follows:

50 The expropriating authority shall pay to an owner other than a tenant, in respect of disturbance, such reasonable costs and expenses as are the natural and reasonable consequences of the expropriation, including,

(a) when the premises taken include the owner’s residence,

(i) an allowance of

(A) 5% of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, or

(B) the actual amount proved with respect to those items,

whichever is the greater, to compensate for inconvenience and

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the costs of finding another residence, if the part of the land so used was not being offered for sale on the date of the expropriation, and

(ii) a reasonable allowance for improvements the value of which is not reflected in the market value of the land;

(b) when the premises taken do not include the owner's residence, the owner's costs of finding premises to replace those expropriated, if the lands were not being offered for sale on the date of expropriation;

(c) relocation costs, to the extent that they are not covered in clause (a) or (b) including

(i) moving costs, and

(ii) legal and survey costs and other non-recoverable expenditures incurred in acquiring other premises.

The Claimant requests the following compensation under this heading;

- (i) Pursuant to Section 50(a)(i)A, \$3,430.00 representing 5% of \$68,607.00, the market value of the residential component of the Expropriated Land.
- (ii) Moving and other related damages - \$4,175.00
- (iii) Auction expenses - \$7,133.00
- (iv) Loss on forced sale of the mobile home - \$6,622.00

Details of these claims are found in Exhibit 7. Mr. Gettel, the Claimant and her husband gave further evidence on the expenses.

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The Respondent denied liability for the claims (ii) - (iv). Its position is that the Respondent should only be liable for the cost of moving the Claimant's chattels, including the mobile home, to another farm. The auction expenses and the loss on the mobile home would have been avoided if the Claimant moved to another farm.

The Claimant estimated that the cost of moving the household, farm equipment and mobile home was approximately \$11,802.00 including G.S.T. The Respondent's estimate was around \$6,000.00.

BOARD'S DETERMINATION:

The Respondent did not take issue with the Claimant's entitlement to damages under Section 50(a)(i)A of the Act merely the amount. The Board awards the Claimant \$3,280.35 under this section or 5% of \$65,607.00. The Board reduced the value of the site improvements from \$18,000.00 to \$15,000.00.

The Respondent pursuant to the February 3, 1998 Section 30 Agreement paid the Claimant \$160,000.00 for the market value of the Expropriated Land. This amount was paid notwithstanding that the Respondent's own appraiser in July, 1997 valued the Expropriated Land at \$178,300.00. In July, 1998 the Respondent's appraiser valued the Expropriated Land on the valuation date at \$185,000.00. Mr. Tarnowsky, the negotiator for the Respondent, admitted that the Respondent did not advance any additional sums to the Claimant and that it is waiting for either a negotiated settlement or a decision of the Board.

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The Board finds that the Respondent's decision to advance only a portion of the market value did not provide the Claimant with the means of purchasing a similar farm in the area. The cheapest property referred to in the Simpson Supplemental Report sold for \$180,000.00. Counsel for the Respondent submitted that the Claimant should have mitigated her losses by borrowing funds to make up the difference in market value. The Board finds that the Claimant is not obligated to borrow funds to mitigate the effect of the Respondent's failure to pay market value.

Under the Act the Respondent is required to pay any reasonable costs and expenses that are a natural consequence of the expropriation. The Claimant's property was expropriated and it was necessary to find a new place to live. The decision to move to a house in Stony Plain was not unreasonable especially in view of the fact that the Claimant only had \$160,000.00. As a consequence the Board approves the moving expenses and other related damages of \$4,174.99.

The move to town necessitated the sale of the farm equipment. The Board approves the auction expenses with the exception of \$3,600.00 which is a loss claimed on the reduction in the sale price of a truck sold to Mr. Litzenburger who assisted the Claimant in the auction. Mr. Maughan estimated that he and Mr. Litzenburger spent 840 hours preparing the machinery for the auction. The Board finds this amount of time excessive and reduces it by the time spent by Mr. Litzenburger.

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The Board also denies the claim for batteries as these were items that had to be replaced if the Claimant continued to own the equipment.

The Board denies the claim of \$408.32 for baby sitting. If Mr. Maughan is charging for his time to prepare the goods for auction, he is not entitled to this claim.

The Claimant after advertising the mobile home for a higher price eventually sold it for \$7,000.00. Mr. Gettel valued the home at \$13,622.00 and the difference of \$6,662.00 is claimed as a disturbance loss. Mr. Capp, for the Respondent, admitted the mobile home could be worth between \$9,000.00 and \$13,000.00.

Having found that the decision to move to Stony Plain not unreasonable, the Board orders payment of this claim. It was not possible to move the mobile home to the Replacement Property. The loss is a consequence of the expropriation.

Additional Claims:

The Claimant claims a \$1,000.00 for her time spent on the expropriation. The Claimant also requests compensation in the amount of \$1,000.00 for the time spent by her husband in preparing the equipment for auction.

BOARD'S DETERMINATION:

The Board awards \$1,000.00 to the Claimant for the time spent by her husband. If Mr.

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Maughan had not prepared the equipment, the Claimant would have been obligated to pay someone for the task.

With respect to Ms. Koziol's time the Act authorizes payment under Section 39 where costs are actually incurred or under Section 42 as a disturbance damage. There was no evidence that costs were incurred in relation to Ms. Koziol's time. Nor was it established that the Claimant suffered any loss or damage because of the time spent on the expropriation. In previous cases the Board has awarded damages to the Claimant for a loss of an executive's time spent on expropriation matters. This is not the case here.

Present Value:

The Claimant seeks the present value of the damages awarded to the date of the award. The Respondent took no position on this issue. The Board finds that the disturbance damages be present valued from September 1, 1998 to the date of the award utilizing the average annual interest yields on 90 day Treasury bills such interest is to be compounded annually. The interest rates are as follows:

1998	-	\$4.8%
1999	-	4.72%
2000	-	5.32%

Interest

The Claimant also seeks interest on the difference between the proposed payment of

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\$160,000.00 and \$226,490.00 determined by the Board to be the market value of the Expropriated Land from March 1, 1998 to the date of payment based on the above present value formula. The Board awards interest on this basis.

SUMMARY OF THE BOARD'S RULING:

The Board hereby orders as follows:

The Respondent shall pay the Claimant,

- (1) The difference between the Proposed Payment of \$160,000.00 and the \$226,490.00 determined by the Board to be the market value of the Expropriated Land (\$66,490.00) and interest based on the annual average of interest paid on a 90 day Treasury Bill from March 1, 1998 to the date of payment, such interest to be compounded annually.
- (2) Disturbance damages as follows:
 - (i) \$3,280.35 pursuant to Section 50(a)(i)A of the Act.
 - (ii) \$4,175.00 for moving and related damages.
 - (iii) \$2,753.70 for auction expenses, and
 - (iv) \$6,662.00 for the loss on the forced sale of the mobile home.
 - (v) \$1,000.00 for the time spent by Mr. Maughan preparing the farm machinery for auction.

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- (3) The present value of the disturbance damages to be calculated in accordance with the Board's ruling.

The Board acknowledges that the parties have reserved the right to appear before the Board in the matter of costs and interest from the date of the award.

LAND COMPENSATION BOARD

Doug MacKenzie, Presiding Member

Marilyn McAvoy, Member

Ernest Stevens, Member