

**STANDING COMMITTEE ON PUBLIC
ADMINISTRATION AND FINANCE**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 6 NOVEMBER 2002**

SESSION 1

Members

**Hon Barry House (Chairman
Hon Ed Dermer (Deputy Chairman)
Hon Murray Criddle
Hon John Fischer
Hon Dee Margetts
Hon Ken Travers
Hon Sue Ellery**

Committee met at 12.55 pm

BRAIDWOOD, MR MAXWELL ROY
Proprietor, WESCO, Victoria Park,
examined:

The CHAIRMAN: On behalf of the committee, welcome to the meeting. You will have signed a document entitled information for witnesses. Have you read and understood that document?

Mr Braidwood: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphones because the proceedings are being recorded. I remind you that your transcript will become a matter for the public record. If, for some reason, you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. Premature publication or disclosure of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make an opening statement to the committee?

Mr Braidwood: I am here to let the committee know that I do not really like the length of time it takes the Western Australian Planning Commission, which I have been more involved with, to handle things. It would probably be best if I read out my notes.

The CHAIRMAN: Can those notes be provided to the committee? It will help Hansard in particular to have them.

Mr Braidwood: In about 1988 I bought a property at 56 Canning Highway, Victoria Park knowing it had a reserve on the front of the property. It worked well as a service station at the time. In 1992, I signed a new lease with Amgas Pty Ltd for 10 years, which was then assigned to Mobil Oil Australia Pty Ltd in 1994. In 1997 Mobil considered redesigning the present building into a convenience store. As times changed with the lack of profit from fuel, Mobil finally walked away at the end of its 10-year lease in February 2002. On 9 October 2001 I submitted plans to the Town of Victoria Park to redevelop the three lots that make up the property to gain a better return on my investment. There were strong rumours around that the reserve would never be used by the commission. My plans were knocked back because of the reserve. I put a claim into the planning commission on 21 December 2001 for compensation. Although the planning commission owns a lot of property on my side of Canning Highway, it only wants to pay compensation now because it does not know whether it will use the reserve. With the way things stand, if the commission compensates me now and I develop the unreserved part of my property at its current plot ratio of 0.5, then in 10 years time, for instance, when the commission decides it does not want the reserve, I might have to pay back the compensation at the same rate

it paid me but on the value of the land in 10 years time. However, what do I do if my development is not suitable to be extended? In answer to my claim for compensation on the reserve, which covers 38 per cent of my property, the commission offered me 7.4 per cent of what is generally considered a low value for the property; that is, \$50 000 out of a total property value of \$675 000. I believe the commission's letter was a standard one offering a small amount of compensation that is sent out to stop people who are too busy or cannot be bothered proceeding against the bureaucracy, and so the commission can get away with things as cheaply as possible. I have elected to go to arbitration and here we are, proceeding as quickly as possible. It is now 11 months after I put in my claim for compensation and 14 months after I put in plans to the Victoria Park council. We now have a pre-arbitration hearing listed for Monday, 11 November. An arbitration date is yet to be set. The conditions of arbitration are that I pay 50 per cent of the arbitrator's costs and all my consultant and legal fees. Since Mobil Oil has vacated the premises, my wife and I have been operating the service station from 7.00 am to 6.00 pm five and a half days a week in an attempt to get some return on our investment. As a standard service station we cannot pay wages and we are battling to pay the rates and taxes with no personal return. However, I considered that in the short term it would be better to continue than close down the station altogether. I have had a "for sale" sign up and have run a series of ads for the property since December 2001. I have had a number of genuine inquiries but when people find out about the reserve, no-one wants to buy land that they cannot use. Therefore, I am stuck with a property that does not work any more.

The CHAIRMAN: To clarify your position, can you highlight the time factors? How long has this been going on and when were the first reserves -

Mr Braidwood: When I bought the property there were two reserves on it; one was three metres across the front of the property and went back three metres, which totalled 129 square metres. The other reserve, which we are now talking about, goes back 14 metres - a total of 500 square metres.

The CHAIRMAN: What year was this?

Mr Braidwood: In 1956 the three metre reserve was put on the property.

The CHAIRMAN: When did you buy the property?

Mr Braidwood: In 1988. In 1996, 40 years after the first reserve went on the property, the commission finally decided it wanted to use it. After four and a half years of consultation and negotiation, a figure was finally settled on.

Mr Braidwood: In 1956 the first reserve went on the property. When did the second reserve go on the property?

Mr Braidwood: I am not exactly sure when that happened. I believe it was in the 1960s or 1970s.

Hon ED DERMER: Was it well and truly in place when you purchased the property?

Mr Braidwood: Yes. When I bought the property I had it valued and it was clear that no compensation had been paid on it. However, at that time that did not bother me because it was securely leased and after I bought it I signed a lease for 10 years, which was then assigned to Mobil Oil and was going well.

Hon ED DERMER: Am I correct in assuming that the valuer was well aware of both reserves on the property when he made his valuation?

Mr Braidwood: Yes. When the commission took the first reserve, which was 129 square meters, it was roughly estimated to be worth about \$80 000. The commission came back with an offer for around \$30 000, which I thought was absolutely ludicrous and which was based on the commission's valuation. I had no idea what the valuation might have been but you can have a valuation and base anything on that valuation. It does not mean that the actual value of the property is anywhere near that amount.

Hon ED DERMER: Was that the offer made to purchase the first reserve?

Mr Braidwood: Yes. That just got my back up. I could not accept the fact that the valuation would be so low. At the time I used consultants, who I am still using. After the commission paid interest, after entering the property and that type of thing, we finally settled and I received about \$2 000 less than the original \$80 000 I had in mind. It was a long drawn out process for no reason.

The CHAIRMAN: What are you going to arbitration on next week?

Mr Braidwood: Because life changes and situations change in the world. The property does not work as a service station in these economic times. Service stations have been rationalised. When I bought the property, we were looking at receiving 10c of profit for every litre of fuel sold, and that was when it cost less than it does now. Now we are making a profit of 3c per litre. The money is just not there. I cannot make money out of the business. Mobil were not making money out of it. After Mobil paid me rent I reckon it was probably losing \$60 000 or \$70 000 a year, but the lease had to be ridden out. I could see that coming. I wanted to do something with my land. Mobil put in an application to redevelop the land but pulled out of the idea in about 1997. It decided it would not go ahead with the development, which was to use the existing buildings, because it could not make the numbers add up. Since Mobil vacated the premises, I have had talks with Caltex Australia Ltd about using the property as a modern convenience store. Caltex could not make the numbers add up either to make it into a business proposition. Therefore, we have to change the use of the property.

I have been in the service station industry for 30 years. I saw this situation arising a couple of years ago so I started to move on other things that we could do with the property. The property comprises three lots. The size of those lots, including the reserve, is 359 square metres, 382 square metres and 571 square metres. After the reserve comes off it brings them back to 217, 238 and 357 square metres respectively, which brings their size down to a marginal property. Even if the lots were combined, the total is reduced from 1 312 to 812 square metres.

Hon ED DERMER: Did you say that you had already been paid some compensation?

Mr Braidwood: That was for the first 129 square metre reserve.

Hon ED DERMER: Was that the 1956 reserve?

Mr Braidwood: Yes. The commission took that reserve to widen Canning Highway by one lane with a median strip down the middle of it.

Hon ED DERMER: That first reserve is no longer your concern, you have essentially sold the land -

Mr Braidwood: Yes, that is it. We settled on that a few years ago now.

The CHAIRMAN: Is the bit in dispute about the 14 metre reserve?

Mr Braidwood: Yes, 500 square metres in total.

Hon ED DERMER: Was that also a reserve for potential -

Mr Braidwood: For possible road widening, yes. Along Canning Highway home units have been developed and the reserve is a grassed area at the front of them. Other properties down the road from mine are owned by the planning commission, of which some have been developed. The planning commission has purchased the reserve and let the owner of the property behind it use it for parking, or whatever, and landscaping to keep it a good area.

Hon ED DERMER: You said you had heard rumours that the commission is no longer planning further widening of the highway.

Mr Braidwood: This is what I have heard through my consultants and one person or another. The commission says that this is why it is not purchasing the properties but will pay compensation because of the reserve. Other consultants and valuers have basically said that I am half pregnant; I am damned if I do and I am damned if I do not. I do not know what to do.

Hon ED DERMER: Have you taken formal steps to inquire as to the commission's intentions?

Mr Braidwood: No because I get nowhere.

Hon ED DERMER: What have you done about asking it the question?

Mr Braidwood: I have had one conversation with a fellow from the planning commission. I was warned that he was a fairly abrupt and awkward person to speak to so I got him on a calm day. I had a telephone conversation with him that I ended up cutting short because I could not keep my cool. I kept my cool at the time but I cut the conversation short. Any dealings I have with them now I have through my consultants. I find that much easier.

Hon ED DERMER: The type of questions I would ask are: when will you know if you plan to use this reserve and is it possible for you to ever know whether you plan to use it. What have you asked the commission?

Mr Braidwood: I have asked questions through my consultants. No-one will incriminate themselves and say what is going on. The reserve is there and they will not say if it will or will not be used. I believe that they are paying compensation rather than purchasing the land, as they have in the past, in case they do not want the reserve. It is now government policy that that be the case. I wrote letters to the Premier, who is the local member for Victoria Park, and to Rob Johnson, the member for the area in which I live. The answer came back that it is in the hands of the planning commission, who will pay compensation, which was fair enough. The offer of \$50 000 was based on the a value that the commission came up with of \$675 000 for the total property, which equates to 7.4 per cent of the total value. The commission said that the reserve was 38 per cent of the property, which makes no sense to me at all.

Hon ED DERMER: Therefore, you have asked the question and the commission has told you that it may or may not use the reserve?

Mr Braidwood: Yes.

Hon ED DERMER: Have you asked if the commission could give you a more definite answer?

Mr Braidwood: It has not been able to answer that question.

Hon DEE MARGETTS: When you purchased the property, how did the reserve impact on the pricing of the property or your decision in relation to what you were prepared to pay for the property?.

Mr Braidwood: It made no difference. The valuations I had done had some wording at the bottom of the valuations to the effect that it has an unencumbered value of X dollars and as no compensation or allowance has been made for the reserve, if and when the commission ever wanted the land, I would be paid adequately for it at the time.

Hon DEE MARGETTS: Therefore, you paid what was the going market rate for that kind of property at that location?

Mr Braidwood: Yes. I had two valuations done by two independent valuers and we ended up settling on the high side of the average.

Hon ED DERMER: There is no doubt that you were aware of both reserves on the property at the time that you purchased the property.

Mr Braidwood: Yes. However, the property was working well under its present use at the time.

Hon ED DERMER: That you could rely on for the period of the lease -

Mr Braidwood: At the time I purchased the property it had a five or six year lease on it. That was assigned to Amgas. It wanted to cancel that lease and start a new 10-year lease, which provides more favourable odds for me, and I had been earning good money off the lease in the last 12 months. Up to that time, the earnings were increasing annually and I was living quite comfortably. Now, we are running the station ourselves and not enjoying life at all.

Hon JOHN FISCHER: In reference to the \$50,000 being 7 per cent of the value of the property, how many valuations have you had on the land recently?

Mr Braidwood: I am having two valuations done for the arbitration. The commission has also had a couple of valuations done to take to arbitration. When arbitration starts, the valuations will be swapped over so everyone gets a copy of them. I am led to believe, from what my valuers and consultants say, that the figure of \$675 000 that the commission has come up with for the \$50 000 compensation was on the low side, which is also my opinion.

Hon JOHN FISCHER: Is the figure of \$675 000 from valuers that you have employed?

Mr Braidwood: It was the total value of the property that the planning commission put on the offer to me. I have not seen those valuations. That figure was based on the commission's valuations, which, from my first experience with the commission, mean nothing. I have no respect for a valuation from that department that is based on one of its valuations; it is a fallacy. I could say the property is worth \$800 000 and make an offer of \$50 000; it is still based on the figure, but does not need to have any relevance to it. I think that is the way to put it.

Hon MURRAY CRIDDLE: What was the compensation that you referred to for and what was traded for compensation?

Mr Braidwood: I have a service station on the highway, which does not work. I have run out of tenants and I cannot get any more so I want to redevelop the property.

To redevelop the property to its full potential would be to use the reserve. As it is, I cannot sell the property because people do not want to buy a property with a reserve on it. I had one offer from a woman when I first put it on the market. She wanted to develop shops and retail outlets on the premises but she only wanted to buy the unreserved portion. She put an offer on the 812 square metre unreserved portion of the property. I could then do what I liked with the 500 metre reserve. I could pay rates and taxes on it forever and a day -

Hon MURRAY CRIDDLE: However, the compensation was for the reserve was it?

Mr Braidwood: Yes. That is the compensation that we are still negotiating for with the commission. We are going to arbitration to let the arbitrator decide. Anyone in their right minds that I have spoken to comes up with the idea that compensation should be closer to 40 per cent of the value of the property or even up to 50 per cent, because the property is less valuable the smaller it gets. If I got anywhere near 40 per cent, I would be inclined to give the commission the reserve. However, it could put a caveat on the title and then, if it does not want to use the reserve in the future, I must buy it back from the commission. If I have developed the 812 square metres of unreserved portion and invested the money elsewhere, why would I want a 500 square metre block on Canning Highway? It is ludicrous.

The CHAIRMAN: In terms of the process, which is our brief, what has given you the most problems, difficulties and frustration? Is it the uncertainty attached to the situation, the time involved in negotiations, the valuations put on your land, the blight over your land or the arbitration system?

Mr Braidwood: It is everything. You got them all.

The CHAIRMAN: How can it then be improved?

Mr Braidwood: There should be people at the commission who enable us to talk to the horse instead of its foot. We need to speak to someone who will treat us like a person. I have dealt with the staff at the commission through my consultants, which costs me money all the time. I have found that people in the department are not approachable at all. That is the main point. The second biggest frustration would be the time it takes to deal with matters and the type of system that is in place. Things change but the system does not. Life changes but we must all go on. The service station was running well but now it is not. Things must change; however, the system does not want to change with the times. The department has not accepted that things will not work like they used to any more.

Hon DEE MARGETTS: Is the department that you are always dealing with the Western Australian Planning Commission?

Mr Braidwood: Yes.

Hon DEE MARGETTS: You have had no contact with Main Roads or anybody else?

Mr Braidwood: Not now. When the commission took the original 129 square metres on the first reserve, Main Roads approached me then because it wanted the reserve. I could talk to the fellow there. He was not understanding but he was a person. There was a big difference.

The CHAIRMAN: You have given us a clear picture of your situation. Is there anything you want to say in conclusion.

Mr Braidwood: I would like to approach the committee again in a couple of months. Hopefully things will be over and I can let you know if we have come to an amicable agreement after all.

The CHAIRMAN: Please leave with the committee any documents you have now that will help us to understand your situation. Also, please follow up and let us know the result of your arbitration.

Mr Braidwood: I will do that.

The CHAIRMAN: That will better help us to get the full picture.

Mr Braidwood: I did not bring in many documents. I have copies of things that my consultants have put to the commission. However, I came to let the committee know what it is like dealing with these people.

The CHAIRMAN: We have a pretty clear understanding of the issue.

Mr Braidwood: It is very frustrating.

The CHAIRMAN: I can understand that. If there is anything else you would like to provide to the committee, please feel free to do so.

Mr Braidwood: All right.

The CHAIRMAN: Thank you very much and best wishes with the arbitration next week.

Mr Braidwood: I am not invited to the arbitration. It is a pre-arbitration hearing in which my consultant, the arbitrator and the man from the planning commission get together and talk about things. One of the first things they must decide at arbitration is whether my development application was real or I am just forcing the issue. It is ludicrous. We have now been trying to do something for 14 months. Hopefully the arbitrator is an independent arbitrator that both sides have picked. If he decides, through something that the man from the planning commission says, that I am just forcing the issue, which I can assure you I am not - I am not making money out of the place at the moment - they can throw the case out. However, it is a genuine application and that must be decided on at the pre-arbitration hearing. We will go on from there. The system stinks, but that is only my opinion.

The CHAIRMAN: Thank you very much for attending the meeting.