

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Madam Justice Diana M. Cameron
Madam Justice Janice L. leMaistre

BETWEEN:

<i>WILLIAM NANOWSKI</i>)	<i>T. J. Kochanski</i>
)	<i>for the Appellant</i>
<i>(Claimant) Appellant</i>)	
)	<i>K. T. Williams, K.C. and</i>
<i>- and -</i>)	<i>J. M. Nordlund</i>
)	<i>for the Respondent</i>
<i>THE CITY OF WINNIPEG</i>)	
)	<i>Appeal heard and</i>
<i>(Respondent) Respondent</i>)	<i>Decision pronounced:</i>
)	<i>October 8, 2024</i>

LEMAISTRE JA (for the Court):

[1] The claimant appealed the amount certified as compensation payable by the Land Value Appraisal Commission (LVAC) for the expropriation of his property.

[2] After the hearing, we dismissed the appeal with reasons to follow. These are those reasons.

Background

[3] On February 22, 2018, the respondent (the City) expropriated just over nineteen acres of agricultural land in the Waverley West neighbourhood of Winnipeg owned by the claimant (the property) for the purpose of

constructing a recreation campus. The claimant's residence, a detached garage and three storage sheds were on the property at the time of the expropriation.

[4] At the hearing to determine the compensation payable under section 15(1) of *The Expropriation Act*, CCSM c E190 [the *Act*], each party called an expert to provide an opinion on the market value of the property at the time of the expropriation. The experts agreed that the highest and best use of the property was for redevelopment. As such, the residence and outbuildings did not add value to the property.

[5] The City's expert, Jason Schellenberg (Schellenberg), valued the property at \$160,000 per acre for a total of \$3,040,000 (rounded up) using the direct comparison approach for the land only. The direct comparison approach involves using sales of comparable properties sold around the time of the expropriation to assess value and is based on the theory that a purchaser will not normally pay more for a property than the price to purchase a similar property under similar circumstances.

[6] Schellenberg considered eight similar properties sold between March 2014 and April 2018, ranging in price from \$107,300 to \$171,242 per acre. The sale date and price per acre of the comparable properties he considered were as follows:

- March 2014: \$107,300;
- November 2015: \$110,123;
- July 2016: \$126,667;
- September 2016: \$160,714;

- September 2017: \$171,242;
- October 2017: \$145,000;
- November 2017: \$161,765; and
- April 2018: \$149,712.

[7] Schellenberg excluded three additional properties sold in 2016 for \$113,779, \$444,000 and \$329,000 per acre and gave reasons for not including them in his assessment of value. In his view, the first sale was a large tender transaction and the other two were outliers with a different highest and best use.

[8] The claimant's expert, Rocky Neufeld (Neufeld), valued the property at \$450,000 per acre for a total of \$8,554,500 using a "novel approach". This approach involved estimating the fair market value of the property after it has been subdivided and rezoned and the estimated costs of developing the property have been subtracted.

[9] The LVAC rejected Neufeld's valuation method.

[10] The LVAC accepted Schellenberg's methodology and found that "apart from sale 1, the sales he used are reasonably comparable to the [property]". Relying on Schellenberg's valuation, the LVAC determined that the compensation payable based on market value was \$172,000 per acre for a total of \$3,300,000 (rounded up). In its view, two of the properties Schellenberg excluded from his assessment were relevant and warranted an increase to the property's market value of \$12,000 per acre.

Issues and Standards of Review

[11] The claimant raises two grounds of appeal. First, he argues that the LVAC's reasons are insufficient because they fail to disclose an intelligible basis for its decision capable of permitting meaningful appellate review. Second, he argues that the LVAC made palpable and overriding errors in determining the value of the property.

[12] Section 44(2) of the *Act* provides for an appeal "on questions of law or fact or mixed law and fact". Questions of law are reviewed for correctness and questions of fact or mixed fact and law are reviewed for palpable and overriding error (see *Winnipeg (City of) v Barcoga Holdings Inc*, 2023 MBCA 19 at para 9 [*Barcoga*]; *Madison Holdings Ltd v Winnipeg (City of)*, 2021 MBCA 94 at paras 19-21; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 37 [*Vavilov*]).

[13] As explained by Pfuetzner JA in *Barcoga*: "Reasons are adequate if, when read in the context of the record and the live issues on which the hearing focussed, they disclose an intelligible basis for the decision, capable of permitting meaningful appellate review" (at para 10).

[14] The method used by the LVAC to assess the value of the property is a question of fact that will not be interfered with absent a clear error in principle (see *Russell Inns Ltd v Manitoba*, 2016 MBCA 43 at para 12).

Analysis

[15] In our view, when read functionally and contextually and in light of the live issues and the submissions of counsel, the LVAC's reasons are

sufficient to explain what it decided and why and to permit effective appellate review (see *R v GF*, 2021 SCC 20 at paras 69-70). The LVAC was not required to advert to all of the evidence in its reasons (see *R v Dinardo*, 2008 SCC 24 at para 30).

[16] We disagree that the principles applicable to the review of an administrative decision for reasonableness set the standard for sufficiency of reasons in this case where the appellate standards of review apply (see *Vavilov* at paras 11-15, 73-142).

[17] The LVAC was entitled to accept Schellenberg's valuation methodology and reject Neufeld's methodology. It was also entitled to rely on the submissions of the City and come to its own determination of the market value of the property at the time of the expropriation. In our view, its basis for doing so is apparent on the record.

[18] We have not been persuaded that the LVAC's determination of value is "inexplicable" and "inordinately low" or that it failed to account for and consider relevant evidence.

[19] First, although section 27(2)(b) of the *Act* prohibited the LVAC from taking into account any increase in the value of the property resulting from the imminence of the planned development, the comparable properties it relied on suggested that property values were increasing over time and the evidence was that the market was aware of the impending development.

[20] Next, the LVAC considered the two properties excluded by Schellenberg in his assessment, which sold for \$444,000 and \$329,000 per acre in 2016, and determined that the inclusion of these properties increased

the market value of the property. It was entitled to determine how these properties affected the market valuation and was not required to do so in a “watch me think” fashion (*R v REM*, 2008 SCC 51 at para 17; see also *Re Parkinson Estate*, 2024 MBCA 52 at para 157). There was evidence that these properties were “outliers” in terms of the trends established by the other properties it found to be comparable and that their location attracted a higher price per acre.

[21] Finally, the LVAC agreed with the City’s submission that the LVAC’s Decision No. X-13-033 was “*generally in line* with [Schellenberg’s] estimate of value” (emphasis in original) for the property and that the property in that case, which was valued at \$209,205 per acre, was in a “far superior location”.

[22] We see no palpable and overriding error in the LVAC’s selection of methodology or determination of value. As such, its decision is entitled to deference.

[23] In the result, the appeal was dismissed.

Costs

[24] Pursuant to section 44(3) of the *Act*, this Court has the discretion to order costs of the appeal. In our view, costs should follow the result (see *Rebel Holdings Ltd v Division Scolaire Franco-Manitobaine*, 2008 MBCA 65; see also *Rebel Holdings Ltd v Division Scolaire Franco-Manitobaine*, 2008 MBCA 100; Robert G Schipper, ed, *Orkin on the Law of Costs*, 2nd ed (Toronto: Thomson Reuters, 2024) (loose-leaf updated 2024, release 5) vol 1, ch 2 at s 2:32).

[25] Therefore, the City is awarded costs on the appeal in accordance with r 47(2) of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R.

leMaistre JA

Rivoalen CJM

Cameron JA
