Legislative Assembly of Alberta

Standing Committee

on

Private Bills

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LEGISLATIVE ASSEMBLY OF ALBERTA

THE 20th LEGISLATURE

Standing Committee on Private Bills

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ZIP, MR. BOHDAN (Bud), Calgary Mountain View (PC)

[Chairman: Mr. Stiles] [8:06 a.m.]

MR. CHAIRMAN: Will the committee come to order, please.

This morning we're going to deal exclusively with Bill Pr. 13. For the benefit of the people who have come before us this morning, I'll perhaps explain the procedure a little more than I normally do. The procedure with private Bills in every case is that the Bill is introduced in the Legislature, given first reading. It then comes before this committee, so members of this committee can hear the facts and arguments in favour or against the Bill. This committee then makes a recommendation to the Legislature on whether or not the Bill should be proceeded with. If it is recommended that the Bill be proceeded with, it then goes through second and third readings in the normal way.

The proceedings in this committee are not formal, in the sense that they are not as formal as they would be in a courtroom. But since evidence is being given — and we often find that because of the nature of the proceedings, the solicitors present tend to give evidence as much as they argue the facts of their case. Accordingly we are having all of you, the solicitors and anyone who will be giving any evidence or addressing the committee, sworn today, so you're under oath. We don't rigorously follow the rules of evidence, such as the rules against hearsay, but we would prefer that you don't use hearsay evidence if you can avoid it.

Mr. Clegg, would you swear in the participants, please.

[Mrs. Smith and Mrs. Bellingham, and Messrs. Mallon, Kowalski, Johnston, Coates, Goyan, and MacLean were sworn in]

MR. CHAIRMAN: Thank you, Mr. Clegg.

We'll proceed by hearing Mr. Kowalski, the solicitor for the town of Grand Centre. Then we'll provide for one or both of the solicitors for the individuals opposing the Bill to be heard. Following that, we will permit members of the committee to ask questions of the witnesses or of the solicitors. Mr. Kowalski, if you'd like to proceed.

MR. W. KOWALSKI: Mr. Chairman, is it customary to stand in making the presentation?

MR. CHAIRMAN: You may stand; if you wish to sit, that's fine.

MR. W. KOWALSKI: Mr. Chairman, I tabled some documents earlier by way of giving some background to the committee as to how the town became involved in this matter to start with after some discussion with the government in respect of the the need and necessity of establishing a regional sewer and water system. The first document I presented in the handout I prepared dates back to a meeting of February 1, 1980, when it was determined that a regional sewer system should be constructed. It was determined at that time as well that the towns — because both the towns of Grand Centre and Cold Lake were involved — should be the ones responsible.

I'm sure most of us are aware of some of the background in respect of the Cold Lake/Grand Centre area and the Esso project that was supposed to go ahead. This regional sewer system was part of the groundwork that had to be laid in order to ensure that if development occurred — or should I say when development occurred — everything would be in place for that development, and we wouldn't have any problems with infrastructure, et cetera.

So as I indicated, the involvement of the communities started prior to February 1980, but it was formally decided in February 1980 that this system should be built. After that date, the town became involved in trying to determine where the system should be built, how it should be built. Of course one of the problems we had to deal with was land assembly for a lagoon site. The subject matter of this Bill is that parcel of land that was subsequently expropriated by the town and was found, after the expropriation, to be an inappropriate parcel of land, in that objections were raised at a later stage by the MD of Bonnyville and the Canadian Forces Base located next to the lagoon site. As I indicated, the documents in the package highlight some of the steps that were taken with respect to this land assembly. We have an extensive number of documents, more than this, but I presented them basically to highlight the kinds of things that occurred.

The towns set up a regional committee to deal with the construction aspect of this lagoon site. Involved in that regional committee were representatives of Canadian Forces Base Medley. I was not involved in these proceedings right from the beginning but, speaking with representatives of the towns, it is my understanding that Canadian Forces Base representatives were available at all the meetings almost from the outset and were aware of what was happening.

One of the problems that occurred was that when it became obvious we were not going to be able to negotiate the purchase of the particular site that was chosen for the lagoon, instructions were given to me to proceed with expropriation. Under the Expropriation Act in effect at the time, there were certain time frames involved. That is, after you filed your notice of intention to expropriate, you were under certain time frames to decide whether or not you were going to complete the expropriation. So decisions had to be made at certain stages.

Once we filed the notice of intention to expropriate, which was in January 1981, it became obvious to all the parties involved that the two parcels of land we were dealing with were the two parcels of land we felt we needed in order to establish a lagoon site. Canadian Forces Base Medley was present at those meetings. There were no objections to that particular land site filed until some time later on in the spring, almost at a time when we could not do much about it except abandon the expropriation.

One of the problems that was occurring in terms of assembling this land was some pressure in terms of the fact that development seemed imminent. It seemed as if a drastic increase in population was going to occur, so there was pressure on the town to get their act together and complete this land assembly so the actual construction of the sewage lagoon could occur. A lot of the work the town was doing was of course done in conjunction with the

provincial government, as I said, to prepare the infrastructure for this development that was supposed to occur. From time to time the towns were working in conjunction with various departments of the government to get certain approvals. A permit to construct is one of the documents you will find enclosed in there. That was granted quite early on in the stage, saying: yes, you can go ahead and construct this particular facility. As I indicated, there were discussions back and forth with other government departments in terms of how construction was coming, what was happening, and where we were going in this type of situation.

The reason I am giving you all this background is that the towns didn't do this on their own, in the sense that they decided out of the blue that they should have a sewage lagoon site. We were trying to work in conjunction with the government to anticipate what would happen in the area, to make sure we wouldn't have any kinds of problems in terms of infrastructure when the development occurred, so that housing and everything else could go on stream quite quickly. As we all know, Esso never went ahead, so obviously the need wasn't as great as we thought it was.

At one particular stage — and the documents touch on it lightly — prior to the deadline when we had to determine whether or not we were going to complete the expropriation, we had our first formal objection from the Canadian Forces Base. Their objection was that the proposed sewage lagoon site was off the end of the runway and it was not a logical place to put it. There were some discussions with the towns' engineers and representatives from the Canadian Forces Base to deal with what the Canadian Forces Base determined to be a bird problem. The negative response from the Canadian Forces Base did not become firmed up until after June 2, when we had actually filed the final notice in respect of the expropriation. Until that stage, the opinion of the parties involved was that there was an objection from the Canadian Forces Base; it was not extremely onerous in that it appeared that the problems could be worked out. It was only after we had completed the expropriation that the MD of Bonnyville refused to issue a building permit and the Canadian Forces Base filed a formal objection by way of a telegram, I believe, addressed to Premier Lougheed, and also a telegram addressed to the towns, saying: in no way, shape, or form can you locate your sewage lagoon site there.

Following that, there were some further discussions, and it then became apparent that we couldn't locate there. But by that time the expropriation had been completed, and we were then under the Expropriation Act and having to deal with the matter of compensation. We would have liked to give the land back, because obviously it was not needed for the sewage lagoon site. We have made proposals to the landowners or their solicitors whereby we have tried to negotiate a settlement after the fact, and one of those proposals has been an indication that we are prepared to give them back the land. My friend will tell you they are not in a position to accept the land back or don't want the land back, but we have attempted to do that as one of our ways of solving this problem.

The Land Compensation Board decision provided that compensation should be paid on the basis of approximately $9,500 for one parcel of land and $6,500 for the second parcel of land; there were two quarter sections of land. The appraisals we had obtained with respect to evaluating the land indicated a value between $1,400 and $1,200 an acre. There was a considerable difference in terms of the values of the land. The difficulty the Land Compensation Board had to go through was that our appraisers had taken the position that this land was farmland — nothing more than farmland. The appraiser for the landowners took the position that this was holding property. Based upon the evaluation that it was holding property, the value that was assessed was considerably higher than farmland, thus the tremendous difference between what we thought the land was worth and what the landowners thought their land was worth.

One of the arguments we presented before the Land Compensation Board was that in determining the value of property, the Land Compensation Board should place a difference between land that was sold for cash and land that was sold on terms, our argument being that somebody buying land on terms is going to be paying a lot more for that land than if they have to come up with cash. Also in the handouts, I've given you some photocopies of parcels of land and a sheet on top of it called a summary of land transactions. The landowners had an appraisal done, and that appraisal had something like 33 or 34 indicators. This summary of land transactions that I'm referring to refers to the indicators in the appraisal that was done for the landowners.

Out of the indicators that the landowners had in respect of the evaluation of the property, there were 20 parcels of land that were sold on terms. Since this has happened — and it's always nice to look back and say, look what occurred — I've had a chance to take a look at those parcels of land again. Out of those 20 parcels of land that were sold on terms, 16 of them have been returned to the previous owner. Foreclosures have resulted or quitclaims have been registered. In any event, these were parcels that were sold on terms. It was these values that the board used in determining how much that land was worth. Our argument was that you can't do that, because there are two different values involved in land sold on terms and land sold for cash.

The landowners' appraiser zeroed in on four parcels of land in respect of saying: these are the parcels that are the best indicators as to the value of this particular property. Out of those four parcels of land, three have been returned to the landowners. On the fourth one, there's been a negotiation in terms of what the price is. It was our contention that that should have been taken into account. The board said they wouldn't take that into account. Our position is in terms of saying to the landowners at this stage: look, we'll give you the land back.

Their contention and the basis of their appraisal was: this is holding property; one day it will ripen, and when it ripens, we can develop it. We're saying to them: fine, take the land back; it's still holding property; it was holding property then, and it's still holding property now; you're not being prejudiced; if you had sold on terms, take a look at the other parcels that have been sold on terms; 16 of them have been returned to the owners; you're no worse off than those owners, if you had sold on terms.

What I'm suggesting to the committee is that if

this Bill is passed, one of the arguments we're putting forward is that no one would be prejudiced with respect to that Bill. The landowners would get their land back. Since it was holding land and since they intended to hold on to it, they will get it back. It's still holding land; it's still their land. Whenever the area develops and they want to develop the property, they can still do it.

The other point I would like to make is with respect to the problems we ran into involving the Expropriation Act. Under the old Expropriation Act — in the documents I've handed out, I've copied section 55, I believe it is — if a party completed its application before the board of arbitration at that stage, and they were dissatisfied with the decision of the board of arbitration, the parties had the right to appeal it to the district court. The district court had the right to conduct a new trial and rehear the whole matter again.

Under our current Expropriation Act, the right of a new trial does not exist. There's an appeal to the Court of Appeal in Alberta. Section 37 of our current Expropriation Act says that the Court of Appeal:

> (a) may refer any matter back to the Board, or
>
> (b) may make any decision or order that the Board has power to make,

When I read that, one of the things that comes to mind is that the Court of Appeal should be able to rehear the whole matter as if they were the initial tribunal. They have taken the position that they will not do that.

On page 2 of the decision of the Court of Appeal, Mr. Justice Stevenson, who gave the short decision, said: "We are not entitled to retry the case". Basically he said: the Land Compensation Board has spoken, they've made a decision, and we will not interfere with that decision unless you can, in effect, show us there's been some error in law. In other words, the Land Compensation Board is the final word with respect to these decisions unless we can show that an error in law has been made. That's a pretty difficult thing to do under the circumstances.

If this matter could have been reheard in the Court of Queen's Bench or in a new trial, I think we would have been able to present information in perhaps a different manner, and we would have had a second chance for somebody to place their interpretation on what this land was worth. The crucial issue in this Land Compensation Board hearing was that our appraiser said this is agricultural land. The appraisers for the landowners said this is holding property. If the matter had been heard by someone else, I think they could have come to the opposite decision. They could have said this is agricultural land. Because of the state of the Expropriation Act at this time, there is no right of a rehearing, whereas under the old Act there was.

The other problem we've been faced with — and again it's a problem with the Expropriation Act — is that because we relied upon our appraisers and their appraised value was considerably lower than the landowners' appraised value, we didn't tender 80 percent of the value of the land. Under the Expropriation Act, the chairman then has a right in effect to penalize us for not having tendered 80 percent of the value of the land. The penalty section says that he can double whatever the interest rate was at that time. As a result, the judgment that was handed down by the Land Compensation Board provides for 32 percent interest. That debt that we've incurred by virtue of the judgment is currently accruing at the rate of 32 percent interest. We're lucky interest rates weren't at 23 percent, as they were at one time, because we could be looking at 46 percent interest on the judgment. That in itself is frightening, to think that a court can award interest at such a high rate. At one time I'm sure people got jailed for charging that kind of interest rate.

That's another problem we've run into. The Expropriation Act provides for that type of situation, and the chairman did not feel — and he's had numerous decisions before our particular application — that if you rely upon an appraiser, that's sufficient reason for not being penalized.

In summary, our position in respect of making a plea to the committee is that we've got ourselves into a situation that occurred as a result of changed economy. The town, in conjunction with the government, was working toward setting up an infrastructure to take into account the development that was supposed to occur in the area. The economy turned around; the development didn't occur. We've got two parcels of land that we can't use for a lagoon site, that we can't use for any reason. We advertised it, and the response we got was that someone was prepared to rent those two parcels of land for $150 a year. So we could get a cash return of $300 a year out of those parcels of land. The interest alone is accruing at in excess of $2,000 a day.

This land is of no use to us whatsoever. We're saying that there wouldn't be anything wrong with turning it back to the landowners, since they were the ones who relied upon the fact that this is holding property. They were holding onto it for one purpose: to develop it at some stage in the future. When we filed our notice of intention to expropriate, they filed a notice of objection to the expropriation, saying that we had no need for it and shouldn't expropriate it. Under the Expropriation Act, there would have been an appointment of an inquiries officer. Not too long after they filed the notice of objection, they withdrew that notice of objection and said: okay, go ahead, continue with the expropriation.

Their position in terms of the appraisal has been that that is holding land, and they wanted to develop it. That's a position that they've made quite clear. They wanted to develop it. So I am saying to you: let's give them back the land; let's compensate them for any inconvenience that's been caused to them as a result of our depriving them of the use of that land for that period of time; they can still go on and hold the land and develop it at some time in the future.

As I indicated before in respect of these parcels of land that were sold on terms, they wouldn't be in any different position than those parties who sold their land on terms. Those parties who sold their lands on terms received some compensation but didn't get the full dollar value and, in effect, have their land back again to do whatever they want to do with it. We are saying that this is probably a unique situation where there would be no prejudice to them. We're prepared to compensate them for the inconvenience. We're prepared to give them back their land so they can develop it when the time is ripe. The wording that I said in terms of holding property and the time being

ripe — the chairman relied upon their appraiser, saying that at some time, when the time is ripe, that land will be developed. So that's where the value is.

We've also sent letters to various communities and municipalities in Alberta, asking for support in respect of this private Bill we're proposing. We've received a response from 43 communities, and the communities have either supported our private Bill or supported a resolution that was proposed by the town of Grand Centre at the Alberta municipalities convention, saying that there have to be some changes to the Expropriation Act in respect of what's happened to the town of Grand Centre. Any amendments that might be made to the Expropriation Act might help communities in the future. It won't do us any good unless these are made retroactive and cover our situation, and hence the need for a private Bill at this particular stage.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Kowalski.

Mrs. Smith, are you the spokesperson for your group?

MRS. SMITH: Mr. Chairman, may I sit while I make my presentation also? Thank you.

I am the solicitor representing most of the landowners who owned the parcels that were expropriated by the town of Grand Centre. My friend Mr. Mallon, who is seated to my left, represents Mrs. Bellingham, who was also an owner of that property.

I was originally approached by these landowners in 1980 in connection with this problem. Therefore I have been involved in this for a considerable period of time. As one of my clients pointed out yesterday, when this matter started, I had no family, and I am on the verge of having two children.

This is a matter in which I'd like to go over some of the facts that occurred. Perhaps so you understand where we're going, I'll explain what we propose to present to you today. I will be presenting basically a short history of the proceedings I was involved in on behalf of the clients and that the clients were involved in. We will be calling some brief evidence by representatives of the landowners in respect of the two quarter sections. Then we will be giving some brief argument. Mr. Mallon will also be giving a short statement and some short evidence in this connection.

My clients are, in large measure, present today, although there are groups involved in this, and they are not all present. They are sitting behind me. They are not Nu-West; they are not Carma. They are not a big developer. This is a fractionalized holding; several parties are involved. They are ordinary citizens of this province.

They were first approached — and you will hear this in the evidence of Mr. MacLean, who was a principal, or a representative, of one of the companies — by this town with one offer in writing in May 1980. That offer contained this statement: if you don't like it, we will expropriate. They certainly fulfilled their promise; they did expropriate. That was May 1980, members of this committee. They commenced their expropriation proceedings. In front of you, you have a history of the proceedings in the black binder under tab 1. They commenced their proceedings in January — and there's a typo there — 1981, by service of a notice of intention to expropriate.

In view of the previous dealings my clients had had with this town, we assumed they were going to expropriate, because they had told us they were going to do so some six months before. Subsequently they registered a certificate of approval on June 2, 1981, which is effectively the time in which they take title. Between the time they first approached my clients and the time in which they finally took title, over a year had gone by. So there was certainly a considerable period of time for the town to investigate.

On July 3 they advised us that the land had been expropriated by way of serving upon us what's called a notice of expropriation. That was the only information we got that the land has been expropriated at that point. Subsequently the town obtained an extension. Under the Expropriation Act, as you may be aware, once the town takes land, they are obliged to pay for it within 90 days. That's to ensure that towns, municipalities, and other expropriating authorities don't take land without paying for it within a reasonable period of time. The town sought and the owners consented to an order extending the time for payment. The payment actually occurred some 150 days after the expropriation occurred.

Subsequently, on behalf of the landowners involved, we submitted applications for determination of compensation for the taking of the land. That was in May 1982. Unfortunately it took some considerable period of time to get it in front of the Land Compensation Board, although we worked very hard to get it there earlier rather than later. The hearing before the Land Compensation Board was held from May 9 to May 11, 1983. They subsequently issued their decision on May 25, 1983. The town appealed that decision. Appeal books were filed and served in September 1983, and the matter was ultimately heard by the Court of Appeal in January of this year.

I might point out to members of this committee that the landowners made no efforts to attempt to enforce any judgment or any decision they had from the Land Compensation Board pending the appeal, although the law of this province is that an appeal does not act as a stay. We did not even request that they seek a stay. We wanted the matter to be determined by the Court of Appeal, and we gave every co-operation to the town in order to have that occur.

My friend has basically raised, if I can express it properly, three problems that he sees with respect to this matter: number one, that the land could not be used for the purpose for which it was taken; number two, that the Land Compensation Board — if I can understand what he's saying to you — erred in some way; and number three, that there are problems with the Act itself. I'd like to tell you a little bit about what went on before the Land Compensation Board and what the principles are that that board works on. I have provided to you a summary, in brief written form, of the Land Compensation Board proceedings.

The Land Compensation Board is a special board set up to hear claims for compensation from owners. When you go in, the onus is on you, not on the town, to establish what you ought to be paid. The onus is on the claimant. I want you to understand

that this is the only right a landowner has under expropriation legislation. I advised my clients when I first represented them that there was nothing they could do to forestall the expropriation — effectively, the result was the withdrawal of the notice of objection — because a municipality has the right to take, and there is no approval whatsoever outside the municipality that they have to seek in that regard. So the right we were exercising was the only right we were given under the expropriation legislation, and that was to seek compensation. Even when we sought the compensation, the onus was on us to establish affirmatively what we could get.

The hearing in this matter was before a single board member, Mr. Boyd, who acted as the chairman. This board works on rules . . . It's not a court, but it works on rules that are even more stringent than a court with respect to disclosure of evidence. All witnesses and all expert reports are to be disclosed at least 14 days in advance of the hearing. That is to give each side the opportunity to look at the reports, examine the witnesses' qualifications, and give consideration as to the weaknesses of the evidence they themselves are going to call, having regard to the other side's evidence, and the evidence of the other side.

I might add that in this connection, the owners did meet that requirement and did disclose their expert reports and witnesses' names. The town was given the opportunity — and the board was very, very fair in this regard — to add witnesses during the course of the hearing, because they had failed to disclose them 14 days in advance as required by the board rules. All evidence before the board is given under oath and is subject to cross-examination. The board heard three days' of evidence and cross-examination on this matter. So you could have an idea of what that looked like, I brought the transcripts and documentary evidence that were filed before that board and considered by it. So it was a very detailed examination of the issues that were before them.

In case the town or you are convinced that the Land Compensation Board has some bias against expropriating authorities, I can assure you that that is not the case. I have appeared on two hearings since the date of this particular hearing. One was representing a northern municipality, and we were completely successful; on the other, representing a landowner, we were completely unsuccessful. So I can assure you that this board does not have a bias against municipalities.

During the course of the hearing, the claimants called an accredited appraiser, a senior appraiser in the city of Edmonton, who was assisted by the researcher from his office. Both were cross-examined by the town. They called an independent planning consultant, whose report was provided in advance and who was cross-examined by the town. The town called no independent planner but did call a planner with the Department of Municipal Affairs whose office had prepared the town of Grand Centre's municipal plan. They called two appraisers with respect to expert evidence. The board listened to all this evidence — and there was a great deal of cross-examination — and came to certain conclusions as to value.

My friend Mr. Kowalski has put before you the argument that the board erred because they did not take into account payment on terms. That issue was fully argued before the board, an expert tribunal put in place by this province to consider these matters. He has also pointed out that numerous properties have reverted since the date. It is important to point out to you that the Act provides that compensation is to be determined as of a certain date. I represented the city of Edmonton on expropriations for a number of years. I recently spoke to the city of Edmonton, and they would love to come before you and have values redetermined. Values have fallen since they expropriated the land. They've fallen considerably in certain areas of this city, including values on property where I represented an individual. But the Act is clear: you have to fix a date for value. Hindsight is always wonderful.

My friend also submits that these people would be no different than anybody else who sold on terms that they would return the land. There's a very important difference. The people who sold their land to others, to private individuals, had the choice to sell it. My clients had no choice. This land was taken. That is a very, very important distinction, and I will address that further in my argument.

The board issued a 41-page decision. My friend has said that the Court of Appeal refused to retry this decision. He did not point out to you that the Court of Appeal described the decision of the Land Compensation Board as — and I am quoting exactly — "a carefully considered judgment". The Court of Appeal had before them all the material I have shown you was in front of the board. The board accepted the evidence of the claimants as to market value, on the grounds that neither appraisal witness for the town had produced any concrete or substantive evidence that the market had declined as of June 2, 1981, which was the valuation date — not 1983 and not 1984. A review of the transcripts of the hearing — and I have reviewed these transcripts over and over again — readily demonstrates the accuracy of that conclusion.

The appraisers for the town had assumed a highest and best use of land as agricultural and did not have proper regard to the location, land use classification, and potential of the land. A review of that particular appraiser clearly indicates that there were a number of easily identifiable errors in his report that were revealed on cross-examination. I don't want to retry this case in front of you, because I don't think it's appropriate. But I am pointing out to you the basis that the board considered this problem very carefully. The report of the other appraiser for the town was rejected in total, because he was unable to answer any meaningful questions under cross-examination. He had the wrong date for the appraisal, it was doubtful he had even inspected the comparables, and there was no discussion or conclusion at all as to highest and best use.

In summary, the board found for the claimants because their evidence was better. The board also awarded interest pursuant to section 64 of the Expropriation Act, and my friend Mr. Kowalski has pointed out these mandatory provisions to you. Those provisions are mandatory. The only basis upon which the interest is not to be awarded is if the board is satisfied that it is not the town's fault. It is important to note that the Court of Appeal pointed out in their judgment that the town didn't call any evidence that would relate to this problem, which is the town's choice. The town could do that.

With respect to the Court of Appeal proceedings, as I've indicated to you — and I've also provided you a short summary sheet in connection with those proceedings — the Court of Appeal had in front of it a complete record of the proceedings before the board, together with all the exhibits filed. That was four volumes of material, 1,115 pages. Both parties had an opportunity to present full and complete written argument to the Court of Appeal. The claimants', the landowners', material was that, which was presented to the Court of Appeal. The town's material was this. No authorities were cited. The town was given a full and complete hearing before the Court of Appeal. Over one-half day of the court's time was devoted to the oral submissions of the town of Grand Centre. The appeal was unanimously dismissed by a three-man court, for reasons given in a memorandum of judgment of the court. As I've indicated to you before, the Land Compensation Board's decision was described as a carefully considered judgment. Furthermore, the court pointed out that the town led no evidence at the hearing with respect to the interest awarded under section 64.

By the way, my friend has indicated — and I want to address this problem very briefly, because otherwise I will forget it when I get to my argument, which I'm addressing in a different way — that if this were under the old Act, they would have some sort of wonderful rehearing. Number one, he's speculating that there might have been some difference with a new hearing. But I can also advise you — I understand some of you are rural members and have rural constituents who are farmers, and this has particularly annoyed the farm community to no end — that the rehearing before the district court, or what became the Court of Queen's Bench with the amalgamation of the court, did not turn out to be the rehearing they counted on. Basically the courts have said, while it's a Trial De Novo, they will not lightly disregard the findings of these specialized tribunals, for a very good reason: those people are appointed and put in place because they have expertise to deal with the matter. They hear case after case after case, and they have the opportunity to bring to bear upon it a full degree of expertise that judges sitting in the Court of Queen's Bench or the district court of Alberta simply don't have, because they don't hear these cases every day. So in my humble submission, it wouldn't have been any different under the old Act.

That is a brief outline of the proceedings as they affected my clients. I would now like to have a representative of one of my clients give you an outline of his dealings with the property and with the town in connection with this matter, so you can have some feel for what occurred in that respect.

MR. MacLEAN: Members of the committee, I'm a principal and, at certain points of the proceedings with this land, I represented the other owners of the land. I'm a principal of the company Turq Developments which, for the lawyers among you, comes from Turquand rules.

The land was acquired in 1977. Basically I think all of us became involved in the land through the efforts of Ramsey Bellingham. We had acquired a quarter section in the area in early 1977. Subsequent to acquiring that quarter section, Mr. Bellingham determined that another quarter, which was more ripe for development, having all the rail access and water, could be available by trading a certain portion of the first quarter we had acquired. An agreement was entered into with the property owner which involved the trade of 30 acres of the initially acquired quarter. We were unable to get subdivision of that 30 acres, and consequently a different arrangement was made. By payment of cash and the trade of the initially acquired quarter, we acquired the quarter section that is the subject matter of the expropriation we're dealing with here. That was basically in September through to the end of 1977. The final documents were registered in the first part of 1978. I think the adjustment date was November 1, 1977. But one of the landowners happened to be in Germany at the time, and it took some time in order to get documents executed.

Immediately after acquiring the property, we took steps to get a development through. In the material which has been handed to you is a brief summary of what has gone on. I prepared that for Mrs. Smith, but I wasn't aware she was going to give it out. I apologize for some of the reproduction, and there are a few grammatical errors in it. In any event, in early 1978 we took steps to obtain a subdivision. In a meeting in February 1978 we agreed that we should retain a firm of engineers, Stewart Weir. During the spring and summer of '78, further steps were taken with respect to contacting other engineers. As well, Turq Developments had contacted engineers on their own, just to obtain second opinions.

We contacted various government authorities concerning the restrictions, regulations, and whatnot with respect to subdivision of the property. What we were primarily concentrating on was an industrial subdivision, as we were aware that the proximity of the land to the air force base would limit any residential subdivision, due to the restrictions of the air force base. That continued through 1978. In the fall of 1978 I went to England to school for a few months, and I wasn't directly involved until the summer of 1979. But during the fall and winter of 1979, efforts continued with respect to the subdivision. The subdivision was submitted, although rejected. A zoning plan was put into effect that in effect zoned the property and in our opinion zoned it for an inappropriate use or uses, one of them being country residential. I found it difficult to understand why anyone would want to live under the path of an F-18. In any event, those efforts continued through the fall and winter months of 1978 and into 1979.

The next sort of significant thing that happened was that in the fall of 1979, we were approached by a real estate agent from the Grand Centre area — I had it in my notes as O'Callahan; it was Dyna Real Estate, and I'm thinking now that it may have been O'Callahan. He indicated to us that he thought he had a prospective purchaser of this land. There was a great deal of discussion and dissension among the owners, because many didn't even want to sell it at any price. It was finally agreed that we would give this real estate agent a listing at $10,000 an acre for the land. That was in the fall of 1979. At the time he approached us, he would not reveal who he had in mind as a purchaser, although he came to us with the idea that he had a definite purchaser in mind. After signing the listing, he revealed that the prospective purchaser would be the town of Grand Centre, in effect for a sewage lagoon. After giving the listing,

we never heard from Mr. O'Callahan again. I don't know how he got the information or what his connection was.

The next thing that happened — and it becomes significant — is that in the spring of 1980, I think all the owners, including Turq Developments, were approached by an engineer. It was the engineering company of W.J. Francl & Associates. In April 1980 I believe Mr. Bellingham had some discussions with Mr. Balchen of that company, who indicated that they were going to expropriate the property and that they needed it for the sewage lagoon for the Cold Lake Grand Centre Regional Utilities Board. Mr. Bellingham made numerous efforts to divert their attentions from our land to other land, and in fact I'm advised — I don't have any direct information other than being told by Mr. Bellingham — that he offered them other land he had or had access to in the neighbourhood for their sewage lagoon. He also apparently offered or suggested that they use some different method to dispose of their sewage which wouldn't involve the land.

In any event, in May 1980 we received an offer from the engineers, Mr. Balchen acting on behalf of the regional utilities board. About the time of receiving that offer, I had a phone call from Mr. Balchen, who indicated that they wanted to purchase the property for $1,750 an acre. At the time of my discussion, I indicated to Mr. Balchen that I, having no expertise in the value of land, did not know what the value of that land was. I asked him whether he, the town, or anybody had an appraisal, and no one did. At that time I suggested to him that perhaps a good step to start might be to get an appraisal of the property.

In any event, about that time I received from Mr. Balchen a written offer for $1,750 an acre. That letter appears in the material. Upon receipt of that letter, I ordered an appraisal of the quarter section from Mr. Shaske. The offer we had received placed certain time restrictions. I wrote to Mr. Balchen on June 16, 1980. And again I apologize for the poor quality of the photocopying. This is subsequent to their offer and subsequent to my ordering the appraisal. I just indicated that we weren't ignoring their offer, and I pointed out again in the letter:

> As we had indicated, we are somewhat uninformed as to the value of the property in this area and have retained a firm to appraise the property.
>
> Perhaps, we should put this matter over until we are in receipt of the appraisal which we would expect around the end of this month.

Well, Mr. Balchen wrote back. This is a letter of his dated June 24, 1980, received by me June 30, 1980. Basically it says: it's very nice that you're getting an appraisal, but we're going to expropriate anyway; if you get an appraisal, we'd like to see it. Apparently they had made the decision at that point to expropriate. Nobody yet had an appraisal of the property.

About that time I was advised that Mr. Walter of the firm of Shandro & Fuller would be acting for the town in respect of the appropriation. I received the appraisal from Mr. Shaske at the end of July 1980. I forwarded that appraisal to the town's solicitor, who at that point, as I said, was Mr. Walter, indicating: here's our appraisal; if you get an appraisal or have one available — it's on the condition that I get a copy of theirs. That's fine; nothing happened.

In November 1980 — this is some months later — I again sent a letter to the solicitors for the town, asking for their appraisal. I had learned that they had obtained an appraisal from Alberta Appraisals, a Mr. Kvatum, I believe in September 1980. I received no response to the letter again in November 1980. The response came from Mr. Kowalski in January 1981. Apparently the town had changed solicitors. The response was a notice of intention to expropriate, that's it; thank you very much.

So I again wrote to Mr. Kowalski and indicated that I would dearly love to see their appraisal, in that I had sent them ours on the condition that I received theirs. I did then receive a copy of their appraisal done by Alberta Appraisers. I received that on February 16, 1981. We analyzed that appraisal and then wrote a letter to the town's solicitor on March 26, 1981, giving them a complete analysis of the appraisal — again, that letter is in the materials — suggesting that they make us an offer of $5,000 to $5,500 an acre, based on analyzing the material in both the appraisals. These were the only two appraisals available or in existence at that time. I got no response to that.

On April 28, 1981, I again wrote the town solicitors, asking them just for some response to my letter and in effect asking them, what's going on? The response to that was that they took the title June 2. That was the communication we got back. We didn't get notification of that officially until July, but I did learn that they had taken the title shortly after they took it.

On June 8, 1981, I wrote a letter to Mr. Kowalski, sending him our duplicate certificate of title, because it was of no value to me anymore or to any of the owners, indicating that I sent it to him on a trust condition that he made a proposed payment under the Expropriation Act. As I said, the next official response was just the notice of expropriation received on July 6, 1981.

The next thing we heard was that we received an originating notice of motion and an affidavit from the town, saying that they needed more time to pay. As a result of that application by the town, we agreed. We gave them more time, and a consent order pursuant to the Act was entered. We finally received their notice of proposed payment near the end of October. I think it was October 30, which is again pretty well near the end of the extended period of time. Then approximately a week after that, we received their payment under the notice of proposed payment.

That is a sort of brief summary of our dealings with the land and, I would like to emphasize, our dealings with the town and their representatives. At no point did they make an offer to us having an appraisal. In fact both appraisals of the land that were in existence at the time they took the land, June 2, 1981, indicated a value significantly higher than what they ultimately paid. The appraisals they relied on in the proposed payment were done in October 1981. That was almost five months after they took the title.

At the time we received the proposed payment, I immediately or shortly thereafter contacted Mr. Shaske's office and advised him to do an updated appraisal as of the date of taking the title, June 2.

At that point Turq Developments retained Mrs. Smith as well, and from thereon she in effect acted for all the owners of the one quarter section. I might advise the committee that it was at least Turq's instructions to Mrs. Smith, and I understand all the other owners' instructions, to attempt to settle this matter and conclude it on some negotiated settlement. I had had no success whatsoever in negotiating, and it would appear that every effort to negotiate was met with a step in the action of expropriation.

I think that's a brief summary of our involvement in the property.

MR. MALLON: Mr. Chairman and members of the committee, Mrs. Smith has given you a history and some of the basics of how the Land Compensation Board operates and how it operated in this instance. I don't propose to go over that again. I would only say that I agree entirely with what she has said.

We were first involved in this file in December 1980. Our firm had had an extensive history of settling expropriation matters. You may be aware that the Dickson dam had a number of heated issues, and we were involved in the settlement of the majority of those claims. We were hired for the purpose of attempting to settle it. Not only were we not able to settle it, we had great difficulties eliciting any responses.

What I will be doing today is producing evidence to you, through Mrs. Bellingham. I'll be asking her some questions, and she'll be giving the answers to those questions. Before I do that, I simply state that our position is that this Bill should not be passed. It shouldn't be passed because it's unfair. It's unwise. It breaches rights which are basic to all Albertans.

If I can start with Mrs. Bellingham, she is seated to the left of me. Mrs. Bellingham, I understand you have an involvement with one of the two quarter sections that are involved; that is, the northwest quarter of section 21, township 62, range 2, west of the fourth meridian. Can you explain your involvement in that land for the committee members?

MRS. BELLINGHAM: Yes. I have a joint half interest in that land, with my husband. We purchased the land in 1976, under an agreement for sale. Subsequently that was paid out sometime during 1978, and we obtained the title. Title passed to us, in my name and in the name of Patterson Park. My husband is the president of that company.

MR. MALLON: Did you have any subdivision plans for that property?

MRS. BELLINGHAM: We didn't have any specific plans drawn up for this quarter, but we always regarded it as a unit with the other quarter, and you've heard from Mr. MacLean about the plans drawn up for that. This quarter was to be phase two in an overall development of those two quarters.

MR. MALLON: When did you first become aware that the land was going to be required for a sewage lagoon?

MRS. BELLINGHAM: Again, as Mr. MacLean has explained, we unofficially heard because of Mr. O'Callahan's approach to us. He came to our home and asked us for a listing. We learned later that he believed the town was going to acquire this land for a sewage lagoon. Officially, in early 1980 my husband was requested by Mr. Balchen of Francl & Associates to attend his office and was told there that the company engineers wanted this land for a sewage lagoon. My husband told them we weren't interested in selling. As Mr. MacLean said, he did try to interest them in some adjacent properties, where the owners were more agreeable to sales. He also talked about other systems of sewage.

At that time they intimated to him that they were willing to pay $2,200 an acre. Later they called him and asked him to go to their office again. He went, and they told him they wanted our land and were willing to pay $1,950 an acre — or $1,900, I think it was. He said that he believed the owners would not be willing to sell at that price. The next communication we had, as did everybody else, was a letter stating that unless we accepted the sum of $1,750 an acre, by June 6 midday, the town would expropriate our land.

MR. MALLON: Mrs. Bellingham, did you receive any other offers from the town prior to going to the Land Compensation Board?

MRS. BELLINGHAM: No we didn't. Shortly after we received the notice of intention to expropriate, we asked Mrs. Smith to act on our behalf. Mrs. Smith didn't appear to be successful in getting an out-of-court settlement, and I had heard that your company was successful in making out-of-court settlements. I particularly was not anxious to get into legal battles; I don't enjoy contention, certainly don't enjoy being here. I came to you and asked you to act on my behalf, with the specific idea of negotiating an out-of-court settlement. But obviously you had no success in doing that either.

The town went ahead and expropriated the land, at which time we felt we had no other course but to take the matter before the Land Compensation Board. You've heard something of the history of that. After the judgment was given, the matter was taken by the town to the Court of Appeal. We had to follow them there. Again the Court of Appeal sustained that judgment unanimously, as you've heard. The next thing we knew, the town applied for this hearing or — I'm not sure how to term it. We felt we had to follow here to present our side of the matter.

MR. MALLON: Do you have any comments on the town's actions during these periods of time?

MRS. BELLINGHAM: Yes, I feel very bitter about the way the town has treated us. I'm not here today just to deal with legal arguments. My lawyers can do that very well, better than I can. But on a personal basis, I feel I almost have to be here, to try to remedy some of the damage the town has tried to do to my name and the names of the other people in this group. It appears there's been an attempt to discredit us — such things as, when the town approaches the press, they call us "speculators". I'm not going to get into a debate as to whether that's accurate or not. It may be for some of us, maybe not for others. But there's nothing wrong with the term "speculator", if it's used in the ordinary sense. But in

this case, it was used in the pejorative sense. In other words, it's an attempt to sway public opinion against us.

I feel that the town used the press to try to sway public opinion against us, to make us the villains of the piece. I don't regard myself as a villain. I haven't done anything wrong, as far as I know. We did not reply through the press. We felt there was no useful purpose to be served in getting into a slanging match through the media. However, the other cheek does get mighty sore after a while.

It's my opinion that the town took some ill-considered steps, some unwise actions; then, rather than accept the consequences and put any blame -- I'm not saying there is blame; maybe there isn't. But if there is any blame, certainly it doesn't belong on my shoulders. It seems to have been the attempt of the town to make me and the others in this case the scapegoats, and I object to being a scapegoat.

I feel that any property owner in this province had better think very hard about what's happening here today. It means that not only can they have their property expropriated if this Bill is passed, not only will they be able to have their land expropriated, not only will the expropriating authority then be able to refuse to pay, not only are they able to set aside the legislation that was in place to protect property owners, but you're also turned into the villain of the piece, and you're dragged into a public arena where you've no wish to be. I'm afraid this seems to happen. It makes me very annoyed that so often, in any legal battle, the victim after a while tends to become the aggressor or the criminal. So yes, I do feel very strongly about this, and that's why I'm here.

MR. MALLON: While you're here today, what is it that you're asking the committee to do?

MRS. BELLINGHAM: I'm asking that the committee recommend that this Bill not be passed.

MR. MALLON: That's all our evidence, Mr. Chairman.

MRS. SMITH: Mr. Chairman, could I ask a procedural question? We have some argument, but I don't know whether that's to be addressed now or at some later point in the proceedings.

MR. CHAIRMAN: It would be preferable if you addressed the argument now.

MRS. SMITH: Mr. Chairman, hon. members, it is obvious that the position of my clients is that this Bill ought not to be passed and that this committee ought to recommend against its passage. This has been a long and very difficult matter for my clients. It has not been resolved easily. It is still not resolved.

In considering the import of this Bill I addressed my mind to the purpose of legislation that this body or the Legislature ought to be adopting. When I looked at it, I came to the conclusion that in the usual course of events, legislation is put in place to remedy some mischief, to address some ill, for the public good. That then led me to the next question: what would the Legislature be trying to remedy in this case? What mischief, what evil, what ill, what public good is being served?

The first thought that came to mind is that somehow my clients did something wrong. I couldn't come up with anything, so I looked over the whole proceedings. What did they do? They owned land. The land was taken from them. They offered to negotiate. The courtesy with which they were treated was minimal, because they received no replies to that. I can advise you that I continued to offer to negotiate, and the response I got is "not one dollar more", while I tried to resolve the issue.

In reviewing this matter, I concluded that my clients had done nothing wrong. The town chose the process, and they merely took part in it. They were expropriated: the town's choice. They failed in negotiations because the town wouldn't. I will concede that my friend offered the land back, but at that point in time it was too late. They had taken it; they had made their choice. As far as my clients were concerned, they had effectively tied the land up from April 1980 on.

In essence, my clients exercised the only right available to them under the expropriation legislation, that of appearing before the Land Compensation Board, and did what they were supposed to do. They engaged experts, they presented a case, they presented arguments, and they were successful. The decision was appealed. They again prepared carefully, appeared before the court, and were successful. They still offered to negotiate, and the response was this Bill. I suggest to you that these landowners have been treated with little consideration, if any, by the town, and that the Bill is but one more example of the town's method of dealing with these people. Their rights and conduct, however, appear to be meaningless to the town in these circumstances.

The next thing I addressed is if the landowners did nothing wrong, maybe the Land Compensation Board did something wrong. I suggest to you, Mr. Chairman and members of this committee, that there is not a shred of evidence before you that would support the contention that the Land Compensation Board made some grievous fatal error. What did the board do? It heard three days of evidence and cross-examination, and considered pages and pages of documentary material. It allowed the town to waive the board's own rules to add witnesses. In the words of the Court of Appeal, it issued a carefully considered judgment. It rejected appraisal evidence that contained numerous deficiencies and difficulties, which was easily established by cross-examination. It made an award based on all the evidence in front of it, and the town had every opportunity to bring in what it wanted. It made an award of interest based on the mandatory provisions of the Act, where the town, as noted by the Court of Appeal, presented no evidence. On what possible basis can it be said that the Land Compensation Board erred? It did its job and it did it well. It did the job that you, this Legislature, has intended that it do.

The only other possibility is that there is some overwhelming public purpose to be served for the town in respect of this Bill. I would like to look at this question also. The town is not the victim in this circumstance. I suggest to you that it is important to analyze the town's actions in this process. Number one, it chose the process. It deliberately, and one hopes with careful forethought, decided to expropriate this land after one offer to my clients.

By so doing, the town established the rules of the game. My clients didn't choose this process; my clients didn't choose to go under the Expropriation Act. The town chose this. Now, when the town does not like the results of the application of the rules of the game it chose and the game itself, it's coming to you and saying: fine, now we want the game changed and the rules changed.

The town refused to negotiate with the owners prior to the taking. Mr. MacLean has indicated to you the responses he received when he suggested offers based on the only credible evidence available, independent expert appraisals. He didn't even receive the courtesy of a reply. I attempted to negotiate and was unsuccessful. The only negotiation the town was interested in was that we take the land back. There was no other possibility to be considered before the Land Compensation Board hearing.

With respect to whether or not it was able to use the land, it advised my clients that it was going to expropriate in May 1980. By June 2, 1981, they had not even applied to the municipal district of Bonnyville for a development permit. That is over one year before they took the land and took title, knowing that the Act is structured so that you have every opportunity to abandon. You can file a notice of intention, and you can abandon that expropriation. You do not have to complete it. Prior to the date on which they had to take title or be deemed to have abandoned, they knew there was a problem with CFB Cold Lake, they knew they did not have a development permit from the MD of Bonnyville, and they still proceeded. This is after over a year had gone by from the time this site was first identified as an expropriation target.

The town of Grand Centre had information as to land values when it commenced the proceedings — that is, in January 1981 — which were well in excess of what it finally paid in October 1981; namely, the appraisal obtained by my clients and forwarded to the town, and indeed their own appraisal, an appraisal that they did not rely upon and did not use when the Land Compensation Board hearing occurred.

In all the circumstances, I do not believe this town comes before you in circumstances which would justify your exercising your legislative discretion to pass or to recommend the passage of the Bill that is before you. Moreover, Mr. Chairman and members of the committee, I submit to you that positive harm results from this kind of legislation. I submit that generally it is inappropriate that the Legislature be asked to intervene, to overrule and dispense with provisions of general law applicable to all citizens.

The obvious function of the Legislature is to enact general laws. In enacting laws of general application, it avoids having to examine each individual fact situation, and thereby avoids allegations of discrimination, inequity, or political favoritism. Therefore while there is no doubt that subject to constitutional restrictions, the Legislature can make whatever laws it pleases, it is not an appropriate function to make laws on a case-by-case basis. Rather, the case-by-case administration should be carried out by independent tribunals employing a technique and a procedure that appears to guarantee justice.

It is particularly inappropriate for the Legislature to intervene, dispense with, and overrule the provisions of expropriation legislation. The province has chosen to give to certain government and quasi-government bodies the right to take the land of any person in this province, whether or not that person wants to give the land up. That such legislation is for the public good is not questioned, and we do not question it. It is a necessary limitation on the free right of an individual to hold land, that the greater public good must be served.

But in permitting the state or its representatives to invade the rights of private individuals in so significant a sense, the Legislature of this province has seen fit to safeguard certain rights of the individual, and only one right; namely, that such taking cannot be without compensation. The province, without the pressure of individual cases to cloud its clear perception of the competing interests, has established fair and reasonable procedures for such determination. These procedures ought to be followed and not set aside through a Bill of this nature.

If this petition and Bill are passed by the Legislature, the protection inherent in the Expropriation Act and procedure are destroyed in a stroke, and private landowners are left at risk, with no protection from the careless actions of an expropriating authority. In view of the seriousness of the consequences of the exercise of the expropriating power, the protection inherent in the Act should not lightly be disregarded and overruled. It is to be remembered that it is only by the award of fair compensation for the unilateral taking of lands that the private owner has any redress or chance of being treated fairly in the entire expropriation procedure.

I also point out that not only is this Bill unfair for the reasons I have previously indicated, it is also unwise. It is a dangerous precedent. There are many litigants and individuals who are equally unhappy with the application of the general law to them, who are equally burdened by the results of the decisions of tribunals, and who equally find payments of awards and judgments insufferable. Is each and every one of them entitled to petition the Legislature to relieve them from the consequence of the law or the consequence of their own deliberate choices and actions?

As is readily apparent, the implications of such a Bill are staggering. It is not, and should not, be the practice of the Legislature to act as a court of last resort in individual cases. Moreover it is unwise to make decisions on a case-by-case basis which are affected by the emotions and pressures of individual circumstances and which then may create unmerited differences between people. Is one person or entity more deserving than another? On what criteria and in what circumstances? The burden that would fall on your shoulders as members of this Legislature would be intolerable, in view of all your other burdens.

Finally, in my submission a Bill of this nature encourages the careless and thoughtless exercise of a confiscatory power if the Legislature bails out expropriating authorities in these circumstances. To allow this petition and Bill will do nothing to encourage the careful exercise of a power which drastically infringes upon individual rights. As a consequence, an expropriating authority could proceed to take lands that it may or may not need, may or may not be able to use, and may or may not be able to pay for, without regard to the

circumstances and the consequences.

I submit to you, Mr. Chairman and members of this committee, that this Bill is not morally justified, it is not legally justified, and it is not philosophically justified. I urge that you recommend that it not be adopted.

MR. CHAIRMAN: Thank you, Mrs. Smith. Mr. Kowalski, do you have any argument to offer in rebuttal?

MR. W. KOWALSKI: Yes, Mr. Chairman, but before that . . .

MR. CHAIRMAN: Mr. Mallon? Certainly. I'm sorry; I didn't realize you were going to speak.

MR. MALLON: That's fine. I will be very short.

Mr. Chairman and ladies and gentlemen of the committee, as you have clearly seen, Mrs. Bellingham is upset with this proposed legislation. I suggest to you that I am upset as well. I'd go further than that. I suggest to you that you should be upset, because what you're being asked to do today is to retry the town's case. You're being asked to overturn a decision of the highest court in this province.

The town's reasoning for that, if you boil it down to its basics, is simply this: they made a bad decision. Unfortunately for them, that bad decision is going to cost them some money. They made that decision with full knowledge and with eyes wide open. They had reports and more reports. They had expert evidence; they had evidence from both sides. They knew what they were getting into. But now they don't like the results of that decision, and they want you to change the law so that they can get out of it. I respectfully submit to you that that is improper, and I believe they're even wrong in bringing the matter before you.

In 1972, I believe, this government passed legislation known as the Alberta Bill of Rights. One of the provisions of the Alberta Bill of Rights was that every individual in this province had the right to enjoy their property, subject only to being deprived of that right by the due process of law. We've been through the due process of law. We've been going through it for a long time. We've been all the way to the Court of Appeal, and we all know what their decision is. I submit to you that what the town is asking you to do right now is to abort that due process.

One of the other things the Alberta Bill of Rights did was to say that all individuals in this province are equal before the law. It said that all individuals in this province are entitled to the protection of the law. The town is asking you to totally disregard those principles. This Bill is discriminatory. It's prejudicial against my client. If it's passed, it means that all individuals in this province are not equal before the law. It means that towns like the town of Grand Centre are above the law, that they can exercise their power of expropriation, which is a total power, to take people's rights away, to take their property away from them, without regard to the consequences. If they just don't happen to like those consequences, they can come to you and legitimize their actions by asking you to pass a law.

I think what the town of Grand Centre is also saying is that by circumstances of economics, they've been wronged, and this Bill they have before you will right that wrong. I submit to you that that just simply isn't the case. As you've clearly heard today, I think the only people who have been wronged to this point in time are the landowners. I submit that passage of this Bill would constitute a perversion of the administration of justice in this province. Additionally, as I've said before, it's totally contrary to the Alberta Bill of Rights. For those reasons and for the reasons that it is unfair to the owners and, as Mrs. Smith pointed out as well, is unwise in setting a dangerous precedent of possibly opening up the floodgates of towns and expropriating bodies in similar circumstances coming to you, I ask that you recommend against the passage of this Bill.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Mallon. Mr. Kowalski?

MR. W. KOWALSKI: Mr. Chairman, I have to agree with some of the statements by my friend in respect of the difficulties the town has found itself in. The town has relied upon expert evidence in various stages in the decision-making. We were told that the sewage lagoon site has to be here. We were faced with the situation of our needs, we need a sewage lagoon site, and the landowner saying, we don't want to sell. We were forced into an expropriation under those circumstances. As I indicated before, in conjunction with the government we had to get the sewage system going so that we could deal with the problems that were going to be created with the development that was occurring. We were forced to make decisions. The decision was based upon our expert evidence saying: that's the site you need; expropriate the site. The Expropriation Act is a powerful tool; there's no question about it. I suppose the wrong that was committed at that stage was that the landowner was being deprived of his land. Again, that's a powerful thing to do. We're saying at this particular stage that these people didn't want to give up their land in the first place; we can't use it for the purpose for which it was expropriated; we're prepared to give it back to you; you wanted the land to start with; you filed the notice of objection to expropriate, which was subsequently abandoned.

It's not true that the expropriated party can't do something to stop the expropriation, that the only thing they argue over is money. They can. They can file that notice of objection to expropriation, and an inquiry officer can determine whether there's a need for the expropriation. There have been cases where expropriations have been stopped, either wholly or in part, by the inquiry officer saying: you haven't been able to establish a need. In any event, at some particular stage, the landowners withdrew that notice of objection and allowed the expropriation to proceed. As I indicated, at this stage we're prepared to give them back the land. We're prepared to compensate them for the difficulties that have been created.

My friend has made reference to the fact that the town seemed to have a campaign to turn them into villains. We're not pointing fingers at anybody. We're not saying that they're bad guys and we're good guys. We're not doing anything like that. We were caught in an unfortunate situation where, based upon the pressures of the times, based upon our experts,

we were put into the position of having to expropriate. Similarly, when it came to negotiations in terms of trying to work out a fair settlement, the experts that were used were so far apart that it was difficult to negotiate any kind of settlement. We have one expert who says the land is worth $1,200 an acre; we have somebody who says it worth $9,500 an acre. This is the same parcel of land. It's pretty difficult to reconcile those differences.

We've co-operated as much as we can during the process. Mr. Mallon and Mrs. Smith indicated that they've been co-operative in terms of allowing us to introduce further evidence at the Land Compensation Board. I'm sure Mr. Mallon will concede that I was co-operative in allowing them to introduce the report of their planner, even though we didn't receive it within the 14-day period. As I indicated before, we're not going out and attacking each other in terms of a bad guy/good guy type of situation. I think there has been co-operation inasmuch is possible under the circumstances.

The difficult thing is that we're faced with a judgment for a parcel of land we cannot use for the purposes for which it was obtained. We're faced with landowners who have said all along — and Mr. MacLean has gone into detail as to the type of planning they've done in relation to the land, what they hoped to do with it, how they hoped to develop something. We're saying to them: okay, if you've got a dream to develop, you can still do that, because you can have the land back.

In terms of prejudice, I'm submitting to you that there is no great prejudice against them in that respect, except perhaps for the emotional strain of having gone through this situation. They may have interpreted the fact that they were described as speculators as being a slur on their reputation. It was never intended that way. The newspapers are always trying to create spectacular stories, and whether they're speculators, investors, or landowners, it wasn't the intention of the town that we were going to go out and turn them into villains.

The difficulty the town faces at this particular stage is that the landowners have got judgment. They've filed writs of execution against the town and have now set down a procedure called examination in aid of execution. This examination in aid of execution is going to occur on June 1. At that particular time, they will examine a representative from the town to determine the assets the town has. With that procedure, they are then in a position to go ahead and collect the debt.

The bottom line is that the town doesn't have the money, and they have the land that they don't need. As I said earlier, the debt is accruing at the rate of $2,000 a day. If there is any need for a public purpose for the Legislature to pass a Bill at this time, I submit that that's the public purpose. We have a community that is totally burdened with a debt for a piece of property they're not using. At this stage they're saying: we'll give you back the land; you wanted to develop it; proceed with development.

That's my submission, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Kowalski. Perhaps now we can have members of the committee address questions to either of the solicitors or the witnesses the solicitors have with them.

MR. HYLAND: Mr. Chairman, mine is first a comment and then a question. Mr. Mallon said that we're being asked to overturn the decision of the highest court in the land. My understanding of the legislative system and of the Legislature is that it indeed is the highest court in the land in the aspect of parliamentary law.

Some comments were made about living within — I think the term Mrs. Smith used was general law or something like that. My understanding is that the purpose of private Bills is to assist people — and we've had examples of that, especially in the last few years — who for one reason or another have a problem fitting within the general law of the land. It's the kind of thing where the general law doesn't particularly fit, and you have an appeal.

I'm not arguing the pros or the cons of the Bill. Some of the comments made bothered me in that extent. Private Bills are unique, and they are not meant to necessarily change a decision. They are meant to fit into something people can't normally fit into elsewhere in law.

MRS. SMITH: Did you want me to address that, Mr. Hyland — I believe? Is that correct?

Sir, I agree with your comments about the usual course of events in private Bills. They are to accommodate a need that is not met in the general legislation. Unfortunately, sir, I would suggest to you that that is not what this Bill is. It is a Bill to overrule the general legislation. I have no doubt you have the power to do it, and I thought I made that clear in my comments. Subject to any constitutional limitations, the Legislature has the right to pass any Bill it chooses to pass.

I'm suggesting to you that it is not wise to do so, to overrule general law applicable to all citizens in the circumstances of this case, sir. It's not the usual private Bill where you're trying to accommodate something that is not addressed in the general legislation.

MR. SZWENDER: Mr. Chairman, I've been following the presentation, although there are a couple of questions that I'd like to have clarified. First of all to Mr. MacLean, just for clarification. The town of Grand Centre took title on June 2, 1981? At that time, had they already made a proposal or an offer for the value of the land?

MR. MacLEAN: The only offer we had received at that point was $1,750 an acre in the letter from the engineer, which was prior to any appraisals or anything ever being obtained.

MR. SZWENDER: Did the engineer . . . I'm sorry, how many supplementaries are we allowed? What authority was the engineer acting under?

MR. MacLEAN: I assume he was authorized by the regional utilities board. In his letter of May 23, 1980, which in effect contained the only offer, he indicates:

> On behalf of the Cold Lake-Grand Centre Regional Utilities Board, we are making you an unsolicited offer to purchase your right and interest in the following property . . .

I assume he's acting on their behalf as agent or

whatever.

MR. SZWENDER: Okay. You follow that up by saying that on October 1, 1981, another final offer was presented. Is that correct?

MR. MacLEAN: No.

MR. SZWENDER: [Inaudible] first. I'm sorry.

MR. MacLEAN: If I can get the dates straight here — May 1980 was the offer through the engineers. The property was expropriated, or title taken, on June 2, 1981. Under the Expropriation Act the expropriating authority has to give the notice of proposed payment within a certain period after them taking the title. It was in October 1981 that we received that notice of proposed payment and shortly thereafter the actual payment in accordance with their proposed payment. That's after they took the title. That was five months after they had expropriated the property.

MR. SZWENDER: I'm still not clear how they could make a proposal of payment on October 1 if no sum had been agreed upon prior to going before the Land Compensation Board. What offer did they give you, and what moneys did they forward, if any?

MRS. SMITH: Perhaps I could handle that question. Under the Expropriation Act, there is a procedure whereby the town must make — I suppose the easiest way to describe it is a statutory offer. The offer or the proposed payment in October 1981 was pursuant to that procedure. They must pay you something when they take the land within the statutory framework. It may or may not be what you were prepared to accept. You are entitled to take that money and apply for more money. It just ensures that when expropriating authorities take the land, the Act is going to make sure something is paid for the land. It's not just sitting in limbo with no payment whatsoever. It's a protection in the Act.

MR. SZWENDER: Was this just a nominal fee then that they forwarded?

MRS. SMITH: They forwarded what they thought the land was worth, which I believe was $1,200 an acre for one quarter section. I think it was the same for both. They had two appraisals at that point, and each appraisal had different values. They chose to pay the lowest value for each quarter although they weren't in the same appraisals.

MR. SZWENDER: One further to Mr. Kowalski. If very little in the form of negotiations had taken place in terms of a final, fair appraisal value, did the town of Grand Centre not anticipate there would be a challenge in front of the Land Compensation Board, which would then prove to make the land beyond what the town of Grand Centre could pay? Was that not considered before the expropriation took place?

MR. W. KOWALSKI: As I indicated earlier, we have to rely upon experts. The difficulty at that particular time was establishing a value for the land. This same parcel of land was appraised after the fact by about five different appraisers, and the values go from a low of $1,200 an acre to a high of $9,500 an acre. And this is the same parcel of land. Our experts say it is agricultural land. It has no other value. So based upon that, that's what our tenders were. I'm just looking at it right now. We have paid about $380,000 based upon agricultural land, based upon the appraisals.

We contemplated that if we couldn't reach a settlement, then of course it would go before the board. But we had no way of predicting what kind of value the board was going to come up with. Our experts say the land is worth $1,200 an acre; the board says that same parcel is worth $6,500. Our expert says the other parcel is worth $1,400 an acre; the board, through the landowners' expert, says it's worth $9,500 an acre. The final appraisal the landowners used didn't come out until some time in 1982. In other words, those figures weren't even presented to us at that time. They didn't come out until about 1982, after the expropriation had occurred. The only thing we were getting ready for, was to have it heard by the board to determine the value. So it was difficult for us to even predict that that was the kind of value that would occur.

MR. SZWENDER: Just one final supplementary without getting into further debate on that. I think Mr. MacLean presented the number of opportunities or occasions on which he had solicited responses yet failed to receive any that were adequate in their response. That leaves a big question in my mind as to the communications.

Just a final supplementary. The land was expropriated for a sewage lagoon, yet I've heard suggestions that there were other options available, as to whether that type of procedure was needed or another site. How much consideration was given to an alternative site? Why did it have to be this section of land that had to be expropriated and why, what I consider, a rather hasty expropriation?

MR. W. KOWALSKI: I can't answer all of that. Perhaps one of the witnesses can.

MR. CHAIRMAN: Perhaps we could call on Mr. Coates for just a moment. For the benefit of members, Mr. Coates is the mayor of Grand Centre, and I think he wanted to respond to the previous question.

MR. COATES: Yes, the hon. member's second last question about the negotiation, and hasty, and so on. I just want to reiterate — as a just-elected junior member on council at that time, I don't think the incredible kind of pressure that was on because of impending development is maybe quite appreciated here. Let me call it a hothouse atmosphere. If you don't get ready, if you don't have your services and infrastructure in place, this place is going to turn into a social jungle — that kind of thing. That was the atmosphere in which all of this was taking place. So if things seemed to march rather quickly and tersely at the time, you have to put it in that context.

We were at the situation where the town of Grand Centre could not expand anymore without these facilities. Any delay at that point put things back not just two or three months, but any delay whatsoever would have put us back a whole year or

perhaps a year and a half in terms of construction. In the times that existed then, a year and a half was an unthinkable kind of delay. Now it didn't happen that way; we all know what happened with the economy. But that was the atmosphere at the time. We had to get something done and get it done sort of yesterday to accommodate the development we felt was almost certainly going to take place.

MR. W. KOWALSKI: Mr. Chairman, if I just might — the other part of your question was with respect to alternate sites or alternate types of facilities. Again I can only speak from what I've found out after because, as you'll recall from Mr. MacLean's scenario, I didn't get involved in this until 1980 or '81. I understood that one of the processes looked at was a mechanical sewage treatment plant. It was considered to be too expensive not only for construction but for maintenance purposes. So that was set aside. Surely if we had known the Land Compensation Board was going to come with the value they did for the land, then the mechanical system would have been cheap in retrospect.

The other was of course alternate sites. Again our engineers said, this is the only site. So we were faced with that kind of dilemma.

MR. THOMPSON: Mr. Chairman, my question to Mr. Kowalski is to do with the air base out there. He mentioned the fact that they were aware all along about what was happening. When your experts said that this was the place to build the lagoon, what effort did the town make at that time to get clearance from the air base to go ahead with this thing? Maybe you could expand just a little bit on that for the committee.

MR. W. KOWALSKI: Again, what I can recall from looking at the minutes of the meetings is that representatives from the air base were involved from day one. For well over a year, there was a representative from the air base at the regional meetings that were held. That representative was aware of the fact that the town was considering those particular sites, and nothing was said about them having any objection. In terms of whether or not the town went to the air base and said to them outright, do you have any objections — I guess the feeling was: you're there; if you have one, you'll tell us. The first formal objection that appears in the meetings didn't occur until about April 1981. At that time the expropriation had been started, and we were at a stage where we had to make up our minds whether we were going to complete the expropriation or abandon it. As Mr. Coates said, at that time we were under some pressure of time constraint to go ahead with it.

There were some discussions with base personnel between the time they raised their objection in April 1981 and the time we finished the expropriation in June 1981. At that particular time, it appeared to everybody that the problem the base was raising could be solved. There was a fencing system talked about; there was a screening system. Sewage lagoons had been located adjacent to other military bases in Canada, so we didn't look at it as a problem that couldn't be overcome. It was only after the expropriation was completed that the base formally objected to everything, and we couldn't do much about it at that stage.

MR. THOMPSON: A supplemental, Mr. Chairman. When you say "representatives" who are you talking about, the commanding officer or flight sergeant or whatever they're called. Maybe you can expand a little more on who represented the air base. You said there was no objection at all. They sat in on these meetings; they knew what was happening. Yet after the expropriation was made, they said no. I find it hard to believe there was no real reaction from the air base to this proposal, that all of sudden they decided afterward that it just couldn't go. Who were the representatives, for instance, from the air base?

MR. W. JOHNSTON: Perhaps I could answer that. I'm the mayor of Cold Lake. Although we're not the expropriating authority, we're involved inasmuch as Grand Centre and Cold Lake have a regional utilities system where the water and sewage systems serve both communities. I was a member of the board for the period of time in question. The base was represented on the board by Major Reader at the time, and after that by Major LeMay, who was an appointee of the base commander. I cannot answer who he reported to or how often he reported or what procedures they used for that reporting, but he was appointed by the base commander to represent the base on the regional utilities board.

MR. THOMPSON: Thank you, Mr. Chairman. No questions.

MR. STROMBERG: Two questions, Mr. Chairman. Mr. Kowalski, you indicated that you were almost ordered to go ahead with the sewage lagoon. What I'd like to know is who instructed you? Was it the local health unit, a regional planning board, the Department of Municipal Affairs, or Alberta Housing? Where did this instruction come from?

MR. W. KOWALSKI: Again I would have to ask one of my friends to answer that, because I wasn't involved in the political process or the preplanning process.

MR. COATES: Again, I'd just arrived on the scene at the time, but as I recall it the town of Grand Centre had been advised some time earlier, I believe, by the Department of the Environment that our present sewage lagoon was at capacity, overcapacity, and that there would be no further construction of housing allowed until the facilities were expanded and upgraded. Whether or not you call that an instruction, as far as we were concerned our development was frozen until such a thing came along. As I indicated earlier, the pressure of the time and so on, that you have to get with it — the whole atmosphere in which things took place had a great deal to do with it too. Our utilities were at capacity for the town of Grand Centre, and we couldn't develop the way we were told we would have to.

MR. STROMBERG: A supplementary. Do you have a regional planning board for that part of northeast Alberta?

MR. COATES: We do not.

MR. STROMBERG: My second question to Mr. Kowalski. You are petitioning us for the right to appear before the Surface Rights Board. What makes you think the Surface Rights Board will give you a better break than the other board you've been through?

MR. W. KOWALSKI: I have no way of guaranteeing whether or not we'll get a better hearing, but the purpose before the Surface Rights Board would be a matter of compensation for loss of use of the property as opposed to physically taking it. Part of our Bill says that we want them to have the land back, because we can't use it. Therefore we think we have an obligation to compensate them for the fact that we've deprived them of the use of that land, much like an easement would be granted to an oil company, et cetera. So it would be a different type of argument that would be presented.

Sir, with respect to your first question — I'm sorry, but I think I have a better understanding of what you were saying. One of the handouts I've given the chairman deals with the fact that on February 1, 1980, there was a meeting, and Mr. Cookson, Minister of Environment at that time, was present. That's when the decision was made to proceed with this system, and it was determined that the town should be the one that built it. I've also put some other minutes in the handout where Mr. Craig, who I think is the executive assistant for Mr. Isley's office, was at a meeting and inquiring how the system was going and what was happening. As well, at another stage a development permit was issued by the department to proceed with it, so I guess various government agencies were involved.

MR. CHAIRMAN: Mr. Kowalski or perhaps Mr. Coates, respecting that question regarding a regional planning board, is the town of Grand Centre not a member of a regional planning commission?

MR. COATES: No, we're not.

MR. CHAIRMAN: I understood there was a development permit that was refused. What was that about?

MR. W. KOWALSKI: The development permit? When the engineers applied to actually start building the sewage lagoon site — you have to apply to the municipality that has the authority to grant a building permit. This was the MD of Bonnyville because the land is located in the MD of Bonnyville.

MR. CHAIRMAN: It was the MD's planning committee that refused?

MR. W. KOWALSKI: They were the ones that refused; that's correct.

MR. SZWENDER: Just a supplementary on the chairman's question. Mr. Kowalski, what was the start-up date when the engineers were going to begin the actual construction?

MR. W. KOWALSKI: I don't have a specific date. The only thing I recall is that they were telling us continuously that they had to gain access to the land in the summer in order to start construction. I guess that would have been July or August 1981.

MR. CLEGG: Mr. Kowalski, a supplementary on that question. You mentioned that there was a committee involved which had a representative from the base during all these matters. In view of the fact you were considering a piece of land in the MD of Bonnyville, was a representative of the MD of Bonnyville on that committee?

MR. W. JOHNSTON: No, there was not.

MR. CLEGG: Was there any consultation with them about the use of that land as a sewage lagoon prior to the expropriation?

MR. W. KOWALSKI: Again, I don't know. Our engineers were looking after those aspects. We assumed they had consulted the MD. In the subsequent parcel of land we've eventually purchased — or again expropriated — for the sewage lagoon site, we went to the MD and said: here's what we want; will you give us a building permit; do you have any objection? So we assumed the engineers had done that. Insofar as having a representative from the MD sit on the committee during all the negotiations and stuff like that, I don't think it's a normal thing that would occur. You would go to them as the authority that says yes, you can do this on land in our jurisdiction.

MR. CLEGG: Mr. Chairman, a final supplementary on this point. You have been referring throughout to your engineers. Are these employees of the town you're referring to, or did you retain consulting engineers to advise you on this matter?

MR. W. KOWALSKI: Consulting engineers. W. J. Francl & Associates were the consulting engineers.

MR. SZWENDER: A supplementary, Mr. Chairman. Have any physical changes at all occurred on this section of land in dispute?

MR. COATES: No.

MR. SZWENDER: So no work was done by the engineers at all, even after they asked for access to the land?

MR. W. KOWALSKI: The only thing that occurred was that there were some soil tests taken, but I think that was even before ... There's been no construction done on this site at all.

MR. CHAIRMAN: The hon. Member for Camrose has a supplementary.

MR. STROMBERG: I hope it's a supplementary, Mr. Chairman.

Usually the Department of the Environment has to okay all engineering, all plans for any type of lagoon. In other words, they have a pretty heavy hand in whether or not this lagoon is going to be approved. Was that the case with your two towns?

MR. W. KOWALSKI: We have the permit to construct from the Department of the Environment. I agree with you that they have to take a look at it to

see that it's environmentally sound. As far as the construction and design of it, I think the permit to construct is an indication that they've said it's okay.

MR. STROMBERG: My last supplementary. The Department of the Environment normally would have checked as to the hazards of waterfowl on that lagoon in regard to plane flights. Did the Department of the Environment give any indication to that proposed problem?

MR. W. KOWALSKI: We have nothing on record in all the documents saying they've ever objected to it, that it's not a safe site because of potential bird problems.

MR. PAPROSKI: Mr. Chairman, my question and my comments are directed to Mr. Kowalski as well. They deal primarily with your closing arguments. You indicated that you are offering this land back to the citizens, and then you stated — and I don't know whether these comments come from Mrs. Bellingham's remarks or not — that indeed you are prepared to compensate them. I suppose I'm asking to what degree. What are you referring to here when you say "compensation"?

MR. W. KOWALSKI: As I indicated earlier, when land is expropriated, you compensate the parties for the fact that you've deprived them of a parcel of land, so in effect you have to pay for it. While we're saying that they can have the land back, we appreciate that they may have suffered some losses in terms of not being able to derive any income from the land during this period of time. So it's only fair that if they were farming the land and receiving a certain income, we should pay them for the lost income during that period of time. We would have to take a look at any other losses that they can establish have arisen directly from this expropriation, and see whether they're directly as a result of the expropriation.

As I indicated earlier, we've already paid $380,000. We've cleared off any encumbrances that were against the property, such as mortgages. I believe there was only one. We've paid an interest penalty in respect of our prepayment of that mortgage. So in terms of dollars and cents, they have had some money available already, and they have made a profit based upon what they initially purchased the land for. But if they can establish that in fact their losses are in excess of the amount we've paid already, then I think we have to accept that's what we should be paying for.

MR. PAPROSKI: Okay, just a supplementary on this point. You're bringing up some valid arguments. My concern, though, is that — you brought this up in your closing arguments — because of the miscommunication or poor communication that has gone on in this whole affair, as far as I'm concerned, I would like to ask what kind of communication there has been with the citizens with respect to this compensation you are talking about now and perhaps into the future, if indeed a decision were made by them to accept the land back.

MR. W. KOWALSKI: We've had negotiations since the Court of Appeal decision, and we have had various offers going back and forth. It's difficult for me to respond to this because, as you're probably aware, most lawyers negotiate under terms of without prejudice offers. In a court of law, these are not to be brought forward to show that somebody has made a commitment in one way or the other.

But proposals have been made back and forth. As I indicated, one of those proposals was a return of the land and cash compensation as well. We haven't been able to meet at any common ground. I don't know whether my friend would raise any objection or whether it's appropriate to do that, but if you want figures, I'm prepared to put those forward.

MR. PAPROSKI: No, Mr. Chairman, I'm not asking for figures. I'm asking if indeed there has been good communication occurring. I hear the gentleman indicating that that communication has occurred. Perhaps Mrs. Smith might want to comment on this area as well.

MRS. SMITH: The comment I'd make in this area, sir, is that for the first time we are receiving a response to proposals we made in respect of negotiation, which had never occurred before.

MR. CHAIRMAN: Mr. Kowalski, I have two or three questions. Or perhaps Mrs. Smith would care to tell me if there are reasons for the Court of Appeal's decision. I've seen the judgment, but I haven't seen reasons for decision. Are those included in the material you've provided us with?

MR. W. KOWALSKI: The last sheet of the material has the Court of Appeal's decision; it's a three-page decision.

MR. CHAIRMAN: Are those the reasons for decision, or is that just the judgment?

MR. W. KOWALSKI: That is the decision in total. It was given by Mr. Justice Stevenson, and that's the total decision.

MR. CHAIRMAN: That's entitled "judgment", I believe.

MR. W. KOWALSKI: That's right.

MR. CHAIRMAN: But there are not reasons for decision.

MR. W. KOWALSKI: It discloses the reasons. They're saying that they've examined the transcripts, and they feel that Mr. Boyd's decision was, as Mrs. Smith has indicated, a carefully considered decision, and that's all. There's nothing more; it's all in the three pages.

MR. CHAIRMAN: Mrs. Smith, perhaps you could tell me from where you're quoting the court saying the decision of Mr. Boyd was a carefully considered decision.

MRS. SMITH: Paragraph 2, page 1, starting "Mr. Justice Stevenson":

> In a carefully considered judgment the Chairman of the Land Compensation Board, Mr. Boyd, fixed that amount,

accepting the expert opinions of E.J. Shaske over that of two other appraisers.

MR. CHAIRMAN: All right, we're looking at the judgment, and that doesn't have those words.

MRS. SMITH: I'm sorry. I thought that memorandum was part of the material.

MR. W. KOWALSKI: The material I handed to Mr. Clegg has the memorandum of judgment.

MR. CHAIRMAN: Committee members haven't been provided with copies of that material, so that will have to be . . .

MRS. SMITH: That's the last sheet of Mr. Kowalski's material, the last item, and it's entitled Memorandum of Judgment.

MR. CHAIRMAN: Thank you. That's what I was looking for.

What prospects are there now for development of this property?

MRS. SMITH: I'm not sure any of us are capable of answering that question with any degree of certainty. I think it is fair to say that the prospects are not the same as they were in 1980, at which time the town advised us they wanted to expropriate. I would venture this much: from reading the newspapers, the town of Grand Centre appears to be in somewhat better condition than the city of Edmonton, in view of the kinds of projects that are being announced. I don't think one can predict.

I can assure you — and I think this is a fair comment to make, Mr. Chairman — that my clients do not want to take the land back. They are extremely concerned about what prospects they might have personally in developing the land, in view of the nature of the proceedings that have gone on to this point. Also, their situation is a lot different than it was in 1980. Their land was basically taken in 1980, the expropriation wasn't complete until June 1981, but they were advised that this land would be taken. They made other investment decisions, relying on the fact that once the land is taken, it's going to be paid for. Their interests are certainly different than they were in 1980 and 1981 when the land was taken. They made decisions based on the fact that the land was going to be taken and was going to be retained.

Other than making that comment, I don't think much more can be said about the prospects for development.

MR. COATES: Mr. Chairman, might I reply to the question? As far as the prospects for development of the land, I think it's obvious from the various reportings — newspapers, wherever — that with the increased development in our community through heavy oil, through the expansion of the Canadian Forces Base, and so on, if there's any property around any small town that is developable, it must be some place around our town, because we do have activity that many other communities aren't sharing. So it is developable.

In terms of whether or not the individual people feel prejudiced or that somehow we would be against their developing land or would somehow hinder it, I can only assure the committee that that would not be the case. As a small town, we welcome positive development and don't question who the developers are.

MR. CHAIRMAN: Mr. Coates, having now acquired the property, would there be anything standing in the way of the town of Grand Centre itself developing the property at this time?

MR. COATES: I think we have always tried to follow the lead and philosophy of this government, in that the town of Grande Centre doesn't want to become a developer. That's the area of the private developer. We don't want to get caught in the situation of some other municipalities, where we try to become businessmen. That's not what we are. We are there to provide municipal services, and we feel development should be done by the private sector. We'd like to stay out of that, because we don't have that kind of expertise.

MR. CHAIRMAN: But outside your general policy against that type of activity, there'd be nothing standing in your way?

MR. COATES: Finances.

MR. CLEGG: Mr. Chairman, a supplementary in this direction. Has the town considered the possibility of selling the land to another developer? On the basis of the fact that her clients have sold the land, or had it expropriated and had a price fixed, Mrs. Smith has represented that her clients have made other decisions as to how they should use their money, and therefore don't wish to become involved themselves in developing the land. Have you looked at the possibility of selling it?

MR. W. KOWALSKI: Our position has been that that land doesn't have the value the board attributed to it. That's buoyed up with the summary of land transactions that have reverted to the owners by way — we're still convinced in our own minds that the value that was attributed by the board is so far out of touch with reality that you'll never get that value again. So in terms of trying to sell it, no, we've never tried to sell it. We have taken this approach, and we're hoping we can give it back to the owners, who wanted it for development.

My personal experience as a lawyer in the area is that there aren't any sales of farmland in the area that might be developed for industrial purposes. There's just no interest in it.

MR. ZIP: Mr. Chairman, there are several questions revolving around my mind. The first question revolves around the fact that since the location of the land expropriated was beyond the jurisdiction of the town of Grand Centre, it seems to me that before any steps to undertake expropriation were taken involving the financial responsibility that's involved with expropriation, what assurances did the town of Grand Centre have from the other jurisdictions that were involved, the MD of Bonnyville and also, because of the interest with respect to impingement upon the use of its runways and so forth, the Department of National Defence? What assurances

did the town get from these jurisdictions that it could in fact use that expropriated land for the purpose for which it was expropriating it?

MR. W. KOWALSKI: I guess the only way I can answer that is: as I indicated earlier, the Department of National Defence, through its involvement in this whole process, going back well over a year, never at any time objected to it until we were already into the expropriation and were under some pressure to complete it. Insofar as consulting with the MD, again the only thing I can say is that our experts, the engineers who were taking care of all of that, never indicated to us any problem whatsoever of the MD objecting to it. Perhaps we were putting the cart before the horse at some particular stage, but there was no indication at all that the MD had any objection whatsoever to the sewage lagoon site, until the Department of National Defence filed a formal complaint, and at that time they wouldn't grant the building permit.

MR. ZIP: It would seem wise to me, sir, that before you undertake a step like that, you have something in writing from these people, so you're not caught in the kind of situation where you've committed them to backing you up in this type of decision.

But the other question I have is with respect to the property owners. Number one, did the property owners in fact make financial commitments based on this expectation of the moneys they were going to receive from the town of Grande Centre, on the value of that land expropriated?

MRS. SMITH: Unfortunately, sir, I have to advise you that subsequent to the decision of the Land Compensation Board, one or more of my property owners did make commitments. This has been a rather unfortunate set of events and circumstances for the individuals involved who made other financial commitments based on their expectation that — as I had advised them, it had never happened to me before that a town wouldn't pay. So there were certain commitments made. I want to advise you that not all of them have made commitments in that respect, but some of them have.

MR. ZIP: Thank you. There's another question. Did it trigger capital gains proceedings from Revenue Canada?

MRS. SMITH: Capital gains proceedings are triggered as of January 18 this year, based on the Court of Appeal decision.

MR. CHAIRMAN: We have only a few moments of time left in the Chamber, so we'll have to move along. But I do have one last question, that hasn't been addressed. What consideration has been given by the towns involved in this expropriation for compensating for the lost opportunity the landowners have experienced, the loss of the opportunity to sell their land during the period between 1981 and 1983?

MR. W. KOWALSKI: We haven't given much consideration to that, because during that period of time, nobody was selling. Everybody was foreclosing and taking land back. One of the difficulties that occurred at the Land Compensation Board hearing was that in trying to determine the highest and best use of that land in Mr. Shaske's appraisal — all of the parties were faced with that — when you determine highest and best use, you take a look at similar land sales within the time frame to determine what land sold for at that time. The bottom line is that no land was selling. That land quit selling in about 1980 — the summer or so of 1980. I think, and I could be corrected, there was only one transfer of land from the period August 1980 until June 1981. So as I said, it was difficult to determine what the value of the land was, because all the large parcels of land sold well before this situation. Since then, my experience in that area is that again it's foreclosures that are occurring, not sales of land. If any land [sales] have occurred, it's at a substantially lower rate.

MR. CHAIRMAN: When did you say the last land sales occurred?

MR. W. KOWALSKI: In terms of the indicators — the appraisers use indicators saying, this is a similar parcel, et cetera — I believe the last parcel sold in August or maybe even September 1980.

MR. CHAIRMAN: That would be after the offer of the town on May 23, 1980?

MR. W. KOWALSKI: That's right.

MR. CHAIRMAN: Those are all the questions we have. If you think you have anything further to add in the nature of closing remarks, we can hear them. We only have a couple of minutes, however.

MRS. SMITH: Nothing further, except to thank you for the courtesy with which you have treated us today.

MR. MALLON: I have only one thing further, sir. Mr. Kowalski may have left the impression — and I'm sure it wasn't intentional — that when somebody objects to an expropriation by giving a notice of objection and there is a hearing in front of an inquiry officer, his decision is somehow binding on the authorities. The Expropriation Act is very clear. All he can do is make recommendations. It's not binding on the authority at all. The town has the last say in all circumstances. That's my only other comment.

Again, I thank the members.

MR. CHAIRMAN: Thank you.

MR. COATES: Mr. Chairman . . .

MR. CHAIRMAN: Yes, Mr. Coates.

MR. COATES: Sorry. Things move along, and I'm a little like a fish out of water in your environment here. But I would like to just make a brief comment in conclusion.

First of all, there have been a number of questions that have focussed on the objection placed by CFB Cold Lake and the fact that the land couldn't be used. While that's a question all right, to some degree I think it misses the essential point that even if we had constructed a lagoon on that site and were using it today, the compensation fixed by the Land Compensation Board is so far out of reach of the

ability of our community to pay that that still is the essential . . . The essential question is that the compensation awarded is way out of our reach in terms of the ability for a community of 3,000-odd souls to pay. I think it should focus on that.

To come back to earlier mention of the greater public good, in having you support the Bill, I ask: where would the greater public good be served by putting this kind of a burden on the 3,200 people in the town of Grande Centre? It's one that we have no possible way of being able to shoulder, even if we were willing.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Coates.

Can we have a motion to adjourn, please? Moved by the Member for Edmonton Kingsway. Are we agreed?

HON. MEMBERS: Agreed.

[The meeting adjourned at 10:30 a.m.]

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