

IN THE MATTER of objections against valuations under the
Rating Valuations Act 1998

BETWEEN **VARIOUS OBJECTORS AT TAUPO BAY**

Objectors

AND **FAR NORTH DISTRICT COUNCIL**

Respondent

Before the North Auckland Land Valuation Tribunal

Chair: His Honour Judge J D Hole

Members: D A Lowe, Esq
J F Hudson, Esq

Date of hearing: 19 July 2004

Appearances: Mr M J Nyssen for Objectors
Mr G Myburg for Respondent

Date of Decision: 13 August 2004

DECISION OF TRIBUNAL

Introduction

1. This decision relates to 13 beachfront sections situated at Taupo Bay. For the purposes of this decision, there is no necessity to list their respective legal descriptions. The area of each section varies from between 665 square

metres and 1,115 square metres. Most of the sections have an area of about 820 square metres.

2. Details of the individual properties, their 2001 roll value, and the objectors' estimate of value are set out hereunder. In each case, only the land value is mentioned as it is land value which is in contention.

Address	Owner	2001 Roll Value	Objectors' Estimate of Land Value
42 Taupo Bay Road	D L & C Broberg	\$260,000.00	\$187,500.00
34 Taupo Bay Road	R D & L C Dent	\$215,000.00	\$165,000.00
2 Marlin Drive	S Lamaletie	\$305,000.00	\$225,000.00
18 Marlin Drive	G E & D F Scott	\$305,000.00	\$250,000.00
20 Marlin Drive	J & M Barr Family Trust	\$305,000.00	\$250,000.00
26 Marlin Drive	St Johns NZ Priority Trust Board	\$305,000.00	\$237,000.00
36 Marlin Drive	E M & G Philson	\$305,000.00	\$212,500.00
44 Marlin Drive	B E & L J Carter	\$290,000.00	\$200,000.00
46 Marlin Drive	R N & T Jenkins	\$295,000.00	\$200,000.00
48 Marlin Drive	M W & R A Speakman	\$290,000.00	\$200,000.00
56 Marlin Drive	T V McGregor	\$280,000.00	\$200,000.00
58 Marlin Drive	C J & N H Campion	\$280,000.00	\$200,000.00
66 Marlin Drive	G C & D L Sinclair	\$220,000.00	\$185,000.00

3. All of the properties are situated on the beachfront or directly over the road from the beach. Those properties fronting Marlin Drive enjoy wide sea views and direct access to the beach. All sites enjoy good vehicle access. Contour is mostly level, although several sites are rather "hummocky" in contour. The Taupo Bay Road sections are level at the front but rise quite steeply at the rear. All sites enjoy an elevated position above the beach. There is evidence of erosion damage at the southern end of the beach which has exposed the adjoining esplanade reserve.
4. Taupo Bay is a popular East Coast beach settlement. It contains a mix of holiday and permanent homes. The main attractions of the settlement are the safe swimming and fishing grounds in the vicinity.

5. The objectors have objected to the respondent's s 9 revaluation of land as at 1 September 2001.

Method of Valuation

6. In order to determine the appropriate method of assessing land value, it is necessary to look at s 2 Rating Valuations Act 1998. There, land value is defined as follows:

“Land Value” in relation to any land and subject to ss 20 and 21, means the sum that the owner's stake or interest in the land, if unencumbered by any mortgage or other charge, might be expected to realise at the time of valuation if –

- (a) offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose; and
- (b) no improvements have been made on the land”;

“Improvements” are defined as meaning “all work done or material used at any time on or for the benefit of the land by the expenditure of capital or labour by any owner or occupier of the land, so far as the effect of the work done or material used is to increase the value of the land and its benefit is not exhausted at the time of valuation; ...”

7. The Tribunal accepts that the best sales evidence is that pertaining to sales of bare land. However, in situations where there is only limited evidence of sales of bare land, then it is permissible to look at sales of improved land to obtain an indicated land sale price. An indicated land sale price can only be obtained provided an appropriate analysis of the entire sale is undertaken. This involves assessing the value of improvements on the land and deducting the value of them from the sale price to reach an indicated land sale price. Whilst this type of analysis is not as perfect as evidence of sales of bare land, nevertheless, properly done, a reasonably accurate assessment of land value can be obtained. This method of valuation has been adopted by valuers for many years and is accepted by the Tribunal.

Onus of Proof.

8. Section 38 (2) Rating Valuations Act 1998 provides that the onus of proof on any objection lies on the objector. Thus, in respect of each of the objections included in this decision, it is for the objector to establish that the respondent's valuation cannot be sustained.

Erosion Problems

9. The Tribunal accepts the evidence of the objectors that, as at the revaluation date, there was significant foreshore erosion affecting the esplanade reserve directly in front of some of the properties. The properties particularly affected by this problem are those numbered from 36 to 66 Marlin Drive. In an earlier objection, ***Churton v Far North District Council*** (LVP 17/02 – decision dated March 2003), which related to an objection affecting 50 Marlin Drive, this Tribunal recognised that, as at the revaluation date, there was a public perception that sites at the southern end of the beach (including those mentioned in the preceding paragraph) were more prone to erosion than sections at the northern end of the beach. The property most affected by erosion is 66 Marlin Drive, as it seems vulnerable to erosion on three sides, namely its southern, eastern and northern sides.
10. The objectors' valuer considered that the erosion of property was a special factor which justified him making a specific allowance for it. The Tribunal disagrees with this approach as it considers that problems associated with erosion are already recognised in the sales evidence.

Respondent's Evidence.

11. The valuation evidence adduced on behalf of the respondent was deficient in a number of ways:
 - (a) Four vacant residential sales relating to properties situated on the inland side of Marlin Drive were referred to. Each of these sales occurred in 2002, which is after the revaluation date. For that reason

alone, they are of limited value. However, the purpose of citing these sales was to establish the proposition that land sales on the beachfront should be 2.5 to 3.0 times the value of the non-beachfront sites. In support of this proposition, a subdivision at Lang Cove was referred to. In addition, two of the Marlin Drive sales were discounted back to the revaluation date and then compared against the highest revalued beachfront sites of \$305,000.00. If the argument of the respondent was to be treated as having any validity, it was essential that the inland sales be compared with beachfront sales which occurred at the same date. Simply to compare the inland sales with the respondent's revaluation proved nothing: especially as the revaluation is the subject of these objections.

- (b) Post revaluation sales were referred to. It was suggested that there had been a market movement of 20 percent during 2002 but no evidence was adduced to support that proposition. It is well recognised that the best evidence is that of sales occurring at about the time of the revaluation date or before it: very little notice can be taken of sales which occurred after the revaluation date.
- (c) The first sale referred to by the respondent's valuer relates to a property at 64 Marlin Drive, which sold in August 2001 for \$395,000.00. After allowing for discounts for improvements etc., the valuer reached an indicated land sale price of \$277,400.00. At the time of the **Churton** objection, the respondent's indicated land sale price derived from the same sale was \$245,000.00. No explanation for the difference has been given. Significantly, the original indicated land sale price of \$245,000.00 compares favourably with the objectors' valuer's indicated land sale price of \$235,000.00.
- (d) The second sale referred to by the respondent's valuer relates to a property at 48 Taupo Bay Road. That property was the subject of a sale dated March 2001 and the sale price was \$460,000.00. The indicated land sale price derived by the respondent's valuer was \$363,400.00. Unfortunately, the valuer did not appreciate that this was

a “rogue” sale in that it is clear that the purchaser was grossly misinformed as to the area of the site (he thought it included a significant portion of the esplanade reserve) and its potential for land slips.

- (e) The third sale referred to by the respondent’s valuer is also somewhat of an anachronism. This is the section at 66 Marlin Drive which was the subject of a sale in August 2000 at a sale price of \$180,000.00. As indicated previously, this section is particularly erosion-prone and, in the opinion of the Tribunal, has a land value significantly less than those of the other properties in Marlin Drive. Interestingly, at its initial revaluation of 1 September 2001 the respondent placed a land value on the property of \$80,000.00. This was clearly a mistake. However, the so-called “reclamation and stone wall to lessen future erosion risk” seemed to the Tribunal (when the property was inspected) to amount to a “Claytons” improvement and, in the Tribunal’s opinion, the property is very much more prone to erosion problems than any of the others which are the subject of this objection. The sales evidence derived from this property is of very little use when attempting to determine the land value of the other Marlin Drive properties.

Objectors’ Valuation Evidence.

12. The objectors’ valuer’s evidence commences by considering some section sales which occurred at Coopers Beach. To the extent that these sales refer to sales of bare land, they are useful. However, the Coopers Beach subdivision in which these sections are situated is essentially a residential type subdivision. It is of very different character from that of Taupo Bay. Taupo Bay is a holiday settlement. Nevertheless, these sales constitute a useful generalised guide and add an element of caution to the respondent’s proposal that it is possible to use post revaluation sales to determine a rate of inflation in land values prior to the revaluation date. In short, however, Taupo Bay appeals to a rather different market from Coopers Beach.

13. After analysing some seven sales at Taupo Bay, the valuer concluded that an appropriate average land value applying to Taupo Bay properties unaffected by erosion as at 1 September 2001 should have been \$250,000.00. He then applied this value to each of the objectors' properties and made adjustments to account for such matters as privacy, contour and, in particular, erosion potential. For the reason mentioned in paragraph 9, the Tribunal disagrees with this approach. Furthermore, the introduction of a discount for erosion potential adds another somewhat vague and subjective element to the calculation. A preferable manner of determining land value is to use the recognised approach of comparing like with like where possible.
14. In this case, it is possible to compare like with like. In particular, the sales at 4 Marlin Drive and 30 Marlin Drive are useful when considering the land values applicable to the properties at 2 Marlin Drive to 26 Marlin Drive. Likewise, the sales at 62 Marlin Drive and 64 Marlin Drive are useful in determining the land values applicable to the properties from 36 Marlin Drive to 58 Marlin Drive. The land value for 66 Marlin Drive can be derived directly from its own sale which occurred in August 2000.

The Individual Properties

15. 42 Taupo Bay Road

The roll value assessed by the respondent for this property is \$260,000.00. The objectors' estimate is \$187,500.00. This is a relatively small area of easy land rising steeply at the rear, separated from the beach by the right of way and public access to the boat launching area. Other than for the public access by way of the esplanade reserve, it can be argued that this is essentially a waterfront site at the protected end of the beach. The objectors' valuer considered that his standard value of \$250,000.00 should be reduced by 25 percent to allow for the right of way, lack of privacy and contour. Of these detractors, the Tribunal considers that contour is the only significant one. Even this, however, is of little importance as a reasonably substantial dwelling has been built upon the property. There is no evidence before the Tribunal which establishes that the respondent's land value for this property is

incorrect. Accordingly, its land value in the sum of \$260,000.00 remains unaltered.

16. 34 Taupo Bay Road

The respondent's land value for this property is \$215,000.00, whereas the objectors' estimate is \$165,000.00. The objectors' valuer has deducted 33 percent from his standard value of \$250,000.00 upon the grounds that an adjustment for contour and the road which separates it from the beach needs to be undertaken. The Tribunal accepts that some detraction from the property's value occurs as a result of its contour but notes that a relatively substantial dwelling has been erected on the land. It could be argued that the road separation constitutes a more significant detraction: however, the beach is just over the road and this is a blind road which serves only seven properties to the north of this one. The Tribunal is satisfied that the objectors have not managed to establish that the respondent's estimate of land value is incorrect and, accordingly, the land value of \$215,000.00 is upheld.

17. 2 Marlin Drive

The respondent's estimate of land value is \$305,000.00, whereas the objectors' estimate is \$225,000.00. The Tribunal accepts that the properties situated in Marlin Drive at the northern end of the beach are the most valuable. However, it is difficult to determine how the respondent reached a value for this property (and others in the vicinity) in the sum of \$305,000.00. The sales at 4 Marlin Drive and 30 Marlin Drive are relevant. The difficulty with the 4 Marlin Drive sale, where the objector has determined an indicated land value of \$290,000.00, is that it dates back to May 1999. However, the sale of 30 Marlin Drive is more useful as it occurred in April 2000. The objectors' indicated land value of that property is \$235,000.00; the respondent's indicated land value is \$240,000.00. The Tribunal considers that this property at 2 Marlin Drive is superior to that at 30 Marlin Drive, although a small discount must be allowed for the adjacent public toilets and reserve. It considers the objector has established that the roll value of \$305,000.00 is excessive and that a land value of \$260,000.00 is appropriate.

18. 18, 20, 26 Marlin Drive

These properties are very similar to 2 Marlin Drive. The only difference is the presence of the adjacent toilets and reserve affecting 2 Marlin Drive. In these circumstances, the Tribunal considers that an appropriate land value for these properties is \$270,000.00 each.

19. 36 Marlin Drive

This property, like the preceding properties, was given a land value by the respondent in the sum of \$305,000.00. In the Tribunal's opinion, it is of lesser value than those mentioned in paragraph 18, primarily because it is, to a small extent, affected by erosion potential. It comes somewhere between the properties mentioned in paragraph 18 and those in paragraph 20. The Tribunal assesses its land value at \$250,000.00.

20. 44, 46, 48, 56, 58 Marlin Drive

The respondent has placed land values of between \$280,000.00 and \$290,000.00 on these properties. The objectors' estimate is \$200,000.00 each. The land value of these properties is affected to some degree by the sale of 30 Marlin Drive. However, the sales at 62 Marlin Drive and 64 Marlin Drive are particularly relevant, especially the latter which occurred on 1 August 2001, giving an indicated land value of \$235,000.00 (as assessed by the objectors' valuer) and \$245,000.00 (originally) by the respondent. Given the sales evidence, the objectors have established that the roll values in these properties are excessive. Accordingly, the Tribunal considers that an appropriate land value for each of these properties is \$235,000.00.

21. 66 Marlin Drive

This property was the subject of a sale in August 2000 in the sum of \$180,000.00. After deducting improvements, both valuers considered that its indicated land value as at August 2000 was \$165,000.00. The land value of the property by the objectors' valuer as at 1 September 2001 was

\$183,000.00, whereas the respondent increased its figure to \$220,000.00. The respondent considered that this increase was justified by some reclamation works and what appears to be a somewhat ineffectual rock wall. As indicated previously, this property seems to be more erosion-prone than any of the others and the Tribunal is unable to find any evidence supporting the respondent's valuation. It is satisfied that the objector has established a land value in the sum of \$185,000.00; and that the roll value of \$220,000.00 is excessive.

Costs

22. The objectors have asked the Tribunal to reserve the question of costs. Accordingly, costs are reserved provided memoranda in respect thereof are received by the Tribunal within 14 days of the date of this decision. It is pertinent to comment, however, that it is unusual for the Tribunal to award costs in cases like this and, if costs are sought, the memoranda should include the legal authority justifying them.
23. Section 38 (4) and (5) may be relevant. It gives the Tribunal power to award costs if a party fails to appear or give sufficient notice of an application to adjourn a hearing; or where the objection is frivolous or vexatious. Subject to section 38, the Land Valuation Proceedings Act 1948 applies.
24. The Tribunal recognises that, in this case, there have been some winners and some losers.

Judge J D Hole
(Chairman)