IN THE LAND VALUATION TRIBUNAL
HELD AT WHANGAREI

BETWEEN FRANK JOHN NEWMAN and MURIEL NEWMAN

Objectors

AND VALUATION NEW ZEALAND

Respondent

Before the North Auckland Land Valuation Tribunal

Chair: Judge B.N. Morris
Members: Mr D.A. Low
Mr K.G. Stevenson
Date of Hearing: 29 October 1997
Date of Decision: 14 January 1998 @ 2.00pm
Appearances: Mr F.J. Newman on behalf of the Objectors
Mr P.J. Malone for the Respondent

DECISION OF THE TRIBUNAL

This is an objection to the refusal for an RPV under Section 25A on the valuation roll of the Whangarei District as at 1 September 1995 for the Objectors property at Tutukaka in the Whangarei District. The legal description is Lot 7, Deposited Plan 158637 and that property has a one-seventh share in Lot 8 on Deposited Plan 158637. Its area is 6.3250 hectares.

From the evidence before us, it is clearly a unique property. On 12 November 1996 the Objectors, as owners, applied for a rates postponement valuation on the basis that a significant and identifiable portion of the property is used for farming purposes. On 26

November 1996, Valuation New Zealand wrote to the owners advising that the property did not qualify for rates postponement value because in its opinion the use of the land did not satisfy the definition under Section 25A(1) of the Valuation of Land Act 1951 in that:

(a) Is farm land - i.e. rateable property used exclusively or principally for agricultural, horticultural or pastoral purposes or for the keeping of bees or poultry or other livestock.

(b) The value of the land is in some measure attributable to the potential use to which the land may be put for residential, commercial, industrial or other non-farming development.

The Objectors, as we said, did not accept that and these proceedings were brought. A description of the portion of the property was provided to us in evidence in an extract from a real estate catalogue produced in 1993 before the Objectors purchased what they ultimately purchased in 1993. As Mr Malone says, the property was marketed in accordance with its best use as a spectacular coastal livestyle property. From the evidence before us, it is clearly a magnificent and unique property. It also appears to us that the main features of the property are its access to the waterfront, spectacular sea views, a substantial homestead with its indoor swimming pool and outdoor spa area together with a right of way access to the waterfront in favour of Lot 6 which winds through the middle of the property. The balance of the property comprising about four hectares is made up of undulating to steep south facing basin of farm land suitable for grazing. In addition to the homestead, there are other buildings comprising a Skyline garage, old boat shed plus a substantial new one currently under construction, an implement shed and a fowl house. We are told the property is well landscaped with native and ornamental plantings over an extensive area. An eclectic mixture of livestock was running on the property when inspected by Valuation New

Zealand including six rising two-year-old Hereford cross steers, five donkeys all of whom were Jennys, two Saanen does and six poultry of various breeds and colours.

The Respondent's position is simply that the principal use of the property is residential and not farming. It is the Respondent's contention that the landscaping lacks any stock protection which raises some doubt in Valuation New Zealand's mind about the grazing value of some of the fenced areas. The Respondent contends that the major attractions of the property are its coastal features such as waterfront access by and to the sea, its views would serve to enhance the residential use.

The Respondent says, with reference to the variety of livestock carried on the property, that there is no commercial production implied or evident and Valuation New Zealand contends, whilst a greater proportion of land is devoted to running livestock than is used for residential purposes that in the absence of any signs of commitment to intensive production, the farming can best be described as an ancillary use rather than a principal or exclusive use.

The Objectors position

Mr Newman, on his wife's and his own behalf, clearly and honestly states that what he seeks is "further clarification to establish guidelines from those on smaller rural lots". He goes on "this is sought as during discussions with Valuation New Zealand it has become apparent that Valuation New Zealand considers the size of one's land area and the value of the improvements vis-a-vis land value to be significant when assessing qualification under Section 25A.

The Objector tells us he is a practising Sharebroker and a practising Accountant and Investment Advisor. He is also a councillor on the Whangarei District Council. His wife is a List Member of Parliament. It seems to us that the ability of a fellow councillor to obtain an RPV for his property and the ultimate outcome of the application by his neighbour, Mr Visser, encourages the Objector and his wife to apply

for an RPV for their property as well and it is clear to us from Mr Newman's evidence. It seems to us that he has very carefully negotiated the matter with Valuation New Zealand in an attempt to get the Respondent to give the Newman's the guidelines for qualification for RPV. As we have said on many, many occasions whilst each case stands upon its own merits, the starting point is the statutory criteria of Section 25A as interpreted very helpfully by the High Court in ***Tepene Tablelands Limited -v- Valuer-General*** [1993] 2NZLR 336. Section 25A was an amendment to the 1951 Act in 1988 and it provides as follows:

> *"Rates postponement values of Farmland*
> *25A. Rates postponement value of farmland - (1) the Valuer-General or the Valuer, as the case may be, may from time to time on his or her own motion or upon the application in writing of the principal administrative officer of the territorial authority or of the owner or occupier of any land, determine the rates postponement value of land that-*
>
> *(a) Is farmland within the meaning of Section 2 of the Rating Powers Act 1988; and*
>
> *(b) The value of which is in some measure attributable to the potential use to which the land may be put for residential, commercial, industrial, or other non-farming development.*
>
> *(2) The rates postponement value of any land shall be determined by the Valuer-General or by the Valuer under this section -*
>
> *(a) So as to exclude any potential value that, at the date of valuation, the land may have for residential purposes, or for commercial, industrial, or other non-farming use; and*
>
> *(b) So as to preserve uniformity and equitable relativity with comparable parcels of farmland the valuations of which do not contain any such potential value.*
>
> *(3) Notwithstanding anything in subsection (2) of this section, no such rates postponement value need to be determined by the Valuer-General or the Valuer, unless in his or her opinion the amount of such value is less than*

the capital value if the capital value system of rating is in force, or less than the land value if the land vlaue system of rating is in force, or less than the annual value if the annual value of rating is in force ..."

The follows subsections (4) and (5).

The two basic principles to be extracted from Tipene as we have mentioned e.g. LVP 64/96 *Visser -v- Valuer-General* are those at page 343, lines 33-45:

"To qualify for rates postponement values two factors must be established:

(a) That the land in question is 'farm land' as defined by Section 2 of the Rating Powers Act 1988 i.e. rateable property 'used exclusively or principally for agricultural, horticultural or pastoral purposes or for the keeping of bees or poultry or other livestock':

(b) The value of the land must be in some measure 'attributable to the potential use to which the land may be put for residential, commercial, industrial or other non-farming developments'.

Now it is quite clear and everybody concedes that this property is not used exclusively as farm land. The contention of the Objectors is that its principal use is farm land use. In dealing with that aspect of the matter we refer again to our decision LVP 466/94 in the Auckland Land Valuation Tribunal decision *Lendich -v- Valuer-General*. At page 7 we looked at this concept in this way "exclusively" or "principally" are not specifically further defined. We take the point that neither party contends the property is exclusively used for farming and that it is the term "principally" that is in issue.

The shorter Oxford English Dictionary on historical principles gives the meaning to "principally" (adverb) in the chief place mainly above all for the most part in most cases.

Chambers Concise 20th Century Dictionary gives the meaning to "principal" as an adjective as "taking the first rank, character or importance, chief".

The Objectors consider farming as the principal use on the basis of their production of farm accounts, their GST registration and the fact that, on acquisition, stamp duty was payable on the rural land character and portion of the land. In answer to questions in cross-examination and in clarification from the Tribunal, Mr Newman advised of his other interests and he confirmed that part of two days per week were spent in clearing up after his five donkeys, six cattle, two goats and some poultry and in landscaping duties. Of his working week, he cannot say that he is wholly or principally a farmer. He was at first reluctant to show us his financial accounts but he did so in the end. Mr Malone looked at them and we looked at them. He told us, on oath, that they had been accepted by the Inland Revenue Department and we, of course, rely on that advice. These accounts show the results of "farming" six steers and five donkeys. It produced a loss and that loss is divided by the two Objectors as partners for tax purposes. Our view is that an operation of this nature will never sustain a regime that could be said to be the principal use of the property. There may well be some purposes for which the property could be put that would meet the principal use test but in our view the present regime does not meet that test. When we consider this present application in the light of our decision in Visser, it is our view that in Visser we were perhaps too strict in our decision to the qualification test when we said:

> *"The question of the respective values given to the components as suggested by Valuation New Zealand to determine the question of eligibility is erroneous".*

This test was one of three then adopted by Valuation New Zealand to establish qualification for RPV. We wish to state quite clearly that we accept the three criteria adopted by Valuation New Zealand being:

1. The potential rental return from the residence on the property compared with the farming return from the farming operation.

2. The size of the property. Anything less than 30 hectares is considered to be a lifestyle block unless farming is clearly the principal use. that is a vineyard and certain types of horticulture.

3. The value of farm improvements compared with the value of residential improvements.

What we feel is the true position that those three factors should be used in conjunction with the other factors that we suggested in paragraph 1 on page 7 of the Visser decision. What we are saying is that the total picture must be looked at although it is difficult to be precise but to qualify farming must be either the exclusive or the principal use. On that basis alone, this application would fail. It simply fails to meet, in our view, the first test. In addition, it is also our view, that there is a very real question mark over the second test. By comparison Mr Visser had obvious potential with their existing multiple titles. Mr Newman claims "he has a potential for subdivision or development potential" but he was vague and rather non specific on that point. There is no evidence of an existing planning consent or an avenue for achieving such development potential. Our view is that the very best potential was a possible homestead lot to be created about the year 2005. In our view, the application fails. The objection is dismissed. We have arranged for this Tribunal secretary to return the Objectors file copy of their unsigned IR7.

B.N. Morris