[2001] QLC 100

LAND COURT

BRISBANE

21 September 2001

Re: Appeal against annual valuation
Valuation of Land Act 1944
Property ID No: 9167403
Local Government: BCC-Belmont
(AV2000-0266)

John C & Stella J Conway
v.
Chief Executive, Department of Natural Resources and Mines

J U D G M E N T

Background:

(1) This matter relates to land at 177 Cribb Road, Carindale, and described as Lot 107 on RP 909073, Parish of Tingalpa. The subject land has an area of 750 m^2 and is an inside lot located about 10 kilometres radially south-east of the Brisbane GPO. Access is good to Cribb Road, which is bitumen sealed with concrete kerbing and channelling, and all normal utility services are available. The subject land is zoned Residential A under the Town Plan of the Brisbane City Council (the Council) of 13 June 1987, affected at the date of valuation of 1 October 1999. The key issues are comparisons of sales, relativity, the impact of a stormwater drain and a sewer line manhole.

(2) On 27 March 2000 the Chief Executive issued a valuation of the subject land at $140,000. Following an objection the Chief Executive confirmed that figure on 1 July 2000. The appellants have now appealed claiming the unimproved value should more properly be $135,000.

John Charles Conway appeared and gave evidence for the appellants. Ms R Trigge, senior legal officer appeared for the respondent, calling evidence from Ross Brian Cranston, the departmental registered valuer responsible for determining the valuation.

The Evidence:

(1) The nature of the land –

(3) The subject land is a regular shaped parcel of medium elevation in height, with a slight cross fall of less than half a metre from west to east at the frontage, and about one metre towards the rear. The subject land is below Cribb Road. Mr Cranston

provides a contour map of the area (Exhibit 4) which also shows the location of the sewer main along the rear boundary. There is a sewer manhole in the north-eastern corner of the parcel.

(4) An area of concern to the appellants is an open unlined drain which was originally excavated during development of the lands to divert surface run-off waters towards the rear of the subject land. That open drain was subsequently altered to include an open field gully pit for entry into a stormwater drain at the north-eastern corner of the subject land, parallel to the sewer line connecting to Ehlers Close to the north-east. The roof waters from the single story dwelling on the subject land now discharge into that field gully pit.

(5) As a consequence of filling upon the subject land, the sewer manhole and the stormwater field gully pit are now below the raised surface level (about 0.4 metres), and will require appropriate remedial action to bring those features to the new landscape surface for ease of maintenance. While those remedial actions have so far not been undertaken by the appellants, it is their intentions to do so in the future. It is proposed to fill the current open unlined drain, and cap it with a concrete half spoon drain to divert surface waters away from the neighbouring property (Lot 89). Mr Conway estimates the cost of landscaping and retaining walls and the spoon drain at $10,000, which he feels represents the value of those disabilities.

(6) The history of the current stormwater drainage along the boundary with the adjoining parcel (Lot 89), reveals that the open drain was in existence prior to any buildings upon the subject land or the two dwellings to the west. The appellants purchased the land about four years ago, and built their home about two years later. During that intervening period the field gully pit was installed without the permission or knowledge of the appellants. The appellants have no knowledge of who installed the field gully pit, but believe it may have been by the Council.

(7) Before filling the old open drain, Mr Conway understands from his neighbour on Lot 89 that protection of the common dividing fence will be required. Mr Conway agrees that those further works will represent a substantial improvement to the subject land. However he sees those improvements as necessary in order to divert the surface run-off from the subject land. The placement of the open drain had apparently occurred following the cut and filling of the adjoining parcel (Lot 89) during the construction of that dwelling. It was not directly apparent why the builder at that time had constructed the open drain on the subject land, rather than upon Lot 89. However the current owner of Lot 89 also has a surface water drain on his side of the common

fence line, although at the lower level of that excavated yard, which is some 0.5 metres below the subject land.

(8) In their grounds of appeal the appellants argued that the existing sewer manhole had prevented the erection of a garden shed at that location. However Mr Conway concedes that a garden shed now exists in the north-western corner of the subject land, and that prevailing breezes predominantly from the north-east are not impeded by that shed. On that basis the disability of the sewer manhole has only significance in respect of the need to maintain access to it by the Council.

(9) In respect of the impact of the sewer line across the subject land, Mr Cranston sees that as only providing a slight impact upon the unimproved value, compared to the parcels to the west, which also have the sewer line passing across them. In allowing $5,000 reduction in the unimproved value of the subject land to $140,000, Mr Cranston sees that mostly reflecting the different topography of that parcel, and including some small allowance for the existence of the open drain. Mr Cranston sees the open drain as really not necessary due to the comparatively small surface water run-off from the subject lands.

(2) Comparison of sales -

(10) The appellants provide no sales of land to support their estimate of the unimproved value, however Mr Conway was aware of Mr Cranston's sales. Mr Cranston provides the following sales of vacant Residential A lands:

- Sale 1 – (57 Delaney Circuit, Carindale - Lot 267 on RP 909073). This is a 766 m^2 inside parcel located about 300 metres north-west of the subject land. The sale is seen as superior to the subject land, and sold in December 1999 for $185,000, was analysed at $183,200, and applied at $172,500.

  Sale 2 – (136 Delaney Circuit, Carindale - Lot 124 on RP 859113). This is a 750 m^2 inside lot, located about 550 metres north-west of the subject land. The sale is less than 0.5 metres below street level, and has a sewer line passing across it towards the rear boundary. The sale is seen as slightly superior to the subject land, and sold in May 1999 for $153,000, was analysed at $150,300, and applied at $144,000.

(11) Mr Cranston sees his Sale 2 as his most comparable sale, noting that it is slightly superior to the subject land as Sale 2 does not have a sewer manhole on it.

(3) Relativity -

(12) While Mr Conway did not specifically identify relativity with neighbouring parcels in his grounds of appeal, it was clear that in ascertaining his estimate of the unimproved value of the subject land he had drawn direct comparisons with the four

or five parcels immediately to its west. He saw those parcels (particularly Lot 106) at an unimproved value of $145,000, as being superior to the subject land.

(13) Mr Cranston agrees with that comparison, and the only difference between the parties is then the quantum of that difference between the parcels. Mr Cranston has relied also partly upon his Sale 2 to assess the difference at $5,000 for the subject land.

Decision:

(i) The nature of the land -

(14) I turn first to the nature of the land and note that it is agreed that there is an open drain inside the eastern boundary of the subject land which is seen as a disability. The creation of the open drain is the subject of some uncertainty, but it would appear to have been created by the builder of the adjoining dwelling on Lot 89, prior to the owners acquiring the subject land. The appellants are under the understanding that some further amendments to that drain would be necessary if the open drain was to be filled during further landscaping.

(15) While the matter of surface waters passing across land is often of concern to property owners, particularly those of lower elevation than adjoining lands, it is not the natural surface water flows which requires special attention. Any owner must not concentrate surface waters to such an extent that it then discharges in a controlled manner onto adjoining lands. However the natural flow of surface waters, if not focussed in any way, is really a result of the topography of the land.

(16) Clearly the builder on Lot 89 saw his solution to diverting waters from Lot 89 by building the open drain along the boundary, particularly as he had excavated Lot 89 by about 0.5 metres. However that should not have been affected by digging an open drain on the subject land. Whether the filling of that drain could lead to a level of disquiet with the new owner of Lot 89 is a matter for consideration by the appellants. However the open drain should be seen as some type of improvement to the subject land, although providing little added value to the subject land. The principal added value is really to Lot 89.

(17) Likewise the current filling, as well as any proposed further filling as part of landscaping of the subject land, are also matters which are associated with improvements to the land. As such they are therefore matters which are to be excluded from the consideration in determining the unimproved value of the land.

(18) In that matter I note that the meaning of unimproved value is established by section 3(1) of the Act which relevantly states:

"**3(1)** For the purposes of this Act -

"**unimproved value**" of land means -

(b) in relation to improved land – the capital sum which the fee simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require, assuming that, at the time as at which the value is required to be ascertained for the purposes of this Act, the improvements did not exist."

(19) That was clearly defined by the Land Appeal Court in *PH Clough v Valuer General* (1981-1982) 8 QLCR 70, where after considering the Privy Council decision in *Tetzner v The Colonial Sugar Refinery Company Limited* (1958) AC 50, the Land Appeal Court said at page 75:

> "We think it beyond doubt that what has to be valued is the subject parcel of land viewed as if the improvements thereon, visible or invisible, never existed but that otherwise the parcel was situated in the community (and environment) with the amenities and facilities that had grown up around it as at the date of valuation."

(20) I am therefore directed to consider the subject land in its original state before the open drain or the filling existing upon the site. In determining what value to subtract for any improvements to the land, I am directed to ascertain the added value that those improvements bring to the land, rather than what those improvements might cost to the appellants.

(21) The matter of added value was addressed in *Mayne Property Development Pty Ltd v Chief Executive, Department of Natural Resources* (1996-97) 16 QLCR 709, where the Land Appeal Court said at page 772:

> "The value of improvements is '… the added value which the improvements give to the land at the time …'. (Valuation of Land Act, section 5(1)). It is not the value of improvements to any particular owner or potential purchaser."

Comparison of Sales -

(22) In seeking comparisons with sales of vacant lands, I note that Mr Cranston has sought to overcome any difficulties in establishing the added value of any improvements. The adoption of vacant sales has long been preferred by the courts, and perhaps was most clearly clarified in *PH Clough v Valuer-General* (supra) where the Land Appeal Court said at page 76:

> "It has been judicially laid down many times and in many jurisdictions that in ascertaining unimproved value, sales of unimproved land of comparable quality, situation, etc, to the subject parcel, if they are

> available, are to be preferred as the best guide for arriving at unimproved value. The reason is obvious. In applying such sales there is no room for error in analysing the value of improvements."

On that basis there is nothing to discredit Mr Cranston's method of determining the unimproved value, and I accept that the subject land has an unimproved value slightly less than Sale 2 ($144,000).

(iii) Relativity -

(23) If I turn then to comparisons with the unimproved value of the adjoining parcels, I find there is agreement that the subject land has an unimproved value less than Lot 106 ($145,000). The importance of correct relativity between parcels was addressed in *R and MM Barnwell v Valuer-General* (1990-91) 13 QLCR 13, where the Land Appeal Court said at page 16:

> "We are conscious that it is desirable that valuations made for the purposes of the *Valuation of Land Act* of comparable lands should bear proper relativity, one to the other, if 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."

That was also followed in *BG and AK Wilson v Chief Executive, Department of Lands* (1994-95) 15 QLCR 63, at 72.

(24) If I look at the potential impact of the sewer line or the sewer manhole upon the unimproved value, I note that does not automatically result in some diminution in value. I note for instance in *PH Clough v Valuer-General* (supra) the Land Appeal Court said at page 79:

> "It does not automatically follow that if a sewerage line passes through a property or a manhole is placed on a property that a reduction in unimproved value results. It depends on the circumstances in particular cases. There is no evidence of any serious disadvantages attaching to the subject land as a result of the sewerage installation or the manhole such as would warrant a reduction in unimproved value. There are many allotments in the neighbourhood similarly affected."

(25) In the circumstances of the current matter I find that the location of the sewer line is comparable to Lot 106. The additional impact of the sewer manhole is restricted to the north-eastern corner of the subject land. On that basis the only disability upon the appellants would be some future need to allow access to the manhole by the Council. However those later difficulties result only from the decision by the appellants to raise the subject land as part of landscaping. Those improvements must be ignored for the purposes of determining the unimproved value.

(26) Finally I am left with the difference between Mr Cranston and Mr Conway for the difference in the topography of the subject land, and any residual allowance for the open drain. Mr Cranston has relied upon his considerable experience in assessing that difference at $5,000, while Mr Conway has sought to identify the likely cost of affecting improvements at $10,000. On that basis I accept Mr Cranston's opinion.

Summary:

(27) Finally I am reminded that the onus is upon the appellants to prove that the Chief Executive has followed a wrong principle or made a serious error of fact. *Brisbane City Council v Valuer-General* (1977-78) 140 CLR 41 at 56, per Gibbs J. On the evidence before me that has not been demonstrated.

Conclusion:

(28) Having considered the whole of the evidence I am not persuaded that the appellants have proved their case. The appeal is dismissed, and the unimproved value of Lot 107 on RP 909073 as determined by the Chief Executive in the sum of $140,000 is affirmed.

NG DIVETT
MEMBER OF THE LAND COURT