

Down v. Ministry of Transportation for Ontario
Case Summary

The Expropriation and the Property

In 2011 the Ministry of Transportation for Ontario expropriated approximately 21 acres of a 72 acre farm belonging to the Down family for the purpose of constructing Highway 407 East. The Ministry's taking included all of the farm improvements on the property, including the house Mr. Down was born in approximately 80 years before the expropriation. The Down's property was located in north Oshawa, outside of the urban expansion area, but within lands known as the "Whitebelt", which were not restricted from future urban development under Ontario's Greenbelt Plan.

The Ministry's Position

The Ministry initially made a statutory offer pursuant to Section 25 of the *Expropriations Act* for \$358,000.00. This offer was based on the acreage of the Down's property, using comparable sales that were improved and were located in the Greenbelt. As the comparable sales included improvements, the Ministry's offer did not pay additional compensation to reflect that the partial taking included all of the improvements, including Mr. Down's home. At the hearing before the Ontario Municipal Board, heard over eight days in January 2016, the Ministry presented a new appraisal report that followed a similar methodology using Greenbelt sales as comparables, providing no additional compensation for the home that was expropriated and finding no injurious affection where other disturbance damage is payable.

The Claimants' Position

The property owners advanced a claim for additional compensation including the following:

1. The market value for the lands expropriated, reflecting long term speculative development potential of Whitebelt lands;
2. Additional compensation for the expropriation of Mr. Down's home, based on the cost of finding an equivalent relocation property;
3. Injurious affection to the remaining lands that were not expropriated, arising from their change in future highest and best use and the lack of future use of portions of the land; and
4. Reasonable costs for the determination of compensation and interest on outstanding compensation.

The Board's Finding – Market Value

Following a hearing before the Ontario Municipal Board, heard over eight days in January 2016, for the determination of compensation, the Ontario Municipal Board rendered a decision that awarded the claimants market value for their property at a rate of \$35,000.00 per acre, which

reflected the fact that the lands were not in the Greenbelt, but rather in the Whitebelt and therefore a candidate for future urban development. The Board agreed with the planning evidence of all experts that these lands would not be developed for many years and had considerable challenges before they would be developed. Without the expropriation, however, the Board found that these lands would have a value based upon the long-term development potential for residential uses. The Board accepted the evidence of the Claimants' appraisers that different rates applied to future residential development lands, based on their development horizon.

The Board's Finding – Value of Mr. Down's Home

The Board valued the residence and a one acre lot surrounding parcel separately in order to provide Mr. Down with compensation to reflect the costs of him finding another residence. The Board accepted the Claimants' evidence that a comparable residence in the area, providing similar amenity would have a value of \$395,000.00. This compensation was awarded in addition to the market value applicable to the vacant lands.

The Board's Finding – Injurious Affection and Disturbance Damages

The Board then considered injurious affection to the remaining lands and accepted the planning evidence of the Claimants that with the 407 East and the taking, the future use of the remaining lands would most probably be for long-term employment lands, when sufficient demand arose. The appraisal evidence before the Board was that there was minimal demand for employment land in north Oshawa and that its value, as compared to residential value would be substantially lower. The Board concluded that the value of the lands with the 407 East, as future employment lands amounted to \$18,750.00 per acre. Accordingly, there was a loss in value of \$16,250.00 per developable acre of remaining land.

The Board also concluded that the portions of the remaining lands that were no longer developable because of the restrictions imposed by the Ministry of Transportation in accordance with the *Public Transportation and Highway Improvement Act* had no value. Accordingly, the 14 metres of land adjacent to the highway would have no value in the future. The Board also awarded the owners their actual moving costs for the relocation that was necessary, along with a 5% inconvenience allowance on the value of the residence.

The Board's Award of Compensation

In total, the Board awarded compensation in the amount of \$1,842,094.00, which was in addition to the \$358,000.00 that was initially advanced in accordance with the Ministry's statutory offer of compensation. In addition to this sum, the Board awarded interest at a rate of 6% per annum on all outstanding compensation from the date the Ministry took formal possession of the property. Lastly, the Ontario Municipal Board awarded the owners their reasonable legal, appraisal and other costs incurred for the determination of compensation.

The Down Family was represented at the hearing by [Shane Rayman](#) and [Jason Beitchman](#) of Rayman Beitchman LLP.

A copy of this decision is available here: <http://elto.gov.on.ca/omb/e-decisions-omb/>