

Legal principles guiding an acquisition by way of expropriation of the Former Golf Course

Validated by the attorneys of
the Town of Rosemère

Background

As we have developed our urban vision, one particular component has resonated strongly with many residents, and understandably so: the matter of the **former golf course**.

Some people have urged the Town to look into purchasing this land and turn it into a huge park. As the property is not on the market and the owner has never expressed any intent to sell it, the Town would have to acquire the land through expropriation, based on the applicable conditions to be determined by the appropriate tribunal.

In an effort to consider all the possible options and make well-informed decisions in this regard, the Town has retained the services of Alain Dubé, a chartered appraiser, to estimate the expropriation compensation that may be imposed if the Town were to acquire the entire property, which represents an area of 613,499.8 square metres. An analysis of this information shows that the Town could be required to pay up to **\$126,000,000** based on previous tribunal rulings.

The following pages outline the legal and appraisal principles used by the appraiser to arrive at this total.

What is expropriation?

- Expropriation is the process by which a property owner is forced to relinquish ownership of a property for the public good or in the public interest. In addition to the value of the expropriated property, the expropriated party is entitled to compensation calculated **in a fair and equitable manner to offset the loss incurred.**
- Hence the importance of dealing with a chartered appraiser who specializes in expropriation matters in order to be able to estimate the amount the Town may be required to pay in an expropriation scenario.

How is compensation determined in an expropriation scenario?

First, a tribunal must determine the highest and best use (H&BU) of the property, in accordance with the principles of the Ordre des évaluateurs agréés du Québec and as recognized in the relevant case law. **The site must be therefore be appraised as if vacant and in a reasonable state of readiness for development to its highest and best use.**

The appraiser must show that the best use meets the following conditions:

- It is physically possible.
- It is permitted under laws and bylaws.
- It is financially feasible.
- It could be implemented in the near future.
- It is based on probable rather than merely possible eventualities.
- There is a demand for the property appraised at its best use.
- Finally, the best use must be the most profitable.

How is compensation determined in an expropriation scenario? (cont'd)

In an expropriation scenario, a tribunal will be required to consider the implementation horizon, which may be extended, the probability of implementation and the constraints, which may be less. The concept of highest and best use serves to correct for any temporarily unfavourable economic or legal situation that might penalize the expropriated party at a time they did not choose to make the settlement.

How is compensation determined in an expropriation scenario? (cont'd)

In an expropriation, **the expropriated party ends up in a position where they are forced to sell a property at a time that they have not chosen.** The following principles are central to the concept of “**value to the owner**”:

- What is to be determined is not just a **price** but **compensation**.
- This **compensation must fully compensate the expropriated party** for the loss suffered as a result of the expropriation.
- **The expropriated party is not an ordinary seller** freely negotiating a price with a buyer.
- **The expropriated party is forced to settle at a time not of their choosing.**
- The potential value, included in the market value, must include any special adaptability.
- The purpose of the expropriation is not relevant to the determination of compensation.

How is compensation determined in an expropriation scenario? (cont'd)

Accordingly, as the expropriated party must be fully compensated for all losses incurred as a result of the expropriation, tribunals take into account all gains that the party reasonable stood to realize with the property.

In the case of a real estate developer, these gains can include, in addition to the value of the property, any proceeds they could have reasonably expected to receive if a construction project was finalized on the property.

Conclusion

- Expropriation is a power exclusive to a public authority for the purposes of public utility.
- Clearly, the expropriation of the golf course by the Town of Rosemère could only be done at a enormously high cost, and would raise homeowners' taxes for many years.

Next steps

After nearly than a dozen public consultation activities that led to an official positioning of Town Council on the urban vision (June 2020), the next steps in implementing this vision are as follows:

- **Adoption of a preliminary Town's development plan in early 2021**
- **Adjustments to the development plan to comply with regional and metropolitan authorities (MRC and Montreal Metropolitan Community) in 2021**

To reiterate, there are no zoning changes planned, and any such zoning changes in the future would be preceded by a thorough public consultation process.