

LAND COURT

BRISBANE

16 AUGUST 1996

Re: AV95-107 -
An appeal against an unimproved valuation
under the Valuation of Land Act 1944
Local Government: Hervey Bay City Council

M.J. Kagerer

v.

Chief Executive, Department of Lands

(Hearing at Hervey Bay)

D E C I S I O N

The appellant is the registered proprietor of land situated at 549 The Esplanade through to Cypress Street, Urangan, described as Lots 76 and 83 on Registered Plan 35351, Parish of Urangan, containing a total area of 2,256 m².

The lots are of approximately equal size - Lot 76 fronting the Esplanade and being zoned "Residential A". That land is developed with a two-storey brick multiple-unit building of eight two-bedroom residential units. Lot 83, fronting Cypress Street, is zoned "Residential B" and is developed with a two-storey timber building containing separate flats and residence/office.

The town planning position, as I understand it, is that the multi-unit use of Lot 76 is a lawful non-conforming use. If the land was however unimproved, it would have been necessary for it to be rezoned to "Residential B" before multi-unit residential development would be permitted. There are costs involved, including contributions for headworks, in the rezoning process which it appears normally occurs in conjunction with application for approval of a particular development proposal. There is a mixture of "Residential A" and "Residential B" zoned lands along the Esplanade. The evidence is that rezoning of "Residential A" land to "Residential B" is consistent with Council's intent for development in this locality, as established under a Development Control Plan.

As at 1 January 1995, the Department of Lands (now Department of Natural Resources) assessed the unimproved value of the land in the amount of \$230,000. An unsuccessful objection was lodged against that assessment and the appeal subsequently filed with the Court. The grounds of appeal are wide and in some respects unclear in meaning.

Mr J. Kagerer, the husband of the appellant, conducted the case. Several appeals have been lodged in recent years against the Department's

valuations at various dates. Mr Kagerer has conducted those cases and as well has appeared in the Land Appeal Court. It is obvious that in his preparation of material for a hearing his research into other valuations (and various other information which he sees as being relevant) is detailed and comprehensive. However, in this matter, there was a distinct lack of cogency in the manner in which the voluminous material was presented. Important as the material may be seen to be by Mr Kagerer, in reaching his conclusions as to inconsistent relativity between valuations, the sales evidence, effect of town planning matters and Council policies and the like, much of his research tends to become meaningless other than to himself. On his own admission, he has no knowledge of any provisions of the *Valuation of Land Act* 1944, regardless of his regular conduct of appeals against valuations made under that Act.

It emerged during the hearing that the appellant's main concern, apart from the physical disabilities of the land, is now concentrated on the contribution to the overall valuation made by Lot 76. As stated earlier that land is zoned "Residential A" and costs are involved in having such land rezoned to "Residential B" to allow the full development potential of such land. Mr Kagerer recognises that "Residential B" zoned land is enhanced in value in comparison with "Residential A" zoned land but it seems that there is also potential for that enhancement to vary depending on when land was first included in the "Residential B" zone. Mr Kagerer tendered part of a copy of a Council Town Planning Report dated 7 April 1993 in relation to an application to develop land at 439 The Esplanade and Cypress Street, Torquay. He highlighted the following passage:

"Council at its meeting in September 1992 resolved to adopt the following policy relating to the application of headworks:

'Water and sewerage headworks contributions be not imposed on town planning consent application, Building Unit subdivision applications and Group Title subdivision applications when such applications relate to multiple unit buildings erected on land which was zoned Residential "B" or "Business" at the date of gazettal of the Town Planning Scheme for the City of Hervey Bay being 12 May 1979.'

Also tendered by Mr Kagerer was part of another Council Town Planning Report dated 14 February 1992 in relation to land at 451-452 Esplanade, Torquay, and an application to rezone that land from the "Residential A" zone to the "Residential B" zone and erect a four storey multiple-unit building containing 21 units. Contributions in connection with that application (the land containing an area of 2,024 m²) amounted to \$192,633.67 or \$95 per m² for water, sewerage headworks and including

\$9,500 towards the provision, development and maintenance of "public recreational and open space". Mr Kagerer suggests that no prudent developer would purchase "Residential A" zoned land because of the costs involved in rezoning and development. Mr Kagerer also produced a typed schedule of calculations headed "Headworks Contributions" said to have been applicable as from 16 March 1993. That schedule shows the contributions required for a 21 unit development would have been \$87,963. The reasons for the differing calculations in that example at 451 Esplanade was not explained and is not clear.

In any event Mr Kagerer carried out a series of calculations deducting from the Lands Department valuations of various Esplanade lands his calculation of the enhancement which he perceived to be built in to those valuations based on the headworks contributions calculated, it seems, either on actual developments or in some cases approved developments. The result demonstrated to Mr Kagerer the inconsistencies in relativities of which he complains. Mr Kagerer's calculations however do nothing to assist in identifying the unimproved market value of the subject land.

What is relevant is that the use of Lot 76 is equivalent to as of right use within the "Residential B" zone. Section 3 of the Act provides the meaning of unimproved value and ss.(4) deals with that meaning as it applies to non-conforming use such as with Lot 76 as follows:

"(4) Notwithstanding anything contained in this section, in determining the unimproved value of any land it shall be assumed that -

(a) the land may be used, or may continue to be used, for any purpose for which it was being used, or for which it could be used, at the date to which the valuation relates; and

(b) such improvements may be continued or made on the land as may be required in order to enable the land to continue to be so used;

but nothing in this subsection prevents regard being had, in determining that value, to any other purpose for which the land may be used on the assumption that any improvements referred to in subsection (1) had not been made."

Mr D.R. Gaedtke was the registered valuer who carried out the valuation appealed against. It is clear from his evidence that the land was valued on the assumption that the existing improvements on that land "may be continued in order to enable the land to continue to be so used" in accordance with s.3(4) of the Act.

The valuation was calculated as follows:

2,256 m² @ \$102.50/ m² = \$231,240

Adopt \$230,000

OR

Lot 76 - 1,126 m² @ \$125/ m² = \$140,000

Lot 83 - 1,128 m² @ \$80/ m² = \$90,000
\$230,000

Mr Gaedtke had followed correct principles in conducting the valuation. It was based on market evidence. He provided the details of sales of two Esplanade frontage properties, and as it happened, both involved land within the "Residential A" zone. One sale at 469 Esplanade was similar to the subject in that it contained an area of 2,228 m² comprising a "Residential A" zoned lot at the Esplanade and a "Residential B" zoned lot at Cypress Street to the rear. That land had sold to show an analysed unimproved value of \$275,000 in December 1994. Rezoning of the "Residential A" component had cost \$35,000. As fully rezoned "Residential B" zoned land the sale showed \$153 per m². On a relativity basis, Mr Gaedtke's evidence was that he would have applied at the relevant date an unimproved valuation of \$140 per m² overall to that sale land which had location and topography superior to that of the subject.

The second Esplanade sale was of a single "Residential A" lot of 1,128 m² in August 1994 for an analysed unimproved value of \$190,000. Again the cost to rezone the land to "Residential B" was \$35,000. As "Residential B" zoned land the sale showed \$200 per m². Mr Gaedtke saw the sale as being at a high level. On a relativity basis he would have applied \$150 per m² as "Residential B" land. It is in a similar locality to the subject land but is superior in topography.

Mr Gaedtke also provided the details of two sales in Cypress Street analysed to show values of \$100 per m² and \$105 per m² the first being in a similar location to the subject land but of superior topography and the second superior both in location and topography.

In addition to the sales evidence, Mr Gaedtke's valuation was made having regard to "the nature of the land ie earthworks are required and also that periodic flooding from tidal surge/stormwater may affect part of the site. Recent remediation works by the Local Government may have alleviated some or all of the problems, however the works have not been put to the test by similar climatic conditions as experienced in the past. The allowance included in the valuation for these problems have been retained pending satisfactory performance of the remediation works."

Mr Kagerer provided no cogent sales evidence to assist in his case. However, if there was some additional headworks benefits applying to certain "Residential B" lands then that would be a matter relevant to the particular valuations of those lands. If, for example, the valuation of certain land was proved to be too low, that does not mean that the valuation of the subject land should be lowered merely to maintain uniform error.

Mr Gaedtke's evidence leaves me in no doubt that the valuation of the subject land is well founded with proper consideration having been given both to the legislation and matters of fact.

The appeal is dismissed and the valuation of the chief executive affirmed.

RE WENCK
MEMBER OF THE LAND COURT