IN THE LAND APPEAL COURT

OF QUEENSLAND

Re: V99-1308
An appeal against a Land Court Determination of Unimproved Value - *Valuation of Land Act 1944*
Local Government: Livingstone Shire

BETWEEN:
RMH Cowie & GI Pearson
Appellants

AND:
Chief Executive, Department of Natural Resources and Mines
Respondent

(Hearing at Rockhampton)

J U D G M E N T

Delivered at Rockhampton this Fourth day of September 2001.

[1] The appellants own an allotment described as Lot 2 on RP 615103, Parish of Hewittville, containing an area of 730 m², situated at 50 The Esplanade, Lammermoor, about 3.5 km south-easterly of the Yeppoon central shopping area.

[2] The irregularly shaped, long, narrow lot has an angular street frontage of 13.405 metres with effective width of about 11 m. The side boundaries angle from the frontage to the north-west to about half the depth of the lot on the northern boundary then further angle to the west to the rear boundary where the width reduces to 9.746 metres. Four surveyed lots adjoin the land along the south-westerly boundary, one adjoins to the rear and another to the north.

[3] The esplanade adjacent to the property is bitumen sealed, terminating in a cul-de-sac a short distance northerly of the lot, with no "through" traffic.

[4] Limited ocean views are available from ground level on the site, obstructed to a degree by planted vegetation on the beachfront opposite. Shifting sandy soils have required retention along the side boundaries of the lot.

[5] Electricity, water, telephone and garbage services are provided but the site is one of about nine in the immediate locality which are unsewered with no prospect of connection to the Council system.

[6] As at 1 October 1998, the chief executive's unimproved valuation of the land was in the amount of $93,000. The owners appealed to the Land Court against that valuation, estimating in the Notice of Appeal, an unimproved value of $81,000.

[7] Mr J Cowie, a registered valuer, who conducted the appellants' case in the Land Court, gave evidence there in support of a valuation in the amount of $75,000. That valuation had been based on his direct comparison of the subject land with two vacant lots, situated respectively at 342 and 142 Scenic Highway in the Statue Bay-Lammermoor Beach area, to the south of the subject land, which had been subject of sales. The Scenic Highway (Yeppoon-Emu Park Road) in that section, is constructed on the beachfront esplanade, carries relatively high traffic volume and separates the sale lands from the beach.

[8] Mr Cowie had analysed the sale of the land at 342 Scenic Highway to show an unimproved value of $58,000. The unimproved value applied by the chief executive at the relevant date was $62,000. The sale of the land at 142 Scenic Highway had been analysed by Mr Cowie to show an unimproved value of $94,000 and the unimproved value applied by the chief executive to that land was $98,000.

[9] In the Land Court, the chief executive's unimproved valuation of the subject land was supported by the oral and written evidence of Mr ST Larking, a registered valuer employed by the chief executive. Mr Larking had not been the valuer who had made the valuation appealed against.

[10] The evidence was that the valuation had represented a 10% increase over the annual valuation previously in force. The evidence of five sales on which the chief executive had relied as support for the varying increases which had been applied to the various esplanade frontage lands in the Yeppoon locality, was introduced to the Land Court through Mr Larking. Two of those sales were of lots a significant distance to the north of the subject land (Kiama Avenue, Bangalee) and a third at Todd Avenue, Yeppoon, where the esplanade frontages were unformed, allowing direct pedestrian access from the sale lots to the beachfront. Factorised increases of 20% had been applied to the previously existing valuations of each of those lots. The Kiama Avenue sales showed analysed unimproved value increases of 40% and 44% respectively while the Todd Avenue sale showed an analysed unimproved value increase of 21%.

[11] The fourth sale (in Ray Street) was of a lot situated a short distance northerly of the subject land. It had unobstructed ocean views and also enjoyed direct

pedestrian access, over an unformed esplanade, to the beachfront. That sale had shown an analysed unimproved value which reflected a 55% increase over the previously existing valuation. However a 10% increase had been applied.

[12] The fifth sale (Prospect Street) was of a lot southerly of the subject land and located between the two sale properties upon which Mr Cowie had relied. This sale land was separated from the beachfront by the Scenic Highway but was elevated high above that road and commanded wide ocean views. No access was available to Scenic Highway. Access was gained from the Prospect Street frontage. The sale showed an analysed unimproved value reflecting a 65% increase over the previously existing valuation. Again however, a 10% increase had been applied by the chief executive.

[13] After considering the totality of the sales evidence, the learned Member said (Record p.15):

> "I believe that the subject land is best compared to 142 Scenic Highway, and that it has better direct access to the beach, but suffers some disability because of the lack of connection to the public sewerage system."

[14] However, he found that all of the sales supported Mr Larking's conclusion and that, on balance, the appellants had not demonstrated that the respondent had made a serious error, or adopted a wrong principle. He was not persuaded that the appellants had proved their case. The appeal was dismissed and the unimproved valuation of the chief executive was affirmed.

[15] The owners appealed to this Court on the ground that the Land Court did not have due regard to the evidence presented to it in respect to a number of factors related to sales evidence; the state of the market; relativity of valuations; lack of sewerage and the cost of installation and maintenance of a septic system; the differences between Residential "A" and Residential "B" zoning; unstable soil; the narrow frontage; the irregular shape; the number of immediately adjoining properties; the effect of having a constructed road separation from the beach as compared to sale lands with unformed esplanade and direct beach access.

[16] Before us, Mr Cowie again represented the appellants, while Mr R Paterson, Barrister, appeared on behalf of the respondent chief executive.

[17] Mr Cowie had made application to adduce some new evidence of a general nature embodied within his written submissions. The more specific new evidence

related to various photographs; existence of multi-unit development in the locality of the Todd Avenue and 142 Scenic Highway sales; information relating to the National Plumbing Code AS3500, (which had been adopted by the Queensland Government on 30 April 1998) and the investigation process and estimated cost of installation and maintenance of an on-site sewerage and effluent disposal system for which local government approval would have been required at the relevant date of valuation, in the absence of a sewerage scheme connection.

[18] Objection was taken by the respondent to the admission of the new evidence. Section 56 of the *Land Court Act 2000*, provides:

> " (1) An appeal in the Land Appeal Court must be decided on the evidence on the record of the proceeding in which the decision appealed against was made.
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> (2) However, the court may admit new evidence if -
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> (a) the court is satisfied admission of further evidence is necessary to avoid grave injustice; and
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> (b) the party applying to have further evidence admitted gives the court an adequate reason for the evidence not previously being given; and
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> (c) application to have further evidence admitted is made before the hearing of the appeal."

[19] Having heard the submissions of the parties, the Court accepted that the new evidence in relation to the on-site sewerage installation requirements and the photographic evidence, should be admitted.

The Issues

[20] The issues in this appeal are, on analysis, relatively narrow.

[21] The learned Member had decided that, of the sales evidence presented to him the subject land was best compared to 142 Scenic Highway.

[22] Mr Larking had not used the 142 Scenic Highway sale as evidence of value supporting the chief executive's valuation. However, before us, the respondent submitted that the learned Member was correct in identifying that sale, tendered by the appellants, as providing the most comparable evidence as to the unimproved value of the subject property.

Findings

[23] We agree that the learned Member was correct in identifying that the sale at 142 Scenic Highway provided the most comparable evidence as to the unimproved value of the subject property.

[24] The comparison process then requires consideration. Mr Cowie was of the opinion that the sale supported a valuation of $75,000 for the subject land on the basis of the various disabilities suffered by it, but also on zoning considerations.

[25] The subject land is zoned Residential "A". The sale land was zoned Residential "B". There was no dispute that the sale land was of lesser area than the minimum necessary to allow individual multi-unit development, despite its "Residential B" zoning. However, Mr Cowie's argument was that it was common practice for smaller lots to be aggregated with adjoining lands for the purpose of achieving permissible multi-unit development and a premium value, over Residential "A" value, attached to Residential "B" zoned land regardless of its size. The facts are in this case, however, that the land was not purchased by an adjoining owner, single unit dwellings occupied the adjoining lands and a single unit dwelling was subsequently constructed by the purchasers. We are unable to accept Mr Cowie's argument, as it relates to the specific circumstances of this sale, that the zoning of the land enhanced its value.

[26] We accept that the survey configuration of the sale land and its immediate environment relative to separation from existing residential development on adjoining lands is superior to that of the subject land. There had been no suggestion of error in Mr Cowie's contention that the soil structure on the sale land was more stable than that of the subject land. Mr Cowie's evidence before the Land Court was that the sale land "has sea views over Lammermoor Beach". The new photographic evidence indicates the available views as being through existing light density vegetation adjacent to the beachfront. The sale land has the advantage of sewerage connection. The negative feature of the site is its frontage to the busy Scenic Highway and its separation from the beach by that road.

[27] When compared to the unformed esplanade frontage lots with secondary road access, the sales evidence indicates a clear discounting in value by the marketplace for those lots separated from the beachfront by Scenic Highway and suffering the disabilities associated with high traffic volume on that road.

[28] We are persuaded that, all other things being equal, the location of the subject land, separated from the beachfront by a local "no through" road would be appreciably more desirable in the marketplace than the location of the 142 Scenic Highway sale land.

[29] We are able to accept that in comparison with the sale land, the superior position of the subject land could largely offset the several demonstrable disabilities of the subject land, including its lack of sewerage connection.

[30] There was no evidence to indicate how the lack of sewerage had been reflected, in monetary terms, in the valuation appealed against. It had been assumed by Mr Larking and, as a consequence, by the learned Member, that previous relativity of valuations would have taken that specific disability of the subject land into account. The further evidence of Mr Cowie as to the estimated cost of installation of an on-site sewerage effluent disposal system is not conclusive evidence as to the deleterious effect on market value attributable to the disability of lack of sewerage connection, or conversely, the added value associated with connection. However, a prudent purchaser of an unsewered lot would be expected to be fully informed as to any specific development costs associated with that disability. We are unable to accept as the learned Member had, based on his interpretation of Mr Larking's evidence, that "any additional allowance for sewerage in the current matter would ***merely be a slight weighting factor*** in order to resolve any other uncertainties in favour of the appellants." (emphasis added - record p.12), when the new evidence of Mr Cowie in that regard, is considered.

[31] We see some relevance in the fact that, on a direct relativity basis, the chief executive had, as at the relevant date, found the subject land to be $5,000 less valuable than the sale land. When the learned Member compared the two lots, he adopted the unimproved value as indicated by the sale, rather than the valuation applied to the sale land by the chief executive, as the basis for comparison. That was the correct approach, in our opinion, and in conformity with relevant legal principles, as adopted by the Land Appeal Court in *Grahn v. Valuer-General* (1992) 14 QLCR 327 then in *Scougall v. Natural Resources* (1996-1997) 16 QLCR 536.

[32] However, just as Mr Larking had found it necessary to assume that previous relativity of valuations had reflected the lack of sewerage to the subject land, it seems fair to also assume that the lack of sewerage was one of the factors which had

influenced a difference in valuations as had been applied by the chief executive, of $5,000 between the subject site and the sale land.

[33] We will maintain that differential and find an unimproved valuation of $89,000 for the subject land in comparison with the analysed unimproved value shown by the sale of 142 Scenic Highway.

[34] One of the matters raised by Mr Cowie was his contention that the valuations applied by the chief executive to the inferior esplanade frontage lots bore incorrect relativity to the valuations applied to the superior lots. He saw that opinion as being supported by the fact that the valuations applied to the Scenic Highway sale lots exceeded the actual sale prices, while the values applied to the superior sale lots were, in most cases, conservative, or in other cases, so conservative that the sales should not have been included as evidence of value. There is logic in Mr Cowie's contention but we do not see that it assists his case. It seems clear that, had the "high" esplanade sales been accepted by the chief executive as evidence of true market value, then some flow-on effect must have further enhanced the unimproved value of the subject land.

[35] The following propositions, which we see as relevant in this matter, and with which we concur, are found, inter alia, in *Scougall* (supra) at p.543, 544:

- It is desirable that valuations made for the purposes of the *Valuation of Land Act 1944* of comparable lands should bear proper relativity, one to the other, so long as the valuations are soundly based. It is, however, untenable to adopt a value for one parcel on relativity with another which has no sound basis (*Barnwell v the Valuer-General* (1989) 13 QLCR 13, at p.16 and cases cited in it).

- The best basis for assessment of unimproved value is the use of sales of vacant or lightly improved parcels of land (*Fischer v The Valuer-General* (1983) 9 QLCR 44, at 46; *Barnwell v The Valuer-General* (1989) 13 QLCR 13, at 17).

- Whilst maintenance of correct relativity is of considerable importance for rating valuations, the use of the principle of relativity should not be preferred to the exclusion of relevant (even if not ideal) sales evidence (*Fischer v The Valuer-General* (1983) 9 QLCR 44, at 46).

- If possible, the Chief Executive should obtain uniformity between different blocks in the same land category or type, but should do so (preferably by reference to sales of comparable land) by correcting inaccuracies rather than by making an inaccurate assessment in order to secure uniform error (*Barnwell v The Valuer-General* (1989) 13 QLCR 13, at 16-17 and cases cited in it).

The 142 Scenic Highway sale provided the best evidence for assessment of the unimproved value of the subject land. If valuations of other lots are inaccurate as suggested by Mr Cowie, then it is those inaccuracies which require correction. It would be untenable to adopt a value for the subject land based on relativity with valuations alleged to be inaccurate.

Order

[36] The appeal is allowed. The determination of the Land Court is set aside and the unimproved value of the subject land determined in the amount of Eighty-nine Thousand Dollars ($89,000) as at 1 October 1998.

(Dutney J)
JUSTICE OF THE SUPREME COURT

(JJ Trickett)
PRESIDENT OF THE LAND COURT

(RE Wenck)
MEMBER OF THE LAND COURT