

LAND COURT OF QUEENSLAND

CITATION: *Ivan v Valuer-General* [2013] QLC 24

PARTIES: Zoltan Ivan
(appellant)

v.

Valuer-General
(respondent)

FILE NO: LVA880-12

DIVISION: General Division

PROCEEDING: Appeal against annual valuations under the *Land Valuation Act 2010*

DELIVERED ON: 23 May 2013

DELIVERED AT: Brisbane

HEARD ON: 11 April 2013

HEARD AT: Brisbane

MEMBER: Mr WA Isdale

ORDERS: **1. The appeal is dismissed.**
2. The valuation appealed against is confirmed.

CATCHWORDS: *Land Valuation Act 2010*, ss 169 and 170

Sales Evidence of Value — comparable sales — Expert Evidence — Relativity

R and MM Barnwell v The Valuer-General (1989) 13 QLCR 13
Brisbane City Council v The Valuer General (1978) 140 CLR 41, 5 QLCR 283
WM and TJ Fischer v The Valuer-General (1983) 9 QLCR 44
Hans and Else Grahn v Valuer-General (1992-93) 14 QLCR 327
Hoeg v Department of Natural Resources and Water [2009] QLC 26
J.L. and I. Qualischefski v Valuer-General (1979) 6 QLCR 167
N.R. and P.G. Tow v Valuer-General (1978) 5 QLCR 378

APPEARANCES: Mr Zoltan Ivan represented himself
Mr I Pepper, lawyer, appeared for the respondent

Background

[1] The appellant is the owner of 368 Montague Road, West End, Brisbane. It is described as Lot 1 on SP 185487, County of Stanley, Parish of South Brisbane. It has an area of 816 square metres and is located in a Character Residential and Demolition Control area. The parties agree that as at the date of valuation, 1 October 2011, the highest and best use of the land is for a single unit dwelling house, the definition of which would allow a duplex to be constructed on the land.

The locale

[2] The property is located about 3 radial kilometres south-west of the Brisbane General Post Office (GPO), in the inner suburb of West End. There is a bus stop outside the property and Montague Road has a mixture of commercial, industrial, retail and residential uses. The usual urban services, power, water, gas, sewer, stormwater drainage and telecommunications are available.

A view was conducted

[3] On the morning of the hearing the Court, at the request of the appellant, conducted a view of the subject land and other properties as agreed between the appellant and the lawyer for the respondent.

The evidence

[4] The appellant gave evidence and provided further written material in support of his contentions. This became Exhibit 3. The respondent called evidence from registered valuer Mr BP Hart who also prepared a report.

The relative positions of the parties

[5] In his Notice of Appeal, Exhibit 1, the appellant contended for a site value of \$680,000. In the course of the hearing this was varied to \$774,000. The Valuer-General supported the issued valuation of \$900,000.

The case for the appellant

[6] Mr Ivan prepared a folder of material, which became Exhibit 2, and gave oral evidence. His appeal is essentially based on the central ground that the valuation of this property is out of line with the valuations of other properties in the surrounding area. Mr Ivan conceded that he is not qualified as a property valuer, he is an electrician by trade and has many years of familiarity with this area, including the flooding experienced here in 2011 and 1974. He stated in evidence that this land did not flood in 1974 or in 2011. He drew attention to the contour of the land, which had been readily apparent during the

view, which had been attended by the appellant, myself and the Deputy Registrar, the respondent's lawyer, the respondent's valuer, Mr Hart, and another of the respondent's officers. Looked at from the street, the existing house has been built on a levelled pad and there is a retaining wall of about a metre in height on the southern boundary, a steep bank, somewhat higher, on the northern boundary and also at the rear of the land, which is to the east. The busy road and the contour of the land provide some difficulty with vehicular access to and egress from the land. Mr Ivan pointed out in evidence that the unit block adjoining to the south is a source of annoyance and debris sometimes falls onto his property from it. Items such as cigarettes, lighters, bottle-tops and bottles included. Mr Ivan pointed out that the view from the land is quite limited and includes the commercial premises across the road where, for instance, chlorine is stored, presenting a hazard. The presence of commercial premises at this point in the road means that there is a significant volume of large trucks using this part of Montague Road.

- [7] The levelling of the subject land has been carried out in such a way that not all of the land is useable. Mr Ivan also notes that in response to his Right to Information request the sales disclosed by the Valuer-General as being used to value his land are different to what is now being relied upon. As vexing as this may be, when the matter comes before this Court the respondent is entitled to make the case it chooses to make and is not bound by any past basis it may have relied upon. Equally, the appellant is free to base the appeal on other evidence to what he might have chosen to put forward at, for instance, an objection conference.
- [8] The appellant considered parcels of land which he had been informed were used to value the subject.

Example 1

- [9] Vacant land at 36A Harriet Street, West End, with an area of 240 m² which sold for \$370,000 on 24 April 2010. The appellant assessed it as inferior to the subject land.

Example 2

- [10] The improved land at 362 Montague Road, West End. This 329 m² parcel sold for \$680,000 on 18 June 2011. It was sold improved with a house and is only two doors from the subject. The appellant assesses it as not comparable in size and possessing superior features of access and a corner location.

Example 3

- [11] 9 Adelaide Street, West End sold for \$480,000 and has an area of 304m². The appellant sees it as superior to the subject in its high position, location, views and access.

Example 4

[12] 8 Egbert Street, West End, sold on 21 January 2011 for \$710,000. It has an area of 304 m² and a site value of \$435,000.

Example 5

[13] 53 Ryan Street, West End, with an area of 301 m², this vacant land sold on 27 April 2012 for \$465,000.

Comparisons

[14] The appellant made comparisons with the following properties in Montague Road, West End:

382A

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Reference was also made to the decision of this Court in *Hoeg v Department of Natural Resources and Water*¹ which concerned 382 Montague Road, West End.

The case for the respondent

[15] The respondent called registered valuer Mr BP Hart, a principal valuer with the State Valuation Service. Mr Hart was present during the whole of the appellant's case and had prepared his valuation of the subject land. His report became Exhibit 4. Mr Hart gave evidence that he had considered the appellant's material but that it did not require him to change his valuation of \$900,000. As previously noted, he was also present at the view.

The valuer's method

[16] Mr Hart used the method of direct comparison with sales of vacant or lightly improved land. He has inspected the subject and the sales. Three of the sales are of vacant land and three are of lightly improved sites.

¹ [2009] QLC 26.

The sales used by the valuer

- [17] Sale 1, of 240 m² Character Residential vacant land in a Demolition Control Precinct was sold on 21 April 2010 for \$370,000. It has access to the road by an easement. It adjoins the rear eastern boundary of the subject. It is substantially smaller than the subject and was considered to be inferior.
- [18] Sale 2, at 60 Granville Street, West End sold on 14 July 2011 for \$374,000 was of vacant land also zoned Character Residential and in a Demolition Control Precinct. Approximately 500 radial metres north-east of the subject and in a less-trafficked street, it is, at 272 m², substantially smaller than the subject and was considered to be inferior.
- [19] Sale 3, 19 Brady Street, West End, with the same zoning, Character Residential and also in a Demolition Control Precinct, has an area of 440 m² and sold on 31 July 2011 for \$595,000. With an un-renovated post-war timber house, the analysed sale price was \$480,000. It is close to the subject land and with its smaller size was considered to be inferior to it.
- [20] Sale 4, 5 Drury Street, West End, also in a Character Residential area and a Demolition Control Precinct, has an area of 607 m². It sold on 18 November 2010 for \$890,000 with an un-renovated pre 1946 house. Its analysed sale price was \$790,000. It is about 600 radial metres south-west of the subject and in a more dominantly residential area. Its topography, size and street frontage were all considered to be inferior to the subject.
- [21] Sale 5, 35 Bristol Street, West End, is of 809 m² Character Residential, Demolition Control area land. It sold on 12 May 2011 for \$1,150,000 with an un-renovated pre 1946 house. The valuer analysed its sale price as \$1,000,000. It is about 600 radial metres east of the subject. Its town planning attributes, size, street frontage and topography are all considered comparable to the subject land. Overall, the valuer considers it superior to the subject.
- [22] Sale 6, 3 Rosebury Street, Highgate Hill, is 810 m² of vacant land zoned Low-Medium Density Residential. It sold on 20 March 2012 for \$1,420,000. It is about 1.5 radial kilometres south-east of the subject. It is not identified as at risk of flooding. The land size and topography were considered to be comparable to the subject and it is in a quieter street. It has superior views and the valuer considered it to be superior in comparison to the subject land.

The valuer's conclusions

- [23] Mr Hart was of the opinion that the land must be worth more than Sale 4 (\$790,000) and less than Sale 5 (\$1,000,000). He notes that Sale 4 can only be developed with a single house and that the subject can be used for a single house or duplex (multi-unit)

development. He assessed Sale 4 as inferior to the subject due to its size and saw Sale 5 as superior to the subject due to its location. He adopted a value in the middle of the range between \$790,000 and \$1,000,000, namely \$900,000.

Relativity

[24] While using the method of direct comparison of sales with the subject land, the valuer considered relativity as a check method. Considering 364, 360, 358 and 370 Montague Road, he was of the view that a value of \$900,000 was appropriate for the subject land as at 1 October 2011.

The applicable law

[25] This Court is not an investigating tribunal and must rely on the evidence put before it by the parties. In *J.L. and I. Qualischefski v Valuer-General* (1979) 6 QLCR 167, the Land Appeal Court in its judgment said, at page 172:

“Neither this Court nor the Land Court in the subject jurisdiction may assume the role of an investigating tribunal requiring the Valuer-General to substantiate his case. This is in contradistinction to jurisdiction conferred under the Land Act.

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 *N.R. and P.G. Tow v Valuer-General* (1978) 5 QLCR 378, the Land Appeal Court constituted by Stable SPJ, Mr Smith and Mr Carter said, at page 381:

“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.”

The approach taken by Mr Hart in applying sales evidence is in accordance with the decision of the Land Appeal Court in *Hans and Else Grahn v Valuer-General* (1992-93) 14 QLCR 327. The relevant principles are set out in the joint judgment of Lee J, Mr Barry and Mr Neate at pages 328-329 where the 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).

- (c) Section 13(7) of the *Valuation of Land Act 1944* creates a presumption that the value in money terms shown by the Valuer-General in his notice of valuation is correct (*Brisbane City Council v The Valuer-General* (1978) 140 CLR 41, at p. 56).
- (d) Once it is shown that:
 - (1) in making the valuation the Valuer-General acted upon a wrong principle, or made a serious error of fact; or
 - (2) the valuation was made by a method fundamentally erroneous, the presumption created by section 13(7) is rebutted (*Brisbane City Council v The Valuer-General* (1978) 140 CLR 41, at pp. 56-7).
- (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)."

[26] The presumption in s.13(7) of the *Valuation of Land Act 1944* does not form part of the current Act so the principles expressed in (c) and (d) in the passage quoted no longer apply. The appellant remains limited to the grounds of appeal as set out in the Notice of Appeal.² In the present case, this does not present any difficulty. The appellant has the onus of proof for each of the grounds of appeal.³

Applying the law to the evidence

- [27] There is only one body of expert valuation evidence before the Court in this appeal. It is the evidence of Mr Hart, the expert called on behalf of the respondent. The appellant has formed opinions in relation to valuation matters but since he is not qualified as an expert in this field, I am unable to accept his opinions as evidence. His observations of fact are another thing and provided cogent and relevant evidence of such matters as the characteristics of the subject land and the history of flooding in the area.
- [28] The evidence of the expert has not been contradicted by another expert and I am not satisfied that it was demonstrated that the expert fell into any material error of fact or principle such that the basis of his opinion could properly be said to be vitiated by an error sufficient to do so.
- [29] Mr Hart valued the subject land using the method which higher Courts, the decisions of which are binding on this Court, have found to be the best basis.
- [30] In the circumstances, this Court can only find that the appellant has failed to discharge his onus and must dismiss the appeal.
- [31] In accordance with s.170 of the *Valuation of Land Act 2010* the valuation appealed against is confirmed.

² *Franklin & Ors v Valuer-General* (1978) 5 QLCR 181 at 184. See also *Land Valuation Act 2010*, s.169(1).

³ *Land Valuation Act 2010*, s.169(3).

Orders

1. The appeal is dismissed.
2. The valuation appealed against is confirmed.

**WA ISDALE
MEMBER OF THE LAND COURT**

Released by DNRM under the RTI Act 2009