LAND COURT

BRISBANE

6 SEPTEMBER 1995

In the matter of an appeal against a valuation
Valuation of Land Act 1944
Valuation Roll No.: 11815/00200
Local Government: Moreton (AV95-35)

James A Farrell
v.
Chief Executive, Department of Lands

(Hearing at Ipswich)

D E C I S I O N

In this matter the landholder appealed against the value of $46,000 placed on the subject land by the Chief Executive as at 30 June 1993 pursuant to the provisions of the Valuation of Land Act 1944. The appellant contends for a valuation of $35,000.

The subject land comprises an area of 27.52 hectares situated at Cumner Road, Ripley, 14 kilometres south-east of the Ipswich Post Office. Access is via Ripley Road into Barrams Road and then into Cumner Road. Whilst Ripley Road is a two-lane bitumen roadway, Barrams Road is formed gravel, and Cumner Road is formed earth with some gravel. Telephone is the only service available. The land is zoned "Rural" under the Moreton Shire Council Town Planning Scheme which applied at the relevant date. The property has a high-set timber dwelling on it which is occupied by the appellant, and has boundary fencing and fencing around the curtilage of the dwelling.

James Anthony Farrell gave evidence in support of his appeal, whilst Brian Joseph McDonald, registered valuer in the employ of the Department of Lands, gave evidence on behalf of the Chief Executive.

Mr McDonald described the subject land as being an easy to moderate sandstone ridge with ironbark and spotted gum running down to easy sloping creek frontage. Whilst Mr Farrell did not disagree with this description, his choice of words were somewhat more colourful, that is "mongrel country". He said that the topsoil on the land, such as it was, would not sustain a garden and that the next strata in the soil was a hard sandstone material. The country has about a 50% cover of blady grass, has no natural permanent water though a creek depression running through the land has holes in it which do hold water just after rain. There is a 3 metre deep well on the subject land which is now dry but which has held water which Mr Farrell has pumped out by way of a solar-driven pump. He has constructed a small dam on the property for a cost of about $600 and this still holds water.

The appellant's major contention is that the subject land ought to be treated as "farming" land pursuant to s.17 of the Valuation of Land Act. Section 17(1) of the Act provides:

"In making a valuation of the unimproved value of land exclusively used for purposes of a single dwelling house or for purposes of farming, any enhancement in that value for that the land has been subdivided by survey or has a potential use for industrial, subdivisional or any other purposes shall be disregarded irrespective of whether or not, in case of potential use as aforesaid, that potential use is lawful when the valuation is made."

Whilst "farming" means -

"(a)the business or industry of grazing, dairying, pig farming, poultry farming, viticulture, orcharding, apiculture, horticulture, aquiculture, vegetable growing, the growing of crops of any kind, forestry; or

(b)any other business or industry involving the cultivation of soils, the gathering in of crops or the rearing of livestock;

if the business or industry represents the dominant use of the land, and -

(c)has a significant and substantial commercial purpose or character; and

(d)is engaged in for the purpose of profit on a continuous or repetitive basis."

In support of his submission that the definition of "farming" would apply, Mr Farrell gave evidence that the bulk of the subject land was leased out on a continuous basis to a family who carry out grazing activities on the land together with grazing on other lands which they own or lease. The lease income to Mr Farrell amounts, at the moment, to $1,040 per annum which he acknowledges is small, however, in view of the fact that he is a pensioner with only minimal supplementary income from part-time work, this ought to be taken into account in assessing the application of s.17 in his view. Mr Farrell put the view that the carrying capacity of the subject land would be about one beast to 4 acres if the blady grass were replaced by better pasture species, whilst Mr McDonald expressed the view that a carrying capacity of one to 8 acres would be a better assessment. According to Mr McDonald over grazing would result in erosion of the land. Whilst I would lean towards the view expressed by Mr McDonald, given the description of the country, I need not determine the issue of carrying capacity as it seems to be quite clear on the evidence that the activities on the subject land, even when treated in association with other lands, do not amount to a "business" which would satisfy the provisions of s.17. Mr Farrell was unable to produce details of income generated by his lessees who he described as "casual sort of farmers" who were not carrying on farming in a businesslike manner, but could have a business if "they got down to it". Even if I were to adopt Mr Farrell's estimate of carrying capacity i.e. 16-18 head, it is quite clear that without evidence that such stock

were of a type and value that contributed to a business which "has a significant and substantial commercial purpose or character", the use would not satisfy the requirements of s.17.

More importantly, I find that the use of the land for grazing purposes does not represent the "dominant" use of the land which is clearly residential. Essentially, the land provides a place of residence for Mr Farrell, with the income from the lease and the use associated with that lease being supplementary uses. Mr McDonald valued the land as having a highest and best use of "large rural homesite" and I would adopt this for the purpose of valuing the subject land. I turn now to the question of the value that ought to apply to the subject land having regard to the use so determined.

Mr Farrell purchased the subject land as part of a tender process, following which he was successful in tendering a figure of $48,000 in April 1992. He had investigated the market in the Ripley area and in other areas and had tendered for a number of parcels in the Ripley area, succeeding in acquiring the subject land. At the time of purchase legal access was available to the land, however, this was not constructed and in about November 1992 Mr Farrell arranged for construction of part of Cumner Road to provide vehicular access onto his land. He argues that the value applying to the subject land ought to make allowance for his expenditure. As the law currently stands, I am unable to accept this. The process of determining unimproved value requires that all improvements made on the subject land be excluded from consideration but that the land be valued situated in its environment together with the amenities and facilities which surround it. In the instant case this would include the road constructed at Mr Farrell's expense. Whilst on first blush this may appear to be unreasonable, it would be the case in a subdivision where roads were constructed and services provided that the cost of supplying these, or at least the value which they added to any parcel of land in that subdivision, would feature in the price which would need to be paid for such land. In Mr Farrell's case he purchased land which did not have a road constructed along its boundary, nor did it have electricity, water and other services and the price paid for it would reflect these matters. Similarly, the unimproved value would reflect the absence of services. What I have attempted to explain in, hopefully, straightforward language, is a summary of a principle expressed by the Privy Council in Tetzner v. Colonial Sugar Refining Co (1958) AC 50.

No basic properties indicating value were supplied by Mr Farrell. His evidence did make mention of the fact that when the subject land was held in aggregation with other parcels, the value which applied to it was $49,000. He suggested that a proportion of that value would indicate that the increase in value over time applying to the subject land was extraordinarily high. Evidence from Mr McDonald, however, was to the effect that the aggregated parcel, of which the subject had been part, was sufficiently large and was put to a use which attracted the protective provisions of s.17

of the Valuation of Land Act (or its predecessor s.11(1)(vii)) and that an extrapolation of value to the subject on a proportionate basis was invalid. Given that, the subject ought to be valued as a site. I accept this explanation.

Mr McDonald referred to three sales in the valuation which he wrote for the Chief Executive and one of these was challenged by Mr Farrell who suggested that the sale price was enhanced by the prospect of further development of the land by a company bearing the name Flagstone. Mr McDonald said, however, that the sale was to a private person, not a developer, and that it does not represent en globo value of the land. His appreciation of the marketplace in the general area of the subject is that values have increased over the past four to five years as part of the demand for rural homesites which is alive in the area. Mr Farrell did not challenge the other two sales relied upon by Mr McDonald. Even if I were to disregard the sale challenged by Mr Farrell, I am left with Mr McDonald's expert evidence applying the other two sales to the subject land and supporting the value contended for by the Chief Executive.

It follows that the appeal fails in this matter and the decision on value made by the Chief Executive is affirmed.

RP SCOTT
MEMBER OF THE LAND COURT