

LAND COURT

BRISBANE

19 JULY 2001

**Re: AV98-323**  
**An Appeal against an Unimproved Valuation -**  
***Valuation of Land Act 1944***  
**Local Government: Johnstone Shire**

**D Holder**

**v.**

**Chief Executive, Department of Natural Resources and Mines**

### DECISION

As at 1 October 1997 the chief executive's unimproved valuation of land described as Lots 1 and 3 RP 720418 and Lot 3 RP 807618, Parish of Japoon, containing 99.16 hectares, was in the amount of \$146,000.

Mr Holder appealed against that valuation. His estimate of the unimproved value in the Notice of Appeal was \$122,000. The grounds of appeal related to the limited area available on the property for cane farming then the low production potential of that area, excessive cost of working it, its inferior soil types, susceptibility to erosion, and the consequent difficulty in comparing the farm with others in the area. Recent sales in the area were stated to be for conversion to banana properties "which attract a much higher price and productivity income".

Mr Gillan, Solicitor, represented Mr Holder, while Mr K Fisher, Barrister, appeared for the respondent. The parties agreed that this appeal should be heard with Appeals AV98-321 and 322 which related to other land owned by Mr and Mrs Holder and used for grazing purposes. The decision in those appeals is also delivered today.

The subject land is situated approximately 20 km south-west of Innisfail and 3.4 km westerly of Mena Creek township via the bitumen strip sealed Mena Creek Road, which is cut off during flood periods.

Mr Holder gave oral evidence in support of written comments prepared in response to and taking issue with some aspects of the respondent valuer's report produced prior to the hearing. With respect to the flooding of access roads, Mr Holder advised that the property became totally isolated at times, during the wet season.

The registered valuer who had made the valuation appealed against was Mr ML Donnelly. In his tendered report the nature of the land was described as follows:

"The subject aggregation is roughly regular in shape and comprises of three titles of land, with Lot 3 on Registered Plan 720418 having an area of 96.659 hectares being considerably larger than the two other titles. Mena Creek Road traverses the subject, near its northern boundary in a roughly east west direction. The subject comprises approximately 46.65 hectares (47% of the total area) of arable lands. The soils are predominantly moderately sloping brown clay loam to sandy loam to red brown schists, which are affected by stone. The balance lands approximately 52.61 ha (53% of the total area) comprises steeply sloping scrub broken by a network of steep, deep gullies, which intersect the arable area."

Mr Donnelly's oral evidence was that included in the arable area was the land occupied by headlands as an integral requirement for arable use.

The soil classification and arable suitability maps tendered through Mr Holder, as referred to in the other appeals, and the aerial photography attached to Mr Donnelly's report, are interpreted as confirming the classification of land types as adopted by Mr Donnelly.

### **Basis of Valuation**

The following is taken directly from Mr Donnelly's report;

"The valuation of the subject property has been approached on a direct comparison basis utilising sales of arable properties in the Johnstone Shire.

Due to the scattered nature of arable property sales in the Johnstone shire it is difficult to find good evidence for comparison purposes to the subject property.

The best evidence of value on an arable land basis is Sale 2. However as stated in the comparison section of the sales schedule the subject is considered superior due to its large amount of balance land.

Sales 1, 3, 4 and 5 are relied upon for support evidence only.

Given all the evidence at hand the fair and reasonable value of the subject property is as follows:

46.65 hectares Arable @ \$2,705 per hectare	\$126,188
(An allowance for broken and workability is inherent in the above arable rate)	
52.61 hectares steeply sloping scrub and a network of steep deep gullies balance lands @ \$375 per hectare	<u>\$19,729</u>
	\$145,917

Apply \$146,000 (or \$1,470 per hectare overall)"

Under cross-examination, Mr Donnelly advised that an allowance of \$200 per hectare had been made in the valuation for the broken nature of the arable area and the workability disability. Mr Donnelly said that an allowance under the same heading of \$150 per hectare had been made for the easterly adjoining farm.

Although the quality of the subject land in comparison with other local farms was a ground of appeal, there was no evidence as to the specific issue of relativity of values applied to other farms in the immediate locality.

Mr Donnelly provided a schedule of the five sales referred to in his basis of valuation. I do not propose to discuss the sales evidence in detail. Mr Holder had little knowledge of the individual farms subject of the sales.

Mr Donnelly had interpreted the overall sales evidence to suggest that support was provided for a general increase of 20% to be applied to the unimproved values which had existed previously for that class of land.

Again the question of allowance for timber treatment, as raised in the grazing land value appeals, was raised in Mr Donnelly's cross-examination relevant to sales analyses. Although there was inherent criticism by Mr Gillan of Mr Donnelly's lack of precise evidence to support the allowances made for timber treatment, there was no evidence to show that those allowances, or indeed the analyses of the sales, were defective. Those analyses showed that the unimproved values actually applied to the sale properties were extremely conservative with regard to Sales 1, 3, 4 and 5.

Sale 2 which took place on 17 February 1997, of 55.59 hectares at Reilly Road, Innisfail, had been analysed by Mr Donnelly to show an unimproved value of \$140,811 (\$2,535 ha). The applied valuation as at 1 October 1997 was \$124,000 which Mr Donnelly apportioned as:

"51.6 hectares @ \$2,375 per hectare  
4 hectares @ \$450 per hectare".

Mr Donnelly described the land in Sale 2 as "comprising approximately 51.59 hectares of predominantly easy to moderately sloping ex-red volcanic scrub country being broken in nature and affected by stone and approximately 4.0 hectares of creeks and gullies. This 51.6 hectares of red volcanic country is considered to possess arable potential."

He then remarked as follows:

"The property was a heavily improved sale incorporating crop, stools, plant and machinery, structures and timber treatment. The price paid was considered fair and reasonable and reflective of the market at the time."

His comparison with the subject land was then as follows:

"The sale property is considered comparable on an arable land basis. However, overall the subject is superior given its large area of balance land."

Putting aside initially, the question of unimproved "superiority" resulting from the large area of "balance land", Mr Donnelly again, in this matter, sought to rely primarily on the analysed sale price (of Sale 2) as proof of the correctness of the valuation appealed against. He conceded that the arable land contained in Sale 2 should be regarded as superior to that of the subject, yet the applied values indicated the reverse (\$2,375 per hectare for the Sale 2 arable land - \$2,705 for the subject arable land). There was no evidence from him to suggest that there were any other factors which accounted for the apparent valuation relativity discrepancy.

Mr Donnelly's evidence in each of the Holder appeals seemed to indicate that, provided the sales evidence "supported" the valuation applied to the appeal property, the question of values actually applied to those sale lands had no real relevance. It is well established (see *Barnwell v. The Valuer-General* (1989) 13 QLCR 13 at p.16 and cases cited in it as referred to by the Land Appeal Court in *Scougall v. Natural Resources* (1996-1997) 16 QLCR at p.543, 544), that:

"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."

Also in *Scougall*, supra, at p.544 the Land Appeal Court said:

- " ▪ Whilst maintenance or 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. ...
- 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."

In the subject matter, as was the case with the grazing land appeals, it would be untenable to suggest that the valuation applied to the most comparable sale land (in this matter Sale 2) is not soundly based. The same could be said of the comparison with the valuation applied to at least the land in Sale 3 in this matter, the only apparent difference being the area of arable land involved.

In *Natural Resources v Radlett Enterprises* (1997-1998) 18 QLCR 397, the Land Appeal Court had observed, at 402:

" The evidence before the Land Court was that it had been the value 'applied' to the sale lands rather than the specific unimproved value analysed from the individual sales which had been adopted as the basis of comparison for the valuation of the subject land."

Then at 403:

" We are not at all persuaded that the methodology adopted by the chief executive breached correct valuation principles as they apply to valuations under the Act. ... It was not until after the chief executive had analysed and considered the specific sales evidence seen to be comparable, that the question of the values "applied" by him to those lands was focussed upon."

and at 404:

"A conservative approach was then taken to the application of values to individual lands. Such an approach is not seen to be in conflict with valuation principles but desirable when all land within a particular local government area is to be valued.

It would be a different matter if the overall sales evidence had been disregarded and supplanted by unsupported valuation opinion. Clearly there must be a limit to the degree of variance between the analysed value of a particular sale property and the value applied to that property, beyond which it could be fairly said that the sale had been disregarded. There can be no arbitrary limit to such variance: each case must be decided on its merits."

## **Conclusion**

The only conclusion which seems open on the evidence before the Court is that a problem has developed with relativity of values applied to arable lands at least in the Mean Creek Road location of the subject land in comparison with superior arable lands in other locations and particularly the location of sale properties 2 and 3.

Mr Holder had produced evidence to show that the fertility of the subject land had been tested to give a rating between "poor and adequate". Then in the South Johnstone Mill Ltd 1999 Productivity Report Mr Holder was shown to occupy the third lowest productivity rating relative to 26 growers in the "Mena Creek to Bombeeta Creek" zone.

There seems to be no cogent basis provided by the respondent for valuation of the balance lands, or even the apportionment of values to those lands in the sales analyses. Mr Donnelly's assertion that the balance lands must logically possess some value is accepted as a reasonable assumption. However, application of any particular

rate per hectare to the balance land seems to have become associated with the extent and nature of that land and its relationship with the total area of the property to which it is attached. For example, \$450 per hectare has been applied where the extent of balance land is relatively small (Sales 1, 2, 3 and 4) then \$200 per hectare was applied in Sale 5 where the balance land comprised 159 hectares, or about 60% of a total area of 267 hectares, of steeply sloping tropical scrub lands and gullies. The subject apportionment of 52.61 hectares represents 53% of the total area, yet \$375 per hectare has been applied in the apportionment of value.

While this decision will no doubt create further problems with regard to relativity of values as applied to comparable type farms in the immediate locality with arable land content, I have concluded that adjustment of fairly significant proportion is warranted on my interpretation of Mr Donnelly's evidence. It seems to me that in the mathematical application of a factorised increase in values over a local government area, relativity of values has in this case become distorted, if it was once correct.

Clearly the need has arisen for the sales evidence of arable land to be applied in a more equitable manner than appears to have been the case here.

Doing the best I can, bearing in mind the state of the valuation evidence, I have decided to adopt a rounded unimproved value of \$120,000 which may be apportioned as follows:

46.65 hectares of arable land, broken by gullies and partly severed by Mena Creek Road @ \$2,250 per hectare	say \$105,000
52.61 hectares balance lands @ \$285 per hectare	say <u>\$15,000</u>
	<u>\$120,000</u>

### Orders

- (1) The appeal is allowed.
- (2) The unimproved valuation of the chief executive is set aside and the unimproved value of the land subject of the valuation as at 1 October 1997 is determined in the amount of One Hundred and Twenty Thousand Dollars (\$120,000).

**RE WENCK**  
**MEMBER OF THE LAND COURT**