

IN THE MATTER OF THE EXPROPRIATION ACT,
BEING CHAPTER E-16 OF THE REVISED STATUTES
OF ALBERTA, 1980, AND AMENDMENTS THERETO

AND IN THE MATTER OF THE INTENDED
EXPROPRIATION BY THE TOWN OF WESTLOCK OF

THE NORTHERLY EIGHTY (80) ACRES, MORE OR LESS, OF
THE NORTH EAST QUARTER OF SECTION THIRTY THREE (33)
TOWNSHIP FIFTY NINE (59)
RANGE TWENTY SIX (26)
WEST OF THE FOURTH MERIDIAN
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT: HECTARES ACRES MORE OR LESS
A. PLAN 7721021 - ROAD 0.979 2.42
EXCEPTING THEREOUT ALL MINES AND MINERALS

AND IN THE MATTER OF THE NOTICE OF OBJECTION
TO THE SAID INTENDED EXPROPRIATION FILED BY
MARVIN D. MARKS, OF WESTLOCK, IN THE PROVINCE
OF ALBERTA.

AND IN THE MATTER OF AN INQUIRY IN RESPECT THEREOF
PURSUANT TO THE PROVISIONS OF THE SAID ACT BY
REX M. NIELSEN, ESQ., AS INQUIRY OFFICER APPOINTED
BY THE DEPUTY MINISTER OF JUSTICE AND DEPUTY
ATTORNEY GENERAL TO CONDUCT THE SAID INQUIRY.

REPORT OF THE INQUIRY OFFICER

BEFORE: REX M. NIELSEN, ESQ.

HELD AT: TOWN OF WESTLOCK, COUNCIL CHAMBERS
 10003 - 106 STREET
 WESTLOCK, ALBERTA

DATE: TUESDAY, JUNE 19TH, 2001

APPEARING FOR THE EXPROPRIATING AUTHORITY -
 MR. D.W. MOROZ,
 MAH & CHIU, BARRISTERS AND SOLICITORS
 SOLICITORS FOR THE TOWN OF WESTLOCK

APPEARING FOR MARVIN D. MARKS -
 MR. D. P. MALLON
 PROWSE & CHOWNE, BARRISTERS AND SOLICITORS
 SOLICITORS FOR MARVIN D. MARKS

I. PURPOSE AND INITIATING PROCEDURE

This is an intended expropriation by the Town of Westlock (hereinafter referred to as "the Town") of the Northerly Eighty (80) acres more or less of the following land:

THE NORTH EAST QUARTER OF SECTION THIRTY THREE (33)
TOWNSHIP FIFTY NINE (59)
RANGE TWENTY SIX (26)
WEST OF THE FOURTH MERIDIAN
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT: HECTARES ACRES MORE OR LESS
A. PLAN 7721021 - ROAD 0.979 2.42
EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter referred to as "the Land"), from the registered owner thereof, Marvin D. Marks (hereinafter referred to as "the Owner").

The Town by Resolution No. 100.2001 on March 19, 2001 resolved to expropriate the Land.

The Town's Notice of Intention to Expropriate dated March 29th, 2001 (hereinafter referred to as "the Notice of Intention to Expropriate") was registered against the title to the Land on April 4th, 2001 as registration number 012094231. Also registered against the title to the Land prior to the Notice of Intention to Expropriate are:

1. Caveat No. 5674SQ registered on December 8, 1971;
2. Caveat No. 842210174 registered on September 24, 1984.

The Town's Notice of Intention to Expropriate was served on the Owner on April 5, 2001.

The Town's Notice of Intention to Expropriate was published in the Westlock News on April 9th and 23rd, 2001 issues of the said newspaper.

The Owners through their then solicitors, Tims & Company, served a Notice of Objection dated the 26th day of April, 2001 on the Town.

The Notice of Intention to Expropriate stated that the work or purpose for which the interest, being a fee simple interest, in the Land is required is for the development of an industrial commercial park.

Clark Dalton, Director (Legal Research & Analysis), Alberta Justice appointed Rex M. Nielsen, Barrister and Solicitor, on April 30th, 2001 as the Inquiry Officer (hereinafter referred to as "the Inquiry Officer") to conduct the inquiry with respect to the intended expropriation by the Town pursuant to and in accordance with the provisions of *The Expropriation Act* and the regulations made thereunder.

On May 16, 2001, Jeanette Fedorak, Co-Director (Legal Services), Civil Law, Alberta Justice, pursuant to Section 23(1)(b) of *The Expropriation Act* extended by 30 days, the time within which the Inquiry Officer had to make his report with respect to the intended expropriation by the Town. On the same date, the said Co-Director extended by 30 days the time for registration of the Certificate of Approval by the Town at the Land Titles Office pursuant to *The Expropriation Act*. The latter extension Order was registered at the Land Titles Office at Edmonton, Alberta, against the Land as Registration No. 012149311 on May 24th, 2001.

The Inquiry Officer served a Notice of Inquiry (hereinafter referred to as "the Notice of Inquiry") on the solicitors for the Town and the solicitors for the Owner, giving notice of an Inquiry Hearing with respect to the Notice of Objection by the Owner to the intended

expropriation by the Town that would be held at the Town of Westlock offices, 10003 - 106 Street, Westlock, Alberta, on Tuesday, June 19th, 2001, commencing at 9:00 a.m. (hereinafter referred to as "the Inquiry Hearing"). Each party was requested in the Notice of Inquiry to file with the Inquiry Officer and each of them with the other, a written brief of their case together with all maps, plans, studies and documents intended to be presented in evidence at the inquiry.

Briefs were filed with the Inquiry Officer by the solicitors for the Town and the solicitors for the Owner.

The Inquiry Hearing proceeded on June 19th, 2001 and concluded on that date. Counsel for the Town and counsel for the Owner appeared at the hearing.

Counsel for the Town advised the hearing that he had no preliminary matters to deal with.

Counsel for the Owner advised the hearing that he had no preliminary matters to deal with.

II. SUMMARY OF EVIDENCE ADDUCED AT THE HEARING

A. EXHIBITS

1. Tab 1 in the Town of Westlock's materials, Town of Westlock authorizing resolution.
2. Tab 2 in the Town of Westlock's materials, document entitled Notice of Intention to Expropriate.
3. Tab 3 in the Town of Westlock's materials, document entitled Affidavit of Service.

4. Tab 4 in the Town of Westlock's materials, document entitled Affidavit of Publication.
5. Tab 6 in the Town of Westlock's materials, map of the Town of Westlock.
6. Tab 8 in the Town of Westlock's materials, document entitled town of Westlock Potential Developments.
7. Tab 7 in the Town of Westlock's materials, land use map of the Town of Westlock.
8. Document entitled town of Westlock Municipal Development Plan 1998, Bylaw No. 06-98.
9. Letter from Mr. Bancroft to Mr. Marks dated February 17, 2000.
10. E-mail from Colleen Thome to Jack and Pat Armitage dated February 16, 2000.
11. Document entitled Alberta Primary traffic Volume History Report, 1990 to 1999.
12. Aerial photograph and overlay of the Town of Westlock prepared by Mr. MacKenzie.
13. Letter to Jack Armitage from the Town of Westlock dated July 14, 1998.
14. Zoning Plan diagram indicating C3 commercial districting.
15. Letter from Alberta Transportation dated December 21, 1994.

B. SUMMARY OF TOWN'S WITNESS EVIDENCE

Witness - Mr. Garth Bancroft

The Town's first witness was its Town Manager, Mr. Garth Bancroft. He was sworn by the reporter. He has been employed in that position since 1990.

His formal academic training includes a Utilities Officer designation and a four year University of Alberta, Department of Extension, Local Government Administration Certificate.

He explained that the Town's current Industrial Park is located west of 98th Avenue and north of Highway 18 in the Town of Westlock. He also advised that this industrial park is essentially fully developed and that the Town did not own any land in same for development. This Industrial Park was first started approximately 26 years ago. Exhibit Number 5 was presented to show the chronological development of this Industrial Park.

Mr. Bancroft explained that there was demand for industrial - commercial properties in the Town. Exhibit Number 6 was presented as evidence of such demand. He suggested that high traffic counts on adjacent roadways, larger sized parcels of a five acre minimum, and being located adjacent to Highway 18 east of the Highway 44 are criteria for interested business developers. In cross examination by Mr. Mallon, Mr. Bancroft agreed that the Boston Pizza enquiry is currently on property south of the hospital in the Town. In addition, Mr. Bancroft confirmed that the John Deere people asked the Town to see if land across from the Case dealership would be available for development and that this is a motivator for the development of the Lands.

Mr. Bancroft testified that the highest traffic counts on Highway 18 existed in an easterly direction from the intersection of Highway 18 and 44. Exhibit Number 11 was presented to show traffic counts from as recently as 1999 to substantiate the Town's position on traffic counts. He admitted in cross examination by Mr. Mallon that the redesignation of Highway 794 to Secondary Highway 44 and a new truck stop development off Highway 16 slightly east of Highway 44 are factors of change that would effect traffic count numbers. He also was unable to confirm if the Exhibit Number 11 traffic count numbers were local or through traffic or commercial or industrial or passenger traffic. Moreover, Mr. Bancroft testified that such specific traffic information would be meaningful in an assessment of what this traffic means to land that is going to be designated as industrial or utilized as industrial or commercial.

Other reasons presented by Mr. Bancroft for favouring industrial development of the Lands rather than other property included the nuisance to residential owners of wind carried debris from industrial sites in the prevailing north and northwest winds that would not present a problem in developing the Lands and water and sewer utilities being available for connection to the Lands from adjacent lands to the Lands on the south side of Highway 18.

Mr. Bancroft identified Exhibit Number 8 as the Town's 1998 Municipal Development Plan. Mr. Bancroft confirmed this Municipal Development Plan was created through a review process starting in 1996 and public hearings in 1997 to be finally approved by the then Town Council in 1998. A professional planner assisted in its creation. He confirmed that this plan recommended development of the industrial-commercial park at property on the west end of the Town. Mr. Bancroft confirmed that this Municipal Development Plan emphasized commercial development in the central area of Town and that it is always encouraged to develop the central area of Town. He stated that notwithstanding same, a political decision was made to proceed with the Lands notwithstanding this Municipal Development Plan.

Mr. Bancroft confirmed that this Municipal Development Plan suggested a staging of development for the Town of non-residential development lands with lands on the west part of the Town being in stage one and the Lands being in stage 2 and 3. In cross examination by Mr. Mallon, he said the Town Council decided to change the staging priorities without public input.

Mr. Bancroft testified that the Town wrote Mr. Marks one letter and met with him on a couple of occasions in regard to negotiations. Neither price nor impact on Mr. Marks' business were discussed by Mr. Bancroft with Mr. Marks. The form of development as expressed in Exhibit Number 9 was discussed by Mr. Bancroft. Mr. Bancroft in re-examination by Mr. Moroz, stated that Mr. Marks never got back to the Town about their written enquiry.

Mr. Bancroft testified that the Town was negotiating regarding both the Lands and with owners of land on the west end of the Town at approximately the same time in February 2000. In respect of the development of the Lands, Mr. Bancroft stated that the Town would be looking at both getting their costs back and taking a profit. He testified that the most recent cost information for connecting Town sewer and water to the North East Quarter of Section Thirty-One, Township Fifty Nine, Range Twenty Six, West of the Fourth Meridian would be \$125,000.00 from a quote some time earlier which he says is likely to have gone up by today. He has no exact cost of connecting water and sewer to the Lands.

C. SUMMARY OF OWNER'S EVIDENCE

Witness - Mr. Marvin D. Marks

The Owner gave evidence on his own behalf as his first witness. He was sworn by the reporter.

Mr. Marks is sixty-one years of age and is a farmer in the area of Westlock. He farms approximately three thousand acres. Approximately seven hundred acres of that is leased land. The balance is owned including the Lands. He also owns the south half section of Section Thirty Three, Township Fifty Nine, Range Twenty Six, West of the Fourth Meridian.

Mr. Marks' farming operation is a mixed grain and cow/calf beef cattle operation. He proposes that Section Thirty Three, Township Fifty Nine, Range Twenty Six, West of the Fourth Meridian is the heart of his farming and cattle operation containing the farm yard, homes, buildings, cattle pens and grain storage facilities on the north west quarter site ("the home property") of that section. He also testified to the usefulness and need of the water from dugouts on the Lands to supply water to his cattle pens on the said north west quarter of that section. He described his water and electrical line from the home property to those dugouts for such purposes. He discussed his need of the Lands during calving season. He also discussed his use of the Lands for pasture and particular use for both cattle requiring medical attention and artificial breeding purposes during the spring and summer. He confirmed the Lands would not be used between November and March.

Mr. Marks also testified that a private airstrip exists on the Lands and is used primarily by a farm equipment dealership adjacent to the Lands which Mr. Marks has an interest in. This private airstrip is used by farmers flying in to pick up parts required fast during harvest time. Highway lights are used as reference lights for the airstrip along with a tower with a red light on it at night on the home property for use by such farmers at night. He explained the preparation required for creation of this strip and the three years necessary to establish same.

Mr. Marks confirmed the negotiations he had with Mr. Bancroft as constituting a telephone call and two meetings in the summers of 1999 and 2000 respectively. He explained discussions about ways to arrange for development of the Lands including the Town developing same, a joint venture, or an outright sale as proposed by Mr. Bancroft. He testified that in the

first meeting he told Mr. Bancroft he would give those suggestions some thought and that is where it was left. He testified that the second meeting did not address in any significant detail what the Town wanted to do, how much they would pay or what their plans were.

Regarding the dugout on the property, Mr. Marks testified that it would be costly to move same and that the inlet mechanics would be very important. He testified the inlet for the dugout comes from the south and west of the dugout.

Mr. Marks testified that prior to the Notice of Expropriation he had not considered development of the Lands. Subsequent to that Notice he is prepared to look at the development of the Lands but Mr. Marks testified that his property immediately west of the Industrial Park, if expropriated, would be less damaging to him than expropriation of the Lands. Those westerly lands are not within the Town of Westlock municipal limits.

Witness - Mr. Jack Armitage

The Owner's second witness was Jack Armitage. He was sworn by the reporter. Mr. Armitage owns or is part owner of land on the west side of the Town south of Highway 18 marked on Exhibit 12 by a purple star and legally described as the portion west of the railway line through the North East Quarter Section of Section Thirty One, Township Fifty Nine, Range Twenty Six, West of the Fourth Meridian. He testified this land is zoned industrial and partly highway commercial.

He explained that in approximately 1994 the Town introduced a possible client, The Alberta Wheat Pool, to them who was interested in building an elevator system on rail trackage. That project died of its own volition.

He testified that a farm equipment dealer expressed interest in their land but ended up buying on the east end of Town, a piece of inexpensive property that had been for sale for quite a while. As well, a large truck stop and movie theatre enterprise showed interest in those lands being the Leo Virbes referred to in Exhibit Number 6. That failed as a result the financial backers of same backing out.

Mr. Armitage testified that in July of 1998 the Town suggested, in writing, that if the Leo Virbes transaction was signed with Mr. Armitage, the Town would take over management of servicing to the Armitage property and Armitage would pay them back. Exhibit Number 13 was entered in respect of same.

Mr. Armitage presented Exhibit Number 10 as evidence of ongoing development discussions with the Town for Mr. Armitages' property on the west side of the Town and south of Highway 18. Mr. Armitage stated he left his preferred option and access applications in respect of Exhibit Number 10 with the Town and nothing has been heard from the Town by Mr. Armitage on this since February 2000. Mr. Armitage testifies that development in the west end of the Town is in the direction of the Municipal Development Plan, would bring more business into the west end of Town, bring more traffic into the west end of Town and rebalance out the area.

Mr. Armitage suspects that if the Town development of the Lands proceeds that Mr. Armitage would not be able to develop his lands, would not be able to compete with the Town and would be out of business.

In cross examination by Mr. Moroz, Mr. Armitage testified that he is currently working with a large manufacturing system, international capacity regarding the Armitage property.

Mr. Armitage testified that competing against the Town is not a level playing field and an unfair advantage for the Town.

Witness - Mr. James Peter Seward

The Owner's next witness is James Peter Seward. He was sworn by the reporter. Mr. Seward is a realtor with Muller Realty in Westlock. He has held this position for six years. he has not sold any commercial real estate but his office does. Prior to becoming a realtor he was a teacher for thirty years in Westlock.

Mr. Seward identified on Exhibit Number 7, numerous commercial properties which are currently for sale or which recently have been for sale of a commercial and industrial nature. His evidence identified numerous commercial properties available.

On cross examination he stated that some of those properties have structures on them and all are owned privately.

Witness - Mr. Kim MacKenzie

The Owner's next witness is Kim MacKenzie. He was sworn by the reporter. Mr. MacKenzie's qualifications were accepted by the Town's legal counsel and the Inquiry Officer to provide expert opinion evidence as a professional urban planning consultant.

Mr. MacKenzie testified that he was retained to examine the land use planning context for the Lands that are proposed for expropriation and to determine whether the purpose of the taking was consistent with the land use planning environment of the Town of Westlock or the land use planning regime.

Mr. MacKenzie has viewed the Lands and Mr. Marks' agricultural operation as a use of the Lands. He has also viewed the industrial area of the Town and has toured the Town. He has also reviewed the Municipal Development Plan entered as Exhibit Number 8 and the Town's land use bylaw.

Mr. MacKenzie's view is that there is a substantial amount of available area of undeveloped land in the west part of the Town which is indicated as future industrial land use by the Municipal Development Plan entered as Exhibit Number 8.

Those westerly lands are identified in that Municipal Development Plan as Stage 1 development areas.

He also identifies some confusion between Map 3.1 in the Municipal Development Plan and Exhibit Number 7 regarding residential development.

He refers to specific policies at pages 4, 6 and 10 of the Municipal Development Plan. He also reviewed the Westlock County Municipal Development Plan and comments that this plan recognizes that the Town of Westlock may have to expand its boundaries. He notes that both the Town Land Use Bylaw and Westlock County Land Use Bylaw attempt to control urban development around the town from a policy perspective.

Mr. MacKenzie confirmed that his engagement did not undertake an empirical analysis of the quantity of lands available for either commercial or industrial use. Based on his experience with other communities and driving this community, he states that a significant amount of land is available for future industrial use. This includes large areas within the Town boundaries designated for future industrial use and a significant number of commercial buildings in the central area and some along the major arterial roadways or highways that transect the Town.

His basic impression is that there is a very significant supply of land available in the Town now for both commercial use and industrial use.

Mr. MacKenzie testified that the proposed taking violates the stated objective of the Municipal Development Plan of expanding the existing industrial area in the western part of the Town. In addition he states that the proposed taking does not conform with the staging priority in the Municipal Development Plan which articulates that the west area should develop first.

It is Mr. MacKenzie's opinion that a private developer might well have to apply to amend a Municipal Development Plan such as Exhibit Number 8 if it wishes to propose a development like that proposed for the Lands by virtue of the Notice of Intention to Expropriate.

Mr. MacKenzie indicated that certain reasons make sense for the Town to focus on industrial growth on the west side of Town including, major trunk utility services are already located in the west part of Town, focus industrial traffic and minimize impacts on the rest of Town, minimize traffic between disjointed commercial and industrial sites (traffic, noise, pollution, visual impacts, waste) and minimize exposure to same to residential areas.

Mr. MacKenzie's opinion is that the proposed taking is not sound because it violates or departs from several stated policies enacted by bylaw in the Town's Municipal Development Plan including:

1. expansion of industrial development in the west end of Town;
2. Town's requirement for service roads along arterial roads may not be complied with in the proposed taking's proposed commercial use;

3. the proposed taking's proposed industrial use area appears to conflict with the Municipal Development Plan designation of a significant residential use area in part of the Lands;
4. the proposed taking and development of commercial and/or industrial uses of the Lands contradicts the stated staging priority for development in the Municipal Development Plan.

It is Mr. MacKenzie's opinion that the proposed taking is not reasonably necessary to achieve the town's objectives because the Town possesses several alternatives which are available to meet commercial and industrial growth needs.

In cross examination by Mr. Moroz, Mr. MacKenzie was referred to section 637 of the *Municipal Government Act of Alberta* and stated that this section does not mean that "the municipality does not have to follow its own Municipal Development Plan".

Mr. MacKenzie suggests that if a municipality wants anybody else to respect their Municipal Development Plan and give it meaning and purpose, it should be the first party to follow their Municipal Development Plan.

III. ARGUMENTS ADVANCED ON BEHALF OF THE PARTIES

Mr. Moroz, in his summation, argued that:

1. The objective of the Town is to develop a commercial industrial park on the northerly 80 acres of North East Quarter of Section Thirty-Three, Township Fifty Nine, Range Twenty Six, West of the Fourth Meridian.

2. The Town's evidence is that large parcels are required on Highway 18 east of Highway 44 where the highest traffic counts are.
3. The intended use does not have to be an immediate use but can be a future use.
4. The Town has made a political decision to develop the subject Lands rather than proceed along the western portion of Town.
5. The only issues raised by Mr. Marks are compensation issues.
6. The objective of the Town is not a subject for debate by the Inquiry Officer.
7. The proposed taking is fair, sound and reasonably necessary to achieve the Town's objective.

Mr. Mallon, in his summation, argued that:

1. The proposed taking is not fair sound and reasonably necessary. The test is set out in section 15(8) of the *Expropriation Act*. Rules of legislative drafting presume that legislation avoids superfluous and meaningless words. Every word is presumed to make sense and have a specific role to play. The test the Town must satisfy is whether the taking is fair, the taking is sound and the taking is reasonably necessary for the Town to achieve its objectives. The Inquiry Officer should not be weakening the test or trying to paraphrase it, but should be looking at the test for what it is.

2. Expropriation legislation should be interpreted broadly in favour of the land owner and strictly with respect to the powers of expropriation and the procedures for expropriation.
3. The Town argues that its objective is to develop an industrial and commercial park in this particular quarter section. The Notice of Intention to Expropriate in paragraph 3 says the work or purpose for which the interest in the lands is required is for the development of an industrial - commercial park. The question for the Inquiry Officer is whether it is fair, sound and reasonably necessary for such objective to occur on this property or to the extent the Town has planned for this property.
4. The St. Mary River Irrigation Case states at page 138 *"the hearing is therefore essentially concerned with the factual information surrounding the proposed taking, the purpose for which the land is required and the suitability of a selected land for such purpose."* This should be considered by the Inquiry Officer.
5. The Municipal Development Plan states the westerly industrial properties are slated for development first. That Plan was incorporated by Town By-law after a two year evaluation and public input in 1998 and within six months of its creation the Town was pursuing the Lands in contravention of same.
6. The negotiations between Mr. Bancroft and Mr. Marks did not go past the barest details. They did not talk about pricing, plans or impact on Mr. Marks' operation.

7. Mr. Bancroft's evidence is that the decision to change was politics. The *Municipal Government Act* does not provide that a municipal purpose for which an expropriation can take place is politics.
8. The John Deere dealership in the Town of Westlock approached Mr. Bancroft and said they would like a portion of the Lands. The Town under the guise of municipal purpose has attempted to satisfy this request and in so doing is looking to advantage the John Deere dealership for its choice of land while disadvantaging Mr. Marks. Mr. Mallon states that exhibits 9 and 13 bolster this conclusion as examples of speeding up development of the Lands contrary to the Municipal Development Plan and slowing the pace of development of lands considered as a higher priority in the Municipal Development Plan.
9. Mr. Marks' airstrip and dugout would be impacted by the taking. The taking in Mr. Marks' view is from the heart of his operation and the impacts are significant on him.
10. Exhibit Number 8 is misleading and the evidence shows that there is not such demand for such property. We must note there are no 2001 inquiries, one in 2000 and one in 1999 only. The Owner's evidence through Mr. Seward, Mr. Armitage and Mr. MacKenzie shows there is a lot of commercial property available for sale and available for development. In respect of Industrial property, the Armitage lands represent a large tract of land as well as land north of the current Industrial Park available for development.
11. Mr. MacKenzie's evidence is the taking is not sound for the reasons stated.

12. When you examine whether the taking is fair, sound and reasonably necessary, the issue of fairness must balance the needs of the community against the impact on the Owner. Fairness to other members of the community as well as Mr. Marks must be taken into account. The needs of the community do not require the Lands to be expropriated. It is not fair to use a different standard for development by the Town than for another owner in Town.
13. The taking is not sound because it violates the Municipal Development Plan, the proposed commercial use may not conform to the service road requirements of the Municipal Development Plan, it creates a conflict between residential uses in the future and the proposed industrial park and contravenes the proposed staging set forth in the Municipal Development Plan.
14. It is not reasonably necessary to develop an industrial and commercial park or industrial and commercial lands on the Marks' Lands. There is considerable land available in this town for those purposes.

IV. ARGUMENTS ADVANCED ON COSTS

On the question of costs,

Mr. Mallon and Mr. Moroz each state that *The Expropriation Act* is clear that the Owner is entitled to their reasonable costs.

V. INQUIRY OFFICER'S FINDINGS OF FACT

I FIND THAT:

1. The Town has satisfied all of the requirements of *The Expropriation Act* and taken all the necessary steps to initiate this Inquiry Hearing as required by *The Expropriation Act* and the Regulations under it.
2. The Town has passed the necessary resolution authorizing the filing of a Notice of Intention to Expropriate.
3. The Town proposes to develop a commercial industrial park on the Lands. The Notice of Intention to Expropriate either expressly or impliedly proposes the use of the Lands for the intended expropriation by the Town.
4. There have been minimal negotiations between the Town and Owner to acquire the Land from the Owner for the proposed purpose.
5. The current Town Industrial park is full.
6. There is some demand for new commercial industrial lands in the Town.
7. There is commercial resale property and industrial developable property in the Town of Westlock without developing the Lands. Those other lands are all privately owned and the Town does not control any such lands.

8. The highway and road traffic count information supports that there is more traffic east of Highway 44 on Highway 18 than west of Highway 44 on Highway 18 but the details of the type of traffic and its orientation is not determinable.
9. The Municipal Development Plan includes the Lands in its considerations for future development of non residential commercial property.
10. The Town negotiated with respect to the Lands at the same time as it negotiated with another owner on the west side of the Town of Westlock in February, 2000.
11. The proposed development of the Lands is generally included in the Town's Municipal Development Plan albeit not as a stage one activity.
12. The time required to fill a sizeable commercial industrial park in the Town is significant, taking several years.
13. The Town has not bound itself to any particular proposal for development of the Jack Armitage et al lands as their most recent proposal was conditional on at least one development having been finalized and under construction. That has not occurred. Numerous periodic and current enquiries for development of that Armitage et al property exist. Any failures of such enquiries have been as a result of circumstances beyond those owners or the Town's control.
14. The Town's Municipal Development Plan is an extensive document containing guidelines and a roadmap for organized municipal development.
15. The proposed taking will have an impact on the Owners' farming and cattle raising operations and other business interests. In particular, the use of the

airstrip and water dugout will be significantly negatively impacted and will have a rippling effect on the aspects of the Owner's business on lands adjacent to the Lands.

16. The Town has made a political decision to proceed with development of the Lands in a fashion outside of the specific terms of reference of the Municipal Development Plan.

VI OPINION AND REASONS

The question before me for determination is whether the intended expropriation by the Town is fair, sound and reasonably necessary in the achievement of the objective of the Expropriating Authority, the Town. This is the only finding or determination that I can make under *The Expropriation Act*. I am obliged to conduct this Inquiry Hearing and prepare my report in accordance with *The Expropriation Act*.

In this case, the objective of the Town is not as clear and unequivocal as one might find in another factual circumstance. The Owner argues that the objective is to develop a commercial industrial park but not necessarily on the Lands and impliedly in accordance with the strict reading of the Municipal Development Plan. The Town argues that this objective is specific to the Lands.

I concur with Inquiry Officer McLennan in his unreported May 16, 2001 Inquiry Officer Report in *the Municipal District of Spirit River No. 133 v. Ben and June Kurys and Larry and Marguerite Bradley* that:

"It is not within the Inquiry Officer's scope of Inquiry to challenge the objectives of the expropriating authority. That is, once the expropriating authority has decided that they wish to make certain improvements, that matter is not a subject for debate before, and decision by, the Inquiry Officer".

I have paid careful attention to the Owner's argument that the Town's objective is limited to the general proposition of developing an industrial commercial park and not specifically connected to the Lands. I have made a finding of fact that the Notice of Intention to Expropriate either expressly or impliedly proposes the use of the Lands for the intended expropriation by the Town. The Town's Municipal Development Plan includes the Lands in its consideration of lands for future expansion. It also authorizes the Town to bank industrial land and service it for resale. This necessarily implies that the Town may take such steps for current and future purposes.

In consideration of the evidence and the interplay between the actions of the Town and the Municipal Development Plan, I am compelled to accept that the objective of the Town is not limited to the Owner's position as stated above, but does include the specific use of the Lands. Accordingly, I do accept that the Town's objective in respect of this matter is the development of these Lands for an industrial commercial park. Having concluded this being the objective I must turn to the test I must apply to these proceedings as proposed in argument by counsel for the parties.

I accept that the test set forth in section 15(8) of the *Expropriation Act of Alberta* is not one capable of being reduced to a paraphrased statement. In my view, it does require an application of the specific components of the test to the evidence and findings of fact. In certain factual circumstances it is conceivable that each of those statutory components may have a greater or lesser importance dependent upon the evidence and facts before the Inquiry Officer.

It is not my job to enquire into whether the Owner or other interested land owners think the expropriation is fair. I am obliged to sit objectively, providing my objective opinion whether the Town is acting fairly and soundly in meeting their objectives. It is not an acceptable reason in and of itself that a real estate owner or business owner or other party with an interest in real estate as defined in the *Expropriation Act* is injuriously affected by an expropriation to conclude that such an expropriation is not fair, sound and reasonably necessary to achieve the

objectives of the expropriating authority. Whereas some expropriations may have no real negative impact on an owner, it is very often the case that an owner such as the Owner in these proceedings is at least inconvenienced if not seriously affected by such expropriation. Expropriating authorities are faced with this consideration on a regular basis and must make decisions to go forward notwithstanding some negative impacts such decisions might have or change their minds and not proceed.

The *Municipal Government Act of Alberta* provides the Town with legislative authority to expropriate an estate or interest in land pursuant to the provisions of the *Expropriation Act of Alberta*. The intent of the Town's Municipal Development Plan and their Notice of Intention to Expropriate are in accord with the *Municipal Government Act of Alberta* provisions. The Town's Municipal Development Plan does not eliminate the Lands from future development considerations. It rather expressly includes those Lands for future development. The opposition to such proposed development of the Lands is really one of timing. The Municipal Development Plan of the Town provides that the development of the Lands should be later than other lands referenced in that Plan. Opposition by other land owners in the Town of Westlock includes that of timing and that of unfair advantage. I am not convinced that such unfair advantage will materialize from the development of the Lands proposed by the Town.

I am unimpressed and disappointed in the lack of communication and limited negotiation by the Town for the acquisition or other development models with respect to the Lands. This is a serious undertaking by the Town with potentially serious effects on the Owner. What has occurred is barely negotiations. Notwithstanding same, I cannot conclude that such actions were with dishonesty or malice in mind. I do not find anything sinister in the fact that the Town was negotiating with two owners in February, 2000 as referred to in my findings of fact. I accept that the Town is attempting to generate better and more business for the Town and its members. It is logical that all avenues of development would be considered.

While it is clear that an impact will occur on the Owner as to his business operations and to the Town in respect of traffic and other aspects raised in these proceedings as a result of the intended Expropriation, I keep coming back to this being a matter of a timing issue and the fact that development of the Lands is part of the long range plan for the Town. The south half of Section thirty three, Township fifty nine, Range twenty six, west of the fourth meridian is shadowed in the Municipal Development Plan of the Town for long term expansion and annexation as well. This clearly shows an intention to utilize three quarters of the Owner's land in that section in the future.

As the Owner has provided evidence of the inlet to the dugouts on the land being from the south and west, it is my view that such water facilities are mechanically moveable at a cost that can be considered in a compensation consideration. The same is true of the underground water line and power line. Other possibilities for handling the water and electrical lines such as easements may be available in respect of same. I believe the usefulness of the airstrip may be significantly lost should the proposed expropriation proceed. I am not satisfied that this will have a negative impact on the business that airstrip supports.

While evidence from the Town expresses the decision to move on the expropriation of the Lands as being a political decision, the entire body of evidence in these proceedings implies to me a more complicated rationale for that decision being made which satisfies me that the authorizing legislation in the Province of Alberta has been complied with in proceeding with this intended expropriation by the Town.

The evidence of the objectors point out specific variances from the Town's Municipal Development Plan in respect of the intended development of the Lands. That Plan is expressed as a long term ideal. As was expressed in the Inquiry Hearing, such Plans go through an evolutionary phase. One Plan evolves into another over time. It is my opinion that the Town's proposed development of the Lands is not contrary to the Town's Municipal

Development Plan, but rather is in general accordance with the Plan, but for the timing of same, and a further step in the evolution of same. The Town is not restricted to that Plan by chapter and verse.

Having regard to all the evidence presented, the intentions of the Town, the impact on the Owner and other owners of real estate in the Town of Westlock, I find that the intended expropriation of the Marks Lands is fair, sound and reasonably necessary in the achievement of the objective of the expropriating authority, the Town of Westlock, to develop an industrial-commercial park on the Lands. I reiterate that I am not impressed with the lack of communication and meagre negotiations but this does not compel me to reverse or restate my opinion stated above.

Pursuant to section 15(10) of the *Expropriation Act*, the reasonable costs of the Owner in respect of these proceedings shall be paid by the Town.

DATED at the City of Edmonton, in the Province of Alberta, this 28th day of June, 2001.



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