

LAND COURT OF QUEENSLAND

CITATION: *Trikam & Anor v Valuer-General* [2023] QLC 18

PARTIES: **Chandra Kant Trikam**
(appellant)

Gita Trikam
(appellant)

v

Valuer-General
(respondent)

FILE NO: LVA348-22

DIVISION: General

PROCEEDING: Appeal against objection decision on a valuation under the *Land Valuation Act 2010*

DELIVERED ON: 25 October 2023

DELIVERED AT: Brisbane

HEARD ON: 17 August 2023

HEARD AT: Brisbane

MEMBER: WA Isdale

ORDERS:

- 1. The appeal is dismissed. The valuation appealed against is confirmed. The site value of 213 Clarence Road, Indooroopilly, Property ID 1306057, is \$3,000,000 as at 1 October 2021.**
- 2. By 4:00pm on Friday, 10 November 2023, the Valuer-General must file in the Land Court Registry and serve on the Appellants any written submissions and affidavit materials to be relied on in the event of a costs application, pursuant to section 171 of the *Land Valuation Act 2010*.**
- 3. By 4:00pm on Friday, 17 November 2023, the Appellants must file in the Land Court Registry and serve on the Valuer-General any written submissions in response and affidavit materials to**

be relied on in such costs issue.

4. By 4:00pm on Friday, 24 November 2023, the Valuer-General must file in the Land Court Registry and serve on the Appellants any written submissions in reply and affidavit materials to be relied on such costs issue.
5. Unless the parties otherwise request in writing, such costs application will be determined on the filed material, without an oral hearing.
6. Either party may apply for review by giving at least two (2) business days' written notice to the Land Court Registry and to the other parties of:
 - a. the proposed date for review; and
 - b. the reasons for the request; and the proposed directions.

CATCHWORDS: REAL PROPERTY – VALUATION OF LAND – METHODS OF VALUATION – COMPARABLE SALES – GENERALLY – where the land is residential – where the appellant is appealing against a decision made by the Valuer-General – where the onus of proof is on the appellant – where comparable sales is the best basis of valuation

Land Valuation Act 2010 s 169, 171

Appeal by C. and B.D. Henricks against the Determination of the Valuer-General – Shire of Mulgrave [1981-82] 8 QLCR 176

Appeal by Landholder against Determination of Valuer-General – City of Brisbane [1983] 9 QLCR 44

Appeal by N.R. and P.E. Tow against Determination of Valuer-General, Redland Shire [1978] 5 QLCR 378

Appeal by P.H. Clough against the Determination of the Valuer-General – Shire of Caboolture [1981-82] 8 QLCR 70

Appeals (4) by J.L. and I. Qualischefski and others against Determination by Valuer-General – Shire of Laidley [1979] 6 QLCR 167

Appeals (4) by Landholders against the determination of the Valuer-General – Shire of Monto [1984-85] 10 QLCR 32

Appeals against annual valuation – Hans and Else Grahn v Valuer-General – City of Redcliffe [1992-1993] 14 QLCR 327

Appeals against Determinations of Valuer-General – Shire of Kolan [1977] 4 QLCR 206

Beydoun v Valuer-General [2018] 39 QLCR 34

Spencer v The Commonwealth (1907) 5 CLR 418

APPEARANCES: Mr CK Trikam, an appellant (self-represented), for the appellants

Ms M Litchfield, Solicitor & Legal Officer (instructed by the Valuer-General), for the respondent

Background

- [1] The Valuer-General, in accordance with the *Land Valuation Act 2010* ('the Act') has performed a routine valuation of land in Brisbane, including this land. The valuation was of the site value, a concept defined in the Act. It is not necessary, for present purposes, to consider that definition. The site was valued, as at 1 October 2021, at \$3,000,000.
- [2] The appellants objected to that value, contending that it was too high. The decision on their objection was that the value was to remain unaltered. The appellants have appealed this decision.
- [3] The land is at 213 Clarence Road, Indooroopilly. It has Property ID 1306057 and is Lot 213 on Survey Plan 113021. It has an area of 2,182m². There is no dispute that its highest and best use is as a single unit dwelling, for which it is being used.
- [4] At the hearing, the appellants contended that the value should be reduced to a site value of \$2,500,000.
- [5] Section 169 of the Act provides that the appeal must be limited to the grounds stated in the appeal notice; the appeal is by way of a rehearing; and the appellant has the onus of proof for each of the grounds of appeal.
- [6] Mr Trikam, an experienced solicitor, was the advocate as well as an appellant. He gave sworn evidence and clearly presented a carefully prepared case. He was quick to point out that he is not a registered valuer.
- [7] The Statement of Facts and Issues filed on 11 April 2023 contains the case for the appellants, and it became Exhibit 1.
- [8] The solicitor representing the respondent, providing assistance to the Court in the spirit of the model litigant principles, usefully tendered the report of the

respondent's valuer, Exhibit 2, and an aerial photo of the properties being considered, Exhibit 3, during the case for the appellant.

- [9] Mr Trikam was cross-examined and was responsive to questioning. He is accepted as a witness of truth in relation to the matters of fact which he gave evidence about. This included the location, size, and characteristics of parcels of land and the local conditions such as noise from the railway, especially when trains cross the river. Mr Trikam gave detailed evidence regarding the outlooks available from the subject land and other sites and referred to the height of the subject land above the river compared to other sites which allow a more intimate connection with the river. This, he readily conceded, would also be reflected in vulnerability of such sites to flooding from the Brisbane River.
- [10] The case for the appellants relied heavily on the concept of relativity and attention was directed to how much, in percentage terms, the site value had increased in recent years. It was stressed that the subject site was out of relativity with the area, thus indicating error in the valuation.
- [11] The appellants relied on different sales to those used by the Valuer-General and emphasised aspects of the subject land such as vulnerability to noise and the significant height of the building pad above the river being a restriction on the view available of it.
- [12] The appellants' only witness was Mr Trikam and Exhibit 1 was the only document presented. This is not a criticism, merely an observation.
- [13] The respondent Valuer-General called Ms JP Chalmers, an experienced valuer with over 30 years' experience. Ms Chalmers did not initially value this site but provided her report for the purposes of this appeal. The report, some 72 pages in length, became Exhibit 2 and an aerial image showing the relative locations of the subject and sale properties in question became Exhibit 3. There were no other witnesses or exhibits.
- [14] Valuation reports, such as Exhibit 2 are not judged by their bulk, but by their quality. The report, although sizeable, is clear, comprehensive, and relevant. It is easy to read. Naturally, a copy was provided for the appellants to refer to when it was provided, early in the hearing, to the Court.

- [15] Ms Chalmers gave evidence and was cross-examined with care by Mr Trikam. The cross-examination drew some well-targeted objections. The Court sometimes allowed Mr Trikam a bit of extra latitude in his cross-examination when, although perhaps unnecessarily repetitive, it was conducted in a professional and respectful manner.
- [16] Both parties made brief verbal submissions, and the solicitor for the respondent provided detailed written submissions in addition. Mr Trikam received a copy of them.
- [17] Ms Chalmers, in the cross-examination, stated that she had heard all of the evidence; she was present in Court the whole time, and was still of the view that the site value of \$3,000,000 was correct. She did not change her opinion from what was set out in Exhibit 2. She also made a comment, “Sales are King”, when cross-examined. This was in response to questions put to her by Mr Trikam about relativity of values, a major concern of the appellants and very prominent in their case.
- [18] Ms Chalmers has inspected the property and presented as a witness of truth, behaving in a professional manner. She was clear that valuation involves an opinion, one based on the facts, namely those set out in Exhibit 2.

The law

- [19] No authorities were referred to in the submissions of the appellants. The written submissions of the respondent refer to the law in detail, with reference to a number of relevant decisions, including those of the Land Appeal Court, which are binding on this Court.
- [20] In *Appeals (4) by J.L. and I. Qualischefski and others against Determination by Valuer-General – Shire of Laidley*, the Land Appeal Court said:

“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.”¹

¹ [1979] 6 QLCR 167, 172.

[21] Section 169(3) of the Act is the current provision. It contains the rather unsurprising requirement that the appellants must prove their case. It is equally unsurprising that it will be difficult for an appellant, without expert evidence, to establish a level of value, in this case \$2,500,000, when the sole expert witness disagrees.

[22] In *Appeals (4) by Landholders against the determination of the Valuer-General – Shire of Monto*, the Land Appeal Court said:

“Relativity between properties or parts of shires may vary from valuation period to valuation period. It is not a matter of mere mathematical calculation or progression. The revaluation of a shire does not involve the application of a more or less uniform increase (or decrease) in the various types of land comprising the shire. What has to be determined is the unimproved value of each parcel of land within the shire at the relevant date. The task set the Valuer-General and the Court is to determine the capital sum which the fee-simple of the land, assuming it were in an unimproved state, might realise if offered for sale on the open market (section 12). The best method or basis for making such determinations is the use of properly analysed comparable sales conforming to the test of the *Spencer* case.”²

[23] In *Appeal by Landholder against Determination of Valuer-General – City of Brisbane*, the Land Appeal Court said:

“It is indeed a fundamental principle of valuation that the best basis for assessment of unimproved value is the use of sales of vacant or lightly improved parcels. Whilst maintenance of correct relativity is also of considerable importance for rating or revenue type valuations, we cannot prefer in the circumstances of this case, the use of the principle of relativity to the exclusion of the sales evidence.”³

[24] In *Appeals against Determinations of Valuer-General – Shire of Kolan*, then President Smith said:

“The difficulty of analysing sales of improved properties, especially highly improved properties, has often been the subject of judicial comment. When there are many and varied improvements including as in the subject cases, crops, cane stools and multifarious items of plant, the possibility of error or mis-description leading to the adoption by the analysing valuer of an unreal market value for any particular item is increased and such errors or misdescriptions compound to adversely affect accuracy of the ultimate analysed land value derivable from the sale in question. The ascertainment of the correct age and state of maintenance or condition of an improvement or item of plant at sale date, the care and time taken by the valuer in arriving at its fair replacement cost at the relevant date and the fairness of the rate of depreciation applied or the “spot on” second hand market value allotted, are all factors affecting the reasonableness of the result and afford a fruitful ground for skilled counsel in cross-examination.”⁴

² [1984-85] 10 QLCR 32, 38.

³ [1983] 9 QLCR 44, 46.

⁴ [1977] 4 QLCR 206, 211.

[25] The learned President went on to say:

“I appreciate the great importance for equitable distribution of rating for properties with similar usage to be placed in fair and reasonable relativity. However it must be borne in mind that each revaluation is a fresh approach and properties must be viewed in relationship each to each and to the comparable sales having regard to the facts and circumstances applicable to them individually as parcels and to the locality in which they are situated as at the date of revaluation. It follows therefore that relativity may quite correctly be disturbed. An increased farm peak, an increased assignment or an occurrence such as scouring or a land slide adversely affecting the natural characteristics of the property are factors which by way of example may cause a variation in former relativity.”⁵

[26] In *Appeal by N.R. and P.E. Tow against Determination of Valuer-General, Redland Shire*, the Land Appeal Court said:

“Courts of the highest authority have laid down that the best test of value is to be found in the sales of comparable properties, preferably unimproved, on the open market round about the relevant date of valuation and between prudent and willing, but not over-anxious parties.

Subject to certain statutory requirements as to the onus of proof and the restriction of the appellants to the grounds of appeal specified in their notice of appeal, the duty of the Land Court and of this Court is to make determinations of unimproved values based on the evidence presented to it by the parties and conforming to the aforementioned statutory formula.

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.”⁶

In *Appeal by P.H. Clough against the Determination of the Valuer-General – Shire of Caboolture*, the Land Appeal Court said:

“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 analyzing the value of improvements.”⁷

[27] In relation to percentage of relative increases in valuations, the Land Appeal Court considered this in *Appeal by C. and B.D. Henricks against the Determination of the Valuer-General – Shire of Mulgrave*. The Court said:

“We have considered all the grounds of appeal. We are not influenced by the reference to percentage or relative increases in valuations. The lack of relevance of large increases was discussed by this Court in *Tow v. The Valuer-General (1978) 5 Q.L.C.R. 378 at p. 381*. Revaluation of a Shire is not a matter of applying a more or less uniform increase to various types of

⁵ [1977] 4 QLCR 206, 224.

⁶ [1978] 5 QLCR 378, 381.

⁷ [1981-82] 8 QLCR 70, 76.

land when comparing component parcels. What has to be determined is the unimproved value of each parcel of land within the Shire at the relevant date, and the best method or basis for making such determinations is the use of analyzed sales evidence. There may be many reasons for a change in the relativity of unimproved values upon revaluation...”⁸

[28] Much of this established knowledge was re-visited in the *Beydoun v Valuer-General*.⁹ There, the Land Appeal Court, relying on authority to which it referred, made clear that relativity with other valuations made by the Valuer-General is not helpful and that the question before the Court is the correct value of the subject land, not the correct value of an area.¹⁰ The superiority of sales evidence was affirmed by the Land Appeal Court by reference to the decision of the High Court in *Spencer v The Commonwealth*¹¹, where it was said that land value is ascertained by reference to prices that have been paid for similar parcels.¹²

The appellants’ relativity submissions

[29] Exhibit 1 sets out six examples of other valuations in the area. These are valuations by the respondent. They are said to show that the subject valuation is out of relativity with them. Some use is also made of their rate of value per square metre. Such a basis of comparison was stated by Ms Chalmers to be inapplicable to residential sites. Her expert evidence is uncontradicted and is accepted in relation to this. Ms Chalmers’ evidence and the authorities referred to above establish that the approach of using relativity is not of assistance in cases like the present where there is evidence of open-market sales of sites with comparable location and characteristics around about the date of valuation.

The appellants’ comparable sales

[30] It is not in dispute that the land, with an area of 2,182m², an elevated building site with frontage to the Brisbane River, should be valued on the basis that its highest and best use is, as presently utilised, for a single unit dwelling. As an additional basis of valuation, apart from the relativity submissions already considered, the appellants refer to three sales. These are:

- 52 Jilba Street, Indooroopilly, sold 21 May 2021

⁸ [1981-82] 8 QLCR 176, 178.

⁹ [2018] 39 QLCR 34.

¹⁰ *Beydoun v Valuer-General* [2018] 39 QLCR 34, 37.

¹¹ (1907) 5 CLR 418.

¹² [2018] 39 QLCR 34, 38 [19].

- 10 Twigg Street, Indooroopilly, sold 14 November 2020
- 45 Ivy Street, Indooroopilly, sold 30 October 2021

[31] All of these properties are improved with homes. The appellants refer to the sale prices and the respondent's site valuations of these properties. The site valuations of these sales are stated and, in the cases of 52 Jilba Street and 45 Ivy Street, are said to be completely out of relativity with the subject land.

[32] This does not provide persuasive evidence in the present case where the issue is the correct valuation of the subject land, not the relationship of the site value with other site values arrived at by the respondent. It is submitted by the appellants that the value of the subject site is incorrect on the basis of other site values arrived at by the respondent, which must be assumed to be correct. That is not a sound basis for finding that the respondent is incorrect in valuing the subject land as it assumes that the other site values are correct. That is not a safe assumption. In order to avoid such a pitfall, the Court prefers to rely on sales evidence and sales of unimproved or lightly improved land as providing the best basis of comparison.

[33] In *Appeals against annual valuation – Hans and Else Grahn v Valuer-General – City of Redcliffe*, the Land Appeal Court said:

“The decision of the High Court of Australia in *Brisbane City Council v The Valuer-General* ((1978) 140 CLR 41, 5 QLCR 283) and the decisions of the Land Appeal Court in cases such as *WM and TJ Fischer v The Valuer-General* ((1983) 9 QLCR 44) and *R and MM Barnwell v The Valuer-General* ((1989) 13 QLCR 13) are authority for the following propositions:

- (a) 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. (*R and MM Barnwell v The Valuer-General* ((1989) 13 QLCR 13, at p. 16 and cases cited in it).
- (b) The best basis for assessment of unimproved value is the use of sales of vacant or lightly improved parcels of land (*WM and TJ Fischer v The Valuer-General* ((1983) 9 QLCR 44, at p. 46; *R and MM Barnwell v The Valuer-General* ((1989) 13 QLCR 13, at p. 17).
- ...
- (e) Whilst maintenance of 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 (*WM and TJ Fischer v The Valuer-General* ((1983) 9 QLCR 44, at p. 46).

(f) If possible, the Valuer-General 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 (*R and MM Barnwell v The Valuer-General* ((1989) 13 QLCR 13, at pp. 16-17 and cases cited in it).¹³

- [34] The appellants have not attempted to analyse the value of the improvements on the land which they have used for comparison but have referred to the site valuations made by the respondent. In order to usefully rely on these sales, it would be necessary to say that the respondent correctly assessed the site values in these cases but did not do so in the case of the subject land. This would require the adoption of a false selectivity in approaching the assessment of the site value of the subject land.
- [35] Such an approach ought not be adopted when comparable sales are available for the purpose of assessing value.
- [36] In Exhibit 1, the appellants also provide comments on the three sales which the respondent's valuer has relied on. In addition, they set out site-specific characteristics of the subject land, referring to such matters as its contour, noise from the nearby bridge across the river and from train lines, flooding, bush-fire vulnerability, protected vegetation and adjoining heritage property.

The case for the respondent

- [37] The sole witness for the respondent was Registered Valuer Ms JP Chalmers, who provided her 72-page valuation report, Exhibit 2, and an overhead image of the area showing the subject land and the sales in their context. That became Exhibit 3.
- [38] The report provided by the valuer is detailed and comprehensive. The land in question was valued in comparison to three sales. Significantly, all three sales are of vacant land, as there is no difficulty introduced by trying to tease out the land value from improvements included in the sales.

¹³ [1992-1993] 14 QLCR 327, 328-329.

- [39] Sale 1, at 3 Ivy Street, Indooroopilly, was of 1,308m² of vacant land sold on 6 November 2011 for \$3,490,000. Its site value on 1 October 2021 is assessed by the valuer as being \$3,300,000 and as superior to the subject land.
- [40] Sale 2, 41 and 41A Ivy Street, Indooroopilly, was of 1,492m² of vacant land sold on 27 August 2021 for \$3,600,000. Its site value on 1 October 2021 is assessed as \$3,300,000. It is noted that this sale was of two lots so that two houses could be built. The evidence of the valuer was that the purchaser intended to use it for a single dwelling so that the valuation was made ignoring the potential for two dwellings. It is assessed as superior to the subject.
- [41] Sale 3, 45 Glencairn Avenue, Indooroopilly, was of 1,368m² which was sold on 10 August 2021 for \$2,800,000. There was an older dwelling on the land and \$35,000 was allowed for demolishing it. Its site value on 1 October 2021 is assessed at \$2,600,000. It is assessed as being inferior to the subject.
- [42] On the basis of these comparisons, the site value of the subject land at 213 Clarence Road, Indooroopilly is assessed as being \$3,000,000 as at 1 October 2021.
- [43] For completeness, the valuer's report also includes discussion of the sales relied on by the appellants. As already mentioned, they are all improved sales, and all are assessed as inferior to the subject land.
- [44] Regarding the sales used by the valuer, sales 1 and 2 are said to be superior to the subject land and sale 3 to be inferior.
- [45] In the expert opinion of the valuer, the three sales relied upon are considered to be good indicators of the site value of the subject land at the date of valuation.

The valuer as an expert

- [46] The Court has the assistance of a qualified expert valuer who has inspected the subject property and the sales evidence properties. The valuer corrected some minor errors in her report and was forthright when cross-examined. The Court accepts her qualifications and her evidence. She is appropriately qualified and experienced.
- [47] When cross-examined, the valuer was responsive, conceding matters where it was proper to do so, such as that her sale 3 does not have a direct river frontage as there

is a reserve between the river and the rear boundary. The witness has over 30 years' experience as a valuer and presented as a careful and thorough expert who answered questions openly and fully.

[48] The Court accepts the evidence of fact and opinion given by the valuer and does so without any reservation. A thorough report with relevant sales provides a sound basis for the opinions which this expert expressed. The sales relied on in forming the opinion as to the site value of the subject land on the date of valuation are a better indication of value than those relied upon by the appellant, principally as they are of vacant sites and, in one case, of a site with a dwelling which was demolished. The use of vacant or lightly improved sales is more likely to provide a good comparison than the improved sales relied on by the appellants.

[49] The respondent's valuer has proceeded in a conservative manner. Sale 1 was analysed at \$3,490,000 and \$3,300,000 was applied. Sale 2 was analysed at \$3,600,000 and \$3,300,000 was applied. Sale 3 was analysed at \$2,835,000 and \$2,600,000 was applied. This conservative application of the sales is in favour of the appellants so that if there is an error in the valuation, it would be in their favour. This approach, favouring the appellants, indicates an appropriately conservative approach to this valuation.

[50] For the reasons that have been given, the Court accepts the evidence of the valuer and the conclusions drawn in the valuation report.

[51] The valuer's report, Exhibit 2, considers the three sales said by the appellants to be comparable. They are all assessed as being inferior to the subject land. The sales relied on by the valuer are considered by her to be good market indicators of site value at the date of valuation, 1 October 2021.

Conclusion

[52] For the reasons given, the Court accepts the evidence of the Registered Valuer in full. The appellants have not shown any error by the respondent in respect of this valuation. It follows that they have not proved their contention that the valuation should be \$2,500,000.

[53] Accordingly, the appeal is dismissed, and the valuation appealed against is confirmed. The property, at 213 Clarence Road, Indooroopilly, Queensland, 4068, property ID 1306057, is confirmed to have a site value of \$3,000,000 on 1 October 2021.

Orders

- 1. The appeal is dismissed. The valuation appealed against is confirmed. The site value of 213 Clarence Road, Indooroopilly, Property ID 1306057, is \$3,000,000 as at 1 October 2021.**
- 2. By 4:00pm on Friday, 10 November 2023, the Valuer-General must file in the Land Court Registry and serve on the Appellants any written submissions and affidavit materials to be relied on in the event of a costs application, pursuant to section 171 of the *Land Valuation Act 2010*.**
- 3. By 4:00pm on Friday, 17 November 2023, the Appellants must file in the Land Court Registry and serve on the Valuer-General any written submissions in response and affidavit materials to be relied on in such costs issue.**
- 4. By 4:00pm on Friday, 24 November 2023, the Valuer-General must file in the Land Court Registry and serve on the Appellants any written submissions in reply and affidavit materials to be relied on in such costs issue.**
- 5. Unless the parties otherwise request in writing, such costs application will be determined on the filed material, without an oral hearing.**
- 6. Either party may apply for review by giving at least two (2) business days' written notice to the Land Court Registry and to the other parties of:**
 - (a) the proposed date for review; and**
 - (b) the reasons for the request; and the proposed directions.**