IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chen v. Langley (Township),* 2024 BCSC 154

Date: 20240131
Docket: S1812321
Registry: Vancouver

Between:

Albert Jen-Tan Chen and Ginger Lan-Ying Hsu

Plaintiffs

And

Corporation of the Township of Langley

Defendant

Before: The Honourable Justice Basran

Reasons for Judgment

Counsel for the Plaintiffs:	M. Pontin C. Elrick
Counsel for the Defendant:	J. Goulden, K.C. N. Lapper A. Farrant
Place and Dates of Hearing:	Vancouver, B.C. October 23–27, 30–31 November 1–2, 2023
Place and Date of Judgment:	Vancouver, B.C. January 31, 2024

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Introduction

[1] The plaintiffs, Albert Chen and Ginger Hsu (the "Chens"), are spouses. They owned and resided at 8020 216 Street in Langley, BC (the "Property"). On November 17, 2017, the defendant, the Corporation of the Township of Langley (the "Township"), expropriated the Property (the "expropriation date").

[2] The Township initially paid the Chens $6,275,000 for the Property. Five years later, it paid a further $1,370,000 and the associated interest. The Township, therefore, in total, paid the Chens $7,645,000 for the Property as of the expropriation date.

[3] The Chens allege that the Township did not pay fair market value for the Property. Based on an appraisal that assumes that the Property would have been removed from the Agricultural Land Reserve ("ALR"), they assert that its fair market value is $26,550,000. Alternatively, they suggest that the Property's value is $20,000,000 based on a conditional contract of purchase and sale that they entered into with Desert Properties, a local real estate development company, a few days before the Township expropriated the Property (the "Desert Properties Contract").

[4] Relying on appraisals it commissioned, the Township maintains that it paid fair market value for the Property. These appraisals did not consider the Desert Properties Contract and the sale of a comparable property close in time to the expropriation date. The Township appraisals also did not adequately account for the Property's value as an investment holding property in a rapidly rising real estate market.

[5] I do not accept that the Chens had a reasonable expectation that the Property would have been removed from the ALR in 2017. Their 2010 exclusion application failed and there were no material changes in circumstances that suggest that the result would have been different in 2017. Specifically, the creation of the University District, within which the Property is located, does not indicate that an application for exclusion of the Property from the ALR would have succeeded at that time.

[6] I assign little weight to the Desert Properties Contract. It was conditional, entirely for the benefit of the buyer, Desert Properties, which chose not to remove the relevant condition and, instead, terminated the contract because it did not think it could commercially develop the property because it was unlikely to be removed from the ALR in 2017.

[7] Based on the sale of a comparable property in December 2017 along with the rapidly increasing prices of real estate throughout 2017, I have concluded, for the reasons that follow, that the fair market value of the Property as of the expropriation date is $10,500,000.

Property History

[8] In 1993, the Chens purchased the Property with a partner. In 2005, they bought out their partner and became the sole registered owners of the Property. The Chens resided at the Property from 2005 until the Township expropriated it in 2017.

[9] The Property is 32.18 acres, and it is in the ALR. To the west of the Property is 216 Street, a five-lane arterial road, with bike lanes and pedestrian paths. University Drive runs along the Property's southern boundary, which carries on to Trinity Western University ("TWU"), about 1.5 km down the road. Highway 1 runs diagonally from the northwest corner to southeast corner of the Property.

[10] Between 2005 and the expropriation in 2017, the Property was used by the Chens and their tenants for equestrian and other agricultural uses, including horse breeding, boarding, and riding, as well as keeping chickens and growing produce. These are all permitted uses for properties in the ALR.

[11] In 2008, the Township identified the Property as one subject to market speculation and accelerating land prices. In a confidential report to the Township's Mayor and Council dated February 18, 2008, which was not disclosed to the Chens at the time, Township staff noted as follows with respect to the Property:

> Property Management supports the expropriation of the subject property due to market speculation, potential changes in use within this area and the escalating land prices within this area. Property Management has learned

> that [TWU] has now optioned lands along Labonte Cres. at $205,000 per acre. If and when these transactions complete, the subject properties value will further escalate.

[12] In 2010, the Chens applied to exclude the Property from the ALR. The Township refused to support the application and the Agricultural Land Commission ("ALC") rejected it.

[13] In 2013, the Township amended its Rural Plan and Official Community Plan (the "OCP") to create the University District. Subject to ALC approval, the University District is an area identified for possible urban development that is designed to encourage residential and commercial development on lands surrounding TWU. The Property is located within the University District.

[14] In 2015, the Township and the ALC entered into a non-binding memorandum of understanding (the "MOU"). It was "a statement of principles which the Parties will make best efforts to consider in the course of decision making […]". However, it did "[…] not imply any legally binding commitment or obligation by either Party".

[15] The MOU identified appropriate areas of the University District as an area in which the Township and the ALC would consider accommodating economic development through joint planning exercises. This was to be done with the objective of continued protection of the ALR.

[16] In 2016, the Township expropriated a portion of the Property to expand 216 Street to allow for an interchange with Highway 1 and to create University Drive, a roadway connecting the Williams neighbourhood to TWU. The Williams Neighbourhood is directly west of the Property, across 216 Street. University Drive runs along the southern border of the Property, and 216 Street runs along its western border.

[17] On April 18, 2017, the Chens listed the Property for sale with a real estate agent for $27,000,000.

[18] Six days later, on April 24, 2017, the Township's Mayor and Council authorized municipal staff to attempt to negotiate a purchase of the Property for $6,275,000, and if these negotiations failed, to expropriate the Property. The Chens did not agree to sell the Property to the Township for $6,275,000.

[19] On July 8, 2017, the Chens received an offer to purchase the Property from Desert Properties for $18,500,000. Desert Properties was owned by Ken Mitchell, a well-known and experienced developer, who had developed a number of properties in the Township, including in the adjacent Williams Neighbourhood.

[20] On July 10, 2017, the Chens rejected Desert Properties' offer and counteroffered at $20,000,000, which Desert Properties accepted by signing the Desert Properties Contract.

[21] The Desert Properties Contract included a 30-day due diligence period that enabled Desert Properties to determine the development potential of the Property. Desert Properties had no financial obligation unless it removed this condition. The relevant condition precedent states:

> The obligation of the Buyer to complete the acquisition of the Property is subject to the Buyer having satisfied itself, in its sole discretion, as to […] the feasibility of the future of the Property in a commercially reasonable manner as contemplated by the Buyer, in its sole discretion.

This condition was inserted for the buyer's benefit only and could be waived in whole or in part at any time on or before August 10, 2017.

[22] The $20,000,000 purchase price was to be paid by instalments with a $5,000,000 deposit payable as follows:

i. $500,000 within three business days of subject removal;

ii. $2,500,000 by September 15, 2017; and

iii. the balance of the deposit by March 30, 2019.

The remainder of the purchase price would be payable at closing on September 26, 2021.

[23] On July 12, 2017, the Township filed a notice to expropriate against the title to the Property in the Land Title Office. The Chens received this notice by letter dated July 13, 2017. The purpose of the expropriation was to initially create a passive park, and later a community park, with playing fields, a 180-car parking lot, and a fieldhouse.

[24] Mrs. Chen (Ms. Hsu) testified that she provided the Township's July 13, 2017 letter to Joe Varing, the real estate agent acting on behalf of the Chens and Desert Properties in respect of the sale of the Property pursuant to the Desert Properties Contract.

[25] On July 20, 2017, Desert Properties terminated the Desert Properties Contract because it determined that it was unlikely that the Township would support an application for exclusion of the Property from the ALR.

[26] On or about November 20, 2017, the Township made the following payments to the Chens:

a) $6,275,000.00 on account of the expropriated Property; and

b) $12,046.92 pursuant to s. 38 of the *Expropriation Act*, R.S.B.C. 1996, c. 125.

[27] Five years later, on November 24, 2022, the Township made a further payment of $1,370,000 to the Chens as compensation for the expropriation, together with interest of $218,233.65.

[28] In total, the Township paid $7,645,000 for the expropriation of the Property, plus $12,046.92 for appraisal fees pursuant to s. 38 of the *Expropriation Act*, and $218,233.65 in interest.

Did the Chens Have a Reasonable Expectation of Excluding the Property from the ALR in 2017?

Findings of Fact

The University District

[29] The Township adopted the Rural Plan in 1993 (the “Rural Plan”). One purpose of the Rural Plan was to identify areas in which the Township would allow or encourage urban and commercial development and areas that would remain rural or agricultural.

[30] On June 10, 2013, the Township amended its Rural Plan and OCP to create the University District.

[31] One of the University District’s purposes was to “[e]ncourage the expansion of [TWU] on its current site and immediately adjacent lands”.

[32] The Township would encourage this expansion by extending “80 Avenue eastward from 216 Street, to provide better access from the university to Willoughby”. The Williams Neighbourhood is one of ten neighbourhoods that comprise the Willoughby Community.

[33] The Property is at the intersection of 80 Avenue and 216 Street and what is now University Drive, which runs along its southern boundary and provides the contemplated access to TWU.

[34] Under s. 2.4.18 of the OCP, adopted on December 12, 2016, areas designated as part of the University District under the OCP "are intended to provide for integrated development of learning, cultural, employment, recreational, and housing opportunities, subject to the approval of the [ALC] where needed. This may also include residential uses linked to the university, convenient day-to-day services and commercial uses for future academic and residential population, and the development of research, high-technology, and related uses" (emphasis added).

[35] The University District contemplates commercial, residential and institutional uses in the area and the Rural Plan provides:

> 5.17.2 Allow the following uses where permitted by the [ALC]:
>
> > a) Residential uses within the context of a University District with links between the academic and residential areas for the mutual benefit of both areas and to reduce the need to travel to and from [TWU], and
> >
> > b) Commercial uses subject to identification of appropriate location and design guidelines in order to provide convenient day to day services for the existing and future academic and residential population.
>
> [Emphasis added.]

[36] Land designations and uses in the University District must be directly or indirectly related to TWU or a similar institution: Rural Plan, s. 517.8.

[37] Subject to the approval of the ALC, the Township designated the University District as “general urban” in its Regional Growth Strategy map. In June 2013, the ALC denied the request to include the University District as “general urban”. Before creating the University District, the Township had designated these lands as “rural.”

[38] Raman Seifi was the General Manager of Engineering and Planning for the Township. He held this position for 15 years until he retired in 2022. A map attached to a presentation made by Mr. Seifi during a joint meeting of the Township and ALC on November 26, 2013 shows the Township’s long-term vision for University District was that it would eventually be entirely out of the ALR. This would of course include the Property.

[39] No properties in the University District have been excluded from the ALR since the University District was created in 2013.

[40] Aside from TWU’s existing campus holdings, there has been no development of any commercial or higher density residential uses on properties within the University District since 2013. Specifically, there has been no development of properties adjacent to TWU north or northwest of Glover Road.

[41] In 2017, at the time of the expropriation, no consultation had been completed with TWU and there was no indication that any development was required or expected in the University District.

The Willoughby Community and the Williams Neighbourhood

[42] The Willoughby Community is defined by the City of Surrey boundary to the west, Highway 1 to the north, 216 Street to the east and the slope of 67and 68 Avenues to the south. It is the Township's primary growth area and is expected to absorb much of its future population growth over the next several decades.

[43] The Willoughby Community consists of ten neighbourhoods, including the Williams Neighbourhood. In 2016, the Township started the public consultation process to approve the Williams Neighbourhood plan. The plan was approved in 2018. It contemplates restaurants, a hotel facing the Property, and multi-storey office buildings.

[44] The Williams Neighbourhood is directly across 216 Street from the Property, but the Property is neither in the Willoughby Community nor the Williams Neighbourhood.

[45] The Willoughby Community and the Williams Neighbourhood are separately planned communities and neighbourhoods in the Township. Unlike the Property, they are not part of the University District.

The MOU

[46] As noted, in 2015, two years after the creation of the University District, the Township and the ALC entered into a MOU that set out a series of aspirational principles that the Township hoped would guide the ALC's decisions on exclusion applications. These principles included "developing healthy and complete communities" and "efficient service delivery" that would accommodate economic development in specific areas, including the University District.

[47] Mr. Seifi was deeply involved in negotiating the MOU and attempting to use it to obtain exclusions from the ALR. The MOU did not bind the signatories regarding future exclusion requests. Mr. Seifi described the MOU as “aspirational” and “a vision document” that was intended to guide future planning exercises. It was not intended to guide specific exclusion applications by individual landowners nor was it a commitment by the ALC to exclude property from the ALR in the University District.

[48] Section 1.9 of the MOU provides an acknowledgment by the ALC that the Township sought future coordinated planning in three areas, including the University District:

> While attempts must be made to utilize existing Urban areas, where possible, consideration should be given to accommodate economic development at the international border crossing at Aldergrove, the Langley Regional Airport, and appropriate areas of the [Township’s] University District, all in collaboration, through joint planning exercises, between the [Township] and the ALC. The objective is continued protection of the ALR while also ensuring continued success of each area as key economic development drivers in the [Township] and within the region.

[49] From the Township’s perspective, the MOU did not fulfill its intended purposes because the ALC did not approve an exclusion application it sought in Aldergrove. The Township was frustrated and dissatisfied with this decision and concluded that the MOU was no longer a priority for the ALC and there was no utility in seeking to collaborate with the ALC under the auspices of the MOU. Also from the Township’s perspective, the MOU proved to be disappointing because it did not have any bearing on the ALC’s decisions.

[50] Neither the Township nor the ALC specifically repudiated the MOU. However, there is no evidence to suggest that it has played any role in the decisions made by the ALC nor has it been used to guide future planning exercises involving the Township and the ALC.

Application for Exclusion of the Property

[51] In late 2009, the Chens applied to the ALC, to have the Property excluded from the ALR in 2010 to facilitate its future development.

[52] The Township's Council declined support for the Chens' exclusion application on the basis that the application was inconsistent with the Township's land use objectives as reflected in its OCP and the Rural Plan.

[53] A Report to the Township's Mayor and Council concluded that there was "no basis" in the OCP or the Rural Plan to exclude the Property for the purpose of future residential and commercial development and that doing so was inconsistent with the current land-use designations for that area.

[54] By letter dated November 18, 2010, the ALC declined the Chens' exclusion application. In its written decision, the ALC determined that:

a) the Property had "prime agricultural capability and could thus support a broad range of agricultural activity";

b) the Property was "surrounded by other parcels of similar size and agricultural ratings";

c) the Property was situated "in an agricultural area and many of the surrounding properties are actively involved in agricultural production";

d) the future expansion of the 216 Street interchange and future access to the TWU campus "would not render the land unsuitable for agricultural use";

e) the Chens' "proposal itself was an example of encroaching non-farm development into the ALR, which, if approved, would negatively affect the agricultural suitability of neighbouring properties";

f) "the proposed exclusion would encourage speculation of ALR properties within the area and may negatively impact existing or potential agricultural use of surrounding lands"; and

g) the Property "had good potential for agriculture based on its prime agricultural capability, and that exclusion of the property was not warranted".

[55] The ALC concluded that the intent of the *Agricultural Land Commission Act,* S.B.C 2002, c. 36 [*ALCA*] was "to preserve and protect agricultural lands and farm communities in the long-term and, for all these reasons, the [ALC] considered that this application was not in keeping with that mandate".

[56] The Chens did not submit another application to the ALC for exclusion of the Property from the ALR.

Other Successful ALC Exclusion Applications

[57] In October 2017, the Township authorized and supported an exclusion application to the ALC in respect of Tara Farms, located at 21198 Smith Crescent in the Willoughby Community. In May 2018, the ALC granted the Tara Farms exclusion of eight hectares from the ALR.

[58] In March 2020, after a successful judicial review application in this court (see *McCall v. British Columbia (Agricultural Land Commission)*, 2017 BCSC 1707), the ALC excluded approximately 36 acres from the ALR pursuant to an exclusion application for industrial development on this property (the "Gloucester Decision"). The Township supported this application.

[59] The lands in the Gloucester Decision were described as rural in the OCP. The agricultural capability and suitability of these lands were limited by excess water and poor drainage.

Relevant Legal Principles

[60] To assert a highest and best use that is contingent on re-zoning, the Chens must establish that they had a "reasonable expectation" that re-zoning would occur at the time of the taking. The burden of proof is a balance of probabilities, a likelihood higher than 50% that re-zoning would have been obtained. More than the mere possibility of approval must be established: *Holdom v. British Columbia Transit,* 2006 BCCA 282 at paras. 36–39; *Lulu Island Holdings Ltd. v. GVSDD*, 2007 BCSC 938 at paras. 42–44.

[61] In assessing the possibility of favourable re-zoning, one must discount any negative impact caused by the scheme which led to expropriation. The appropriate test is "but for the taking by the [expropriating body], could the claimant have reasonably expected a change in zoning permitting?": *Devick v. British Columbia*

(Minister of Transportation and Highways) (1998), 47 B.C.L.R. (3d) 14, 1998 CanLII 6136 (C.A.) at paras. 17 and 32.

[62] Pursuant to s. 6 of the *ALCA*, the purpose of the ALC is to preserve the ALR, encourage farming on agricultural land, and accommodate the farm use of agricultural lands.

[63] The ALC's mandate is limited to consideration of the factors set out in s. 6 of the *ALCA* and does not extend to questions of the economic viability of the Property: *Bustin v. Agricultural Land Commission*, 2016 BCSC 1869 at para. 58.

[64] Land designated as agricultural land in the ALR remains in it unless it is excluded by the ALC: s. 15 of the *ALCA*.

[65] Subject to few exceptions listed in s. 2, the *ALCA* takes precedence over other legislation and local government bylaws that may apply to a property: ss. 2 and 46 of the *ALCA*.

[66] At the time of the expropriation, s. 30 (4) the *ALCA* (repealed in February 2019) required that that all exclusion applications be authorized by a municipal resolution: *Greater Vancouver (Regional District) v. Langley (Township)*, 2014 BCSC 414 at para. 9.

Positions of the Parties

[67] The Chens assert that the Property probably would have been excluded from the ALR in 2017. They believe that the Township would have supported this application because the Property is in the University District, which contemplates residential and commercial uses directly or indirectly related to TWU. They further rely on the MOU which refers to considering applications for exclusion from the ALR for lands in the University District to accommodate economic development. They find further support for this position in the ALC's decisions to exclude Tara Farms in Langley in the Willoughby Community and the Gloucester Industrial Park from the ALR.

[68] The Township denies that it would have supported rezoning and redevelopment of the Property so it asserts that it is unlikely that the ALC would have agreed to exclude it from the ALR. The Township would have expected a development plan that demonstrated that the proposed development of the Property was for a use connected to TWU.

Discussion

[69] The Chens' assumption that the Property would be removed from the ALR relies significantly on its designation within the University District in the Township's OCP and Rural Plan. They assume that the location of the Property within the University District at the date of expropriation means that it would have been slated for urban development at that time. This contention is not supported by the evidence.

[70] Specifically, there is no evidence that TWU had been consulted in respect of a proposed development. There is no indication that TWU, the only post-secondary institution in the University District, required, or even wanted, the development of the Property for its direct or indirect purposes.

[71] I accept that over the long-term, potentially decades, the Township contemplated applying to remove the entire University District from the ALR if TWU or another yet to be established post-secondary institution would benefit directly or indirectly from its development. However, this does not suggest that at the expropriation date, November 17, 2017, the Township would have supported such an application. On the contrary, the evidence of the Township's witnesses is that they had no intention of seeking or supporting an application for removal of the Property from the ALR in 2017.

[72] Furthermore, even if the Township had supported an exclusion application, I am not satisfied that it is probable that the ALC would have approved it. This is because there was virtually no material change in the relevant circumstances surrounding the Property between 2010, when the ALC issued its decision on the exclusion application submitted by the Chens, and the expropriation date in 2017.

[73] In 2010, the ALC determined that the Property had prime agricultural capability and suitability, and that exclusion of it would invite speculation of exclusion of surrounding lands and negatively impact the agricultural use of surrounding lands (the “2010 ALC Decision”). Given that there were no material changes to the agricultural capability of the Property, no permitted exclusions in the vicinity of the Property, or any similar exclusions permitted by the ALC since 2013, and no actual planning decisions from the ALC in respect of this area, the findings of the ALC in the 2010 ALC Decision would probably remain determinative. In my view, it is probable that the ALC would have rejected any new exclusion application.

[74] The creation of the University District is not a basis on which I can conclude that an exclusion of the Property from the ALR was reasonably probable in November 2017, particularly in the absence of detailed and comprehensive joint planning involving the Township and TWU.

[75] The mere existence of the MOU and its reference to the University District does not suggest that the ALC would have approved an exclusion application for the Property in 2017. The MOU was expressly a non-binding document intended to guide future planning and was specifically not to be relied for individual exclusion applications, such as one for the Property.

[76] It is an inaccurate overstatement of the intention of the MOU to suggest that the ALC agreed to support urban development in the University District. This view is inconsistent with the ALC's prior resistance to urban designations in the University District in its review of the OCP in 2013. It is also contrary to the unambiguous language of the MOU which only provides support for "economic development" in "appropriate areas in the University District" through "joint planning exercises". This is very different from the view espoused by the Chens that the MOU constituted a specific planning commitment that would have supported an exclusion application for the Property.

[77] Furthermore, in the Township's view, the MOU was largely ineffective and of little practical use. It viewed the MOU as having been effectively repudiated by the ALC.

[78] The exclusion of Tara Farms from the ALR was the result of a decades long planning process between the Township and the ALC in which specific commitments were made by the ALC to exclude a portion of this property as early as 1990. Furthermore, the portion of the Tara Farms lands sought to be excluded is in the Langley's Willoughby Community, not the University District.

[79] The Gloucester Decision is distinguishable from the case at bar for two reasons: first, it constitutes post-taking evidence and is therefore inadmissible because this decision was rendered on March 10, 2020, almost three years after the expropriation date: *Nguyen v. British Columbia (Transportation and Infrastructure)*, 2018 BCSC 192 at para. 130. Second, in rejecting the 2010 exclusion application, the ALC concluded that the Property had prime agricultural capability and suitability. By contrast, the agricultural capability and suitability of the Gloucester lands were limited by excess water and poor drainage. The ALC therefore concluded that the Gloucester lands were unsuitable for agriculture.

[80] I accept that over the long-term, the Township may wish to exclude all or a portion of the University District from the ALR. However, I am not satisfied, on a balance of probabilities, that the Chens had a reasonable expectation of excluding the Property from the ALR in 2017, a mere four years after the creation of the University District.

What is the Fair Market Value of the Property?

Findings of Fact

[81] The Township expropriated the Property because it intended to use it as part of a park. Its initial plan was to use the Property as a "passive park", with the possibility of developing it into a "community park" in the future, subject to the approval of the ALC. The Property was also identified as a potential node on the

planned Arbour Ribbon Greenway which is a linear treed buffer running north-south along the western edge of the Property on 216 Street.

[82] On September 9, 2016, the Plaintiffs sold approximately 1.4 acres of their property to the Township for the 80 Avenue road extension for $265,000.

[83] In addition to obtaining independent appraisals for the Property, the Township also commissioned a report by Pacific Land Group to determine the highest and best use of the Property, which was provided to the Township on March 10, 2016 (the "PLG Report").

[84] The PLG Report concluded that the highest and best use of the Property was as a holding property pending future development.

The Dybvig Valuation Report

[85] The Chens retained Larry Dybvig, a qualified real estate appraiser, to provide an expert report on the market value of the Property (the “Dybvig Report”). The Dybvig Report assumes that the ALC would have approved an application to exclude the Property from the ALR as of November 2017. On this basis, it concludes that the market value of the Property is $26,550,000. Mr. Dybvig testified that his report is premised on this fundamental assumption and it would not be valid without it.

[86] Mr. Dybvig did not do an analysis of the permissible uses of the Property. He simply accepted the assumption that it had immediate urban development potential as a business park. He testified that this assumption had a material impact on his appraisal of the Property.

[87] Mr. Dybvig valued the Property using comparables in the adjacent Williams Neighbourhood which is subject to significantly different land-use designations under the OCP as compared to the Property. None of the comparables used by Mr. Dybvig are in the University District.

[88] Applying the assumption that the Property would have been excluded from the ALR, Mr. Dybvig concluded that the highest and best use of the Property was development of it as a business park or for residential purposes, similar to the development envisioned west of the Property, across 216 Street, in the Williams Neighbourhood.

[89] The Williams Neighbourhood allows for a broad range of commercial and residential uses. The University District contemplates development directly or indirectly tied to TWU or a similar institution. Mr. Dybvig did not consider this requirement in determining the highest and best use of the Property.

[90] Mr. Dybvig did not consider the Desert Properties Contract because, it did not reflect the fundamental assumption in his report that the Property would be excluded from the ALR as of the date of expropriation.

The Carmichael Valuation Report

[91] The Township retained Stuart Carmichael, a qualified real estate appraiser, to value the Property. He did this twice. His first report was dated February 17, 2017 and it valued the Property at $6,275,000 as of February 16, 2017 (the "First Carmichael Report"). The Township relied on the First Carmichael Report in determining the compensation paid to the Chens in 2017.

[92] In 2022, approximately five years after the Township expropriated the Property, the Township retained Mr. Carmichael to prepare an updated appraisal of it with an effective date of November 17, 2017, the date of the expropriation. Mr. Carmichael's second report is dated October 28, 2022 (the "Second Carmichael Report"). In this report, he concluded that the value of the Property as of November 17, 2017 was $7,645,000, $237,500 per acre.

[93] Mr. Carmichael opined that the market appeal of the neighbourhood in which the Property is located is good and interest in this area was increasing because the Property is in close proximity to major arterial roadways including 200 Street, 208 Street, Highway 1, Highway 10, Golden Ears Way, and the then proposed and now

constructed Highway 1/216 Street interchange that provides easy access to the surrounding growth areas.

[94] The intersection at 216 Street and 80 Avenue had also been proposed for upgrade as of November 2017 and this work was completed in 2020. The 80 Avenue extension to TWU was part of this upgrade. “University Drive”, the portion of the 80 Avenue extension east of 216 Street opened in 2020.

[95] Mr. Carmichael described the Property to be “a highly desirable holding property and would trade in the marketplace for more than a typical agricultural property in the Township of Langley”.

[96] For the purpose of assessing the trends in the real estate market at the relevant time, Mr. Carmichael conducted a residential market overview because statistics for agricultural parcels are not available. He noted that the ratio between sales and active listings is a useful indicator of the state of the market. A balanced market is reflected by a ratio of 12% to 20%. A ratio over 20% indicates a sellers’ market and one below 12% suggests a buyers’ market. The sales to active listing ratio in November 2017, for all property types in the Fraser Valley was 34%, reflecting a clear sellers’ market.

[97] Mr. Carmichael reported that the benchmark price for a detached home in Langley increased by 15.5% between November 2016 and November 2017. The median price increase over this period was 19.11%.

[98] Mr. Carmichael concluded that notwithstanding the 2010 ALC Decision rejecting an exclusion application from the ALR, the Property was a desirable holding property due to its location within the University District, the then proposed 216 Street interchange, the development of a proposed business park across the street from the Property on the west side of 216 Street, and its increased exposure from the 80 Avenue extension. He further noted that the proposed interchange at Highway 1 and 216 Street, which opened on September 4, 2020, located north of

the Property, serviced Walnut Grove and Willoughby and would significantly improve access from the Property to Highway 1.

[99] Mr. Carmichael considered the Property appealing as a “strategic holding property” on the fringe of the ALR. He described “holding use” as a legitimate highest and best use and therefore the highest and best use for the Property was as a holding property pending future development with the “existing use limited to its existing agricultural (equestrian)/rural residential use”.

[100] Mr. Carmichael relied on the direct comparison approach to value the Property along with a consideration of the following factors:

a) Parcels with a “fringe” ALR location or sites on the boundary of the ALR generally sell for a per acre premium over comparable properties located in the heart of the ALR;

b) The Property and the majority of the comparables are in the fringe of the ALR although the comparables do not possess equal strategic attributes as compared to the Property; and

c) Parcels with a location along a main thoroughfare typically sell for a premium.

[101] In applying the direct comparison approach, Mr. Carmichael reviewed seven comparable sales, one of which was in respect of a 10.16-acre property located at 21318-32 Avenue, Langley, B.C. (the “32 Avenue Comparable”). In his second report, Mr. Carmichael noted the sale of this property in August 2015 for $1,963,000. He concluded that a downward adjustment to the price per acre was required given the larger size of the Property but that this was more than offset by an upward adjustment for time and improved market conditions. Furthermore, the Property was in a superior location to the 32 Avenue Comparable because it was closer to urban development, the proposed 216 Street interchange and the 80 Avenue extension. Accordingly, the Property had superior holding utility and value that warranted an overall upward adjustment.

[102] In his second report, Mr. Carmichael mistakenly omitted a subsequent sale of the 32 Avenue Comparable property in December 2017 for $2,750,000. At trial, he

explained that the subsequent sale of this comparable property was negotiated in July 2017, and it demonstrated that the market was increasing rapidly during that year. Without doing a detailed valuation of this property, he assumed that renovations to the house on this property accounted for part of the increase given that this was a 10-acre property as compared to the Property which is three times larger. He did not adjust his estimate of the value of the Property upon discovering the December 2017 sale of this comparable.

[103] Mr. Carmichael concluded that the following factors increase the speculative potential of the Property for possible release from the ALR:

a) The fringe location of the Property along 216 Street;

b) Its 30-acre size;

c) Future development in the area resulting from the 216 Street interchange and 80 Avenue extension;

d) Its location directly east of future development in the Willoughby Community; and

e) Its location in the University District.

[104] Mr. Carmichael also considered steady monthly property price increases in Langley from November 2016 to October 2017 due to strong demand conditions.

[105] Without adjusting for the omitted December 2017 sale of the 32 Avenue Comparable, Mr. Carmichael concluded that the Property land value was in the range of $150,000 to $200,000 per acre but that the Property had qualities that significantly enhance its appeal as a holding property. Accordingly, he concluded that the Property's value would be in the range of $225,000 to $250,000 per acre. He chose the midpoint of this range at $237,500 per acre and applied it to the Property in concluding that the market value of the Property on November 17, 2017 was $7,645,000.

[106] The Township did not provide Mr. Carmichael with the Desert Properties Contract. He was unaware of it in the course of preparing both of his appraisal

reports. Mr. Carmichael had no knowledge of the Desert Properties Contract until he read about it in the appraisal report prepared by Mr. Dybvig, dated November 21, 2022. Recall that Mr. Carmichael's second report was dated October 28, 2022.

[107] Upon discovering the existence of the Desert Properties Contract, Mr. Carmichael spoke to Mr. Mitchell, whom he had known and worked with for the past 15 years. From this conversation, Mr. Carmichael understood that:

a) the $20 million offer involved minimal money down, a five-year closing period, and was subject to the property coming out of the ALR;

b) Mr. Mitchell had not done any due diligence on the Property prior to agreeing to this deal. He did not want to miss an opportunity to buy it because he participated in developing adjacent properties in the Williams Neighbourhood; and

c) Once Mr. Mitchell did some investigation and due diligence, he concluded that it was unlikely that the Property would be removed from the ALR so he rescinded the Desert Properties Contract within about a week because he did not think he could develop it for industrial, commercial or residential uses.

[108] From this conversation with Mr. Mitchell, Mr. Carmichael thought that the Desert Properties Contract was subject to the Property coming out of the ALR. He agreed that it was not possible to obtain an exclusion of the Property from the ALR within 30 days.

[109] Mr. Carmichael did not know that the township issued a Notice of Expropriation on July 13, 2017—three days after Mr. Mitchell's $20,000,000 offer for the Property. Mr. Mitchell did not refer to the expropriation as a reason for his decision to terminate the Desert Properties Contract.

[110] Mr. Carmichael reiterated that he only learned of the $20 million Desert Properties Contract from the sales history in the Dybvig Report and that if he had known of it, he would have referred to it in his report and would have been required to do so by the Canadian Uniform Standards of Professional Appraisal Practice rules. He stated that he respects this type of information and would have addressed

it in his report if he had known of it. Mr. Carmichael did not indicate if the existence of the Desert Properties Contract would have changed his valuation of the Property.

Termination of the Desert Properties Contract

[111] The Desert Properties Contract contained condition precedents as to the "state and condition of the Property" and "feasibility of the future [*sic*] of the Property in a commercially reasonable manner as contemplated by the Buyer". The subject period was 30 days, and the subjects had to be removed by August 10, 2017.

[112] On July 12, 2017, two days after Desert Properties accepted the Chens' $20 million counteroffer, the Township filed a notice of expropriation with the Land Title Office. The expropriation notice stated that the "land is required for passive park purposes". The notice was delivered to the Chens with a letter dated July 13, 2017.

[113] The Chens received the letter and notice of expropriation on July 16, 2017, which they immediately provided to Mr. Varing who, as noted, was acting as a joint real estate agent for both them and Desert Properties.

[114] Two days later, on July 18, 2017, Desert Properties sent a notice terminating the contract (the "Termination Notice"). The Termination Notice cited the following as grounds for termination:

> Achieving agreement with the Township to support a request for exclusion of the property from the ALR was of paramount importance to achieving the higher value represented in our offer and we have concluded that is not likely and therefore the property will remain at ALR values.

[115] Allan Neufeld was manager of parks and administration for the Township in 2017. He was familiar with the Property and testified that the Township had been interested in acquiring the Property for approximately ten years prior to the expropriation. He agreed that the Township's Property Services Department monitors transactions involving properties that it is interested in acquiring.

[116] Mr. Neufeld confirmed that the Township expropriated the Property for use as a passive park, a use permitted on ALR land, and eventual development as a

community park, which would have required ALC approval because this use is not permitted on ALR lands.

Relevant Legal Principles

[117] The Township must compensate the Chens for expropriating the Property pursuant to s. 30(1) of the *Expropriation Act*: *Chen v. Chilliwack (City),* 2015 BCSC 382 at para. 8.

[118] Compensation paid to an owner of expropriated lands is based on the market value of the lands on the date of the expropriation: s. 32 of the *Expropriation Act, Hanlon v. North Vancouver (District),* 2022 BCSC 353 at paras. 15 and 67, aff'd 2023 BCCA 114.

[119] The basic formula for determining the market value of expropriated lands is set out under s. 31 of the *Expropriation Act*, as follows:

> **Basic formula**
>
> 31(1) The court must award as compensation to an owner the market value of the owner's estate or interest in the expropriated land plus reasonable damages for disturbance but, if the market value is based on a use of the land other than its use at the date of expropriation, the compensation payable is the greater of
>
> (a) the market value of the land based on its use at the date of expropriation plus reasonable damages under section 34, and
>
> (b) the market value of the land based on its highest and best use at the date of expropriation. […]

[120] Subsection 31(1) of the *Expropriation Act* provides that compensation is the greater of the market value of the land on the date of the expropriation plus reasonable damages, or the market value of the land based on its highest and best use as at the date of the expropriation. In this case, the Chens are not seeking disturbance damages under the *Expropriation Act*. Both parties' appraisers have valued the Property based on their highest and best use in accordance with s. 31(1)(b) of the *Expropriation Act*.

[121] "Market value" is defined under s. 32 of the *Expropriation Act*: "The market value of an estate or interest in land is the amount that would have been paid for it if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer".

[122] Section 33 of the *Expropriation Act* sets out certain exclusions from considerations in respect of market value and includes, among other things, "the anticipated to actual purpose for which the expropriating authority intends to use the land" and "an increase or decrease in the value of the land resulting from the development or prospect of the development in respect of which the expropriation is made".

[123] Where the owner of expropriated lands believes the compensation provided is insufficient and does not reflect the market value of the lands, the owner may bring a claim for additional compensation pursuant to s. 30(1) of the *Expropriation Act* against the expropriating authority.

[124] The *Expropriation Act* should be interpreted and applied “in a broad and purposive manner in order to comply with the aim of the Act to fully compensate a landowner whose property has been taken”: *Toronto Area Transit Authority v. Dell Holdings Ltd*., [1997] 1 S.C.R. 32,1997 CanLII 400 at paras. 20–23 [*Dell*].

[125] Because expropriating authorities wield significant powers, courts must strictly construe expropriation statutes in favour of those whose rights have been affected: *Dell* at para. 20:

> [20] The expropriation of property is one of the ultimate exercises of governmental authority. To take all or part of a person’s property constitutes a severe loss and a very significant interference with a citizen’s private property rights. It follows that the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected. This principle has been stressed by eminent writers and emphasized in decisions of this Court. [Citations omitted.]

[126] Real estate valuation is as much an art as a science. It is not exact: *Hanlon* at paras. 37–39.

[127] Professor Todd notes in *The Law of Expropriation and Compensation in Canada*, 2nd ed (Toronto: Carswell, 1992) at 176, cited in *Hanlon* at para. 40:

> [40] […]
>
> It is quite true that in all valuations, judicial or other, there must be room for inferences and inclination of opinion which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. Everyone who has gone through the process is aware of this lack of demonstrative proof in his own mind, and knows that every expert witness called before him has had his own set of conjectures, of more or less weight according to his experience and personal sagacity. (from *Secretary of State of Foreign Affairs v. Charlesworth, Pilling & Co*., [1901] AC 373 (PC) at 391.)

[128] "[A]ppraisers draw upon a plethora of sources, stated and unstated, at arriving at a valuation": *Hanlon* at para. 41.

[129] An offer to purchase a property is the "best and most probative evidence of value" that the Court "can and must" consider in determining the fair value of a property: *Smithies Holdings Inc. v. RCV Holdings Ltd.,* 2016 BCSC 477 at paras. 78–81, aff'd 2016 BCCA 479.

Positions of the Parties

[130] The Chens assert that the Property would have been removed from the ALR at the date of the expropriation and would have been available for urban development indirectly related to TWU. They suggest that it would take its character from the adjacent Williams Neighbourhood and could include residential, commercial, and business park development.

[131] Alternatively, if the Property was not going to be excluded from the ALR, the Chens rely on the Desert Properties offer of $20,000,000 as the best evidence of the value of the Property as of the date of expropriation.

[132] The Chens submit that the only reasonable inference to be drawn from the facts surrounding the termination of the Desert Properties Contract is that Desert Properties terminated the contract as a result of the Township filing and delivering the notice of expropriation. They point to the timing of the expropriation in relation to the listing of the Property for sale.

[133] The Township asserts that there is no direct evidence that the Township knew that the Chens listed the Property for sale or of the existence, let alone the termination, of the of the Desert Properties Contract. It also points out that there is no direct evidence to confirm that Desert Properties was aware of the expropriation or that this influenced its decision to terminate the Desert Properties Contract. It emphasizes that there is a gap in the evidence because neither Mr. Mitchell, the principal of Desert Properties, nor Mr. Varing, the agent who acted for the Chens and Desert Properties in respect of the Desert Properties Contract, testified at trial.

[134] The Township submits that the Second Carmichael Report accurately reflects the fair market value of the Property in November 2017.

Discussion

The Impact of the Desert Properties Contract

[135] There is a gap in the evidence because neither Mr. Mitchell nor Mr. Varing testified at trial. I decline to speculate on what their testimony would have revealed.

[136] In the absence of direct evidence regarding the circumstances surrounding the Desert Properties Contract, I rely on my assessment of these circumstances.

[137] The Township had been interested in acquiring the Property for approximately a decade before it expropriated it. I accept Mr. Neufeld's evidence that the Township monitors properties that the Township has an interest in for potential transactions and it probably became aware of the Chens listing of the Property and the Desert Properties Contract.

[138] I am therefore not prepared to accept that the timing of the expropriation was merely coincidental with Desert Properties conditionally agreeing to pay $20,000,000 for the Property. I am satisfied that that the Township proceeded with its expropriation in response to the Desert Properties Contract. I infer this from the timing of the events, and in particular, the fact that the Township commenced the expropriation process on April 24, 2017, seven days after the Property was listed for

sale, and filed the expropriation notice on July 12, 2017, two days after Desert Properties accepted the Chens counteroffer of $20,000,000 for the Property.

[139] Not only did the Township not provide the Desert Properties Contract to Mr. Carmichael in August 2017 for the purpose of obtaining a revised appraisal, it also did not provide it to him five years later in October 2022 when he was preparing a revised and updated appraisal of the Property. This is both puzzling and concerning conduct by an expropriating authority such as the Township because this agreement was relevant to an assessment of the value of the Property.

[140] I disagree with the Township's suggestion that the Desert Properties Contract has no probative value because it did not complete. Instead, I prefer the evidence of Mr. Carmichael who confirmed that this contract would have been relevant to his assessment of the fair market value of the Property and that he did not consider it because it was not provided to him.

[141] Mr. Carmichael testified that he "really respects this type of information" and agreed that if he had known about the Desert Properties Contract, he would have been required to consider and comment on it in his appraisal report.

[142] In my view, a broad and purposive application of the *Expropriation Act* requires that the expropriating authority disclose all relevant information to its appraiser for the purpose of ensuring that the property owner receives full compensation for the expropriated property. The Township did not live up to this obligation by failing to disclose the Desert Properties Contract to its appraiser. The Township should have provided the Desert Properties Contract to Mr. Carmichael when they received it in August 2017 and certainly should have ensured that he was aware of it when it retained him to do a second appraisal of the Property in 2022.

[143] Neither appraiser considered the effect of the Desert Properties Contract, but I must determine its impact, if any, on the value of the Property. The contract contained a condition precedent that could be removed by Desert Properties at its sole discretion. Desert Properties declined to remove the condition and complete the

contract because it concluded that it would probably not be able to successfully remove the Property from the ALR. The language used in the termination letter does not specifically mention the expropriation. In my view, it is clear that Desert Properties declined to proceed because at that time because the Township would not support removal of the Property from the ALR and in any event, this application was unlikely to succeed.

[144] As noted earlier, I believe that the Township was under an obligation to disclose the Desert Properties Contract to Mr. Carmichael because it was relevant to his assessment of the value of the Property. However, I assign little weight to it because in 2017, the Township would not have supported an exclusion application from the ALR and even if they had, it is unlikely that the ALR would have granted an exclusion. Desert Properties would have discovered this in the course of doing due diligence on the development potential of the Property and concluded that it could not develop the Property in a manner similar to its development efforts in the Williams Neighbourhood. It is therefore likely that it would not have removed the relevant condition and proceeded with its plan to buy the Property. Accordingly, the Desert Properties Contract has minimal impact on my assessment of the value of the Property.

The Appraisal Reports

[145] I reject the Dybvig Report valuation because I find that at the date of the expropriation, the Chens could not have had a reasonable expectation that the Property would be excluded from the ALR and subject to urban development akin to the adjacent Williams Neighbourhood.

[146] None of the comparables used in Mr. Carmichael's second report were in respect of areas, such as the University District, which allowed for the possibility of residential and commercial development.

[147] In reviewing the comparables that he analyzed, Mr. Carmichael missed a subsequent sale of the 32 Avenue Comparable. This property sold for $270,000 per acre, significantly more than the value he attributed to the Property in his report, and

this sale was negotiated before the expropriation date and closed in the month after this date. Mr. Carmichael notes in his report that while some downward adjustment is needed as a result of the smaller size of this comparable property, an upward adjustment is needed because of the Property's "superior location closer to urban development".

[148] Mr. Carmichael did not address this subsequent sale of the 32 Avenue Comparable in his report and he did not adjust his estimate of the value of the Property upon discovering the December 2017 sale of this comparable.

[149] I agree with Mr. Carmichael's characterization of the Property as "a highly desirable holding property" and a "strategic holding property" on the fringe of the ALR. The highest and best use for the Property was as a holding property pending future development with the existing use limited to its existing agricultural uses. The PLG Report supports this finding because it concluded that the highest and best use of the Property was as a holding property pending future development.

Market Value of the Property

[150] The Township's power to expropriate must be strictly construed in favour of the Chens because their private property interests were severely interfered with by the expropriation of the Property.

[151] In assessing the market value of the Property, I must engage in a broad and purposive interpretation of the *Expropriation Act* that ensures that the Chens are fully compensated, bearing in mind that real estate valuation is as much an art as a science. It is inexact.

[152] I have considered the following valuation factors:

a) Parcels of land with a location along a main thoroughfare typically sell for a premium;

b) In November 2017, the extension of 80 Avenue had begun and the expansion of the interchange at Highway 1 and 216 Street had been approved and construction had commenced;

c) The Property is located in an area that is transitioning from rural to urban uses and it is close to the Highway 1 and 216 Street interchange;

d) The Property is located within the University District which contemplates future development in connection with TWU or a similar institution;

e) The Labonte Crescent lands that TWU optioned were valued at $205,000 per acre in 2008;

f) The Township's planning documents, including the map Mr. Seifi included referred to in his presentation to the ALC on November 26, 2013 shows that the Township's long-term vision for University District was that it would eventually be entirely out of the ALR;

g) The comparables analyzed by Mr. Carmichael do not possess equal strategic attributes as compared to the Property; and

h) The sales to active listing ratio in November 2017, for all property types in the Fraser Valley was 34%, reflecting a clear sellers' market.

[153] The Chens bought the Property in 1993 and became the sole owners of it in 2005. I accept Mrs. Chen's evidence that they kept this property as a long-term investment.

[154] Without considering the sale of the 32 Avenue Comparable, and before applying adjustments, Mr. Carmichael concluded that the range of comparable sales was between $150,000 to $200,000 per acre. He then adjusted the range upward to account for positive contingencies and concluded that the per acre price to be applied was $237,500. A downward adjustment in respect of the smaller size of this comparable property was more than offset by what Mr. Carmichael described as the Property's "superior location closer to urban development".

[155] In my view, Mr. Carmichael's valuation should be adjusted upward to account for the December 2017 sale of the 32 Avenue Comparable at a per acre price of $270,000. Importantly, the sale of this comparable property closed in the month after the date of the expropriation.

[156] Furthermore, I find that per acre value of the Property should be higher than the 32 Avenue Comparable due to the rapidly increasing real estate prices in

Langley throughout 2017, the net positive contingencies described by Mr. Carmichael, and the aforementioned valuation factors.

[157] I am satisfied that the per acre value of Property on November 17, 2017 was approximately $325,000 such that the value of the Property on this date was $10,500,000. In my view, this valuation reflects the actual market value of the Property in November 2017 as a strategic holding property in a desirable fringe location.

[158] I am satisfied that the fair market value of the Property as of the date of expropriation is $10.5 million.

Interest and Costs

[159] The Chens seek costs pursuant to s. 45(4) of the *Expropriation Act*. Pursuant to s. (7)(a), those costs are “actual reasonable legal, appraisal and other costs”.

[160] The Chens also seeks interest pursuant to s. 46(1) of the *Expropriation Act*:

> (1) The expropriating authority must pay interest on any amount awarded in excess of any amount paid by the expropriating authority under section 20 (1) or (12) or otherwise, to be calculated annually,
>
> > (a) on the market value portion of compensation, from the date that the owner gave up possession, and
> >
> > (b) on any other amount, from
> >
> > > (i) the date the loss or damages were incurred, or
> > >
> > > (ii) any other date that the court considers reasonable.
>
> (2) Interest is payable at an annual rate that is equal to the prime lending rate of the banker to the government.
>
> (3) During the first 6 months of a year, interest must be calculated at the interest rate under subsection (2) as at January 1, and during the last 6 months, interest must be calculated at the interest rate under subsection (2) as at July 1.

[161] In addition, the Chens seek interest pursuant to s. 46(4) of the *Expropriation Act*:

> (4) If the amount of the payment under section 20 (1) or (12) or otherwise is less than 90% of the compensation awarded, excluding interest and business loss, the court must order the expropriating authority to pay additional

> interest, at an annual rate of 5%, on the amount of the difference, calculated from the date that the payment is made to the date of the determination of compensation.

[162] Interest “calculated annually” under s. 46(1) requires a compound interest calculation, while s. 46(4) imposes a simple interest calculation, at 5 percent: *Jesperson's Brake & Muffler Ltd. v. Chilliwack (District)* (1994), 88 B.C.L.R. (2d) 230, 1994 CanLII 1662 (C.A.) at paras. 44 and 48.

Conclusion

[163] The fair market value of the Property is $10.5 million.

[164] The Township shall pay the Chens $2,855,000. This is the difference between the fair market value of the Property and $7,645,000 paid to the Chens by the Township for the expropriation of the Property.

[165] The Chens are entitled to the associated interest pursuant to ss. 46(1) and (4) of the *Expropriation Act*.

Costs

[166] If the parties wish to make submissions on costs, they may be filed within 30 days of the date of this judgment. If the parties wish to make oral submissions on costs, they may make the necessary arrangements with Supreme Court Scheduling within this timeframe.

[167] If no further submissions are received, the Township will reimburse the Chens for their reasonable legal fees, disbursements, and appraisal costs pursuant to s. 45 of the *Expropriation Act* and the *Expropriation Proceeding Costs Regulation,* B.C. Reg. 98/2005.

“Basran J.”