CASE NO. 6

Tooheys Ltd v The Valuer-General

Extract from "The Valuer", July 1932. Vol. 2, Folio 113.

The Privy Council on Appeal from The Supreme Court of NSW.

Licensed Premises. Unimproved value not affected by licence.

Judgment of the Lords of the Judicial Committee of the Privy Council. Delivered on 22 December 1924.

Present at the hearing:— Lord Dunedin, Lord Atkinson, Lord Wrenbury. (Delivered by Lord Dunedin).

Their Lordships are of opinion that the valuation in this case, made by the Valuer-General and confirmed by the Judge of the Land and Valuation Court and the Supreme Court of New South Wales, cannot stand. They consider that the valuation as made proceeds on a principle which is fallacious, but really stands condemned, not so much on this fallacy as upon the fact that it is made not according to the method described by the Act of Parliament.

The question is as to the unimproved value of a piece of ground on which stand buildings occupied as licensed premises. The method of valuation adopted was as follows:

First, an agreed on figure of £24,100 was taken as the figure that would be realised if the whole subject was sold as licensed premises.

Secondly, an agreed on figure of £18,840 was put as the value of the buildings on the subject, the buildings being appropriate to and suitable for the purposes of licensed premises.

The valuation put on the subject as unimproved value was then reached by deducting £10,840 from £24,100, ie. £13,260. Now, the sections of the Act of Parliament dealing with the matter are as follows:

> "Section 5 — The improved value of land is the capital sum which the fee simple on the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require."
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> "Section 6 — The unimproved value of land is the capital sum which the fee simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bone fide seller would require, assuming that the improvements, if any, thereon or appertaining thereto, and made or acquired by the owner or his predecessor in title, had not been made."

It is with the latter of the two sections that the valuer has to do. Now, what he has to consider is what the land would fetch as at the date of the valuation if the improvements made had not been made. Words could scarcely be clearer to show that the improvements were to be left entirely out of view. They are to be taken, not only as non-existent, but as if they never had existed. It is, therefore,

Source: Australian Institute of Valuers and Land Economists (Incorporated). (1997) Third Edition. Court Decisions for examination study. Southwood Press Pty Ltd, Sydney.

to approach the question from a completely wrong point of view to begin with a valuation which takes in the improvements and then proceed by means of subtraction of a sum arrived at by an independent valuation in order to find the required figure. What the Act requires is really quite simple. Here is a plot of land; assume that there is nothing on it in the way of improvement, what would it fetch in the market? It will be observed that the value is not what has been sometimes designated by the expression prairie value. The land must be taken as it exists at the date of the valuation.

It has, again and again, been pointed out what the value of land on compulsorily acquisition is, and the principle here is exactly the same. The value has been formulated by this Board in the cases of *Cedars Rapids Company v Lacoste* [1914], AC 569, and *Fraser v Fraserville* [1917] AC 187, citing the former case the value to the owner consists of all advantages which the land possesses, present or prospective. In the stated case there is a finding of a negative character:

(f) That the subject land possesses no special advantages or adaptabilities as a site for licensed premises by reason of its position or otherwise, which render it more valuable than any similarly situated land in the immediate neighbourhood.

But that negative finding, which declares that the land is not better as a site for licensed premises than any other land similarly situated, does not exclude a value which may adhere to the land in respect of its suitability. Their Lordships do not attempt themselves to make a valuation to be deduced from the figures given, for the simple reason that the valuer has not applied himself to the only questions presented to him by the Act and it is his business to do so. But, as already said, the result obtained is not only contrary to the method permitted by the Act, but is demonstrably fallacious. Proceedings are begun by the taking of a figure for the subject as it stands as licensed premises. It is obvious that this figure is composed of three ingredients: first, the bare land itself; second, the buildings themselves constructed for and appropriate for licensed premises; third, the enhanced value due to the fact that the land and buildings in question are not only suitable for licensed premises, but are, in fact, licensed premises.

When, however, the subtraction sum is entered upon, it is only Item 2 that is subtracted from the total figure; the result being that Item 3 is all included in the unimproved value. From this follows the extraordinary result that the land is enhanced by the value of a licence which could only be granted in connection with buildings — for a licence such as this cannot be granted to sell liquor without premises — in calculation in which you are told to assume that no building is there.

Their Lordships will, therefore, humbly advise His Majesty that the appeal should be allowed, and the case remitted to the Supreme Court to direct the valuer to make a valuation of the land itself as it at present stands with such advantages as it at present possesses, and viewed as bare land without any buildings upon it, and without any consideration of the value of the subject as including de facto licensed premises. The respondent will pay the costs before this Board and in the Courts below.