



[2020] JMSC Civ 44

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2012HCV07132**

**BETWEEN                      THE COMMISSIONER OF LANDS                      CLAIMANT**  
**AND                                      VALTIMAN THOMAS                      DEFENDANT**

**IN OPEN COURT**

Ms Faith Hall instructed by the Director of State Proceedings for the Claimant

Mr Maurice Smith instructed by SmithLaw for the Defendant

***Compulsory Land Acquisition – Compensation and Interest paid – Owner of land aggrieved – Reference by the Commissioner of Lands – Land Acquisition Act***

**Heard:** July 29, 30 and 31, October 7 and November 14, 2019 and March 12, 2020

**CORAM:**        LINDO, J  
                     CLINTON CUNNINGHAM, ASSESSOR  
                     KENNETH ALLISON, ASSESSOR

**LINDO, J**

[1] This matter is a reference by the Commissioner of Lands (the Commissioner) under Section 17 of the Land Acquisition Act (the Act). It is made by way of Fixed Date Claim Form filed on December 20, 2012 and amended on February 6, 2013. It is supported by evidence on affidavit of the Commissioner, Elizabeth Stair and Courtney Henry, Deputy Commissioner of Land Valuations, whose valuation reports were considered and relied on by the Commissioner.

[2] The remedy sought is a determination as to the amount of compensation payable to the Defendant for the acquisition of the lands. The background to the matter

and the evidence of the Commissioner are encapsulated in her affidavit filed on October 20, 2012.

**[3]** The Defendant Valtiman Thomas is the registered proprietor of the following lands, the subject of this matter:

(a) All that parcel of land part of Harmony Hall, Portland Cottage situate in the parish of Clarendon containing approximately 15.87 acres of land and being part of land registered at Volume 1357 Folio 678 of the Register book of Titles (hereafter referred to as Parcel A)

(b) All that parcel of land part of Harmony Hall, Portland Cottage situate in the parish of Clarendon containing approximately 8.03 acres of land and being part of land registered at Volume 1161 Folio 959 of the Register Book of Titles (hereafter referred to as Parcel B)

**[4]** The Defendant is also the owner of all that parcel of land part of Harmony Hall, Portland Cottage situate in the parish of Clarendon containing approximately 8.03 acres of unregistered land with Valuation Number 24402007017 (hereafter referred to as Parcel C)

**[5]** Pursuant to Section 3(1) of the Act, the Minister of Land and Environment (the Minister) by Notice dated March 8, 2005 indicated that the lands would likely be needed for a public purpose, the relocation of victims displaced by Hurricane Ivan in 2004. This notice was published in the Jamaica Gazette dated March 11, 2005 and on March 8, 2005 a declaration was made by the Minister pursuant to Section 5(1) of the Act that the lands would be needed and this declaration was also published in the Jamaica Gazette of March 11, 2005.

**[6]** The Commissioner states that she was directed by the Minister pursuant to Section 6 of the Act to take proceedings for the acquisition of the lands and she took steps to have the lands valued and to enter into negotiations to acquire them by private treaty. Offers were made to the Defendant through his attorneys

at law and a counter offer was made by the attorneys at law, supported by a valuation report prepared by Edwin Tulloch Reid and Associates, dated March 2005.

- [7] The Defendant's attorneys at law were advised by letter dated April 19, 2005, that the Commissioner was unable to accept the values stated in the report of Edwin Tulloch Reid and Associates so no agreement was arrived at for the acquisition of the land by private treaty.
- [8] On April 28, 2005, the Commissioner published a notice pursuant to Section 9 of the Act, inviting claims for compensation from persons with interest in the lands, as well as inviting such persons to appear at an Enquiry on May 16, 2005, to state the nature of their interest and the amount and particulars of claim for compensation. The Minister, by way of Notice pursuant to Section 15 of the **Land Acquisition Act (LAA)**, (undated) directed the Commissioner to take possession of the said lands and copies of the notices were posted on the lands.
- [9] An Enquiry was held by the Commissioner on May 16, 2005, in accordance with Section 11 of the Act. Mr Thomas, who was present, requested the bases of the valuation reports relied upon, and the Commissioner requested a breakdown of the valuation by Mr Edwin Tulloch-Reid. A breakdown was provided on June 30, 2005. It indicates that Parcel A, land registered at Volume 1357 Folio 678 is valued at \$6m; Parcel B, land registered at Volume 1161 Folio 959 is valued at \$3m, and Parcel C, unregistered land is valued at \$2.7m.
- [10] On March 17, 2006, the Commissioner made the following awards:
- (i) Two million four hundred thousand dollars (\$2,400,000.00) in respect of Parcel A
  - (ii) One million two hundred thousand dollars (\$1,200,000.00) in respect of Parcel B

(iii) One million two hundred thousand dollars (\$1,200,000.00) in respect of Parcel C.

[11] The Commissioner states that in determining the amount of compensation she considered the market value as at the date of service of the notice under Section 9 of the Act, and relied on Certificates of Valuation from the Commissioner of Land Valuation dated February 21, 2005 for the three parcels of land and she determined that the awards would adequately compensate the Defendant.

[12] By letter dated March 29, 2006, the Defendant indicated that the awards would not be accepted, but following further correspondence the Defendant accepted the payments of the awards and payment of interest at the rate of 15%, pending the determination by the court.

[13] The sum paid to the Defendant on February 6, 2007 was \$5,300,160.00, representing the compensation handed down in the Notices of Award dated March 17, 2006, plus interest up to January 31, 2007.

### **The Hearing**

[14] At the hearing which commenced on July 29, 2019, the affidavit of the Commissioner was admitted as her evidence in chief. She was not cross examined.

[15] Mr Courtney Henry, Chartered Valuation Surveyor and Deputy Commissioner of Land Valuation in charge of the South Region, and a member of the Royal Institution of Chartered Surveyors, gave evidence and was cross examined. His affidavit filed on January 7, 2019 stood as his evidence in chief.

[16] His evidence is that he was instructed by the Director of Estate Management at the National Land Agency (NLA) to conduct valuation on part of Portland Cottage “for the purpose of the Land Acquisition Act and to value each parcel of land separately”. He says he conducted valuations of each parcel of land to determine

their current market value and in arriving at the market value he acted in accordance with **Section 14(1)(ii)(a)** of the Act.

- [17] Mr Henry says “the definition of Market Value, as agreed by the ‘Royal Institution of Chartered Surveyors’ and the ‘International Valuation Standards (2013)’ is:

*‘The estimated amount for which an asset or liability should exchange on the conduction date between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.’”*

He adds that “the definition of market value implicit (sic) the assumption of Highest and Best Use (HABU). The definition of Highest and Best Use as agreed by ‘Royal Institution of Chartered Surveyors’ and the ‘International Valuation Standards (2013)’ is:

*‘The most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value.’”*

- [18] He also states that an investigation of the planning considerations relating to the site revealed that it is located in an area which is not zoned for any particular use under the Town and Country Planning (St Catherine Coast) Provisional Development Order, 1964, and based on the approved and prevailing use of the subject and adjoining lots, the HABU of the site was deemed to be residential lands.

- [19] Mr Henry indicates that inspections of the three parcels of land were carried out and upon analysis of various factors, together with comparable data and their analyses, the market value of the parcels of land were found as at the Valuation date of February 5, 2005, to be as follows:

*“In the region of One Million Nine Hundred Thousand Dollars to Two Million Four Hundred Thousand Dollars (\$1,900,000.00 to \$2,400,000.00) ... in the region of Nine Hundred and Fifty Thousand Dollars to One Million Two Hundred Thousand Dollars (\$950,000.00 to \$1,200,000.00) ...Nine Hundred and Fifty Thousand Dollars to One Million Two Hundred Thousand Dollars (\$950,000.00 to \$1,200,000.00...”*

**[20]** He states further that in arriving at the market value, he utilized the Direct Sales Comparison Approach, a method which is dependent upon “*the availability of sales data as near as possible to the Valuation Date, which are located in close proximity to the subject, are similar in size, gradient, soil type and land use, and from which comparisons and therefore adjustments, can be made*”, and that the transactional evidence relied on are of residential/agricultural-type unimproved properties sold in 2002/2005 and sold for prices ranging from “a high of \$175,000.00 per acre (rounded) to a low of \$150,000.00 per acre (rounded)”

**[21]** Mr Henry highlights the following:

*“Transactional evidence dated January 5, 2004 showed lot with a plot size of 607.03 m<sup>2</sup> in Mitchell Town, a community which is adjacent to Portland Cottage, selling at \$120,000. Analysis indicates that large lots with sub-divisional potential would fetch a market price in the region of \$200,000.00 per acre.*

*Transactional evidence dated November 22, 2000 showed that a 10.5 acre site in Mitchell Town was sold for \$1.75M reflecting \$166,000.00 per acre.*

*Transactional evidence dated October 6, 2001 shows that 3.25 acres in Gimmi-Mi-Bit another community which is adjacent to Portland Cottage was sold for \$450,000.00...”*

**[22]** He points out that in each case, the evidence was adjusted upwards to account for the difference in transaction date and valuation date, adjusted negatively, on account of the location and poor access to the subject property, and that based on the evidence available, adjusting upwardly for time and negatively for location, a value of \$150,000.00 per acre for the property was determined in respect of each parcel.

**[23]** When cross examined, Mr Henry said the “updated” Industry Standards of 2013 would have applied in this case. He said the instruction to do the valuation came by ‘internal memo’ from someone within the organization for which he is working. He said he got chartered after working at NLA and that it is possible he was not a Chartered Land Valuer at the time he did the valuation, but later said he was not sure if it was after 2007.

- [24]** He explained that the fact that the Appraisal Report has the date January 6, 2005, a date prior to receiving the 'internal memo', is because he received a request to do a preliminary valuation of five or six properties, as a whole, and then was asked to do the actual property. He agreed that in the report of January 5, 2005, 15.87 acres is "the area of take". When asked if having received formal written instructions from the Commissioner, he made a second visit, he said "[he] personally did not but [his] valuer did"
- [25]** He agreed that "transactional evidence" is the same as "comparative sales data" and indicated that both would be in relation to similar parcels of land and how much they would be sold for, over time, and that the benefit of comparative sales data is to find recent transactions relative to the date valuation is taken on the subject property.
- [26]** He admitted to making a typographical error where he stated in his affidavit that he perused transactional data concerning a parcel of land in Mitchell Town January 2004. In relation to his evidence that the transactional evidence relied on in the determination of the market value of the property are residential/agricultural-type unimproved properties sold in Mitchell Town, selling at \$120,000.00, he stated that he mentioned what the average prices for properties in the area would have been. He admitted that he did not see \$175,000.00 per acre from the transactional data, but "it was an average, a range", and he concluded that the lowest rate was \$150,000.00. He also admitted that he did not see transactional evidence for 2005 and that \$150,000.00 would have been a low figure in relation to some years previous.
- [27]** He said he used all the sales data, analysed them and came up with an adequate figure and Gimmi-Mi-Bit was good comparative sales data because of proximity, land usage, better land, road network and generally the demand for land in that location was better than in Portland Cottage.

- [28]** When asked if one cannot find comparative sales data, if that is a fact stated in the report, he said “no”. He said that he found comparative sales data in similar location, and said he could not find sales data for Portland Cottage, so he had to seek data from surrounding communities, and that the lack of data was not a limitation in the exercise he carried out.
- [29]** When it was suggested to Mr Henry that the sales evidence he gave for Mitchell Town would have been in the region of \$190,000.00, he having said it was analysed and brought up to \$175,000.00, and asked if it was an error, he said it should have been April 2005. He then indicated that he would have seen the error, but that he did not produce an addendum to correct it.
- [30]** Mr Henry stated further that he did adjustments using the rate of growth of prosperity on the location at that time, which was about 5% per annum, and when asked what was the significance of the “15%” which he had stated, he said “5% per annum would have been about 15%”.
- [31]** He then said he found transactional data for \$175,000.00, and when asked to reconcile that statement with his earlier response, he admitted to making a mistake when he indicated that he had sales data showing \$175,000.00. He also said the valuation he returned of \$150,000.00 “still remains spotless”.
- [32]** In relation to property at Rocky Point, referred to by him, he said it was a studio unit in poor condition. When it was pointed out to him that he did not indicate the size of the land, he said “probably it was a small lot, it wouldn’t have been relied on much in the actual valuation”. He also said it was not significant, but it is part of the report as “reports should have all sales information we found.”
- [33]** He admitted that it was not the practice to compare vacant land with encumbered property with houses on it, for the purposes of arriving at a value. He agreed that if land is unregistered it would impact the valuation, and that he returned a valuation adjusted to approximately \$150,000.00 per acre which is the same range of value for the registered land. He then said the unregistered land would



fall in the lower range. He admitted that in relation to the appraisal reports, the dates are not his dates of inspection.

**[34]** He said access by road is typically a good quality and that he would describe access to the subject properties as good. When it was pointed out to him that his report indicated “adjusted negatively on account of poor access to the subject property” he said “something is wrong there, with that statement”.

**[35]** He said proximity of the property to the sea can be a good quality, and would impact the valuation, and he agreed that a property benefitting from a view of the sea would command a premium on value, admitted that the subject property had a view of West Harbour, an important feature he would normally include in a valuation, but said he had no particular reason for neglecting to mention it. He also admitted that a feature was a view of a lighthouse which he also did not mention in his report.

**[36]** Mr Henry said that in relation to highest and best use of the properties, he came to the conclusion that the area was agro-residential and added that the potential for subdivision did not factor in his conclusion, as his understanding of Section 14 of the Act is not to consider subdivision potential. He however stated that, in usual practice, premium would be added for property with potential for subdivision.

**[37]** With respect to the availability of electricity and water, he said that would be a factor in conducting a valuation. He admitted that the report of Edwin Tulloch-Reid shows that they arrive at significantly different figures and said he did not “totally” agree with Edwin Tulloch Reid’s description of the area in relation to utilities and services. He stated that he would not have described the property as being of limited infrastructural development and agreed that the specific area with big infrastructural development would command a higher value than without.

**[38]** Mr Henry agreed that social amenities are relevant considerations in carrying out a valuation exercise and the presence of those amenities ought to be spoken to

in a valuation report. He said they were considered by him and he had no particular reason for not including them in his report in relation to the 15.87 acres.

[39] He said he knew, at the time of the report, that Monymusk and New Yarmouth Sugar Estates existed, and agreed with Mr Tulloch-Reid's statement that those, as well as the bauxite plant, are sources of employment and their existence ought to be included in a valuation report. He said if he had not considered them, it could have impacted his valuation figure.

[40] Mr Henry accepted that natural drainage, especially close to the sea would be a positive feature, agreed that the property has natural drainage and that a valuation figure would have to be adjusted down in relation to poor drainage. He agreed "in general" with the description of "The Site" as stated by Mr Tulloch-Reid and specifically that the property has natural drainage feature and said that he mentioned it in his report as "slope...gully". He also agreed that if he did not consider natural drainage at the time, it would affect the figure he arrived at.

[41] He disagreed that there are several descriptions and features of the property which he failed to put in his report. He said he did not think the omissions he accepted to have been made in the compilation of his report, were positive or attractive features. He also said he did not think there are any negative features of the property that he failed to mention in the report.

[42] When re-examined, Mr Henry said he did not have to be a chartered land valuator to conduct a valuation for the Commissioner of Lands.

### **Case for the Defendant**

[43] Mr Thomas' affidavit, filed on June 3, 2013, was admitted as his evidence in chief. He was not cross examined.

[44] He expresses the view that the meeting on May 16, 2005 did not amount to an enquiry as he expected a further meeting "*so that representation could be made in respect of the diverse Valuation Reports...*"

[45] He says the awards, “*did not adequately compensate [him] when viewed within the context of the unchallenged Valuation of Edwin Tulloch-Reid & Associates ... Further having regard to my plan to develop the properties in the area of eco-tourism which would further enhance the value of the properties in 2005. ... I have experienced great loss especially so were I still in possession of the lands which at this time would have increased beyond the value attributed thereto by Edwin Tulloch-Reid & Associates. ...The awards did not and have not adequately compensated me...*”

[46] He is asking the court to increase the amount of compensation, with appropriate interest, and to award costs in his favour.

### **The Report of Mr Tulloch-Reid**

[47] The valuation report of Mr Edwin Tulloch Reid which was exhibited to the affidavit of the Commissioner as Exhibit 9, states that the inspection of the properties took place on March 1, 2005. It states also that the property “has an area of approximately 32.4 hectares/ 80.0 acres with a frontage on the main road of approximately 167.7 metres/ 550 feet and a depth of approximately 1220 metres/4000 feet ... is above road level and rises gently southward to a height of approximately 60 feet above sea level affording natural drainage and a view of the West Harbour ... ”

[48] In relation to the market value, the report states “taking into account the abovementioned factors and the prices at which comparable properties suitable for housing development are being sold in similar localities ... the market value of the freehold interest in the subject property as at February 2005 is ... \$28 M... ”

### **Submissions of Counsel**

[49] Counsel for the parties provided submissions for the assistance of the court on October 23 and 31, 2019, respectively. Both Counsel considered the evidence of the parties and examined the valuation reports of Mr Edwin Tulloch - Reid and Mr Courtney Henry.

- [50] Ms Hall on behalf of the Claimant urged the court to accept and uphold the award made by the Commissioner, as the sums were the true market value of the lands as at the date of service of the Notice under Section 9 of the Act. She concluded that the Defendant has put forward bases for compensation, unsupported by the Act, while the compensation offered by Claimant is in keeping with the principles prescribed by the Act and with established standards of land valuation.
- [51] On behalf of the Defendant, Mr Smith commended to the court the report of Mr Tulloch Reid “supplemented by Letter dated June 15, 2005, Exhibit 15” and expressed the view that the valuations relied on by the Commissioner were “bad in law” as they were dated February 21, 2005 and the notices under section 9 of the Act were issued April 28, 2005.
- [52] Counsel highlighted what he described as “serious deficiencies” in the valuation report relied on by the Commissioner including the expertise of Mr Henry, the valuation exercise and whether Mr Henry visited the properties himself, and the numerous errors concerning the comparative sales data he relied upon in arriving at his conclusions.

### **The Jurisdiction of the Court**

- [53] Part III of the Act deals with the reference to the court and the procedure to be followed. The court is empowered to conduct an enquiry in open court and the scope of the enquiry “shall be restricted to a consideration of the interests of the persons affected by the objection”.
- [54] Pursuant to **Section 20** of the Act, two Assessors, Mr Clinton Cunningham and Mr Kenneth Allison were appointed for the purpose of “aiding the court in determining the objection...”

### **The Law and Application**

- [55] The Act sets out the procedures to be followed for the acquisition of land “needed for a public purpose”, as well as the rules in relation to the amount of

compensation that may be awarded and the matters which are to be taken into consideration and those which shall not be taken into consideration in determining the amount of compensation to be awarded for land acquired.

[56] Pursuant to **Section 5(1)** a declaration has to be made by the Minister to the effect that the land is needed and this declaration shall be published in the Gazette, and after this declaration is made, the Minister must direct the Commissioner to take proceedings for the acquisition of the land.

[57] The Commissioner is required by Section 7 of the Act, to cause the land to be surveyed and a plan made of it and then cause the land to be valued and enter negotiations for the purchase by private treaty, in keeping with Section 8 of the Act.

[58] The negotiations for the acquisition of the lands by private treaty having failed, the Commissioner was required, pursuant to **Section 9 (1)** to cause notices to be posted at convenient places on or near the land to be acquired, stating that claims to compensation for all interests in the land may be made to her and requiring interested parties to attend an Enquiry before her, to state their respective interests in the land, as well as the particulars and the amount of compensation they are seeking and to state if there is any objection to the survey. The Commissioner is also obliged to serve this notice on any occupier of the land, as well as on “all persons known or believed to be interested therein, or to be entitled to act for persons so interested...”.

[59] The Commissioner’s evidence is that on April 28, 2005, she published a notice pursuant to section 9 of the Act. There is no evidence to indicate whether any survey was undertaken or whether, in keeping with Section 3 of the Act, the lands “had already been marked out” and a plan already existed.

[60] In accordance with section 11(1) of the Act, the Commissioner is obliged to conduct an enquiry, and in conducting the enquiry, she is required to consider the market value of the lands at the date of service of the notices under Section

9. She also has to bear in mind any increase in the value of other land of any interested person likely to result from the use to which the land acquired is put; the damage sustained by any interested person at the time she took possession of the lands and which “injuriously affected the person’s actual earnings; and the reasonable and incidental expenses of relocation of residence or place of business of any interested person, arising as a necessary consequence of the acquisition.(See: **Section 14(1)(ii) of the Act**. In arriving at the market value, the Commissioner is required to bear in mind any subsisting valuation of the unimproved value of the land in keeping with **Section 14(2) (c) of the Act**.

**[61]** The Commissioner is precluded from considering the following: any urgency which led to the compulsory acquisition of the land; any disinclination of the interested party in parting with the property; any damage sustained by the person interested which, if caused by a private person, would not be a good cause of action; any damage likely to be caused to the land as a consequence of its use after the publication of the declaration pursuant to Section 5 of the Act; any increase in the value of the land which is likely to be occasioned from its subsequent user; any expense incurred on additions or improvements to the land after the publication of the notice under Section 5 of the Act , which were not necessary for the “maintenance of any building in a proper state of repair”; and whether or not compensation is to be paid by the issue of bonds. .

**[62]** It is common ground that the market value of the lands for the purposes of the acquisition would be that which obtained when the notices under Section 9 were served. The Commissioner has indicated that she considered the market value as at the date of service of the notice under Section 9, “that is, the 28<sup>th</sup> day of April, 2005”, and relied on the Certificates of Valuation reports dated February 21, 2005.

**[63]** The report by Mr Edwin Tulloch-Reid dated March 11, 2005 although it was admitted in evidence, the court did not have the benefit of any explanation by him as to what transactional data in relation to comparable properties, for example,

he used to arrive at the valuation. He gives the market value as at February 2005 and arrives at his valuation “taking into account ... the prices at which comparable properties suitable for housing development are being sold...”. His report states a figure for the three parcels, as well as other properties, together, as \$28m.

**[64]** The court notes however, that the Commissioner had the benefit of the breakdown of the figure stated by Mr Tulloch Reid, corresponding to the interest in land of the several parties as appears on the Notice under Section 15 of the Act and had figures for the three properties belonging to the Defendant, separately, having made a request for same.

**[65]** Not much weight was placed on the report of Mr Tulloch Reid, as his findings could not have been tested by cross examination. Additionally, the report has not provided sufficient evidence to show any bases for his opinion, but has given a generalized statement, and the properties were valued together, and with others, and ought to have been valued separately.

**[66]** With regard to the report by Mr Henry, it is clear on the evidence presented that his date of valuation is prior to the publication of the notices issued on April 28, 2005 and he states that he received instructions on February 14, 2005 and by his report, the inspection was done before January 5, 2005.

**[67]** I therefore reject, as unreliable, the valuations of Mr Henry which have been relied on by the Commissioner on the basis that they were done prior to the publication and service of the notices required under Section 9 of the Act, and the law requires that the market value be as at the date of service of the notices.

**[68]** I also reject, as unreliable, the valuations presented on the basis that Mr Henry’s evidence in chief, and his answers given in cross examination lead to a finding, on a balance of probabilities, that he personally did not visit the properties before providing the report to the Commissioner. The numerous inconsistencies in his evidence, in addition to his admissions that there were errors in his report which

he did not seek to correct, and his omissions or his failure to indicate in his report information which he too, agrees ought to be in the report, also lead me to find that his opinion ought not to be accepted.

**[69]** Mr Henry's evidence has been discredited in a number of aspects. I therefore find that the valuation reports he provided to the Commissioner, and on which she acted, were flawed, and having formed the bases of the awards made by her, those awards cannot stand.

### **Assessors' Opinion**

**[70]** Although the opinion of each assessor "shall be given orally and shall be recorded in writing by the Judge" (See Sec 25 of the Act), the opinion given to the court was a joint opinion, in writing, which was elaborated on by them, individually, when they sat in Chambers. Their opinion was recorded in writing, their.

**[71]** Both Assessors were unanimous in their opinion. They pointed out that Mr Henry valued the subject based, principally, on one parcel of evidence in Mitchell Town, of 10 acres 2 roods 9.8 perches, registered at Volume 1316 Folio 687 of the Register Book of Titles, which was sold on November 22, 2000 for \$1,750,000.00 or \$166,571.48 per acre.

**[72]** While they were in agreement with his conclusion that Race Course and Lionel Town are superior locations, they did not necessarily agree with the adjustments to value, such as a sale in 2000, being adjusted by 15% in 2004. This increase they did not find to be proved and was held to be somewhat arbitrary. They also noted that Mr Henry has not adjusted for the fact that the subject land needs no fill.

**[73]** Mr Cunningham and Mr Allison also pointed out that Mr Henry compared Mitchell Town favourably with Portland Cottage and indicated that both are prone to flooding, but stated that the comparable parcel at Mitchell Town is still



substantially under-developed. They opined that building sites on that property would need some degree of fill, while the subject property is elevated land “affording in most areas the amenity of view of the harbour and not subject to flooding”.

[74] The Assessors also indicated that although Mr Henry says he found no sale comparable in Portland Cottage, they found one, “a 0.58 acre, lot” which lies along the main road within a kilometre of the subject and which was sold November 29, 2004 for \$300,000.00 or \$517,241.00 per acre. They note that they adjusted for size and the fact that the subject is elevated and not subject to any flooding, to show a figure of “\$250,000.00 to \$300,000.00 per acre.

[75] I accept the views of the Assessors and I am in complete agreement with their assessment.

#### **Assessors’ Fees**

[76] Pursuant to **Section 27 of the LAA** every Assessor shall receive such fee “not exceeding twenty dollars” as the judge shall direct for each day upon which he shall sit as an assessor or upon which he shall be engaged in inspecting the land, the subject of the proceedings. This Act came into being in 1947. Like the learned judges in the cases of **The Commissioner of Lands v Clifford Armstrong & Ors** [2012] JMSC Civ 115, and **The Commissioner of Lands v Homeway Foods Limited and Stephanie Muir** [2012] JMSC Civ. 108, I too, am of the view that there is the need for very urgent legislative action to address a number of the provisions of the Act.

[77] Assessors are currently paid at the rate of \$25,000.00 per hour when they undertake private assignments.

[78] Both assessors attended open court on three occasions, July 29, 30 and 31, 2019, and appeared in Chambers on November 15, 2019. On August 7, 2019 they were engaged in inspecting the lands, subject of the claim. They are

therefore entitled to remuneration and I am of the view that the rate per hour of \$25,000.00 is quite reasonable to compensate them for their services.

**[79]** It is therefore ordered that each assessor be paid at the daily rate of One Hundred Thousand Dollars (\$100,000.00) for each day's attendance in court, a rate of \$50,000.00 for the attendance in Chambers and the sum of \$140,000.00 for the day of attendance to travel and inspect the lands.

### **The Award**

**[80]** In view of all the foregoing, the market value of the three lots given by Mr Henry and as relied on by the Commissioner are rejected as wholly unreliable.

**[81]** Section 28 of the Act provides that the award is to be in writing, signed by the Judge and the Assessors concurring therein and shall specify:

- (a) the amount awarded under paragraph (a) of subsection (1) of Section 14
- (b) the amount (if any) deducted under paragraph (b) of subsection (1) of Section 14
- (c) the amount (if any) respectively awarded under paragraphs (c) and (d) of subsection (1) of section 14 and
- (d) the grounds upon which such amounts were awarded or deducted.

**[82]** In keeping with the requirements of Section 28 of the Act and for the reasons outlined above, the amount awarded under Section 14 (1) (a) of the Act for:

All that parcel of land part of Harmony Hall, Portland Cottage situate in the parish of Clarendon containing approximately 15.87 acres of land and being part of land registered at Volume 1357 Folio 678 of the Register Book of Titles referred to as Parcel A, is **\$4,800,000.00**. When the sum awarded by the Commissioner is deducted from that amount, the amount payable to the Defendant is \$2,400,000.00.

All that parcel of land part of Harmony Hall, Portland Cottage situate in the parish of Clarendon containing approximately 8.03 acres of land and being part of land registered at Volume 1161 Folio 959 of the Register Book of Titles hereafter referred to as Parcel B, is **\$2,500,000.00**. When the sum awarded by the Commissioner is deducted, the amount payable to the Defendant is \$1,300,000.00.

All that parcel of land part of Harmony Hall, Portland Cottage situate in the parish of Clarendon containing approximately 8.03 acres of unregistered land with Valuation Number 24402007017 referred to as Parcel C, is **\$2,000,000.00**. When the sum awarded by the Commissioner is deducted, the amount payable to the Defendant is \$800,000.00.

- [83]** In accordance with the provision of **Section 30 of the LAA**, the Defendant is awarded interest on the excess of this award over the award made by the Commissioner, at the rate of 5% per annum from the date she took possession of the land, to the date of payment.
- [84]** The costs and fees attendant upon the appointment of the assessors are to be borne by the Applicant, the Commissioner of Lands, and the Defendant is entitled to his costs of the proceedings which are to be taxed if not agreed, and are also to be paid by the Applicant.