

**BOARD OF ASSESSMENT – W. & S. ENGINEERING COMPANY LIMITED –
convened pursuant to the Land Acquisition (Public Purposes) Act, Chapter 184**

Board: Chief Justice – Hon. Kenneth Benjamin – Chairman
Mr. Clinton Gardiner – Nominee of the Minister of Natural Resources and Agriculture
Mr. Alexis Fairweather – Nominee of W. & S. Engineering Co. Ltd.

Description of subject property: 4.98 acres of land situate along the Sea Coast and the South Side of the Western Highway near Mile 4, Port Loyolaville Registration Section, Belize City, Belize District.

Proprietor: W. & S. Engineering Company Limited

Title: Minister's Fiat Grant No. 848 of 2002.

Survey Plan: Survey Entry No. 6691 Reg., 25 dated 25th July 2002 at the Office of the Commissioner of Lands and Surveys in the city of Belmopan, Cayo District.

Representative of the Proprietor:
William Arthur Lindo
Managing Director of W. & S. Engineering Co. Ltd.

Date of compulsory acquisition: September 27, 2008

Legal Representatives:
Mr. Eamon Courtenay, SC and Ms. Ashanti Martin for the Proprietor.
Ms. Rondine Twist for the Ministry of Natural Resources and Agriculture.

Dates of hearing: September 4, October 26, November 30, December 28, 2012 and January 4, 2013.

Date of site visit: November 16, 2012.

Witnesses:

For the proprietor: Mr. Armin Cansino – professional property appraiser and retired Commissioner of Lands and Surveys

For the Minister of Natural Resources: Mr. Antonio Cawich, Chief Valuation Officer, Lands & Surveys Department

At the instance of the Board: Mr. David Aguilar, Snr., Professional Property Valuator and retired Permanent Secretary of the Ministry of Natural Resources and the Environment.

Documentary evidence:

1. Letter dated August 22, 2008 from Mr. Dean Lindo, SC on behalf of W. & S. Engineering Co. Ltd. to Ministry of Natural Resources with claim for compensation attached.
2. Witness Statement of Armin Cansino dated June 22, 2011 with Valuation Report attached.
3. Valuation Report dated November 15, 2012 prepared by Mr. Antonio Cawich.
4. Appraisal Report prepared by David Aguilar, Snr. dated December 18, 2012.
5. Letters dated January 28, and March 3, 2008 from the Ministry of Natural Resources to W. & S. Engineering Co. Ltd. re: Permission to construct a boat/ship way and two jetties and for dredging near Belizean beach.

Background

The proprietor acquired the subject property by Minister's Fiat Grant on October 4, 2002 at a purchase price of \$44,000.00 (forty-four thousand dollars). By notices in the Gazette published on July 26, 2008 and September 27, 2008, the Ministry of Natural Resources and the Environment declared in accordance with section 3 of the Land Acquisition (Public Purposes) Act, Chapter 184 of the Laws of Belize, Revised Edition 2000 ("the Act") that all interest or estate in or over the subject property is being acquired for a public purpose, namely, building facilities for the Belize Coast Guard and the Belize Port Authority respectively. The subject property is presently

occupied as to 1.75 acres by the Belize National Coast Guard Service and by the Belize Port Authority, both entities having erected buildings and other structures.

Pursuant to section 3(4) of the Act, upon the second publication of the declaration in the Gazette of September 27, 2008, the subject property vested absolutely in the Crown.

A Notice of Acquisition dated December 12, 2008 was served on the proprietor informing of the acquisition and inviting a claim for compensation.

Rules for assessment of compensation

The assessment of compensation is governed by the rules set out in section 19 of the Act which reads:

“19. Subject to this Act, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land –

- (a) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, in its condition at the time of acquisition, if sold in the open market by a willing seller, might have been expected to have realised at the date of the second publication in the Gazette of the declaration under section 3:

Provided that this rule shall not affect the assessment of compensation for any damage sustained by the person interested by reason of severance, or by reason of the acquisition injuriously affecting his other property or his earnings, or any other matter not directly based on the value of the land;

- (b) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers not already granted, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department;
- (c) where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which

could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to public health, the amount of that increase shall not be taken into account;

(d) where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Board is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;

(e) no allowance shall be made on account of –

(i) the acquisition being compulsory or the degree of urgency or necessity which has led to the acquisition;

(ii) any disinclination of the person interested to part with the land acquired;

(iii) any damage sustained by the person interested which, if caused by a private person, would not render such person liable to an action;

(iv) any damage, not being in the nature of deprivation of or interference with an element, servitude or legal right, which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put:

Provided that nothing herein shall prejudice any claim under this Act for damage subsequently sustained in consequence of the use to which the land acquired is put;

(v) any increase to the value of the land acquired likely to accrue from the use to which the land acquired will be put;

(vi) any outlay or improvement of such land which has been made, commenced or effected within twelve months before the publication of the declaration under section 3, with the intention of enhancing the compensation to be awarded therefor in the event of such land being acquired for public purposes”.

The Board's task is to assess and award compensation reflective of the open market value of the subject property as at the date of compulsory acquisition.

Claim for compensation by W. & S. Engineering Co. Ltd.

The intention of the Proprietor was to construct a ship yard and machine and casting shop on the subject property. Letters were written to the Minister of Natural Resources requesting permission to construct a boat/ship-way to operate a ship yard. Further letters were exchanged. Up to the date of the compulsory acquisition, no permission was granted, pursuant to the request or application of the Proprietor.

The Claim by the Proprietor attached to the letter dated August 22, 2008 from Mr. Dean Lindo, SC reads (so far as relevant):

“1.	Project Development	
A.	Marine Railway Dry Dock & Machine Shop Investment	
		\$1,305,520.00
	Projected Revenue	\$4,190,846.74
	Less Expenses	\$2,550,928.00
	Profit, annually	\$1,639,918.74
2.	Interest payable on mortgage Interest @ 16% per annum	\$ 320,000.00
3.	Costs of land per se	
	Attributes	
	Draft of sea at 12 ft. Proximity and access to Western Hwy. Beach and waterfront Proximity to Main Harbour Channel Proximity to Deep Water Port, Old Belize, etc.	\$2,150,000.00
4.	Trespassing by Ministry of National Security (Coast Guard of Belize) Rent for one month	<u>\$ 60,000.00</u>
		\$2,736,060.00

These items of claim are not cognisable by the Board save as to them being factors impacting the market value as at the date of compulsory acquisition. Further, having regard to the steps taken pursuant to the Act, no issue of trespass can arise; indeed, no claim for rent was pursued.

Valuation Report by Armin Cansino

The subject property was stated to be within the official city limits of Belize City lying approximately 5 miles southwest of the commercial centre of Belize City. The property is about 315 meters southwest of the George Price Highway and is accessible from the Belizean Beach Road. There is direct frontage to the Caribbean Sea. The area has general access to utilities – water, electricity and telephone services. There are no land use restrictions presently in force and the properties in close proximity are used for residential, commercial and industrial use. The property is adjacent to the Belizean Beach.

Mr. Cansino stated “At the time of acquisition, the parcel of land was undeveloped.” Based on a comparison with property sales and offers for sale in the general area, he concluded:

“Guided by my investigations, it is my opinion that a fair market value of the subject property at the date of acquisition is say, nine hundred thousand dollars (\$900,000.00).

The report listed four neighbouring properties as comparables. The best comparable property relied upon is adjacent and was stated to have been sold for \$990,000.00, approximately \$243,243.24 per acre. A value of \$180,000.00 was arrived at for the subject property after making allowances for the fence on the comparable property and the cost of filling approximately 2.5 acres of the 4.07 acres of the comparable property.

The supporting documentation to authenticate the four comparables was not furnished. However, the transfer document for the comparable relied upon was helpfully furnished by Ms. Twist. It was revealed that the property was sold for

\$400,000 in 2004 and subsequently for \$210,000.00 in 2009. Therefore, adopting the higher figure from 2004 of \$400,000.00 and his stated calculation making a deduction of \$30,000.00 for the fencing and \$15,000.00 per acre for the filling of the land, there is a sum of \$75,909.09 per acre. Based on 4.98 acres, a figure of \$378,027.27 is arrived at.

It is to be noted that the second and third comparable properties not relied upon by Mr. Cansino are adjacent to each other and enjoy both highway and sea frontage.

In the view of the Board, the failure to furnish any or any accurate supporting sales data operated to severely diminish the efficacy and reliability of Mr. Cansino's report.

Report and Valuation by Antonio Cawich

This report identified the subject property and described the development to be valued as 'an unimproved site' comprised of generally flat mangrove grassy wetlands, that is to say, a swamp. Utilities are supplied to the area and are available in the vicinity. Planning permission is controlled by the Government of Belize.

The basis of valuation is correctly stated to be the market value of the subject property. The methods of valuation employed were both the direct comparison approach as well as the residual approach. In the case of the former approach, the valuation was based on comparable sales from sale evidence gleaned from the Valuation Section of the Lands and Surveys Department of the Ministry of Natural Resources and Agriculture.

In Mr. Cawich's opinion, the market value is \$400,000.00.

The comparable data consisted of five properties including the first comparable relied upon by Mr. Cansino. In Mr. Cawich's view, his second comparable property was the most comparable although it was recognised that it was sold in distress. This property is situate at Mile 4 Western Highway and is

comprised of 2.32 acres sold for \$135,000.00 on June 19, 2008 by a Receiver. An adjustment of 25% upwards was made to bring the sale price on par with market value of \$75,000.00 per acre.

Utilising the residual method, on the basis of 20 lots of which 4 would have sea frontage, a total of \$560,000.00 was arrived at. Making deductions for the construction of a road at \$100,000.00, survey cost at \$600.00 per lot and miscellaneous expenses of \$10,000.00, a sum of \$122,000.00 was taken away leaving an approximate figure of \$438,000.00.

The Board is of the view that the approach and final opinion of Mr. Cawich, though sound, is cautiously conservative with regard to the adjustment upwards to cater for the sale while the property was in receivership.

Valuation Report of David Aguilar

The subject property was identified as being at Mile 4 of the George Price Highway on the south side of Belize City south of the said Highway and adjacent to the Caribbean Sea. There is no highway frontage and access is by a road to Belizean Beach. At the time of acquisition the reserve road was not accessible. It was stated that the lack of highway frontage reduced its market value, although no discernible deduction was made for that characteristic. The subject property is described as low tidal flat land mostly covered with mangrove. The land was undeveloped and in its natural state at the time of acquisition. Utilities were accessible though not installed until the Coast Guard took up occupation. The neighbourhood is comprised of properties used for commercial, residential and industrial purposes.

Mr. Aguilar wrote in his report and confirmed in sworn testimony that in 2008 the market for land was more vibrant than at present, although he stated the reservation that land prices do not immediately follow a worsening of the economy and persons still regard land as security.

It was identified that in the short term, the best option for the use of the land was to reclaim and subdivide the land for sale as lots. This opened the door to the residual approach as a method of valuation.

The report employed also the direct comparison method which was also utilised by Messrs. Cansino and Cawich. In this regard Mr. Aguilar consulted eight comparable properties being the seven (7) properties relied upon by the other witnesses and one additional property. In the course of his testimony, he lamented the disturbing variances in the values of the properties casting doubt upon reliance upon them as sufficient and reliable evidence of market value, a state of affairs which did not escape the attention of the Board.

The Base Lot Method was utilised and a figure of \$125,000.00 per acre was arrived at with a resulting value of \$622,500.00 for 4.98 acres.

The Residual Method was next employed based on the subdivision of the subject property into 16 lots as against the 20 lots upon which Mr. Cawich based his calculation. Subtracting the cost of the sale of \$91,800.00 and costs of development of \$280,328.71 and allowing a discount back to 2008, a figure of \$447,614.45 was arrived at.

In his opinion, Mr. Aguilar set the fair open market value at \$535,000.00.

When questioned by Mr. Courtenay, Mr. Aguilar defended his deduction for the cost of promotion of the sale of lots and legal fees as well as the cost of financing infrastructural works at a rate of 11% over a period of six months. In response to the Board, he explained that he had consulted a trucker to determine the cost of land fill.

Having regard to the difference of the number of lots as identified by Mr. Cawich, it was explained that the subdivision into 16 lots was, as demonstrated in a sketch plan exhibited, done with the concurrence of a land Surveyor.

Conclusions

The Board placed much reliance upon the report of Mr. Aguilar as it was substantially supported by evidence and cogent reasoning. As expressed earlier, Mr. Cansino's fundamental premise was flawed while Mr. Cawich was demonstrably conservative in his estimation.

Mr. Aguilar's final figure of \$535,000.00 was arrived at by a mean of the two separate methods of valuation.

However, having regard to the almost invariable practice of the purchaser bearing the legal expenses and the promotion of the sale of lots being usually limited to billboard signs and website advertisement, the cost of sale of \$91 ,800.00 ought not to be deducted. The cost of financing the infrastructural work is considered by the Board to be indispensable and cannot be left to a mere hope of pre-sales. Also the Board is more attracted by the reasoned sub-division into 16 lots.

The Base Lot Method applied to the comparables identified by Mr. Aguilar is acceptable to the Board given the range of variations between the sale values of the comparables.

Adopting a mean of the total of \$536,000.00 derived from the Residual Method and the \$622,500.00 being the Base Lot Method applied to the direct comparison approach, rounding out the result of \$579,250.00, an award of \$575,000.00 as compensation is hereby made by the Board.

As to the award of interest, the Board has noted that the excessive claim of nearly \$3m by the Proprietor was made in August, 2008 and the first office of the Ministry of Natural Resources on record is dated June 22, 2011. The Board finds itself unable to accede to the submission by Ms. Twist to allow interest to run only from the date of the Ministry's offer. The rate of interest stipulated by section 22 of the Act stood at 8.5% in September 2008 as verified by Statistical Digest for 2011 of the Central Bank of Belize. Interest is therefore awarded on the sum of \$575,000.00 from the 27th day of September 2008 until payment.

In its discretion, the proprietor shall have its costs in the sum of \$6,250.00 inclusive of the fees paid to Mr. Aguilar.

The sum awarded inclusive of interest and costs shall be paid to Courtenay Coye & Co, LLC acting on behalf of the proprietor, W. & S. Engineering Co Ltd. in accordance with a payment schedule mutually agreed between the proprietor and the Ministry of Natural Resources and Agriculture. The sitting of the Board if accordingly adjourned to a date to be fixed at the request of the proprietor in the event that there is a failure to agree upon a schedule of payments.

The Board is grateful to the parties' legal representatives for the assistance rendered.

KENNETH A. BENJAMIN (Chief Justice)
Chairman