Expropriation Gone Awry: A Case Study

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Expropriation

“the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers”

- Ontario Expropriations Act

“the legal right to acquire property by forced rather than by voluntary exchange”

- Patricia Munch
Three key questions

• Who should have the right to expropriate, and for what purposes?

• What should the process look like?

• What constitutes fair compensation?
Yonge Street & Dundas Street, Toronto (mid-1990s)
Planning process not transparent

Business association and ward councillor worked in secret for nine months.

“No one who worked outside of city hall could challenge the project because it was being planned behind a veil.”

- Beth Milroy
Joint Board hearing

• Did the proposal represent good planning?
• Was it in the public interest?
• Was expropriation fair, sound, and reasonably necessary *in the achievement of the objectives of the expropriating authority*?
Community improvement project area

“‘community improvement project area’ means an area within a municipality, the community improvement of which in the opinion of the Council is desirable because of age, dilapidation, overcrowding, faulty arrangement, unsuitability of buildings or for any other reason.”

- Planning Act (emphasis added)
Whose interest: public or private?

Redevelopment was driven and carried out by the private sector.

Board decision:
Planning Act permits a city to co-venture with the private sector to promote economic activity.
Expropriations Act does not prohibit a city from expropriating property and re-selling it to private interests.
Landowners’ alternative proposals rejected

Zoning had prohibited development.
New height and density limits facilitated development without expropriation.

Board decision:
Landowners’ proposals were appropriate … but were neither the city’s vision nor timely.
It was essential that the corner develop now.
“Now” … or in ten years?

City and board misjudged viability of project
• 1998: city served expropriation notices
• 2003: excavation began
• 2004: developer ran out of money
• 2005: construction resumed
• 2008: multiplex opened
• 2009: property placed in court-ordered receivership
Inadequate compensation

Compensation payable to the owner shall be based upon:
the market value of the land;
the damages attributable to disturbance;
damages for injurious affection; and
any special difficulties in relocation.

“In determining the market value of land, no account shall be taken of ... any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the expropriation is made.”

- Expropriations Act
Proposed reforms

• Limit who can expropriate, and for what purpose.
  Restore a genuine public use requirement.
• Inject integrity into the process.
  Ensure planning process is transparent.
  Ensure expropriation process evaluates the objectives, merits, and economic viability of proposed projects, and that it considers viable alternatives to them.
• Rethink compensation.
  Ensure that those who lose their land are left whole.
For more information …

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