LAND COURT

BRISBANE

19 JULY 2001

Re: AV99-1554
An Appeal against an Unimproved Valuation -
Valuation of Land Act 1944
Local Government: Herberton Shire Council

PD & TP Wheatley and LC & RP Bekkers
v.
Chief Executive, Department of Natural Resources and Mines

D E C I S I O N

As at 1 October 1998, the chief executive's unimproved valuation of land described as Lot 1 RP 735194, County of Cardwell, Parish of Woodleigh, containing 806.2 ha, is $63,000, having been reduced on objection from $70,000. The land is situated about 5 km by road west of Tumoulin and a further 6.5 km northwest of Ravenshoe.

The owners have appealed against the valuation on various grounds which relate to the increase above the previous valuation of $37,000; the resultant increase in local government rates; the inferior topography of the country and soil types; the existence of heartleaf poison; lack of permanent water; effects of drought; limited breeding carrying capacity; need for feed supplement; lack of electricity; difficult access. They estimate the unimproved value not to exceed $40,000 if there had been any increase at all since 1992.

Mr Wheatley conducted the appellants' case and gave evidence in support of a tendered statement. The property had been purchased by the appellants in 1992. After some investigation of that sale by the Department, when it was explained that the existence of millable or potentially millable timber and poles and a sawmill licence had influenced the sale price, an earlier valuation of $32,000 had been increased to $37,000. The owners at that time had accepted the valuation based on their purchase. The valuation of $37,000 had then remained in force until the current date of valuation. Mr Wheatley knew of no local comparable sales evidence which would support the valuation appealed against. The appellants had found after their purchase that the natural and artificial water supplies were not permanent. They had outlaid significant expenditure in enlarging and constructing dams. They had experienced four years of drought when the property carried no stock at all. In good

seasons the carrying capacity was limited to a total 100 head of mixed stock and then only with feed supplement. Calves had to be weaned early and moved elsewhere.

Mr Wheatley described the property as comprising "mainly undulating rocky to very steep rock and solid rock outcrops. A ridge runs about east west through the centre of the block at a height of 3636 ft. The northern side drops down fast approximately 500 ft then slopes to the northern boundary with rocky ridges and gullies, with a small area (12 ha approx) of arable land to the northeast. To the southwest the land drops into ravines, very large gullies, rock out crops, sodic soils which are very hard in dry and very boggy in the wet season. From the top of the ridge to the southern boundary, there are drops of 1000 ft and some places go straight down. In addition, on the western boundary we have had to fence out (approx 45 ha) of heartleaf that is a poison to cattle. There is still more heartleaf to be fenced out in the southwest corner."

Mr Wheatley pointed out that management of the property was difficult because of its topography and isolation, the existence of the heartleaf poison and the incidence of bushfires. The appellants had found it necessary to carry out work themselves to improve the external access into the property. It was not until about October 2000 that the Council gravelled part of that difficult access. A creek crossing on that access is capable of being flooded quickly and then remain inaccessible for up to 24 hours.

The valuation appealed against was made by Mr DF Paton. As I understood his evidence he had not inspected the property on the ground but had been aided in his work by historical records and consultation with the valuer who had conducted the previous valuation. It seems that it was that valuer who had made inquiry of Mr Wheatley as to the circumstances surrounding the 1992 sale to the appellants. As I understood the evidence, the property had not been physically inspected for the purpose of analysing the sale. Mr Paton had been of the opinion that values for grazing land in the Herberton Shire had shown an increasing trend since the previous valuation and the 1992 sale had no relevance to the market as at the relevant date of valuation in 1998.

Mr Paton's valuation was said to have been made based on the evidence of two sales in the Mt Garnet district, a significant distance westerly of the subject property. Apparently there had been sales of leasehold grazing lands which he had rejected as providing a reliable basis while the sales evidence in the immediate locality of the subject land was of land of a differing nature and usage potential.

Brief details and comments relevant to the two sales upon which Mr Paton chose to rely are as follows:

(1) 492.15 ha intersected by the bitumen sealed Kennedy Highway westerly of Mt Garnet, sold 1 June 1998 for $150,000, analysed to show an unimproved value of $77,909 ($158.3/ha) with an applied valuation of $70,000.

Mr Paton described the land as comprising easy broken forest slopes with light brown to brown-grey soils, parts reddish sandy soils and some gravelly low ridges. There was fairly reliable water from holes in a creek on one boundary. Electricity is available. Services, access, country and natural water were all considered by him to be superior to the subject property and he had concluded - "The sale is slightly superior to the subject on a pro rata basis." Mr Paton's investigation of rainfall records indicated that Ravenshoe enjoyed a higher average rainfall than did Mt Garnet.

Mr Wheatley knew of the sale. He gave evidence to the effect that the sale resulted from a family "squabble" over an estate which was subject of litigation. He said that the property comprised some "silt" country with a long frontage to the "river" and apart from being superior grass country overall there was a commercial orchard (mangoes and grapefruit) established. He was of the opinion that no cogent comparison could be made between the sale property and the subject.

Mr Paton acknowledged, in his oral evidence, that the background to the sale was as described by Mr Wheatley, but his investigations had indicated that the sale price had been in some way established from four valuations which had been obtained in connection with the litigation. He thought the sale price represented fair market value. There was no rebuttal of Mr Wheatley's evidence as to the use of the sale property.

(2) 311.1 ha, about 35 km southwest of Mt Garnet also fronting the bitumen sealed Kennedy Highway, sold for $50,000 in February 1998 analysed to show an unimproved value of $43,295 ($139/ha) with an applied value of $20,500 ($65.8/ha).

Mr Paton described the land as comprising easy slopes with sandy granite soils timbered with ironbark and tea-tree on the frontage half while the rear half was steep, rising up the Main Dividing Range and timbered with cypress, wattle and blackboy with patches of heartleaf. Electricity was available and access was good. Mr Paton saw the location of the sale land as far more remote in comparison with the subject land, the lack of natural water similar with no permanent supplies and the country inferior. He concluded - "Poorer country than subject, and more remote making the sale inferior to the subject on a pro rata basis."

Mr Wheatley, understandably, had difficulty in accepting the logic in Mr Paton's use of this sale. He questioned Mr Paton at length as to the basis on which the applied valuation had been founded when it was about half

> the analysed sale price. Mr Paton's response was that the intention of the purchasers had been to use the land for grazing in conjunction with other holdings in the area, and the land had been valued on the basis that it was used for the "business of farming" pursuant to s.17 of the *Valuation of Land Act 1944*.

Mr Paton valued the subject land at $78/ha overall. He described it, I assume based on the information available to him, as follows:

> "At the northeast corner on the easier slopes are heavier forest soils named Bally soils which are described as a deep, red podsolic soils formed on rhyolite. On the balance of the block the Bally soils grade into Whelan soils which are a grey to dark shallow skeletal soil on acid volcanic rocks. The southern part of the block drops into hard broken ridges with deep gorges."

Appeal Considerations

The difficulty facing the appellants is that pursuant to s.33 of the *Valuation of Land Act 1944*:

> "Any and every valuation, or alteration of the valuation, of any land made, or purporting to be made, under this Act by the chief executive shall be deemed to be correct until proved otherwise upon objection or appeal or until altered or further altered."

Then s.45(4) of the Act provides that "the burden of proving any and every such ground" (of the appeal) "shall be upon the owner".

The Land Appeal Court observed in *Qualischefski v. The Valuer-General* (1979) 6 QLCR 167 at 172:

> "In appeals of the nature of the subject, the onus which the appellant must assume is not an easy one to discharge without the assistance of a registered valuer who can lead evidence as to sales analyses and/or comparison with valuations made by the Valuer-General in respect of comparable properties."

In this case, there is no sales evidence before the Court upon which I am prepared to rely. The inclusion by Mr Paton of his Sale 2 as evidence of value for the subject property is quite remarkable when that evidence clearly was not applied to the sale property itself. As I understood Mr Paton's explanation, the best use of the information provided by the sale was that it was "high" and it was really the applied valuation which afforded the comparison.

Mr Paton's evidence indicated that the previously existing relativity of grazing unimproved values in Herberton Shire had been altered as at 1 October 1998 after specific consideration had been given to the question of relativity. It seems that the increase applied to the subject land fell within the upper range of increases applied

generally to grazing lands. It appears that Mr Paton had been assisted in his task of application of altered relativities through consultation with the previous valuer colleague. His report indicated awareness of the general disabilities of the subject property including the heartleaf poison problem, the lack of permanent natural water, the flooding susceptibility of the creek crossing and the cost of extension of electricity.

Mr Paton's knowledge of the principles of valuation and his expertise in the comparison of the relative values which had been applied in Herberton Shire must result in greater weight being placed on his opinion as to the unimproved value of the subject land than on Mr Wheatley's opinion which was, in effect, that nothing of significance had changed to alter unimproved values over a period of six years.

While I have found that there was no sales evidence presented to the Court which would allow direct cogent comparison with the subject property, that does not mean that there would not have been change and even significant change in market values for grazing land since 1992. It is an important part of the valuer's task to ensure that correct relativity of values is established. If a trend in movement of value in one locality is identified but no direct evidence exists in another locality, then the professional opinion of the valuer comes into play.

Nevertheless, the overall evidence indicates that the disabilities associated with the subject property would make it a most difficult property to market, regardless of its location, strictly for exclusive use for the "business of farming" as it is required to be valued pursuant to the *Valuation of Land Act*. Despite the recognition of the individual disabilities by Mr Paton, and in the absence of strictly comparable evidence either of sales or relativities, a doubt has been created in my mind as to whether there has been sufficient recognition of the effects of the disabilities, when considered in combination, on the unimproved value.

Finding

I will provide the benefit of the doubt that has been created to the appellants. The appeal is allowed and the chief executive's valuation set aside. The extent of doubt is resolved by the adoption of a pro rata value of $70/ha and the unimproved value is determined in the total rounded amount of Fifty-six Thousand Five Hundred Dollars ($56,500).

RE WENCK

MEMBER OF THE LAND COURT