BEFORE THE AUCKLAND
LAND VALUATION TRIBUNAL LVP 004/06

IN THE MATTER of the Rating Valuations Act 1998

AND IN THE MATTER of an objection to the revaluation of the District Roll for the North Shore City Council

BETWEEN **NEIL SWANSON**

Objector

AND **NORTH SHORE CITY COUNCIL**

Respondent

Before the Auckland Land Valuation Tribunal

Chair: His Honour Judge J D Hole

Members: I W Gribble Esq

Date of hearing: 15 August 2007

Appearances: Objector in Person
Mr S H Smith for Respondent

Date of Decision: 29 August 2007

DECISION OF TRIBUNAL

Introduction

[1] The objector is one of the registered proprietors of a residential property at 37 Chippendale Crescent, Birkdale. The legal description of the property is an estate in fee simple in all that parcel of land containing 1449 square metres more or less being Lot 49, Deposited Plan 47832, being all the land comprised and described in Certificate of Title NA42C/799 (North Auckland Registry).

[~~1~~][2] Situated upon the land is a modest three bedroomed house built in 1962, together with a two bedroomed sleep-out and a rear flat (granny flat). The granny flat contains one bedroom, a lounge, kitchen/dining area, laundry and bathroom. It can be for family use only. The sleep-out cannot be separately let.

Formatted: Bullets and Numbering

[~~1~~][3] Under s 9 Rating Valuations Act 1998, the valuation of the property as at 1 September 2005 was assessed on behalf of the respondent as follows:

Capital value	$440,000
Land value	$220,000
Value of Improvements	$220,000

[4] After two reviews the respondent's valuation became:

Capital value	$420,000
Land value	$200,000
Value of Improvements	$220,000

[5] In his objection the objector contended for the following values:

Capital value	$260,000
Land value	$101,000
Value of Improvements	$159,000

The Objection

[6] The objection raises three points:

(a) The use at the neighbouring property of 7A Chippendale Crescent has changed from normal residential use to a commercially operated business housing intellectually challenged persons. The house at 7A Chippendale Crescent is within three metres of the boundary of the subject property. The occupants at 7A Chippendale Crescent have subjected the occupants of the subject property to "maniacal noise, obscene verbal abuse and threats to kill". In these circumstances, it is submitted that the "environment impact on the occupancy change has been so dramatic that a 15 percent lowering of value would be closer than 5 percent".

~~(a)~~(b) As the property incorporates only one large rental unit, the respondent's valuer's income approach does not result in a fair market value. In this regard, the valuer, when employing an income approach to the determination of the capital value of the property, assessed individually the rental which he thought could be achieved for the main dwelling, plus the granny flat plus the sleep-out plus incidental amenities. To reach the total market rental for the property he added all the individual items together to reach a rental of $750 per week or $39,000 per annum.

~~(a)~~(c) The respondent has encumbered the land with pipe reticulation. (With respect to the objector, it is plain that the valuer for the respondent took this fact into account when assessing a land value in the sum of $200,000 and, in this regard, the letter dated 28 August 2006 from Quotable Value Limited to the objector is relevant.)

Formatted: Bullets and Numbering

Change of Occupancy of Neighbouring Property

[7] There was no evidence as to whether the present use of the property at 7A Chippendale Crescent is permitted within the current zoning of the property or whether it arose as a result of a consent granted under the Resource Management Act 1991. Regardless, the valuer for the respondent recognised that the nuisance emanating from 7A Chippendale Crescent (being one of 10 adjoining properties) impacted detrimentally upon the capital value of the subject property and allowed a discount of 5 percent. Whilst the objector contended for a 15 percent discount, the objector failed to indicate how such a discount should be determined. The respondent's valuer stated that, to determine his 5 percent discount, he spoke to three real estate agents and other colleagues. None of the real estate agents or colleagues to whom he spoke gave him concrete evidence of any sale which might have been affected by such an issue. It seems no further inquiry was made. The Tribunal considers that it is possible that, upon further investigation, sales affected by similar issues will have occurred which could have given both parties a more accurate guide to the calculation of the discount.

[~~7~~][8] However, in the absence of any evidence to the contrary, the Tribunal, acting in accordance with s 38(2) Rating Valuations Act 1998, accepts that the 5 percent discount allowed by the respondent is appropriate. Section 38(2) of the Act provides that "The onus of proof on any objection rests with the objector".

Formatted: Bullets and Numbering

Land Value

[9] The submissions of the objector related primarily to the calculation of the capital value of the property. Nevertheless, the objection itself notes the objector's assessment of land value in the sum of $101,000 compared with $200,000 contended for by the respondent.

[9][10] The Rating Valuations Act 1998 defines land value in s 2. It is the sum that the owner's estate or interest in the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose. In the leading Court of Appeal decision of ***Boat Park Limited and Ors v Hutchinson and Anor*** [1999] 2 NZLR 74, Thomas J reaffirmed the willing seller/willing buyer principle. He acknowledged that, where appropriate sales evidence was available, the sales comparative method of land valuation was generally regarded as the most reliable, although that could be checked, when appropriate, by the use of other methods. No single method should be regarded as conclusive.

[9][11] The Tribunal is satisfied that there is adequate comparative sales evidence to support the respondent's land valuation. There was none supporting the objector's assessment.

[9][12] The respondent's assessment of land value can be derived from the table constituting Appendix 2 of his brief of evidence. There is no necessity for the Tribunal to detail this evidence. Suffice to say that the valuer's adoption of $140 per square metre was supported by his sales evidence. Indeed, if the valuer had adjusted his sales to allow for time, a result less favourable to the objector would have been achieved. Accordingly, the Tribunal is satisfied that the respondent's land valuation in the sum of $200,000 is supported by the evidence.

Capital Value

[13] The principle expressed in ***Boat Park*** applies to the calculation of capital value as well as land value. The sales comparative method is usually regarded as the most reliable but other valuation methods can be employed as well. They become more important if there is a paucity of sales of comparative properties.

Formatted: Bullets and Numbering

~~[13]~~[14] That is the case here. In his analysis of the capital value sales (and the Tribunal does not accept his analysis as correct) the valuer reached a median for improvements of $708 per square metre with an average of $757 per square metre. Inexplicably, the valuer then adopted $800 per square metre as being appropriate to the subject property's improvements. He applied the net rate of $800 per square metre to the living area of the dwelling. He then, again inexplicably, applied a nett rate of $1,100 per square metre to the area of the granny flat. Then he determined what he thought would be a replacement cost for the sleep-out (without supporting evidence). The calculated improvement value of $181,400 reflected an average rate of $925.51 per square metre over 196 square metres of combined area. The Tribunal found no support for this rate. He then added it to the site improvements to reach a total of $240,000 for the improvements. This was added to the land value already ascertained of $200,000, 5 percent was deducted, and a net capital value of $420,000 reached.

~~[13]~~[15] This approach to the calculation of capital value contains two problems:

(a) There was no reason to apply different square metre rates to the various parts of the building. Presumably this was done because the respondent's valuer assumed that the different parts could be separately let. Even if this assumption were correct, it does not necessarily follow that, without explanation, different square metre rates are appropriate.

The combined area of the dwelling house, granny flat and sleep-out is 196 square metres. If one multiplies 196 square metres by an average of $800 per square metre (reflecting size), then adds site improvements of $60,000, a capital value of $416,800 (including land value of $200,000) is achieved. From this should be deducted 5 percent ($20,840). Objectively, $395,960 capital value is too high when compared with the sales evidence. The "added value" for the

site improvements including pool and garage ($60,000) is considered too high for such a property.

(b) It does not accord with the definition of capital value – see para [13]. It is capital value which is being valued; not improvements. What must be considered in terms of the definition of improvements is the "added value" which they give to the land. If one adds an analysed value of improvements to the land value, the valuer must step back and consider the result in terms of the capital value definition.

[16] From the foregoing, it is obvious that the capital value sales analysis undertaken by the valuer was flawed. Furthermore, all the capital value sales evidence related to smaller homes generally in a better location compared to that of the subject. The subject property constitutes a larger house in a worse location.

~~[16]~~[17] In these circumstances an examination of the alternative valuation approach (the income approach) becomes pertinent.

Formatted: Bullets and Numbering

Income Approach

[18] The respondent's valuer determined that the total income which the property might command was $750 per week or $39,000 per annum. He capitalised this at 8 percent to reach a capital value of $487,500. After allowing for the 5 percent discount, this reached a capital value of $460,000. Thus, by using the income approach he achieved a capital value which amounted to $40,000 greater than that which he achieved using the comparative sales approach.

~~[18]~~[19] To reach his notional rental of $750 per week, the valuer assessed the rental achievable from a four bedroomed house (this was a three bedroomed house) in the sum of $400 per week. He assessed the rental which could be obtained from the sleep-out in the sum of $120 per week and the rental achievable from the granny flat in the sum of $200 per week. In addition, he

Formatted: Bullets and Numbering

thought that the freestanding garage could command a rental of $10 per week and the swimming pool $20 per week. The valuer stated that, in the surrounding locality, rental for a four bedroomed house would be in the range of $400 to $450 and that rental for a single bedroomed, self contained flat was in the range of $200 to $230 per week. He considered that these rentals reflected the location, type of property, age, condition and risk associated with the subject property. He adopted a market capitalisation rate of 8 percent which he thought appropriately reflected the surrounding location, quality of property and level of risk for the property. He stated that the higher rate of 8 percent (as compared with rates which he had analysed from other properties) was necessary because of difficulties which might be expected in letting the property due to its locality.

~~[18]~~[20] There are obvious problems with his calculations. First, he assessed rental for a four bedroomed house whereas, in fact, the house contains three bedrooms. He assumed that the granny flat would achieve a rental of $200 per week when his own evidence disclosed that it was not capable of being let independently of the main dwelling as it could only be used for family purposes. The same comment applies to the sleep-out which is not capable of being let independently of the main dwelling as it has no kitchen and other independent facilities.

~~[18]~~[21] In these circumstances, as the objector claims, the proper approach in determining the sort of rental which the property might command is to treat the property as one entity. Indeed, this is exactly what it is. If one treats the house (including the granny flat) as constituting a four bedroomed dwelling with two bathrooms, a minimum rental in the sum of $450 per week seems to accord with the valuer's evidence. Allowing for the benefits of the swimming pool and garage, the overall rental for the property, excluding the sleep-out, would be $480 per week. In the circumstances, for the purposes of this calculation, the Tribunal accepts that the sleep-out might generate added income in the sum of $120 per week from boarders. Thus, the total income

which the property is likely to generate amounts to $600 per week which works out at $31,200 per annum. Applying the valuer's capitalisation rate of 8 percent (which the Tribunal thinks is justified on the valuer's evidence) this produces a capital value of $300,000. From this figure must be deducted 5 percent ($19,500).

~~[18]~~[22] The result of $370,500 is $25,460 less than the capital value obtained by the Tribunal by using the sales comparative method, (although with the Tribunal's reservations relating to the "added value" of the site works). It is $49,500 less than the $420,000 contended for by the respondent.

~~[18]~~[23] If one stands back and looks at the entire property objectively (as all experienced valuers do) it becomes plain that the calculations and analysis undertaken by the respondent's valuer are insupportable. However, from the same standpoint, the two calculations by the Tribunal of capital value seem to reflect an appropriate range. This is especially so, given the Tribunal's reservations as to the "added value" for the site improvements. All of this leads the Tribunal to fix a capital value in the sum of $375,000.

Conclusion

[24] In these circumstances, the Tribunal considers that the objection should be allowed and that an appropriate valuation as at 1 September 2005 is:

Capital value	$375,000
Land value	$200,000
Value of Improvements	$175,000

Signed at Auckland this 29thday of August 2007 at pm.

J D Hole
(Chairman)