

ISSUE DATE:

June 28, 2010



LC050035

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Southside Construction Management Limited has made an application to the Ontario Municipal Board under section 26 of the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended, for determination by this Board of the compensation to be paid by the Town of Ingersoll for land known as Part Lots 19 and 20, Concession 2 in the Town of Ingersoll
OMB File No. L050038

APPEARANCES:

Parties

Town of Ingersoll

Southside Construction Management
Limited

Counsel

P. Scargall
M. Owen-King

R. Beaman
A. Burton

**MEMORANDUM OF ORAL DECISION DELIVERED BY JAMES R. McKENZIE
ON MAY 25, 2010, AND ORDER OF THE BOARD**

This teleconference proceeding was convened for the purpose of scheduling a hearing and attending to other preliminary matters for inclusion in a Procedural Order.

Two principal matters were outstanding between the Parties: a hearing start date and location of the hearing. Other minor points of difference were resolved during the call and there is no need to recount those details here.

Counsel for the Claimant (Southside), Mr. Beaman, sought a hearing start date in September, 2010; whereas, counsel for the Respondent (Town), Mr. Scargall, sought a start date in January, 2011. Mr. Scargall reported that several of his witnesses could not be available for the start date advanced by Mr. Beaman. On the other hand, Mr. Beaman reported that he could not be available for the start date proposed by Mr. Scargall given earlier obligations on another hearing matter before the Board.

With respect to the location of the hearing, Mr. Scargall proposed convening the hearing in Toronto at the Board's offices. All counsel as well as the majority of the professional witnesses are located in Toronto or the Greater Toronto Area and convening the hearing in Toronto would, in Mr. Scargall's view, mitigate the costs of litigation. Mr. Beaman, on the other hand, maintained that the hearing should be convened in Ingersoll since that is proximate to where the Claimant and some of its witnesses are located.

Upon canvassing the above matters with counsel, the Board decided as follows:

1. The hearing will commence on April 4, 2011, for 15 hearing days. Counsel will confer on establishing those 15 days, taking into account religious holidays, etc.

On balance, it would be prejudicial to the Respondent to begin the hearing in 2010, since doing so would interfere with its ability to secure the witnesses it deems essential for its case. While the Claimant is inconvenienced by having to wait until April, 2011, this delay, taken in the full context of when this action was initiated, is modest and will secure Mr. Beaman's availability.

2. The hearing will take place in Ingersoll, at the municipal offices. Counsel may continue a dialogue on location with a view to settling on an alternative location, if they so desire.

The Board will not compound the impact of this process by requiring the Claimant and several of its witnesses to assume the burden of travelling.

The Procedural Order for the hearing is attached as Schedule A. In the interim, the Board may be spoken to if necessary.

This is the Order of the Board.

"James R. McKenzie"

JAMES R. McKENZIE
VICE-CHAIR

Schedule A

LC050035

**Ontario Municipal Board
Commission des affaires municipales de l'Ontario**

BETWEEN:

SOUTHSIDE CONSTRUCTION MANAGEMENT LIMITED

Claimant

and

THE CORPORATION OF THE TOWN OF INGERSOLL

Respondent

**PROCEDURAL ORDER OF THE
ONTARIO MUNICIPAL BOARD**

CONTENTS OF THIS PROCEDURAL ORDER

This is an order of the Board which sets:

- (1) rules of procedure for the hearing that will follow;
- (2) the date and time of the hearing;
- (3) the issues for the hearing;
- (4) the order of presentation of evidence at the hearing;
- (5) rules for meeting(s) of the parties and exchanging of written evidence and witness statements before the hearing.

NOTE that the Board may vary or add to these rules at any time, either when a party asks for a change or where the Board itself makes one, and it may do so either orally or by another written order.

1. The hearing will begin on **Monday, April 04, 2011** at 10:30 a.m. at the Ingersoll Town Hall, 130 Oxford St., Ingersoll, Ontario, N5C 2V5, unless the parties mutually agree on an alternative venue. The hearing will end on **Friday, April 29, 2011**.
2. The Issues are set out in the Pleadings, being the Notice of Arbitration and Fresh Statement of Claim of the Claimant, and the Reply of the Authority, as filed by the parties.

PRE-HEARING SCHEDULE, MOTIONS AND PRE-TRIAL DATES

3. The Board has set down the following dates for the effective case management of this matter:
 - (a) The Board orders that any motion(s) arising out of the Examinations for Discovery, or other matters, shall be heard by the Board on **Thursday, September 02, 2010** to be heard by a single member of the Board at the Board's Chambers at 655 Bay Street at 10:00 a.m. Should the parties agree that the motion day is not required, the parties agree to advise the Board no later than **Friday, August 27, 2010** (and sooner if possible), that the day may be released.
 - (b) The Board may be spoken to regarding any other dates required from the Board for effective case management of this matter.

PROCEDURE BEFORE THE HEARING

The Board requires procedures before the hearing so that parties know before the hearing what the issues are. This means they will be prepared for the hearing.

4. Meeting of the Expert Witnesses

If parties intend to call expert or professional witnesses, the witnesses in the same discipline shall meet on or before **Thursday, November 25, 2010**, and shall produce for the Board and the parties a written outline of facts and issues in agreement or in dispute on or before **Friday, December 10, 2010**. This will be filed with the Board and copies exchanged between the parties within fifteen days of the meeting.

5. Discoveries

(a) Affidavit of Documents (together with production briefs of the documents) shall be exchanged by **Friday, June 18, 2010**.

(b) Discoveries shall be completed by **Friday, July 16, 2010**.

(c) All undertakings provided at the Examination for Discovery of the parties shall be answered on or before **Friday, August 13, 2010**.

(d) Any additional productions or further Examination for Discovery arising from answers to undertakings shall be completed by **Wednesday, August 25, 2010**.

6. Request to Admit

A party exercising its right to serve a request to admit facts or documents (pursuant to Rule 51 of the Rules of Civil Procedure) shall serve a request on the party opposite on or before **Friday, February 11, 2011**.

7. List of Witnesses

A party who intends to call witnesses, whether by summons or not, shall provide to the Board and to the other parties a list of witnesses and the order in which they will be called. This list must be delivered on or before **Wednesday, September 22, 2010**.

Parties wishing to obtain leave of the Board pursuant to subsection 28(2) of the Act shall make a motion in writing on or before **Wednesday, October 06, 2010**. Should the parties agree that the motion day is not required, the parties agree to advise the Board no later than **Wednesday, September 29, 2010** (and sooner if possible), that the day may be released.

8. Written and Visual Evidence – Definitions

Written evidence includes expert reports, documents, letters and witness statements which a party intends to present as evidence at the hearing. These should have pages (and also paragraphs, where possible) numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

Visual evidence includes photographs, maps, videos, models, and overlays which a party or public participant intends to present as evidence at the hearing.

An expert witness statement is a short outline by an expert or professional witness which should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address in oral evidence, (4) the witness' opinions on those issues and the reasons for the opinions, (5) a list of reports which the witness will refer to at the hearing and, (6) all other matters as specified in Rule 53.03 (2.1) of the *Rules of Civil Procedure*.

A witness statement is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will address and an outline of the witness' evidence on those issues; together with a list of reports, if any, to which the witness will refer at the hearing.

9. Providing Written and Visual Evidence
 - (i) On or before **Wednesday, October 06, 2010**, the parties shall provide copies of their written evidence, including expert reports and lay witness statements, to the opposite party and to the Board.
 - (ii) On or before **Wednesday, October 06, 2010**, the parties shall exchange copies of their visual evidence. Where it is difficult to copy, such as in the case of a model, all parties must have full and reasonable opportunity to view during normal business hours.
10. A party wishing to change written evidence, including witness statements, must make a written motion to the Board, and must provide copies of the motion to the other party **10 days** before the Board hears the motion.
11. Additional written or visual evidence may not be provided after **7 calendar days** before the hearing unless the Board permits this, and where leave is granted subject to subsection 28(1) of the Act, the evidence must be provided at least **5 calendar days** before the date on which the witness who prepared it will give evidence at the hearing.
12. The parties may provide to each other, and to the Board, a written response to any written evidence on or before **Friday, January 28, 2011**.

Additional Rules for Expert Witnesses

13. If an expert witness creates a report and wishes to introduce it into evidence at the hearing, the expert must list the report in the expert witness statement (unless the Board permits it to be mentioned without such listing.)

14. If an expert witness mentions other reports or documents in his or her witness statement, copies of these must be provided as above if the expert intends to refer to them at the hearing.
15. An expert or professional person hired by a party to give evidence may not give oral evidence at the hearing unless the expert has provided to the other parties all written evidence he or she will introduce, and has filed and delivered a witness statement. The Board can make exceptions to this but will not do so often.
16. If an expert or professional person intends to give evidence at the request of a party (other than to prove an appraisal report) but without being hired by that party to do so (although a summons may have been served and the usual witness fee may have been paid), the expert is not required to provide written evidence in advance of the hearing. However, the party requesting the witness must provide to the other parties within the times given above a statement of the issues which the expert will address and a brief outline of the expert's evidence on these issues.

Notice of Readiness

17. The parties shall execute a Notice of Readiness by **Wednesday, February 16, 2011**.

Delivery of Documents

18. Documents may be delivered by personal delivery, courier, e-mail, facsimile or registered or certified mail, or otherwise as the Board may direct.
19. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
20. The delivery of documents by fax or e-mail shall be governed by the Rules 26 to 31 of the Board's Rules of Practice and Procedure.

Evidence by Witnesses

21. A party who delivers written evidence must have a witness present to give oral evidence unless the party notifies the Board at least **7 days** before the hearing that the written evidence is not part of the record.
22. The witness who will follow the witness who is testifying should be available in the hearing room in order to provide evidence immediately after that witness.

23. This will be the order of examination of witnesses by the parties:
- i) case for the Claimant;
 - ii) case for the Respondent; and,
 - iii) reply by the Claimant.
24. Reply evidence shall not include evidence which was or should have been led in chief.
25. A party who wishes to challenge the qualifications of an expert or professional witness must do so before the witness testifies. Otherwise, the Board will consider the expert qualified in the area relevant to the hearing that is set out in the expert witness statement.
26. The Board will permit the leading of witnesses in any factual matters not in dispute.
27. Exhibits will be prepared and submitted by following Rules 18 to 20 of the Board's Rules of Practice and Procedure.

Summary of Argument

28. Lawyers representing parties should provide 2 copies of a summary of their oral argument at the time of presenting the argument. The written summary should state that the party has no submissions on part or parts of the evidence, if this is the case.

Adjournments

29. No adjournments or delays will be granted during the hearing except for serious hardship or illness. Rules 61 to 65 of the Board's Rules of Practice and Procedure applies to such requests.

Mediation

30. The Board will conduct mediation on consent of the parties or on motion of a party if the Board sees fit.

Pre-Hearing Conference

31. The Board shall conduct a Pre-Hearing Conference to address any outstanding issues regarding this Procedural Order, the conduct of the hearing or any other matter related to this arbitration, scheduled for a full

day and to be held on **Wednesday, March 02, 2011** at the Offices of the Board, 655 Bay Street, Toronto, Ontario. Should the Pre-Hearing Conference be unnecessary, the parties shall notify the Board by **Friday, February 18, 2011** (and sooner if possible), that the day may be released.

This member is not seized with the hearing, but will be available with respect to the case management of this matter before the Board and may be spoken to further if there is any difficulty with this decision or its implementation. So orders the Board.