

IN THE DISTRICT COURT

AT HAMILTON

LVP 3/06

BETWEEN DEREK KENNETH TATE & JOANNE

ELIZABETH TATE

Claimant

AND

WAIKATO DISTRICT COUNCIL

Respondent

Hearing: 13 June 2007

Quorum: RP Wolff DCJ, D Smythe, V Winiata

Appearances: Claimant appears in person

G Guyett for the Respondent

Judgment: 13 June 2007-11-21

ORAL JUDGMENT

OF WAIKATO (NO 1) LAND VALUATION TRIBUNAL

Introduction

[1] The question raised in the present case is whether the respondent can on a revaluation of land when an objection has been taken to the land value policy; without the objectors being able to discover or having been told that it was possible, increase the unobjected to capital value.

Ruling

[2] At the beginning of the hearing we asked Mr Guyett if there had ever been a case decided where an objection to land value had been settled prior to hearing and the response of the respondent had been to seek an increase in the previously agreed value of improvements. We were informed that neither Mr Guyett nor the Valuer General, after enquiry of him, were aware of any cases where this had occurred, though this had occurred on some occasions with the consent of the objector, and thus no hearing was required.

[3] Mr Guyett as part of his evidence suggested that it was the Valuer General's view that the appropriate approach in determining a fresh valuation or a valuation in such circumstances was to re-value the property and to re-visit the entire process.

[4] The difficulty with this approach is that so far as the objector is concerned there is nowhere an objector can discover that that is the process that the Valuer General contends is appropriate.

[5] The Valuer General has the power under s5 of the Ratings Valuation Act 1998 to make Rules in relation to valuations.

[6] Under ss5(g) he can provide for the manner in which any valuation is to be reviewed by a territorial authority as the result of an objection.

[7] When a set of rules is to be promulgated by the Valuer General the Valuer General must follow the steps required of him under ss3, 4 and 5 of s5 of the Rating Valuation Act 1998.

[8] The Valuer General has in fact promulgated the Land Valuation Rules but none, (and Mr Guyett accepts this) in a definitive way sets out that the approach that was taken in the present case is that which ought to be followed.

[9] Land Valuation Tribunals have generally investigated only those areas to which there has been objections. Where there is agreement then the Tribunal does not intervene.

[10] So in the present case we have the situation where the objectors have objected to the land value and by so objecting they have challenged the capital value. The respondent accepted that their objection to the land value was justified, and that has been resolved by

agreement. On the re-evaluation however the value of improvements has been increased, though the capital value is lower as a consequence of the reduction in land value being less than the increase in assessed capital value.

[11] This is not the case in which to resolve whether or not the approach taken by the respondent in the present case is the correct one. It is plain to us that there would be a degree of unfairness to the objectors in the present case to take that approach without some clear indication, either in the evidence that they were informed, or the rules provided, that this was the appropriate approach to follow. And thus they were aware of it at the time they reached agreement about their initial objection.

[12] However, we do not need to make that decision in the present case. After hearing the evidence from the respondent and considering the matters before us, we are not satisfied that the evidence tendered in support of an increased value for the improvements is sufficient to persuade us that the initial assessment should be changed.

[13] Our reasons for this are that the subject property is quite different from the examples chosen and we do not see them as a valid comparisons.

[14] The alternative approved based analysis of the cost of building do not persuade us either that it is appropriate for the Tribunal to intervene in the present case.

[15] While we are troubled that the result in the present case may mean there may be a lack of comparability created as a result with capital values of neighbouring properties. However the way this case has focussed on the value of improvements has meant that the evidence as to capital values of neighbouring properties has not been adequately addressed. The result is that we feel that it is not appropriate for us to intervene regarding the unobjected to parts of the original valuation. It seems to us that here the objectors agreed, albeit reluctantly, with the original capital value component, challenging only the land value component which in turn resulted in agreement being reached as to that aspect. To proceed to alter the capital value without them being aware that this was a possibility undermines the integrity of the settlement of their objection that they thought they had achieved.

Determination

[16] Our determination then is that the land value is the agreed value of \$420,000.00. The value of improvements is \$265,000.00, that being the initially assessed value. The capital value is \$685,000.00.

Comment

[17] Before leaving the matter we note approach taken by Mr Guyett has a degree of logic to support it. We believe that this approach needs to be adequately promulgated so that people understand that when they object to part of a valuation it is the Valuer General's view that the entire valuation is subject to re-scrutiny.

[18] It may be that it is necessary for the Valuer General to consider making it plain in rules to that effect that this is the approach that is to be taken. An objector must be told that this is the approach being adopted or be able to discover this is so in the material that they are able to access.

[19] The reason that the difficulty has arisen in the present case as we understand it is that in the main valuation of improvements for this region has been done on a statistical basis and that there have been infrequent actual inspections of improvements. We understand that this is to be cured in the near future and that the respondent proposed to carry out actual inspections systematically over the next few years.

[20] This case does not determine the issue of whether the approach contended for by the respondent is correct or not. The result has been reached because we see the objectors as having settled the issues with the respondent.

[21] In future cases this may need to be determined, but it would be appropriate that either that the Valuer General should promulgate rules under s5(g) or that objectors be informed by the rating authority when considering an objection that an objection to part only of a valuation opens the entire valuation to reassessment whether or not there is agreement about the other part of the valuation.

[22] In the absence of clearly promulgated rules, it will fall to a Land Valuation Tribunal to consider the issue that was not able to be resolved by the present case, of whether the approach contended for by the respondent was the correct one.

[23] This decision was given orally, but at the invitation of Mr Guyett I have edited it to sharpen its focus, the result is that I have shortened this decision from its original, but each of the other tribunal members have approved the editing.

JUDGE R P WOLFE

For the Waikato (No 1) Land Valuation Tribunal