

**BEFORE THE LAND VALUATION TRIBUNAL
AT GISBORNE**

NO. LVP 7/06

UNDER	THE RATING VALUATIONS ACT 1998
IN THE MATTER OF	AN OBJECTION TO REVALUATION OF THE DISTRICT ROLL FOR THE GISBORNE DISTRICT COUNCIL
BETWEEN	ROBERT NISBETT SMITH Objector
AND	GISBORNE DISTRICT COUNCIL Respondent

Hearing: 1 August 2007

Appearances: Chair: His Honour, Judge M E Perkins
Members: W J Harvey, N Kaa
Counsel: G R Webb for Respondent
Objector in Person

Judgment: 24 October 2007

DECISION OF THE GISBORNE LAND VALUATION TRIBUNAL

Background

[1] This is an objection to a rating valuation in respect of the Objector's property at 586 Waihau Beach. Waihau Beach is situated north of Gisborne City. The objection has been brought before the Tribunal pursuant to s 36 of the Rating Valuations Act 1998. The Objector is an affected person who is dissatisfied with a review of the rating valuation for the property carried out under s 34 of the Act.

[2] Section 38(2) of the Rating Valuation Act 1998 provides that the onus of proof in respect of any objection rests with the Objector.

[3] The land in question is freehold land and is legally described as being all that parcel of land containing 1824 square metres (more or less) being Lot 1, Deposited

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Plan 313008, and being all the land described in Computer Freehold Register 51245 Gisborne Land Registration District. The land is zoned "rural general" in the Gisborne District Combined Regional Land and District Plan.

[1][4] Waihau Beach is located approximately six kilometres from Whangara Road (State Highway 35). This is approximately 14 kilometres south of Tolaga Bay and some 50 kilometres from Gisborne City. The last six kilometres to the beach from SH 35 is mostly a winding, metalled road. The locality is known locally as Loisel's. The community comprises lifestyle blocks and residential homes, which include both permanent and holiday occupants. The locality is described as a typical East Coast bay with rocky outcrops at each end and a sandy beach curving within the bay. There is no boat ramp within Waihau Bay or other facilities except for a Council toilet. The general standard of housing in Waihau Bay comprises basic baches to more elaborate residences. Farming properties are located at the end of the road, approximately 400 metres north from the subject land. The subject land bounds a Council reserve to the north with Tolaga Bay being the closest servicing centre to provide most daily needs. Services to the land include electricity and telephone. Sewage disposal is via septic tanks and water supply is via roof catchment into holding tanks.

The Hearing and Subsequent Submissions

[5] At the prior callover meeting of this matter, Mr Smith indicated that he would be away from New Zealand at the time of the hearing. He indicated that his valuer witness, Mr Tietjen, would present his case. As it transpired, Mr Smith was present at the hearing and represented himself. He called Mr Tietjen as his expert witness. There had been a gross under-estimation by the parties as to the time required for the hearing. At the conclusion of evidence it was agreed that written submissions would be presented and timetabling was set. Mr Smith was to present his submissions first; Mr Webb, counsel for the Council, would then answer with a final right of reply from Mr Smith.

[5][6] Mr Smith objected at the hearing, and repeated his objection in the written submissions, to the Council being represented by counsel at the hearing. He claims that at the prior callover it was agreed that each party would represent themselves.

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There was no such agreement. Indeed, Mr Smith indicated that he would not be present at the hearing at all. As we indicated at the hearing, any party is always entitled to be represented by legal counsel.

[5][7] So far as the final submissions are concerned, Mr Smith filed a brief written submission, dated 6 August 2007. Mr Webb, counsel for the Council, then filed a written submission in answer, dated 31 August 2007. Contrary to principle, Mr Smith chose to allow his expert witness, Mr Tietjen, to present the submission in reply. This submission goes considerably beyond a response to Mr Webb's submission and introduced new matters and, indeed, new evidence. Mr Webb, without invitation, has filed a further brief supplementary submission objecting to the submission of Mr Tietjen. Both Mr Smith and Mr Tietjen are of course laypersons, not experienced in matters such as this proceeding. We have noted Mr Webb's objection, which has some point.

[5][8] In the circumstances, however, we have decided to consider all documentation received. So far as our decision is concerned, it is based on the evidence we have heard from the witnesses at the hearing. Where an attempt has been made to present new evidence in the submissions, we have disregarded those parts of the written submissions.

Evidence

[9] The rating valuation submitted by Land Mass Technology Ltd, the valuer contracted by the Gisborne District Council, is as follows:

Valuation of Improvements	\$160,000.00
Land Value	<u>\$650,000.00</u>
Capital Value	Total: \$810,000.00

[10] The valuation was made on the basis of comparable sales and assuming that any valuation is inclusive of GST, if required.

[10][11] The Objector submitted that the rateable value should be as follows:

Valuation of Improvements	\$120,000.00
Land Value	<u>\$330,000.00</u>
Capital Value	Total: \$450,000.00

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[12] The Tribunal heard substantial evidence from the valuer witnesses, Mr Graeme Tietjen for the Objector and Mr Dean Craig for the Council. The main dispute between the valuer witnesses and the reason for the substantial variation in capital valuation for the property relates to which appropriate East Coast property sales are valid for the purposes of assessing comparable sales.

[12][13] From the evidence we heard, the subject land rises from the road to a hilltop and then drops steeply to the beach below. The limited area for development has now been virtually fully utilised. Geo-technical advice would be required for any further development. Access directly to the beach is difficult. Access via the road is approximately 300 metres. The land has expansive Pacific Ocean views.

[12][14] The difference between the valuers as to the valuation of improvements, in our view, is not a significant matter. On the one hand, the valuation of Mr Tietjen, the Professional Valuer employed by the Objector, revalues the improvements at \$120,000.00. Mr Craig, the Valuer employed by LandMass Technology Ltd, assessed the valuation of improvements at \$160,000.00. Mr Craig is not a Registered Valuer, but his evidence was audited and endorsed by Mr Laing, a Registered Valuer and Director of Land Mass Technology Limited. While our consideration must be directed to the value of land, we mention the valuation of improvements because it was raised as an issue at the hearing.

[12][15] During cross-examination Mr Tietjen conceded that he had not inspected the dwelling and it was clear that his description of the dwelling was erroneous in some respects. The Tribunal was disappointed at the variation in floor areas when considering a comparatively simple structure. Comparing the evidence and the submissions, the Tribunal is drawn to the conclusion that Mr Craig's description and measurement of the property should be adopted. We see no reason to depart from his valuation of improvements at \$160,000.00. Such valuation does not include any chattels or outbuildings.

[12][16] While the valuer witnesses used some of the same properties for the purposes of assessing comparative sales, Mr Craig took a more expansive approach by considering sales for the entire coastal area between Mahia in the south to

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Onepoto (Hicks Bay) in the north. Mr Tietjen, on the other hand, narrowed the sales down to properties, which he considered were more analogous to the remote location of Waihau Bay, such as Nuhiti Beach. Mr Tietjen considered that, using in the equation sales at beach areas such as Mahia Peninsula and the beaches closer to Gisborne City, such as Wainui, Okitu and Makorori, without proper indexation and discount is not valid. He submitted that Mahia Peninsula, for instance, catered for a different market, including the Hawke's Bay, from the remoter beaches on the East Coast north of Gisborne City.

[12][17] Mr Craig, on the other hand, took the more expansive approach and also related much of his evidence to the fact that the subject property was more analogous to direct beachfront properties even though there were some difficulties with access to the shore with the subject property. He conceded that the Nuhiti vacant land values were more representative of the market in which the subject property would sell. However, in his valuation he discounted the consideration for such sales on the basis of difficult practical access, lack of legal access, issues relating to land tenure where Maori freehold land was involved, and the cost to reticulate power and telephone into Nuhiti Beach.

Conclusions and Disposition

[18] The Tribunal has given careful consideration to the valuation evidence submitted by the respective valuers. The Tribunal has also considered each of the properties to which the valuers have referred for the purposes of comparative sale in reaching its conclusions. We received helpful, final submissions from both the Objector and his valuer and also counsel for LandMass Technology acting on behalf of the Gisborne District Council.

[18][19] The Tribunal acknowledges that having regard to the nature of the subject property, the matter has provided a difficult valuation exercise due to the lack of direct sales evidence in or close to Waihau Bay region and close to the revaluation date. Obviously where the valuers are not able to rely upon substantial comparative sales and have to consider widely differing areas along the East Coast, the valuations are going to be fraught with the difficulty. Subjective elements, which come into the setting of consideration for the sale and purchase of such

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properties, will be a factor causing distortion. We have come to the conclusion Mr Tietjen has taken too narrow an approach to the issue of comparative sales. On the other hand, we consider that Mr Craig has possibly introduced into his assessment too much influence from the comparative sales in popular beachfront areas nearer to the catchments of Gisborne City and the Hawke's Bay. These values massively inflated due to the increased popularity and demand in such areas. However, we do not accept that the subject property is so remote from such areas to not be subject to the same or similar inflationary factors.

[18][20] In this respect, we agree with Mr Craig's statement that:

"Locations that previously have received no special interest rapidly came within the radar of purchasers seeking property with that coastal/beachfront character. This has combined with a generally accepted increase in commuting distances on a national scale, by purchasers seeking to live in their chosen environment."

[21] So far as the Nuhiti area is concerned, the Tribunal accepts the submissions made by Mr Craig as to difficulties of land tenure. However, it was not convinced that this factor, together with lack of facilities and access to the locality, would create a difference in value of over 100 percent between Nuhiti and Waihau Bay. The Objector considered a discount of 15 percent was appropriate and only because Nuhiti was further removed from Gisborne.

[21][22] We accept that this has been a difficult valuation exercise for the reasons which we have mentioned and which the valuers presented in their evidence.

[21][23] So far as valuation principles are concerned, it is now well established that the proper way to arrive at land value is to assume that there is nothing on it in the way of improvements as defined in the Act. The Tribunal then has to assess what, in that state, it would fetch in the market. In **Valuer-General v Reece**, (LVC Dunedin, 1963, Reported in McVeagh and Babe, 464), Judge Archer made the following and now well used statement:

"In assessing the value of improvements the valuer's first duty is to fix the unimproved value (land value), then to ascertain the capital value by reference to selling value in the market. The difference between these values is the added value given by the improvements, that is – the value of improvements. The breakdown of the improvements is not a matter which the Court is required to consider and is not of great importance."

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[24] The decision in *Valuer-General v Mangatu Inc* [1997] 3 NZLR 641 confirms that legal constraints on alienability are matters, which have to be taken into account in determining value. However, care needs to be taken as to the extent of discounting made for that reason. We have already said we do not accept the extent of the discounting, which Mr Craig has made in respect of land tenure and other issues for the Nuhiti comparative sales. Nor do we agree with the extent to which Mr Craig has adopted direct sales evidence for coastal sections on the East Coast north of Gisborne such that the same inflationary factors can be adopted to the extent adopted for the subject property. For this reason, the Tribunal is not persuaded that the value for the subject property is at the level submitted for on behalf of the Council. Rather the Tribunal finds some favour with the Objector's indexation method to show a discount of premiums between Waihau Bay and Wainui, Okitu and Makorori locations. The Wainui Beach area is a dormitory suburb of Gisborne City and creates a completely different market level, as the evidence shows as the coastal values proceed northwards. On the other hand, we do not accept that the valuation of properties in Mahia should be discounted altogether.

[24][25] The Tribunal is clearly of the view that a capital value of \$810,000.00, based on a land value of \$650,000.00, is excessive. The matter is difficult, but the Tribunal allows the objection and values the land value of the subject site at \$440,000.00. Accordingly, the rateable valuation as at 1 September 2005 will be:

Land Value		\$440,000.00
Improvements		<u>\$160,000.00</u>
Capital Value	Total:	\$600,000.00

M E Perkins
District Court Judge
Chairman
Gisborne Land Valuation Tribunal

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