

LAND COURT OF QUEENSLAND

CITATION: *Theologhidis v Department of Natural Resources and Mines* [2007] QLC 0018

PARTIES: Alexander Theologhidis
(appellant)
v.
Chief Executive, Department of Natural Resources and Mines
(respondent)

FILE NO: AV2005/1157

DIVISION: Land Court of Queensland

PROCEEDING: An appeal against an annual valuation of land under the *Valuation of Land Act 1944*.

DELIVERED ON: 22 March 2007

HEARD AT: Brisbane

DELIVERED AT: Brisbane

MEMBER: Mr RS Jones

ORDER: **The appeal is dismissed.**

CATCHWORDS: Section 33 *Valuation of Land Act 1944* – presumption of correctness of statutory valuation – best evidence of value – *Maurici v Chief Commissioner of State Revenue* (2003) 212 CLR 111.

APPEARANCES: Mr S Theo for the appellant
Mr W Isdale of counsel, Crown Law, for the respondent

Background

- [1] Mr Theologhidis, the appellant, has appealed against the assessment of the unimproved value attributed to his land by the respondent the Chief Executive, Department of Natural Resources and Mines.
- [2] The appellant is the registered proprietor of a parcel of land located in Maine Road Clontarf, more properly described as Lot 3 on Registered Plan 151746 parish of Redcliffe. The land comprises an area of 579 m² and is zoned "Residential A" under the town plan

for the City of Redcliffe. All of the usual town services are available to the land and, consistent with its zoning, it was being used for single unit dwelling purposes as at the relevant date of valuation.

- [3] The unimproved value determined by the respondent as at 1 October 2004 (effective as at 30 June 2005) is \$162,500. In his notice of appeal the appellant estimates the unimproved value of his land to be \$60,000. The appellant was represented by Mr S Theo who is the father of the appellant. Mr Theo has no real estate valuation qualifications but has accounting qualifications and was a real estate agent in the Redcliffe area between 1985 to 1990. The respondent was legally represented by Mr W Isdale of counsel and relied on the evidence of Mr James Corder a registered real estate valuer employed by the respondent. Mr Corder has some 40 years experience as a valuer in Victoria and Queensland.

Issues in the Appeal

- [4] In his notice of appeal the appellant raises two issues namely:
- (i) the respondent's increase of about 27% from the previous unimproved value attributed to the land was not able to be justified.
 - (ii) the respondent had failed to take into account relevant "legal precedent" when carrying out its statutory valuation.

The "legal precedent" referred to in the notice of appeal seems, in particular, to include reference to the decision of the High Court in *Maurici v Chief Commissioner of State Revenue* (2003) 212 CLR 111 and the decision of the Land Appeal Court in *The Valuer-General v Marano* (1978) 5 QLCR 194.

- [5] At the hearing of this appeal the appellant relied in part on a document which, among other things, contained elements of evidence and submissions. This document, exhibit 1, raised in my opinion four central matters or issues which could be summarised as follows:
- (i) The onus of proof lies with the respondent to prove the valuation under appeal was correct. This included an onus to prove that the sales evidence relied on was truly comparable to the subject land and that the rise in the unimproved value of the land of about 27% from 2003 to 2004 was justified.
 - (ii) The respondent's valuer did not carry out a physical inspection of the land.
 - (iii) The increase in the unimproved value attributed to the subject land is not able to be justified when reference is had to statistical market evidence.
 - (iv) The respondent failed to have regard to relevant legal principles.

- [6] As to the first matter raised by the appellant, it fails to recognise the effect of s.33 of the *Valuation of Land Act 1944* ("VLA"). Pursuant to s.33, the valuation appealed against is

deemed to be correct and it is the appellant who bears the burden of proving that it is wrong.¹ In *Brisbane City Council v Valuer-General*² the High Court considered that the presumption in favour of the correctness of the statutory valuation may be rebutted when it can be shown that the valuation was based on a wrong principle and/or involved a significant error of fact and/or was made by a fundamentally erroneous method. Also of relevance in appeals such as this is that pursuant to s.45(4) of the VLA the appellant is limited to the grounds stated in his notice of appeal and bears the burden of proving each and every ground relied on. I will deal with the sales evidence relied on by the respondent in more detail below.

[7] As to the second matter raised by the appellant, I am satisfied that Mr Corder had carried out a physical inspection of the subject land and the sales relied on by him in the preparation of his valuation.

[8] As to the third matter raised by the appellant, I do not consider that general evidence about overall land value movements in South East Queensland including in Logan, Caloundra, Caloundra West and Little Mountain is of any assistance in determining the unimproved value of the subject land located at Clontarf.

[9] As to the fourth matter raised by the appellant, I do not accept that the valuation appealed against is wrong, invalid or otherwise unlawful because it offends any relevant legal obligations and/or principles.

[10] In carrying out his valuation, Mr Corder identified that the Redcliffe City area experienced rapid rises in land prices in 2003 and 2004 and had particular regard to the sale of three parcels of land two of which were located in Clontarf and the other at Woody Point. The dates of these sales ranged from 18 September 2003 through to 8 January 2005. All three of the sales could be described as being small residential lots and had, in common with the subject land, a "Residential A" zoning. The only improvements on the sale lands was clearing and Mr Corder attributed a value of \$2,000 to that clearing.

[11] It is well established that usually the best evidence for determining a basis for the assessment of unimproved value is evidence of sales of vacant or lightly improved comparable land which occurred at a date reasonably close to the relevant date of valuation.³ In this context, the Land Appeal Court in *Tow v Valuer-General*⁴ said:

"It follows that a large increase over and above the previous valuation is in itself not a relevant issue provided bona fide sales of comparable parcels support the new valuation".

¹ *Qualischefski & Anor v Valuer General* (1979) 6 QLCR 167 at 172.

² (1977-78) 140 CLR 41 at 56-57.

³ *Fischer v The Valuer-General* (1983) 9 QLCR 44 at 46 (LAC); *The Valuer-General v Marano* (1978) 5 QLCR 194 (LAC).

⁴ (1978) 5 QLCR 378 at 381.

[12] In exhibit 1, after referring to the *Maurici* and *Marano* decisions, it was asserted on behalf of the appellant that it was the duty of the respondent's valuer to "*ascertain what part of the purchase price of a sale property relates to improvements and what part is attributable to the land itself*". This, as I understand the case advanced on behalf of the appellant, was an important issue because Mr Corder ought to have had regard to sales of improved land located closer to the subject land than any of his vacant or near vacant sales. According to Mr Theo, the failure to have regard to these improved sales put Mr Corder in direct conflict with the decision of the High Court in *Maurici*.

[13] It seems to me that the quote referred to above can be traced directly to the decision of the Land Appeal Court in *Marano* where at pp 200-201 it was said:

"It is well established that the best way to ascertain the unimproved value of land is by applying to it sales of unimproved, comparable, lands which took place reasonably close to the date at which the valuation is to be made. But in many districts it is impossible to obtain sufficient unimproved sales to form a sound foundation, and it therefore becomes necessary to analyse sales of improved lands for the purpose of ascertaining, as far as is possible, what part of the purchase price of the sale property relates to improvements and what part is attributable to the land itself." (emphasis added)

[14] In *Maurici* the High Court was concerned with the statutory valuation attributed to a parcel of land situated in Hunters Hill, Sydney. The evidence was that the valuation was essentially struck by reference to four sales (including one resale) of vacant or substantially vacant land in Hunters Hill and that vacant land in Hunters Hill was scarce if not very scarce. In rejecting the approach of the valuer for the Chief Commissioner of State Revenue the High Court in paragraph 18 said:

"The respondent could not, and did not suggest that he would be performing his statutory duty if he made other than a fair estimate of the value of the subject land. A fair estimate could only be made here on the basis of a fair, that is to say, a reasonably representative group of comparable sales. A group of comparable sales cannot be representative if it does not go beyond sales of scarce vacant land. That is not to say that sales of comparable vacant land may not provide useful evidence of value. But as J F N Murray observes in *Principles and Practice of Valuation* (33) in discussing valuations under federal land tax legislation of land in its notionally unimproved state, 'sale evidence [*must be*] *relevant and sufficient in volume*' (emphasis added). So too, sales relied on, such as of scarce vacant land, are likely to be to a special and different class of buyer from buyers of improved land. As Waddell J said in *Sher v Commissioner for Main Roads* (34), sales of properties of a different character are likely to attract a different class of buyer and are unlikely to provide a reliable indication of value."

[15] In my opinion there is no immediate tension between what the High Court said in *Maurici* and what has been said by the Land Appeal Court concerning what would usually constitute the best evidence of unimproved value, namely sales of comparable vacant or lightly improved lands which occurred at or about the relevant date of valuation. However, as stated by the High Court in *Maurici* the sales relied on must form or be part of a reasonably representative group of comparable sales. In this context in *Department*

*of Natural Resources and Mines v Spender*⁵ at paragraph 54 the Land Appeal Court said in part:

" ... The High Court reasoning, as we interpret it, was a recognition that the market for land in a predominantly built-up area was not exclusively of scarce vacant land but inclusive of land with improvements thereon. As each parcel of land in that environment, vacant or improved, was required to be valued in the statutory process, on the basis of relative value at the same date, albeit notionally as unimproved, it was wrong to adopt a basis of valuation selected exclusively from one segment of the market which in itself was not proved to be representative of the overall market for land."

[16] The evidence of Mr Corder was to the effect that there was no shortage of vacant land sales in the Redcliffe area and the sales analysed in his report were specifically selected because they were physically the closest comparable sales to the subject land. Having heard the evidence of Mr Corder I am satisfied that the sales contained in his report and relied on by him are a reasonably representative group of comparable sales capable of providing the foundation for a fair assessment of the unimproved value of the subject land. Accordingly, I reject Mr Theo's argument that Mr Corder's sales 1, 2, and 3 were inherently unreliable evidence of value and that regard should have been had to closer but more heavily improved sales.

[17] In this appeal the appellant has, in my opinion, produced no reliable sales evidence or other reliable evidence to support the level of unimproved value contended for by him. On the other hand, on the evidence before me, I am satisfied that in reaching his expert opinion, Mr Corder had regard to reliable sales evidence which was properly analysed and applied by him in his valuation exercise.

[18] For the reasons expressed above I have reached the conclusion and so find that the appellant has failed to prove that the valuation appealed against is wrong and ought be varied.

[19] Accordingly, the order of the Court is that the appeal is dismissed.

Order

The appeal is dismissed.

R S JONES
MEMBER OF THE LAND COURT

⁵ unreported decision of the Land Appeal Court, [2003] QLAC 0086.