



#138--1972

LAND ACQUISITION FOR THE NORTH PICKERING PROJECT

On March 2, 1972, the federal and provincial governments jointly announced plans for a "co-operative" airport/new community project in North Pickering. If the project proceeds as originally conceived¹, a new federal airport and a provincial new community will be built on adjacent sites. It is an immense undertaking. The operating airport will cover 15,000 acres on a site of 18,000-20,000 acres². (By comparison, Malton Airport covers only about 5,000 acres). The new community will cover a town site of about 15,000 acres on a total site (including transportation and service corridors) of about 25,000 acres. (By comparison, Bramalea, the largest new community in the Toronto area, is only about half as large as the proposed provincial new community; and the City of Toronto, with 24,092 acres, is about the same size).

Land acquisition is almost always a difficult task. A 43,000-45,000 acre project that involves two levels of government would seem to indicate a special need for detailed precautions to ensure that compensations are awarded on an equal basis to all land owners in the affected areas. Logically, compensation to owners of land in both federal and provincial areas should be awarded on the basis of the same acquisition procedure. This has not happened.

Despite joint announcements of intergovernmental cooperation and evidence of cooperation in some planning tasks and financing³, there are major procedural differences in one of the first and most important tasks undertaken -- land acquisition. Each government is proceeding by

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1. There is continuing public debate over whether or not a second airport is needed in the Toronto area and whether or not any such second airport should be located in North Pickering. This COMMENT does not deal with these questions.
 2. Total site estimate from a Toronto area federal Pickering Airport officer.
 3. The federal and provincial governments are undertaking joint transportation and servicing planning, and dividing up financing of the project. There is a liaison structure in the form of a federal-provincial committee set up to deal with matters of joint concern in the North Pickering project. A March 1, 1972 Annex of Understanding between the two levels specifies 12 points of understanding, 10 of which deal with joint responsibilities, while the other 2 specify that there will be separate responsibilities for land acquisition.

its own method and under its own Expropriation Act. These procedural differences, discussed below, could result in serious inequalities, with owners of land which happens to lie on the federal site receiving compensation that has been calculated on a basis different from that used to compensate owners of land which happens to lie on the provincial site.

There are two major differences between the acquisition procedures adopted by the two governments: the method of acquisition process, which in turn makes for a difference in date set for calculation of market values; and the use of different Acts, which makes for consideration of different factors in setting market value.⁴

Acquisition Process and the Date of Market Value Calculation

The federal and provincial governments originally decided to proceed by two entirely different acquisition processes; the province will try to acquire properties first by offer and negotiation, by expropriation as a last resort, while the federal government expressed an intention to acquire all properties by expropriation⁵. A major result of this difference in process has been a serious discrepancy between the two levels as to the date set for market value calculation.

Since it is proceeding mainly by negotiaion, the province has been able to determine the market value of land on the provincial site as of the date the airport/new community was announced, March 2, 1972. Under the federal Expropriation Act, compensation is based on market value determined as of the date of the issuance of a "notice of confirmation" of the expropriation of the airport site. This "notice of confirmation" has not yet been released. Only the announcement in the "Canada Gazette" on October 7, 1972 of the formal intent to expropriate -- with a legal description of the site lots -- which must precede the notice of confirmation by a maximum of four months⁶, has been made. The earliest date, therefore, as of which market value of lands required by the federal government could probably be determined would be February 1973, almost a year after the date as of which market value of provincial lands acquired for the project by

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4. Market value is the value a willing buyer would offer a willing seller for his property. In theory, the appraiser determines the price on the basis of factors of costs (original cost plus depreciation or appreciation over time), income to the property, and sales (average prices in the area). In practice, most appraisers or tribunals award on the basis of average price levels of properties in the area comparable to the one being acquired.
 5. This decision was originally made because the airport deadline is 1978-79. The provincial new community deadline is later on.
 6. Federal officials estimate that the size of the project will necessitate using the maximum time period of four months.

negotiation have been determined⁷.

This is a serious discrepancy, since it allows market considerations to affect federal compensation levels for about a year longer than they can affect provincial compensation levels. Although the federal Expropriation Act, like the provincial Expropriations Act, excludes from value any change resulting from the announcement of its own project (in this case, the airport), by 1973, these changes will be difficult to separate from general market value and hence from the appraisals. For property-owners in adjacent federal-provincial projects, with similar properties, it is a serious inequity.

Different Acts: Factors Considered in Market Value Calculation

The second major difference between the federal and provincial governments' compensation procedures lies in use of different Acts and in a resultant difference in the factors that each level considers when it calculates market value. When the joint project was announced on March 2, the province also introduced a two-clause amendment to its Expropriations Act, Bill 6, which has the effect of preventing the province from taking into account any market value changes in lands needed for the provincial new community site which would be attributable to proximity to the new federal airport project. The federal government, however, has passed no similar amendments to its Expropriation Act which would exclude from appraisal of properties needed for the federal airport any market value changes caused by proximity to the major provincial project of a new community. Hence the province does not take airport-induced market value changes into account, but the federal government takes new community-induced market value changes into account. This difference will probably produce the largest compensation difference in monetary terms between the two levels.

The use of different Acts may also introduce possible further discrepancies. No major discrepancy in methods for awarding compensation is immediately apparent, but there may be slight procedural differences or differences of interpretation which in actual practice could add up to significant differences in the amount of compensation offered by each level of government.

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7. So far, only 10% of needed provincial lands have been acquired through negotiation. It is possible that many legally-advised provincial property-owners will insist on expropriation and reject negotiation, thereby changing the date of their market value calculation. (Market value calculation would be at the earliest the date of the registration of a provincial expropriations plan, which has not yet taken place). Though the province is trying to hold to negotiation and to ensure that comparable expropriated and negotiated properties on the provincial site will have the same values, both of these goals are next-to-impossible.

The sum total of the procedural differences for granting compensation which have been described in this COMMENT may introduce serious inequality of treatment between property-owners on the federal site and property-owners on the provincial site. It seems obvious that land acquisition for the entire project should have fallen under the jurisdiction of one government as has been the practice under N.H.A. provisions for joint federal-provincial projects such as Malvern or Thistledown -- or, at the very least, should have been better coordinated. But it is now too late to take issue with the original decision to proceed under two different Acts, with two different administrative structures. The province has already completed appraisals of two-thirds of the needed properties amounting to three-fourths of the needed acreage on the provincial new community site.

The Bureau recommends, however, that the joint federal-provincial Committee set up to deal with North Pickering project matters of joint concern, which has so far dealt only with border properties in the land acquisition question, take on the additional function of monitoring over-all land acquisition procedures of both government levels. This joint Committee should ascertain whether or not any inequities of treatment of property-owners have occurred, and take steps to rectify any imbalances. The Bureau also suggests that the federal government introduce an amendment to this Expropriations Act that would specifically exclude increases in market value caused by proximity to the new community from any calculations of market value, with the clear understanding that this would be retroactive in effect.