

 [Yin Wan Enterprises Ltd. v. Richmond \(City\), \[2008\] B.C.J. No. 185](#)

British Columbia and Yukon Judgments

British Columbia Supreme Court

Vancouver, British Columbia

R.B.T. Goepel J.

Heard: July 30-31 and August 1-3, 2007.

Judgment: February 5, 2008.

Docket: L052406

Registry: Vancouver

[2008] B.C.J. No. 185 | 2008 BCSC 146 | 94 L.C.R. 76 | 67 R.P.R. (4th) 114 | 2008
CarswellBC 203 | 165 A.C.W.S. (3d) 288

Between Yin Wan Enterprises Ltd., Plaintiff, and City of Richmond, Defendant

(56 paras.)

Case Summary

Real property law — Expropriation — Compensation — Business property — Entitlement — Valuation of land — Methods of — Preferable method of valuing portion of expropriated business property was Direct Comparison approach — Landowner entitled to compensation for expropriated portions of property valued using Direct Comparison method — Construction of road by City actually increased value of commercial properties by making them more visible — Expropriation Act, ss. 32, 40, 44.

Action by Yin Wan for compensation from City for expropriation of portion of its properties -- Yin acquired one property in 1984, and acquired adjacent property in 1990 -- Yin leased properties to restaurant, office and cabaret tenants -- Yin's intention was to either develop properties as comprehensive commercial development or sell to one owner -- City adopted transportation plan in 1997 which proposed construction of road to bisect both properties -- City notified Yin in 1998 of its wish to acquire portion of each property -- City decided to acquire portions of properties by way of expropriation or purchase -- City delivered expropriation notices to Yin for each property in 2004 -- City served appraisal reports, valuing affected area of properties at \$123,000 and \$900,000 -- City made advance payments to Yin for these amounts in October 2004, and expropriated portions of properties -- Effect of expropriation was that each property was reduced in size and properties were no longer contiguous -- Parties agreed aggregate value of properties prior to expropriation was \$6,378,000, or \$57 per square foot -- Parties agreed Yin entitled to \$1,059,768 as compensation based on appraised value per square foot of expropriated portion of properties -- Yin sought additional compensation for loss of market value of \$966,640 based on post-expropriation appraisal of value per square foot of remaining properties -- Yin's appraiser used Development Approach -- City's appraisal, using Direct Comparison approach, showed properties' value per square foot increased because of expropriation.

HELD: Yin entitled to additional compensation of \$36,768, representing difference between advance payment by City an agreed-upon value of expropriated portions of properties.

City's appraiser provided more reliable valuation, where Yin's appraiser based figures on completely speculative development of properties -- Properties actually increased in value because road development made them more visible.

Statutes, Regulations and Rules Cited

Expropriation Act, R.S.B.C. 1996, c. 125, s. 32, s. 40(1), s. 40(3), s. 44(1.1), s. 46

Counsel

Counsel for plaintiff: D. Pangman and P. Sandhu.

Counsel for Defendant: S. Manhas.

Reasons for Judgment

R.B.T. GOEPEL J.

INTRODUCTION

1 On October 15, 2004 the City of Richmond (the "City") expropriated a portion of lands owned by the plaintiff, Yin Wan Enterprises Ltd. The parties have agreed on the value of the lands prior to the expropriation, but they have been unable to agree on the value of the remaining lands. When the City expropriated the lands, it made an advance payment to the plaintiff of \$1,023,000. The issue before the court is to determine what additional funds, if any, the plaintiff is entitled to receive as a result of the expropriation.

BACKGROUND

2 Evidence at the trial was limited to an agreed statement of facts together with appraisal reports and oral evidence from the parties' respective appraisers.

3 The plaintiff, on May 16, 1984 acquired the property at the civic address 4200 No. 3 Road, Richmond, British Columbia (the "4200 Lands"). The plaintiff has owned the 4200 Lands continuously since that time.

4 In early 1990 the plaintiff learned that 4260 No. 3 Road, the property immediately adjacent to the 4200 Lands, was for sale (the "4260 Lands"). The plaintiff sought advice from Paul Leong Architects Inc. concerning the development potential of the 4260 Lands if that property was consolidated with the 4200 Lands.

- 5** On January 27, 1990 the plaintiff wrote to its shareholders recommending the purchase of the 4260 Lands because of its long-term development potential.
- 6** On or about March 29, 1990 the plaintiff acquired the 4260 Lands. The plaintiff has owned the 4260 Lands continuously since that time.
- 7** The 4200 Lands and the 4260 Lands will be collectively referred to as the "Properties".
- 8** The plaintiff has conducted retail/commercial operations from the Properties by, *inter alia*, leasing out units on the Properties to commercial tenants, including restaurants, offices and a cabaret.
- 9** At all times prior to the expropriation, the plaintiff's ultimate objective was to develop the Properties as a comprehensive commercial development on a combined parcel or, alternatively, to sell the Properties to a single owner for future redevelopment.
- 10** In or about April, 1997 the City adopted the City Centre Transportation Plan which, *inter alia*, identified the extension of Browngate Road from Hazelbridge Way to No. 3 Road as a key road link to facilitate more efficient traffic circulation in Richmond's city centre. On February 16, 2004 the extension of Browngate Road from Hazelbridge Way to No. 3 Road was incorporated by the City in its official community plan as part of the road network plan for the city centre.
- 11** The proposed extension of Browngate Road bisected both the 4200 Lands and the 4260 Lands. In order to build the extension the City needed to acquire a portion of each of the Properties.
- 12** In or about February 1998 the City notified the plaintiff that it wished to acquire a portion of each of the Properties for the purpose of constructing the road extension through the middle of the Properties.
- 13** In or about December, 2003 the City decided to acquire a portion of each of the Properties either by way of purchase or by way of expropriation.
- 14** In or about August, 2004, the City delivered expropriation notices to the plaintiff which stated that the City intended to expropriate a portion of each of the Properties for the purpose of extending Browngate Road to intercept with No. 3 Road.
- 15** On October 8, 2004 the City served the plaintiff with appraisal reports for each of the affected areas of the 4200 Lands and the 4260 Lands. The appraisals estimated the market value of the required portions of the Properties as follows:
- (a) the affected area of the 4200 Lands - \$123,000; and
 - (b) the affected area of the 4260 Lands - \$900,000.
- 16** Together with the appraisal reports, the City made advance payments to the plaintiff in the amounts of \$123,000 and \$900,000, consistent with the values set out in the appraisals.

17 On October 15, 2004 the City expropriated the affected areas of the Properties by making the appropriate filings in the Land Title Office.

18 The effect of the expropriation was to divide the Properties so that they were no longer contiguous and to decrease the size of each of them.

19 The area of the Properties and the area expropriated are set out in the following table:

	Before Exprop- iation	Exprop- iated Area	After Exprop- iation
4200 No. 3 Road	52,011 ft ²	(2,223 ft ²)	49,788 ft ²
4260 No. 3 Road	59,029 ft ² -----	(16,227 ft ²) -----	42,802 ft ² -----
Gross Aggregate	111,040 ft ²	(18,450 ft ²)	92,590 ft ²

20 Prior to the expropriation, the Properties fronted onto No. 3 Road. As a result of the expropriation, the No. 3 Road frontage for the 4260 Lands was reduced from 110.8 feet to 52.7 feet and the No. 3 road frontage for the 4200 Lands was reduced from 186.4 feet to 164.3 feet. The Properties have been transformed from interior lots to lots with corner exposure. The 4260 Lands now have additional frontage of 398.8 feet on the Browngate Road extension while the 4200 Lands also have a frontage of 278.7 feet on the Browngate Road extension. The 4260 Lands have lost 39 parking spaces and the 4260 Lands "L" shape is now more pronounced.

21 The parties are agreed that the aggregate market value of the Properties prior to expropriation was \$6,378,000, or \$57.44 per square foot.

STATUTORY FRAMEWORK

22 This proceeding is governed by the provisions of the ***Expropriation Act***, R.S.B.C. 1996, c. 125 (the "**Act**"). The **Act** defines "market value" as the amount that would have been paid for an interest in land if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer (s. 32).

23 In this proceeding, consideration must be given to ss. 40(1) and (3) and s. 44(1.1) of the **Act**. Sections 40(1) and (3) provide:

- (1) Subject to section 44, if part of the land of an owner is expropriated, he or she is entitled to compensation for
 - (a) the market value of the owner's estate or interest in the expropriated land, and
 - (b) the following if and to the extent they are directly attributable to the taking or result from the construction or use of the works for which the land is acquired:
 - (i) the reduction in the market value of the remaining land;

(ii) reasonable personal and business losses.

...

(3) If part of the land is expropriated, the amount of compensation payable in respect of the matters referred to in subsection (1)(a)(i) may be established by determining the market value of the area of all of the land before the date of expropriation and subtracting from it the market value of the land remaining after the expropriation occurs, but in no case, subject to section 44, must compensation be less than the amount determined by multiplying the ratio of the area of the land before it was taken, times the value of the land before it was taken with the appropriate reduction if the interest expropriated is an easement, right of way or similar interest less than the fee simple interest.

24 Section 44(1.1) of the Act provides that:

(1.1) If part of the land of an owner is expropriated, and the expropriation or the construction or use of the works for which the expropriated land was acquired are of any benefit to that owner, the estimated value of the benefit must be deducted from the amount of compensation payable to that owner, under section 40(1)(b)(i), for the reduction in the market value of the remaining land, whether or not any other owner is benefited by the expropriation of the expropriated land or by the construction or use of the works.

POSITION OF THE PARTIES

25 The parties have agreed that the value of the Properties prior to expropriation was \$6,378,000 or \$57.44 per square foot. The parties have also agreed that the plaintiff is entitled to \$1,059,768 as compensation for the expropriation, being the amount calculated by multiplying the expropriated area (18,450 square feet) by the value per square foot of the Properties prior to expropriation (\$57.44 per square foot). From this sum must be deducted the City's advance payment of \$1,023,000 leaving a balance owing to the plaintiff of \$36,768. The plaintiff is entitled to interest on this amount pursuant to s. 46 of the **Act**.

26 The plaintiff submits that in addition to being compensated for the market value of the land expropriated by the City, it is entitled to additional compensation of \$966,639.60, being the alleged loss in market value of the remainder of the Properties after the expropriation. The plaintiff relies on appraisal reports prepared by Mr. Gary Laughton who valued the Properties after the expropriation at \$47.00 per square foot, resulting in a post-expropriation market value loss to the remainder of the Properties of \$10.44 per square foot.

27 The City, relying on appraisal reports prepared by Mr. Geoffrey Johnston, submits that the market value of each of the Properties after the expropriation is \$66.70 per square foot. In the result, the City says that the market value of the Properties increased as a result of the expropriation and that the plaintiff is not entitled to any additional compensation save and except for the agreed amount of \$36,768 plus interest.

APPROPRIATE VALUATION METHOD

28 The parties do not agree on the appropriate valuation method. Mr. Johnston used the Direct

Comparison Approach. The Direct Comparison Approach examines the cost of acquiring equally desirable and valuable substitute properties indicated by transactions of comparable properties within the market area. The characteristics of the sold properties are then compared to the subject property on the basis of time and such features as location, size and quality of improvements, design features and the income generating potential of the property.

29 Mr. Johnston, using the Direct Comparison Approach, suggested that the Properties were worth between \$55.00 and \$60.00 per square foot prior to expropriation and concluded that \$58.00 per square foot would be the most appropriate value. Using the same approach, Mr. Johnston concluded the value of the Properties after the expropriation to be \$66.70 per square foot.

30 Mr. Laughton used both the Direct Comparison Approach and the Development Approach. The Development Approach allows an appraiser to take into account the cost and revenues associated with undertaking a complex subdivision or real estate development. This approach also takes into account the time period over which the development would take place as well as how long it will take for the marketplace to absorb the finished product. Factors such as construction costs, financing costs and the developer's profit are also taken into consideration.

31 Mr. Laughton favoured the Development Approach for two reasons:

- (a) The Development Approach considers the characteristics and attributes of the particular property that is being appraised. No adjustment for time, location or different site characteristics is required. Instead, the Development Approach is based on the potential profitability of a specific piece of property.
- (b) The Development Approach is the analysis that a purchaser undertakes before deciding whether to purchase a property for redevelopment and, in particular, before deciding on the price that he or she is prepared to pay.

32 The Development Approach requires a thorough analysis of each component that goes into the development of the property. It includes assumptions in relation to unit sales, construction costs including both hard costs and soft costs, financing and the developer's expected profit.

33 Mr. Laughton's Development Approach resulted in a value of \$59.29 per square foot prior to the expropriation whereas his Direct Comparison Approach resulted in a value of \$55.00 per square foot. Mr. Laughton then reconciled those numbers to arrive at a pre-expropriation value of \$57.00 per square foot.

34 Using identical methodology, Mr. Laughton determined that after the expropriation the Development Approach yielded a value for the remaining Properties of \$49.49 per square foot whereas the Direct Comparison Approach yielded a value of \$45.00 per square foot. He reconciled the two approaches to estimate the post-expropriation value to be \$47.00 per square foot.

35 As noted, the parties have now agreed that prior to expropriation the Properties had a value of \$57.44 per square foot. The plaintiff submits that Mr. Laughton's Development Approach should be accepted as accurate for the post-expropriation value because it led to the correct pre-expropriation value. The difficulty with that submission is that Mr. Johnston's Direct Comparison Approach came even closer to the agreed pre-expropriation value.

36 The Development Approach has been the subject of criticism. In *Double Alpha Holdings Corp. v. Pacific Coast Energy Corporation* (1998), 65 L.C.R. 99, (B.C. Exp. Corp. B.), the Expropriation Compensation Board said at paras. 29-31:

[29] Professor Todd, in *The Law of Expropriation and Compensation in Canada*, 2nd ed. (Toronto: Carswell, 1992), discusses the subdivision development approach. He says at p. 219:

Courts and tribunals are usually reluctant to rely on the land development (subdivision) approach for two reasons. First, unless a proposed subdivision has actually been officially approved there is always some degree of uncertainty as to whether, and under what conditions, the subdivision would ever have materialized

...

Second, it is recognized that the approach is "volatile" in the sense that a comparatively minor change, for example in the costing of service, can produce a figure in the end result which will significantly affect the residual value.

He goes on to indicate that courts and tribunals frequently reject the approach on the basis of the availability of reliable comparable sales data, the conclusion that the subject property was not ripe for development at the date of expropriation, or a determination that the various factors such as servicing, engineering and other development costs were not based on solid, factual evidence.

[30] The Appraisal Institute's *The Appraisal of Real Estate, Canadian Edition*, (1992) states at p. 297 that

... bona fide sales data provide a better indication of value than a subdivision development prospectus. The reliability of the approach is determined by the accuracy of the lot yield, absorption rate, sale prices, servicing costs and soft cost estimates.

Most of the case law on the appropriateness of the subdivision development approach deals with the issue of the remoteness in time of the development, as well as the availability of reliable data with which to perform a direct comparison valuation. In *Lincoln Village Ltd. v. City of Waterloo* (1977), 12 L.C.R. 232 at p. 243, the Ontario Land Compensation Board stated that "... where the state of development of the lands is such that all the necessary computations can be accurately forecast, the development cost approach may be appropriate, provided that suitable comparable sales are not available." In *Oakfield Estate Ltd. v. Halifax (County)* (1992), 47 L.C.R. 100 at 105, the Nova Scotia Expropriations Compensation Board declined to accept valuation conclusions based on the subdivision development approach because there was "uncertainty as to the date of commencement, the number of lots, the costs of development, price and marketability."

[31] This board, in *McKinnon v. School District No. 36 (Surrey)* (1994), 54 L.C.R. 23, referred to Professor Todd's text, and quoted him as stating that "it is appropriate to use the method where there is a paucity of comparable sales ... or where the appraisers for both sides find insufficient comparable sales on which to base an opinion on the market approach and both accept that development was imminent as of the date of expropriation." The board was not persuaded in that

case that the "required degree of imminence was prevalent", and thus declined to apply the subdivision development approach.

37 Many of those criticisms can be applied to Mr. Laughton's analysis. The valuation that results from Mr. Laughton's use of the Development Approach depends on the inputs that are used in the calculation. Those numbers are far from certain. By way of example, in determining the hard costs of the proposed development his report sets out a range of numbers for demolition and clearing costs, site work costs and construction costs. He then inputs into his *pro forma* the mid-range of each of those numbers. Any change in those numbers would affect the result.

38 With regard to a developer's profits, Mr. Laughton notes that "quantitative data of a developer's profit is difficult to come by. However, anecdotal evidence suggests that developers generally expect a rate of return in the range of 15% to 25%." On that slight foundation, he then enters into his *pro forma* a 20% developer's profit and concludes that the residual land value for the Properties after the expropriation was \$49.49 per square foot. Had he instead entered a 15% developer's profit, he would have arrived at a residual land value for the Properties after the expropriation of \$53.28 per square foot.

39 Mr. Laughton's Development Approach is not based on an actual development proposal for the Properties, only on a possible project. It is completely hypothetical and speculative. While such an approach might be appropriate absent sufficient comparable sales, in this case both appraisers were able to complete their reports using the Direct Comparison Approach. I note that both appraisers relied on the same comparables and testified at length concerning the comparables. Mr. Johnston's Direct Comparison Approach was within 64 cents of the subsequently agreed pre-expropriation value.

40 I find that, in the circumstances of this case, the Direct Comparison Approach is the preferable method to determine the value of the Properties after the expropriation. The Development Approach is too speculative to be given any weight in that determination.

DISCUSSION

41 The question for determination is whether after the expropriation the Properties are valued at more or less than their pre-expropriation value of \$57.44 per square foot. The burden is on the plaintiff to prove the loss of market value to the remainder of the Properties after the expropriation: ***Glendale Trading Ltd. v. British Columbia (Minister of Transportation and Highways)*** (2000), 70 L.C.R. 235, (B.C. Exp. Comp. B.).

42 The plaintiff's primary submission in support of a loss of market value was based on Mr. Laughton's Development Approach analysis, which concluded that the Properties had lost approximately \$10.00 per square foot in value as a result of the expropriation. For the reasons I have already given, I do not accept that the Development Approach is the correct way of valuing the Properties.

43 Mr. Laughton's Direct Comparison Approach also concluded that the properties are now worth less. He testified that the expropriation had a detrimental affect on the Properties. In his opinion, after the expropriation the 4200 Lands were worth \$50.00 per square foot and the 4260 Lands were worth \$40.00 per square foot.

44 Mr. Laughton suggested that the 4260 Lands are significantly less valuable than the 4200 Lands because of the 4260 Lands configuration and the 4260 Lands loss of No. 3 Road frontage. He considered the new access from Browngate Road to be less desirable. He suggested that the 4200 Lands had also become less valuable because of the reduction of No. 3 Road frontage which, in turn, made the 4200 Lands less visible. He also suggested that the Properties are now less desirable because they are no longer connected and they have lost the inherent value of assembled lands. He also raised the impact of the loss of parking on the 4260 Lands as being the basis for finding a reduction in its value after the expropriation.

45 Mr. Laughton's opinion was seriously undermined in cross-examination. He acknowledged that there is little market evidence to suggest a 20% differentiation in the value of the Properties. He supported the differential in part by the sale price of property at 8200 Capstan Way, being the only property examined with an irregular shape. That property, however, had a history of contamination and its sale price likely reflected its contamination, not its configuration.

46 As to the issue of plottage or assemblage, Mr. Laughton agreed that there is no market evidence to support his assertion of a benefit from plottage or assemblage of the Properties prior to expropriation.

47 As for the loss of frontage on No. 3 Road, Mr. Laughton agreed that the primary function of frontage is exposure and visibility and that, in relation to exposure and visibility, the Properties now have better exposure and visibility after the expropriation than before. In this regard, the Properties benefit from their new corner lot configuration.

48 With regard to the loss of access, Mr. Laughton agreed that the 4200 Lands maintained their access directly from No. 3 Road and attained additional access from Browngate Road. With regard to the 4260 Lands, he acknowledged that the new access from Browngate Road had taken the place of the former No. 3 Road access. Mr. Laughton also agreed that by virtue of the expropriation both Properties now have additional traffic exposure because of the new road connection to Hazelbridge Way.

49 Mr. Laughton acknowledged that there is now better visible exposure for the 4200 Lands. He agreed that in certain circumstances corner lots can add a significant benefit.

50 With regard to site configuration, Mr. Laughton agreed that the expropriation had little or no impact on the site configuration of the 4200 Lands while the "L" shape of the 4260 lands is now simply more pronounced.

51 With regard to the impact of the loss of parking on the 4260 Lands, Mr. Laughton agreed that the loss of parking is not an impediment to the redevelopment of the property in accordance with its highest and best use. The conceptual plan relied on by Mr. Laughton illustrates a development of the property with sufficient parking provided on the site as it exists after the expropriation.

52 Mr. Johnston opined that after the expropriation both Properties increased in value and were worth \$66.70 per square foot. He testified that as a result of the expropriation both Properties have been transformed from interior to corner lots. The Properties are now exposed to Hazelbridge Way and to the new Aberdeen shopping centre which will lead to an increase in both vehicular and pedestrian traffic which, in his opinion, will be beneficial to the Properties.

While acknowledging that the Properties' No. 3 Road frontage has been reduced, Mr. Johnston suggested that the reduction is more than offset by the additional frontage on Browngate Road and the beneficial effect of a corner location. Relying on a study he did in 1997, Mr. Johnston opined that a 15% increase in the value of the Properties is warranted because the Properties are now corner parcels.

53 Plaintiff's counsel challenged the corner lot assumption and the report upon which it was based. While the report has some flaws, even Mr. Laughton did not seriously challenge that an upward adjustment for a corner lot is appropriate.

54 Having considered the evidence of both Mr. Laughton and Mr. Johnston, their written reports and the various exhibits, I prefer the evidence and analysis of Mr. Johnston to that of Mr. Laughton. The Properties' exposure and visibility is better now than before the expropriation. Although the increase in value of the Properties may not be as great as that suggested by Mr. Johnston, I find that on the totality of the evidence the plaintiff has failed to prove that the market value of the Properties has decreased as a result of the expropriation. The expropriation has not negatively impacted the 4200 Lands. Indeed, its new corner location has probably increased its value. While the expropriation did exacerbate the "L" shape of the 4260 Lands, the evidence does not support a finding that its value has been reduced as a result of the expropriation.

55 In the result, therefore, the plaintiff is only entitled to recover the agreed sum of \$36,768 plus interest.

56 If the parties cannot agree as to costs or the manner in which interest is to be calculated, they are at liberty to make written submissions. Such submissions should be filed within 30 days of the date of these Reasons while any responsive submissions should be filed within 15 days thereafter.

R.B.T. GOEPEL J.