

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Matheson, LeMay and Schreck JJ.

BETWEEN:	)	
	)	
	)	
REGIONAL MUNICIPALITY OF	)	<i>F. Sperduti, L. Fortini and M. Grant, for the</i>
YORK	)	Appellant
	)	
	)	<i>Appellant</i>
	)	
– and –	)	
	)	
	)	
2090396 ONTARIO LTD.	)	
	)	
	)	<i>M. Flowers and A. Valela, for the</i>
	)	Respondent
	)	
	)	
	)	
	)	
	)	HEARD in Toronto: March 31, 2026
	)	

REASONS FOR JUDGMENT

SCHRECK J.:

[1] Owners of land are ordinarily free to decide whether to sell it and, if so, for what amount. However, the *Expropriations Act*, R.S.O. 1990, c. E.26 (“the Act”) permits the government take private land without the owner’s consent, but requires it to compensate the owner. How that compensation is determined is the subject matter of this appeal.

[2] In 2015, the Regional Municipality of York (“the Region”) expropriated a vacant lot in the City of Vaughan that belonged to a corporation, 2090396 Ontario Limited (“209”). In accordance with the Act, 209 made a claim for compensation to the Ontario Land Tribunal, which held a hearing involving numerous witnesses and thousands of pages of documentary evidence. On April

17, 2025, in a decision reported at 2025 LNONLT 381, 2025 CanLII 34622, the Tribunal determined that 209 was entitled to compensation totalling approximately \$2,400,000.

[3] The Region appeals the Tribunal’s decision to this court on three grounds: (1) the Tribunal erred by failing to “screen out” increases to the value of the property resulting from the scheme that culminated in the expropriation, as required by s. 14(4)(b) of the Act; (2) the Tribunal failed in its assessment of the effect of the Region’s entitlement to demand that portions of the property be conveyed to it without cost in exchange for certain planning approvals, a process known as “land dedication”; and (3) the Tribunal erred in its assessment of injurious affection (the loss of property value resulting from the expropriation).

[4] I would dismiss the appeal. I am not persuaded that the Tribunal committed any legal error in its application of s. 14(4)(b) of the Act. In my view, the complaints raised by the appellant in relation to the land dedications relate to questions of fact or mixed fact and law, matters in respect of which the Tribunal’s conclusions are entitled to deference and which are not subject to appellate intervention absent any palpable and overriding error, which has not been demonstrated. As the appellant’s submissions respecting injurious affection are premised on the success of the other grounds of appeal, they must be rejected.

[5] The following reasons explain these conclusions.

I. THE FACTUAL AND LEGAL CONTEXT

A. The Expropriations Act

[6] The Act sets out how and in what circumstances land may expropriated, none of which is at issue on this appeal. Section 13(1) of the Act provides that an individual whose land is expropriated is entitled to compensation as is determined in accordance with the Act based on the factors set out in s. 13(2). The factors that are relevant in this case are the market value of the land (s. 13(2)(a)) and damages for injurious affection (s. 13(2)(b)).

[7] Section 14(1) provides that the market value of land is “the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.” This has been interpreted to mean the amount that a reasonably informed person would pay for the property based on its “highest and best use”, which is determined based on information available as of the valuation date: *1353837 Ontario Inc. v. Stratford (City)*, 2022 ONSC 6347 (Div. Ct.), 36 R.P.R. (6th) 207, at para. 19. To establish the highest and best use of property, a four-part test must be met. The proposed use must be (1) legally permissible; (2) physically possible; (3) financially feasible; and (4) maximally profitable. Each part of the test must be considered sequentially and all four parts must be met to establish highest and best use: *135387 Ontario*, at para. 21.

[8] The determination of the market value is subject to the requirements of s. 14(4)(b) of the Act, which provides as follows:

(4) In determining the market value of land, no account shall be taken of,

....

(b) any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the expropriation is made or from any expropriation or imminent prospect of expropriation;

This process is sometimes referred to as “screening out” the expropriation scheme.

[9] If the highest and best use of the property would require rezoning or other types of planning approvals, the claimant (here 209) must establish that it is probable that such approvals would be granted: *Farlinger Developments Ltd. v. East York (Borough)* (1976), 9 O.R. (2d) 553. In some cases, a municipality will only grant approvals if the landowner agrees to convey part of the land to it pursuant to ss. 41(8) and 41(9) of the *Planning Act*, R.S.O. 1990, c. P.13, a process known as “land dedication.”

B. The Expropriation in This Case

[10] The respondent, 209, owned a vacant lot at 1500 Centre Street, located on the northeast corner of Centre Street and Dufferin Street in the City of Vaughan. On April 7, 2015, the Region registered an Expropriation Plan pursuant to the Act expropriating a fee simple interest on part of the property as well as a five-year temporary easement.

[11] The stated purpose for the expropriation was “implementing road and intersection improvements along Highway 7, Centre Street and Bathurst Street, including associated local roads, and to provide designated lanes for the vivaNEXT transit system and works ancillary thereto.” The vivaNEXT was a bus rapid transit system which was to have a dedicated right of way in the centre of the travelled portion of the street.

C. The Tribunal’s Determination

(i) The Positions of the Parties

[12] The respondent brought a claim for compensation before the Ontario Land Tribunal. It took the position that the highest and best use of the property prior to expropriation would have been a 12-story mixed-use residential and commercial development, the particulars of which were outlined in what the parties referred to at the hearing as “Development Concept 1.”

[13] The respondent submitted that it was entitled to the following in addition to interest and costs:

- \$857,493, said to be the market value for the fee simple interest (based on a rate of \$182 per square foot);
- \$1,502,067 as damages for injurious affection to the market value of the remaining portion of the property;

- \$45,095, said to be the market value of the temporary easement.

[14] Before the Tribunal, the appellant took the position that the respondent did not meet the four-part test for establishing that Development Concept 1 was the highest and best use of the property, particularly in light of the required “screening out” of the expropriation scheme. The appellant also submitted that probable land dedications would also make Development Concept 1 unfeasible.

[15] The appellant took the position that the highest and best use of the property was as a low-rise commercial development, and the respondent was only entitled to the following:

- \$376,920 for the fee simple interest (based on \$80 per square foot);
- no damages for injurious affection;
- \$12,348 for the temporary easement.

(ii) The Hearing

[16] Based on what was in issue, the Tribunal’s determination of the appropriate level of compensation required it to resolve the issues of (1) whether Development Concept 1 was the highest and best use of the property, (2) the impact, if any, of the screening out process, and (3) the impact, if any, of potential land dedication.

[17] The Tribunal conducted a 10-day hearing between January 13 and 24, 2025 in which it heard the testimony of 11 witnesses, all but one of whom was qualified to provide expert opinion evidence. The areas of expertise included land use planning, architecture and urban design, transportation planning and engineering, real estate analysis and development feasibility, and real estate appraisal. The parties also filed over 4,500 pages of documentary evidence.

(iii) The Decision

[18] On April 17, 2025, the Tribunal released a 53-page decision in which it concluded that Development Concept 1 was legally permissible, physically possible, financially feasible and maximally profitable. It rejected the appellant’s submissions that a finding of highest and best use was incompatible with the appropriate “screening out” process. The Tribunal also did not accept the appellant’s submission that it would likely have obtained certain land dedications that would have affected the viability of Development Concept 1.

[19] In the result, the Tribunal concluded that the claimant was entitled to the amounts it requested for the fee simple interest (\$857,493) and as damages for injurious affection (\$1,502,067), as well as \$12,348 for the temporary easement. The value of the temporary easement is not in issue on this appeal.

II. JURISDICTION AND STANDARD OF REVIEW

[20] Section 31(1) of the Act provides that decisions of the Tribunal can be appealed to this court “on a question of law or fact or both.” Questions of law are reviewable on a correctness standard. Questions of fact are reviewable on a standard of palpable and overriding error, as are questions of mixed fact and law unless there is an extricable question of law, which is reviewable for correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 43.

III. GROUNDS OF APPEAL

A. Application of s. 14(4)(b) of the Act

(i) *The Issue*

[21] The Tribunal concluded that Development Concept 1 was legally permissible based primarily on the evidence of Antonio Volpentesta, the respondent’s land use planning expert. He testified that Development Concept 1 would have required an official plan amendment and a zoning by-law amendment, which in his opinion would likely have been granted as they would have been consistent with the provincial and municipal planning policies in effect on the valuation date. In coming to that conclusion, Mr. Volpentesta relied on a number of policies and planning instruments, which were described in the Tribunal’s reasons at paras. 24-27 and which included the following:

- York Region’s 2010 Official Plan;
- the City of Vaughan’s 2010 Official Plan;
- the 2013 Thornhill Centre Street Land Use Plan;
- Vaughan’s 2013 Centre Street Urban Design Guidelines;
- Vaughan’s 2013 Centre Street Streetscape Plan.

[22] In 2005, a York Region environmental assessment report designated Centre Street as a “preferred alignment” for the implementation of rapid transit systems. In the Region’s 2009 Transportation Master Plan, Centre Street was designated as a “rapid transit corridor.” The appellant took the position that the imminent creation of a rapid transit system on Centre Street influenced land planning and urban design policies in the area that resulted in increased density and higher intensity mixed use development, including those that resulted in the creation of the documents relied on by Mr. Volpentesta. The appellant submitted that s. 14(4)(b) of the Act required that those documents be “screened out” and without them, Development Concept 1 could not have been achieved.

(ii) *The Tribunal’s Reasons*

[23] The Tribunal rejected the appellant’s submission for a number of reasons:

- there is “no clearly established connection or direct relationship” between the designations, policies and policy documents and the expropriation scheme (para. 38);
- bus rapid transit already existed on Centre Street on the valuation date, and while the Region’s 2010 Official Plan referred to bus rapid transit corridors, it did not expressly stipulate that the corridors must have dedicated lanes (para. 39);
- the fact that policies were “influenced by” the scheme is not sufficient to engage s. 14(4)(b) (para. 40);
- the Region and City 2010 Official Plans were general in scope and did not target specific areas of properties (para. 41);
- the “link between the designations, the policies, and the policy documents the Regions wishes to screen out are far too tenuous, oblique, and remote to warrant the conclusion pressed by the Region” (para. 42);
- the documents “neither contemplated nor required the taking” of the respondent’s land. The “transit-supportive vision” in several of the documents “could have been implemented without the expropriation of the Subject Property” as Centre Street was “already a transit-supported corridor” that a bus rapid transit route (para. 44).

[24] The Tribunal went on to conclude that even if the documents identified by the appellant were screened out, Mr. Volpentesta’s conclusion that the required planning amendments would probably have been granted was supported by other policies, including the 1994 York Region Official Plan and the 2006 Golden Horseshoe Growth Plan (para. 46).

(iii) *Relevant Legal Principles*

(a) *Codification of the Pointe Gourde Principle*

[25] Section 14(4)(b) is a codification of a common law principle known at the “*Pointe Gourde* principle,” the origins of which can be found in a 1947 decision of the Judicial Committee of the Privy Council: *Pointe Gourde Quarrying and Transport Co. v. Sub-Intendent of Crown Lands*, [1947] A.C. 565 (P.C.). The principle is designed to ensure that the expropriation results in neither an economic burden nor a windfall for the landowner, who is entitled to “fair compensation but not more than fair compensation”: *St. John’s (City) v. Lynch*, 2024 SCC 18, 491 D.L.R. (4th) 581, at paras. 37, 49.

(b) *Terminology*

[26] Before considering the explanation of the *Pointe Gourde* principle set out in *Lynch*, it should be noted that the terminology used in that decision, other decisions and the Act is not always the same. The two key concepts discussed in *Lynch* are referred to as “enactments” and “the expropriation scheme,” terms which do not appear in the Act.

[27] An “enactment” includes governmental decisions that restrict land use, such as zoning by-laws, regulations, and municipal or provincial land-use policies: *Lynch*, at paras. 33, 38, 55. In the context of this case, the relevant “enactments” are the instruments and documents Mr. Volpentesta relied on to conclude that various by-law and official plan amendments that would have been necessary for Development Concept 1 to have been granted.

[28] The “expropriation scheme” refers to “the government actions that culminated in the expropriation”: *Windsor (City) v. Paciorka Leaseholds Limited*, 2012 ONCA 431, 111 O.R. (3d) 431, at para. 1. As noted, the term does not appear in s. 14(4)(b) of the Act, which instead refers to “the development or the imminence of the development in respect of which the expropriation is made.”

(c) *St. John’s (City) v. Lynch*

[29] The basic elements of the *Pointe Gourde* principle were set out in *Lynch* and can be summarized as follows:

- applying the principle “requires consideration of whether an enactment was made with a view to the expropriation,” that is, whether it was “made for the purpose of expropriating rather than regulating”: *Lynch*, at paras. 54, 56;
- whether an enactment was made with a view to expropriation “depends entirely on a case’s factual circumstances” and the assessment “calls out for flexibility in its application and deference in its review”: *Lynch*, at para. 57;
- the inquiry requires an examination of the purposes and effects of the enactment, which can be discerned from the terms of the enactment itself or from evidence such as policy statements, correspondence, or other sources: *Lynch*, at para. 48;
- a “broad conception of causation should [not] drive the inquiry,” that is, the analysis does not turn on whether the regulatory enactment was a link in the chain of events leading to the expropriation (*i.e.*, that “but for” the enactment there would have been no expropriation), although “it is not enough for a regulatory enactment to be a ‘related connection’ to the ... expropriation to be ignored in assessing compensation”: *Lynch*, at paras. 52-53;
- factors to consider may includes whether the enactment is part of a city-wide or province-wide policy that does not target specific properties and whether it was enacted by the same public authority that expropriated the property: *Lynch*, at para. 55.

(d) *The Nature of the Inquiry*

[30] Central to the analysis in *Lynch* is the recognition that an act of expropriation is always “part of a continuing process”: *Lynch*, at paras. 20, 40, 53, 61. “The key question is, therefore, What is the scope of the expropriation scheme?”: *Lynch*, at para. 39. However, this type of determination “does not admit of bright-line rules”: *Lynch*, at para. 65. The reason for this was

explained by Denning L.J. in *Wilson v. Liverpool Corporation* (1971), 1 All E.R. 628 (C.A.), a p. 634 (as cited in *Windsor (City) v. Leaseholds Ltd.*, 2011 ONSC 2876 (Div. Ct.), 106 O.R. (3d) 690, at para. 54 (rev'd on other grounds, *supra*)):

A scheme is a progressive thing. It starts vague and known to few. It becomes more precise and better known as time goes by. Eventually it becomes precise and definite and known to all. Correspondingly, its impact has a progressive effect on values. At first it has little effect because it is so vague and uncertain. As it becomes more precise and better known so its impact increases until it has an important effect. It is this increase, whether big or small, which is to be disregarded at the time when the value is assessed.

[31] Because of the lack of bright-line rules, as noted in *Lynch*, at para. 47, whether an enactment was made with a view to expropriation

... is normally a factual determination to be made by the board or other authority tasked with determining compensation (...*Vision Homes Ltd. v. Nanaimo (City)* (1996), 59 L.C.R. 106 (B.C.C.A.), at para. 20; *Clements v. Penticton (City)*, 2005 BCCA 212, 86 L.C.R. 81, at para. 12). Courts reviewing these determinations must accord deference to first instance decision-makers. On an appeal, compensation determinations are generally reviewable only for palpable and overriding error, absent an extricable error of law (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 36).

To similar effect, the Court of Appeal in *Paciorka*, at para. 18, stated:

The determination of which of the various government actions form part of the expropriation scheme is a factual one that engages squarely the OMB's specialized expertise in applying the relevant legal principles under the Expropriations Act. is a factual one. As such, it is reviewable on a standard of palpable and overriding error.

(iv) *Alleged Errors*

[32] Section 14(4)(b) of the Act requires the “screening out” of “any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the expropriation is made or from any expropriation or imminent prospect of expropriation.” The appellant alleges a number of errors in the Tribunal's analysis, but the common theme is a submission that the Tribunal took an overly narrow view of what constitutes a “development in respect of which the expropriation is made” and the required connection between such a development and any increase in value.

[33] According to the appellant, the instruments and documents relied on by Mr. Volpentesta “represent the advancement of a policy regime that promotes dense, transit-supportive

development integrated into the Scheme along Centre Street” (Appellant’s Factum, para. 40) and, as such, were sufficiently connected to the expropriation such that their effect had to be “screened out.” The Tribunal therefore erred in law by requiring, at para. 38 of its reasons, a “clearly established connection or direct relationship.” The Tribunal’s reliance on the fact that the documents “neither contemplated nor required the taking” and “could have been implemented without the expropriation” (at para. 44) demonstrates an improper focus on causation, which constitutes an additional error of law.

(v) *Analysis*

(a) *Standard of Review*

[34] The Tribunal’s conclusions respecting the effect of s. 14(4)(b) of the Act involve a detailed consideration of the facts. The appellant submits that the Tribunal failed to “properly apply” s. 14(4)(b) of the Act. The application of legal principles to the facts raises issues of mixed fact and law which are reviewable for palpable and overriding error except with respect to any extricable questions of law.

[35] While the appellant does not expressly identify extricable questions of law as such, as outlined earlier, it takes issue with particular phrases the Tribunal used in its reasons, which the appellant submits demonstrates a legally flawed approach.

(b) *“clearly established connection”*

[36] In para. 38 of its reasons, the Tribunal stated:

The Tribunal is not persuaded that the designations, policies, and policy documents relied upon by the Claimant, including those listed above, were made with a view to the expropriation. There is no clearly established connection or direct relationship between the Scheme and those designations, policies, and policy documents (especially the designation of Centre Street as a rapid transit corridor generally and as a Regional Corridor under the ROP [Region’s Official Plan] 2010).

[37] The Tribunal’s use of the phrase “established connection or direct relationship” does not reflect any error. While that phrase does not appear in *Lynch*, it is not inconsistent with the principles outlined in that case, which held that a “related connection” was insufficient: *Lynch*, at para. 53. The court continued as follows, at para. 54:

As I have explained, giving effect to the *Pointe Gourde* principle requires consideration of whether an enactment was made with a view to the expropriation. If it was connected in this manner, it should be considered part of the expropriation scheme and its effects excluded from the compensation assessment.

[38] The Tribunal was well aware of the type of connection required by *Lynch* and specifically referred to it (at para. 37). When considered in the context of the reasons as a whole, the Tribunal's use of the phrase "clearly established connection" was simply a reference to the type of connection described in *Lynch*, that is, a connection in the sense that the enactment was made with a view to the expropriation.

[39] The appellant submits that "screening out" was required because the documents in question were "influenced by scheme." In support of its submission that "influence" describes the type of connection that requires a "screening out," the appellant relies on the Ontario Land Tribunal decision in 536555 *Ontario Ltd. & Emros Developments Corp. v. Ottawa (City)*, 2024 LNONLT 936, 2024 CanLII 74379, at para. 27. That case was heard before *Lynch* was released and while the decision was released after *Lynch*, it makes no reference to it. In my view, the test in *Lynch*, that an enactment be made with a view to the expropriation, clearly requires more than "influence."

(c) *"neither contemplated nor required the taking"*

[40] The phrase "neither contemplated nor required the taking," which the appellant submits demonstrates a legally incorrect approach, comes directly from *Lynch*, at para. 52, where the court considers the submission of the respondent in that case that a causal connection should be required:

I do not agree that this broad conception of causation should drive the inquiry. It is inconsistent with the jurisprudence highlighted above, which affirms that zoning regulations properly bear on the compensation for expropriation. Adopting this approach would risk including as part of the expropriation scheme "decisions that neither contemplated nor required a taking" (I.F., Attorney General of British Columbia, at para. 43).

(d) *Alleged Improper Focus on Causation*

[41] I do not agree that the Tribunal improperly focussed on causation. While the Court in *Lynch* warned against such an improper focus, it must be remembered that that case involved Newfoundland and Labrador's *Expropriation Act*, R.S.N.L. 1990, c. E-19, which differed in some respect from Ontario's. While s. 27(1)(a) the Newfoundland Act provided that "no account shall be taken of the compulsory acquisition of the land," s. 14(4)(b) of the Ontario Act excludes consideration of increase or decreases in value "resulting from" the development in respect of which the expropriation is made or the expropriation.

[42] As noted in *Lynch*, at para. 38, "the specific terms of the relevant jurisdiction's statutory provisions must ground any compensation analysis." The specific terms of Ontario's provision required the Tribunal to consider whether increases or decreases in value "resulted from" the expropriation scheme. The Tribunal's reasons reflect the statutory context in which the decision was made rather than an improper focus on causation.

(e) *The Tribunal Took the Correct Approach*

[43] As noted earlier, the Tribunal cited *Lynch* and correctly identified the principles it had to apply. To paraphrase *Lynch*, at para. 62, having correctly identified the question it had to answer, the proper analytical framework, and the parties' position, the Tribunal was entitled to its view of the evidence. In the absence of any legal error, the Tribunal's findings are entitled to deference and there is no basis for this court to intervene.

(f) The Tribunal's Alternative Conclusion

[44] The appellant submits that the Tribunal's alternative conclusion that there was policy support for Mr. Volpentesta's conclusions even if the impugned documents were screened out was "flawed." The appellant's submissions on this issue are largely fact-based and do not demonstrate any legal or palpable and overriding factual error.

B. Land Dedication

(i) The Issue

[45] Sections 41(8) and (9) of the *Planning Act* provide that in certain circumstances, a municipality from whom certain development approvals are sought may require as a condition of such approval that the owner of the land convey to the municipality at no expense portions of the land in accordance with the municipality's official plan, a process known as "land dedication."

[46] Before the Tribunal, the appellant argued that the approvals necessary for Development Concept 1 would have been conditional on land dedications of up to 30% of the property's area and the remaining area would have been too small for the proposed development. The risk of such a land dedication would have been taken into account by a reasonably informed buyer, and as such had to be considered when determining the land's market value in accordance with s. 14(1) of the Act.

(ii) The Tribunal's Reasons

[47] The Tribunal concluded that it was not reasonably probable that the municipality could have obtained a land dedication in this case for the following reasons:

- the Region's contention that a land dedication would have been required for a widening of Centre Street was based on the evidence of Calvin Mollett, a program manager of development engineering, who was not qualified to give expert evidence and whose evidence the Tribunal rejected on several points (paras. 60-63);
- the objectives of various applicable planning documents could have been achieved without the land dedications (paras. 64, 77, 80, 84);
- Mr. Mollett acknowledged that as of 2015, there were not other planned infrastructure projects that would have required additional land for widening (para. 64);

- Joshua de Boer, a professional engineer qualified to give expert evidence in transportation planning, testified that the proposed development would only have resulted in a 1% increase in traffic, which suggested that no widening would be required (para. 64);
- a 30% land widening dedication would likely have frustrated the proposed development and resulted in an application to the Ontario Municipal Board (“OMB”) (the predecessor to the Ontario Land Tribunal), which would likely have succeeded (para. 68);
- evidence of land dedications respecting other properties in the vicinity were obtained in a different context and were not probative (para. 69);
- other Tribunal decisions relied on by the Region were distinguishable on their facts (paras. 71-74, 78).

(iii) Alleged Errors

[48] The appellant submits that the Tribunal erred in its analysis respecting land dedications in several ways. Broadly summarized, the submissions are that the Tribunal

- (1) erred by focussing on whether a land dedication would have been granted rather than what effect the *risk* of the Region seeking a land dedication would have on what a reasonable buyer would be willing to pay;
- (2) erroneously and unfairly speculated about the outcome of a hypothetical OMB proceeding;
- (3) erred in its assessment of the impact of the Region’s history of obtaining land dedications from other properties, particularly in relation to 1470 Centre Street in 2002, and the likely effect various policies would have had on the need for and likelihood of land dedications.
- (4) erred by failing to consider the effect of possible land dedications less than the maximum allowable.

(iv) Analysis

(a) Considering the Likelihood of Dedication Rather Than Risk

[49] The Tribunal’s reasons focussed on whether the Region would have obtained a land dedication. I agree with the appellant that the issue for the purposes of determining market value pursuant to s. 14(1) of the Act was not whether the Region would have done so, but rather what effect the risk of a land dedication would have on what a reasonable buyer would be willing to pay. Nonetheless, there are two reasons why I am not persuaded that the Tribunal committed any reversible error.

[50] First, while a reasonable buyer would take the risk of a land dedication into account, the effect of that risk on the amount the buyer would be willing to pay would depend on the extent of the risk. The more remote the prospect of a land dedication, the less effect the risk of it would have on what the buyer would be willing to pay. The Tribunal's analysis of the likelihood that the Region would obtain a land dedication was therefore relevant, as a reasonable buyer would engage in the same type of analysis.

[51] Second, it is obvious that a reasonable buyer would have considered the risks associated with purchasing the property, including the risk of land dedications, and the Tribunal appreciated this. This is evident in the Tribunal's list of the issues that had to be determined, set out in para. 16 of the reasons, which includes: "What impact, if any, does *potential* land dedication have on the claim?"

(b) Procedural Fairness

[52] The appellant submits that the Tribunal's consideration of the probable outcome of a hypothetical OMB proceeding was procedurally unfair because the Tribunal undertook the analysis on its own initiative, did not alert the parties that it intended to do so, and neither party led evidence on the issue.

[53] I agree with the respondent that the appellant's complaint is not supported by the record. In para. 57 of its written submissions to the Tribunal, counsel for the respondent (the claimant before the Tribunal) expressly averted to the likelihood of a land dedication being challenged before the OMB, which they submitted would likely have succeeded. At para. 53 of their written submissions in response, counsel for the appellant stated that "... the Region submits that it is more likely than not that the OMB would uphold the Region's dedication requests."

(c) Impact of Land Dedications For Other Properties and Other Factors

[54] The Tribunal concluded that the appellant's history of receiving dedications with respect to other properties had little probative value because they were part of "site plan agreements related to pure land use planning matters and were not in the context of an expropriation proceeding" (at para. 69). The appellant submits that the Tribunal erred in this regard because the hypothetical dedication in relation to Development Concept 1 would also be part of a "pure land use planning matter."

[55] The effect of the other land dedications raises a question of fact or mixed fact and law. Even if the Tribunal erred in the manner suggested, land dedications in relation to other properties was only one part of the factual matrix the Tribunal had to consider. The dedication in relation to 1470 Centre Street occurred over a decade before the valuation date and before the Region's 2010 Official Plan was created. Even if any error the Tribunal made on this issue could be described as "palpable," it was clearly not "overriding" as it has not been "shown to have affected the result," nor could it be said that it "goes to the very core of the outcome of the case: *R. v. Kruk*, 2024 SCC 7, 489 D.L.R. (4th) 385, at para. 98; *Benhaim v. St-Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352, at para. 38; *R. v. Clark*, 2005 SCC 2, [2005] 1 S.C.R. 6, at para. 9.

[56] The appellant also suggests that the Tribunal's interpretation of certain municipal policies meant that land dedications were not compulsory (at para. 57) was somehow an error of law. I do not agree. It was the manner in which policies were likely to be implemented that mattered, not the specific wording of the policies. The Tribunal had the benefit of expert evidence on this issue and its conclusions are entitled to deference.

[57] The appellant advanced similar arguments with respect to the effect of other policies and the evidence of witnesses about their effect. The Tribunal's conclusions on these issues are entitled to deference unless the appellant can establish palpable and overriding error, which it has failed to do.

(d) Lesser Dedications

[58] In its final submissions before the Tribunal, the appellant made submissions respecting the possibility that it would have been entitled to a land dedication for road widening of less than the maximum allowable. The Tribunal declined to consider this submission for the following reasons (at para. 70):

The Tribunal rejects this approach as it flies in the face of the evidence and submissions of the Region throughout the proceeding which was predicated on a maximum land dedication. Counsel for the Region insisted in his closing oral arguments that the Region's consistent practice is to request maximum width. No Party explored, during the evidentiary stage, the impact of a lesser land dedication of the Subject Property along Centre Street on the Pre-Expropriation Concept because this was simply not the position advanced by the Region. The Tribunal agrees with the Claimant's assertion that the Region and the Region's witnesses treated this as an "all or nothing" issue. The evidence proffered by the Region leaves the Tribunal with no probative evidence to assess whether a lesser land dedication, of unspecified size, would have had an impact on the criteria of legal permissibility specifically, and the reasonable probability of the Claimant's submitted highest and best use generally. The Tribunal cannot just speculate on the size of this lesser dedication nor its impact on the Claimant's Pre-Expropriation Concept on such matters as physical possibility, financial feasibility, unit size, and construction costs.

[59] The appellant submits that the Tribunal erred in refusing to consider its submission for two reasons: (1) because the burden of demonstrating the probability of the highest and best use of the property was on the respondent, any evidentiary gap was its responsibility, not that of the appellant; (2) there was some evidence from Mr. Volpentesta that a lesser dedication would have made Development Concept 1 impossible.

[60] I would not give effect to this ground of appeal. The fact that the onus of proof was on the respondent did not mean that counsel had to adduce evidence in relation to every conceivable issue

that might have a bearing on the outcome. I agree with the Tribunal that once the appellant treated this as an “all or nothing” issue, the respondent was entitled to adduce evidence and make submissions accordingly.

[61] Although the appellant now submits that the evidence of Mr. Volpentesta supports its position respecting a lesser dedication, the appellant made no mention of this evidence in its final written submissions where it raised the issue for the first time. Nor was the evidence mentioned in the appellant’s written reply submissions. In these circumstances, the Tribunal’s failure to consider this evidence cannot be said to amount to error.

C. Injurious Affection

[62] The appellant submits that the Tribunal erred in its application of the test for injurious affection by basing it on the effect the expropriation would have had on Development Concept 1. As this submission is premised on the success of the appellant’s other grounds of appeal, it cannot succeed.

IV. DISPOSITION

[63] The appeal is dismissed with costs.

[64] The respondent seeks costs of more than \$230,000 on a full indemnity basis, relying on s. 32(1) of the Act and related cases: *Ottawa (City) v. Wright* (2007), 94 L.C.R. 19 (Ont. Div. Ct.); *Re A.M. Souter & Co. Ltd. and City of Hamilton* (1973), 1 O.R. (2d) 760 (C.A.). However, it is full indemnity for reasonable costs. The appellant submits that the respondent’s costs should be fixed at \$160,000, inclusive of taxes and disbursements. Having regard to all relevant factors, we fix costs at \$160,000, all inclusive.

Schreck J.

I agree.

Matheson J.

I agree.

LeMay J.

Released: June 11, 2026

CITATION: *Regional Municipality of York v. 2090396 Ontario Ltd.*, 2026 ONSC 3430
COURT FILE NO.: DC-25-00000463-0000
DATE: 20260611

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Matheson, LeMay and Schreck JJ.

REGIONAL MUNICIPALITY OF YORK

Appellant

– and –

2090396 ONTARIO LTD.

Respondent

REASONS FOR JUDGMENT

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