Valuer-General v Tepene Tablelands Ltd

High Court Whangarei
14, 15 September; 1 October 1992
Blanchard J and Mr J N B Wall

Valuation of land—Valuation for rating purposes—Postponement of rates—Potential value of farmland for other uses—Principles applicable—Valuation of Land Act 1951, s 25A.

Tepene Tablelands Ltd (Tepene) had applied to the Valuer-General for determination of the rates postponement value of its land in accordance with s 25A of the Valuation of Land Act 1951. The Valuer-General refused to do this saying that the requirements of s 25A had not been met and notified a valuation of value of improvements $250,000, land value $2.65 million, and capital value $2.9 million. Tepene took an objection to the North Auckland Land Valuation Tribunal which allowed the objection and fixed the value for the purposes of s 25A(2) as: value of improvements $250,000, land value $1.55 million, and capital value $1.8 million. The Valuer-General appealed to the High Court.

The property had an area of 1220 hectares used almost entirely for farming purposes. It provided examples of coastal scenery probably unsurpassed on privately owned land anywhere in New Zealand and had within it, or easy access to, five beaches. From an aesthetic point of view, the inland portions of it were no different from many New Zealand farms. Subject to the question of zoning and questions of economics, it was possible to subdivide the beachfront areas and the tablelands on top of high apparently stable cliffs for residential development. The rate of return from investment in the farm was very low and the Court was confident that no one would pay anything like the assessed capital value of the property without the intention of carrying out some form of development. The property had potential for subdivision along the coast line even in a depressed economic climate and the lots in such a subdivision would command very substantial prices. The cost of providing roading and other services would be very high also. It also had potential for use as a country club or golf club, as a large-scale tourist resort, as a farm park, as a subdivision into lifestyle lots, or as a residence for a very wealthy person occupying it for a short period in the course of a year.

Held: 1 Where land possessed unusual or unique features as regards its position or potential the land was to be valued not merely by reference to the use to which it was being put but also by reference to the uses to which it was reasonably capable of being put in the future. Zoning in this context was no more than a useful aid. Nevertheless, in the case of this land, the possibility of obtaining subdivisional consent at some foreseeable future time must be taken into account in considering the potential of the property (see p 341 line 54, p 342 line 13).

Tawharanui Farm Ltd v Auckland Regional Authority [1976] 2 NZLR 230 followed.

2 The components of simple coastal influence and subdivisional potential could be separated in valuing the land (see p 342 line 30).

3 To qualify for determination of a rates postponement, the land must firstly be farmland as defined in s 2 of the Rating Powers Act 1988. Secondly, the value of the land must "in some measure" be attributable to the potential use of the land for development rather than merely to potential for use. Section 25A should not be given an unnecessarily restrictive interpretation unless that was really required for consistency with accepted valuation principles (see p 343 line 33, p 343 line 41, p 344 line 47).

4 Potential uses meant the uses to which the land was reasonably capable of being put in the foreseeable future. Except in the most extraordinary circumstances, that would not be much more than the next decade. The value of the potentiality must be ascertained on such materials as were available without indulging in feats of the imagination. Any potential value, in order to be taken into account, must be capable of measurement in normal valuation terms (see p 344 line 55, p 345 line 44).

Vyricherla Narayana Gajapatiraju v The Revenue Divisional Officer, Vizagapatam [1939] AC 302; [1939] 2 All ER 317 (PC) applied.

5 Because of the potential of the Tepene property for development by way of subdivision, as a tourist resort or golf club, as a farm park, or for lifestyle development, and because it could attract someone of great wealth looking for a coastal property on which to establish a home, but not principally seeking the property merely to farm it, the respondent had established on the balance of probabilities that it was entitled to relief under s 25A of the Valuation of Land Act 1951 (see p 348 line 54).

6 Because it was proper and necessary to apportion what had been called the coastal influence factor and to take into account for the fixing of a rates postponement value only that proportion related to the potential value of the property for residential or other non-farming development, the apportionment of coastal influence value made by the tribunal would not be disturbed (see p 349 line 41).

Appeal dismissed.

Observation: The intention behind s 25A is to give rating relief until non-farming development occurs and not thereafter. When the land ceases to be used for farming the ratepayer must give notice to the Valuer-General and the rates postponement value is then deemed to be removed from the roll. The drafting of s 25G(2) is of some concern because the provision may give rise to a problem in a case where part only of the land is involved in a non-farming development or otherwise ceases to be used exclusively or principally for farming and farming continues on the balance (see p 350 line 19).

Other cases mentioned in judgment

Cedars Rapids Manufacturing and Power Company v Lacoste [1914] AC 569 (PC).

Environmental Defence Society Inc v Mangonui County Council [1989] 3 NZLR 257 (CA).

Foote (J P) & Co Ltd v Valuer-General (High Court, Whangarei, M 10-17/83, 4 February 1986, Casey J and Mr I W Lyall).

Appeal

This was an appeal against a decision of the North Auckland Land Valuation Tribunal.

C J McGuire for the appellant.

M V Smith for the respondent.

Cur adv vult

BLANCHARD J and MR J N B WALL. The Valuer-General appeals against a decision of the North Auckland Land Valuation Tribunal which allowed an objection by Tepene Tablelands Ltd (Tepene) to a valuation under the Valuation of Land Act 1951 appearing in the district valuation roll for the district of the Whangaroa County Council. 5

The respondent, Tepene, had applied to the Valuer-General for determination of the rates postponement value of its land in accordance with s 25A of the Valuation of Land Act. This is a relatively new section, being one of a number dealing with rates postponement and special rateable values which were substituted in 1988 for former sections dealing with the same subject-matter. It has throughout 10 the proceedings before the tribunal and this Court been common ground that the matter should be dealt with under the 1988 legislation. We will discuss the new s 25A in more detail later in this judgment. In brief, it authorises the Valuer-General on his or her own motion or on application by the territorial authority or by an owner or occupier of any land to determine the rates postponement value of the 15 land. The section applies to farmland whose value is in some measure attributable to the potential use to which the land may be put for residential, commercial, industrial or other non-farming development. The rates postponement value excludes the potential value that the land may have for these purposes or uses. Once it has been determined, s 25G provides for it to be deemed to be entered 20 in the valuation roll for the district in which the land is situated. The land then has, for rating purposes, a deemed value which is lower than the value which would otherwise be attributed to it. Consequently the rates on the property are lowered.

In this case the valuation of Tepene's farm property made by the valuation department (now known as Valuation New Zealand) and notified to Tepene on 25 1 May 1988 was as follows:

Value of improvements	$250,000
Land value	$2,650,000
Capital value	$2,900,000

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The Valuer-General refused to determine a rates postponement value for the land saying that the requirements of s 25A had not been met. Tepene took an objection to the North Auckland Land Valuation Tribunal. When the tribunal allowed Tepene's objection it fixed the value of the property for the purposes of s 25A(2) as follows: 35

Value of improvements	$250,000
Land value	$1,550,000
Capital value	$1,800,000

The point at issue before the tribunal, and on this appeal, is whether and 40 when farmland situated on the sea coast, or for that matter adjacent to any other area of special scenic beauty, such as a lake or river, is qualified to have a rates postponement value determined and, therefore, for rating postponement and relief, by reason of its situation.

Before us there was much discussion of what valuers call "coastal influence" 45 on the value of coastal farms: the additional value attributed to such land because of its special characteristics. These create value over and above that of non-coastal farmland which does not have these features. Coastal influence on value derives from the aesthetic appeal of a seaside property, including particularly views of sea, coastline and off-shore islands available from sites on the property. Another 50 factor which creates it is the presence of beaches within or adjacent to the property or accessible from it. These features may in turn make the farmland, or portions of it, suitable for subdivision or other forms of development, such as tourist accommodation.

The property

The Tepene property provides splendid examples of coastal scenery probably unsurpassed on privately owned land anywhere in New Zealand. It is situated just beyond the southern end of Matauri Bay, long famous for its "million dollar view", including a vista of the Cavalli Islands. The property enjoys similar views. It has an area of 1220 hectares. It is situated on the south and east side of Matauri Bay Road and has access from Tepene Road, which runs in a generally southerly direction off Matauri Bay Road. The farm has a lengthy frontage to Takou Bay. It is a sheep and cattle fattening property. There are two dwelling-houses on the property. They have a combined value of only $100,000: a small fraction of the total value.

At one time in the early 1980s when the livestock incentive scheme was in operation the farm carried over 10,000 stock units, but since then because of reversion of some of the pasture, poor seasons and overstocking the carrying capacity is said to have reduced to about 7000 stock units. Mr Nicholls, a registered valuer, who gave evidence before the tribunal for Tepene, assessed the average efficient carrying capacity of the property at 8750 stock units, this being a little lower than the assessment made by Mr Curry for the Valuer-General. But some capital expenditure would be needed, it seems, to restore this capacity. One requirement, which was obvious to us when we visited the property, is a vigorous programme of gorse eradication.

The whole of the farm is attractive, but from parts of it the sea coast cannot be seen. These inland portions of the property are from an aesthetic point of view no different from many New Zealand farms. But a substantial part of the farm faces or slopes towards the sea and from many vantage points both seascapes and landscapes are truly spectacular. There are extensive areas of flat or tablelands on top of high and apparently stable cliffs. These are said to provide well-drained building sites for future subdivision. Five beaches are contained within or can be accessed from the property, of which three are of greater significance, namely Waiaua Bay, Pink Beach and an unnamed beach at the southern end of the property. Subject to zoning and questions of economics which we discuss later, it would appear to be possible to subdivide the beachfront areas and the tablelands on the cliffs for residential development. However, no such development has occurred to date and the whole property, save for one area, remains devoted to sheep and cattle farming. The exception is an area well away from the sea coast which New Zealand China Clays Ltd has the use of for settling ponds in connection with the operation of a kaolin factory on its adjacent land.

Tepene is owned and controlled by the Williams family. Tepene's land first came into ownership of the family by purchase in 1950, when it had a carrying capacity of just over 2000 stock units. It has been a family farming venture ever since and while some 20 or so years ago the family took advice from a firm of surveyors concerning the possibility of subdivision and sale of portions of the sea coast into 10-acre lots, as recommended by the surveyors, the proposal was never taken beyond a very preliminary stage. Although it is not relevant to our decision, it appears to us that the concern of the Williams family at this time is to preserve the viability of its farming operation by obtaining rating relief and that there is no present intention of taking advantage of such development potential as the property may have.

Value of the property

As the property has not been on the market for over 40 years the very high capital value attributed to it by the appellant has necessarily been derived from transactions with comparable properties up and down the eastern coastline of Northland. It is obvious, however, that the land value of $2.65 million assessed by the Valuer-General bears little relation to its value as a farming proposition.

Indeed, there was really no disagreement between those who gave evidence for the Valuer-General and Tepene on this point. Mr Curry, a registered valuer with Valuation New Zealand, assessed the land value of the property, disregarding the factor of coastal influence and so valuing the land as if it were an inland farm, at $1.1 million, while Mr Nicholls' comparable value was $975,000. The tribunal seems to have accepted a mid-point between these two figures. This compares with the department's total or market land value of $2.65 million, which included coastal influence. Plainly then the incremental value of coastal influence is in this case much greater than what might be called the ordinary land value, ie the value which the land would have for farming purposes if situated away from the sea coast.

The parties were agreed that a purchaser seeking farmland would ordinarily be prepared to pay more for a comparable property on the coast than he or she would do for an inland property and that this higher price would be obtained even if there was little or no prospect of using a property in the foreseeable future for anything other than farming. This is despite the fact that coastal farming has its own environmental difficulties: seaspray inhibits growth of pasture and accelerates depreciation of improvements like fencing. The additional value is created by the amenities of a coastal property, including its views and access to beaches. In the same way a purchasing farmer will be prepared to pay more for a farm property situated in relatively close proximity to a city or town even though there is no possibility of subdividing and selling off portions of the property. In the latter instance the increased price is paid because the farm enjoys certain amenities by reason of being close to a built-up area. It will be convenient not to have to travel long distances into town, the roading system may be better and the cost of servicing the farm may consequentially be less.

These amenities of coastal farms or those near an urban area are a locality factor shared by all comparable properties. For reasons which will be discussed, they do not in themselves qualify a property for rating relief.

However, the land value ascribed by the Valuer-General to the Tepene property is so far above the value of the property as a farming proposition that it cannot possibly be wholly, or even predominantly, a reflection of the amenities available to the Williams family merely because they live on the sea coast. While, as we have said, one would expect a farm purchaser to pay rather more where coastal amenities are available for enjoyment, we have here a situation in which ordinary farmland value increases from about $1.1 million to $2.65 million. That is not attributable merely to the availability of amenities for the owners of the farm. (We should record that it was not suggested to us that the additional value was related to the arrangements with New Zealand China Clays Ltd: this matter was not mentioned in evidence and is, we assume, of no relevance.)

It is also pertinent to note that at the time of the hearing before the tribunal in the latter half of 1990 the gross annual income from the farm was only $170,000 and, we were told from the Bar, even now it is not more than $240,000, while expenses are in the vicinity of $150,000. The rate of return from the investment in the farm is therefore very low. Although New Zealanders have traditionally—some might say foolishly—been prepared to accept low rates of return from their investments in farmland, apparently relying upon eventual reward from capital appreciation—in which they have doubtless been disappointed in the 1980s—we are confident that no one would pay anything like the assessed capital value of this property merely to farm it and have the use of the amenities without the intention of carrying out some form of development. Now that tax incentives for farmers have been withdrawn and taking into account the relative lack of buoyancy in the farming community, we have concluded that such a development is not very likely to be of a farming nature. It cannot reasonably be forecast that this property will, in the foreseeable future, be able to be farmed in such a way as will produce an acceptable net annual return on an investment of $2.9 million plus such further

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capital expenditure as will be needed to raise the carrying capacity of the land to its optimum level.

History of rating relief legislation

5 We move now to the history of the legislation which has given farmers and others some rating relief. This history was helpfully traced for us in the comprehensive submissions presented by Mr McGuire for the Valuer-General. It commences with the Urban Farm Land Rating Act 1932 which was an Act "to make Special Provisions in respect of the Rating of Urban Farm Land with a view 10 to affording Relief to the Occupiers thereof". "Urban farm land" was farmland subject to a rate levied by a borough council, but not fit for subdivision for building purposes or likely to be required for those purposes within a five-year period. As the name of the Act suggests, it was intended to provide relief from urban influences on farmland. In 1955 it was extended to farmland in county towns. There was 15 a further extension when the Rating Amendment Act 1965 was passed, but it was again confined to land which had potential use for urban development. At this time also an earlier version of s 25A was inserted into the Valuation of Land Act 1951. It provided for the determination of the rates postponement value of farmland. The rates postponement value was not to include "any potential value 20 that at the date of valuation the land may have for subdivision for building purposes or for commercial or industrial use". At the same time provision was made in s 25B for the determination of special rateable values of industrial or commercial land in residential or rural areas. Then in 1970 s 25C (special rateable values of rural or residential land in commercial or industrial areas), s 25D (special rateable values 25 of single-unit dwelling-houses in areas where value is influenced by demand for multi-unit housing) and s 25E (special rateable values of "existing use" properties) were added. Thus the legislature was gradually moving in the direction of liberalising provisions for rating relief to deal with what it must have seen as unfair incidents of the application of ordinary valuations to certain properties for rating 30 purposes.

The Foote *decision*

In *J P Foote & Co Ltd v Valuer-General* (Whangarei, M 10-17/83, 4 February 1986, Casey J and Mr I W Lyall) this Court allowed appeals by eight farmers 35 occupying farm properties north of Whangarei with coastal and river frontages possessing desirable scenic features and recreational beaches. The case was decided under the former s 25A. The evidence before the Court proved the existence of a substantial premium that buyers were prepared to pay for the farms because of their coastal frontages and amenities. However, the essential question was what 40 (if any) part of this premium could be classed as potential subdivisional value for building purposes or for commercial or industrial use in terms of the then s 25A(3)(b). Industrial or commercial development was not a possibility so the attention of the Court was directed to the influence of the possibility of subdivision for building purposes. The same valuer who gave evidence for Tepene in the present 45 case, Mr Nicholls, gave evidence in *Foote* for the objectors. Taking one of the farms as an example, he there said that as much as 60% of its added coastal value could be related to its potential for residential purposes and 40% to aesthetic considerations unrelated to such development. On the other hand, evidence called on behalf of the Valuer-General had been to the effect that the paramount 50 consideration was the zoning of properties. In *Foote* they were all subject to a rural zoning under the Whangarei county district scheme, the policy of which was to stop coastal residential development. The policy appears to have been unsuccessful.

It was accepted by the Court that, before it could be found that land had a potential value for any of the relevant purposes or uses, there must be cogent evidence of that potential. The Court adopted, as we do, the following

passage from *Tawharanui Farm Ltd v Auckland Regional Authority* [1976] 2 NZLR 230, 235:

"(4) Where land possesses unusual or unique features as regards its position or potentialities there will be no market value to guide the court which must, therefore, act as best it can from the materials before it, bearing in mind that the land is to be valued not merely by reference to the use to which it is being put at the specified date, but also by reference to the uses to which it is reasonably capable of being put in the future. In that connection, it is the possibilities of the land and not its realised possibilities that must be taken into consideration. The value of the potentiality must be ascertained on the materials available without indulging in feats of imagination:".

The Court agreed with the objectors that the imposition of the rural zoning under the district scheme had not, in practical effect, eliminated the potential for subdivision for building purposes. It rejected the view that the extra premium commanded by the coastal land was due solely to non-commercial appreciation of its attraction by those who wanted to live there. The Court noted that there was no evidence of a drop in values since the new zoning provisions had come into force. It regarded zoning in this context as no more than a useful aid and said that the chance of restrictions being removed or modified must also be borne in mind. We respectfully agree. This is apposite in the present case where we heard evidence that the previous relative liberality concerning subdivisional consents of the former Whangaroa County Council has been replaced by a stricter attitude on the part of the Far North District Council. (The Whangaroa County Council has now been amalgamated into the Far North District Council but the relevant district scheme continues to be that of the former body.) Nevertheless, following *Foote*, we think that the possibility of Tepene obtaining subdivisional consent at some foreseeable future time must be taken into account in considering the potential of this property.

Most importantly, the Court in *Foote* determined the issue before it by separating the components of simple coastal influence and subdivisional potential in the valuations of each of the blocks of land. Those components varied "being high on the most attractive, sheltered and scenically beautiful areas, and lower on the lesser content of open coastline in mangroves areas, or where access was difficult or lacking". The Court found that the relationship between the two factors was not a simple increment per hectare or a matter of percentage adjustment on the basic farmland value. That would only apply if all the coastlines were identical. The increment was obviously more related to quality and quantity of beaches, bays and seafront, to the attractiveness or otherwise of the landscape immediately behind, with view and outlook being other prime factors. In those cases, the Court thought, vendors and purchasers would recognise, in addition to the immediate coastal benefits, some worth attributable to potential building subdivision, even though it was by no means certain at that time. The Court was therefore able to determine appropriate rates postponement values which did not include the potential value at the date of valuation that the properties had for subdivision for building purposes and accordingly the objectors were successful in gaining rating relief to that extent.

The present s 25A

Against this background we come now to the provisions of s 25A, as substituted in 1988 for the earlier section discussed in *Foote*. The new section further liberalises rating relief for farmland. The section now reads as follows:

"**25A. Rates postponement values of farmland**—(1) The Valuer-General or the Valuer, as the case may be, may from time to time on his or her own

motion or upon the application in writing of the principal administrative officer of the territorial authority or of the owner or occupier of any land, determine the rates postponement value of land that—

"(a) Is farmland within the meaning of section 2 of the Rating Powers Act 1988; and

"(b) The value of which is in some measure attributable to the potential use to which the land may be put for residential, commercial, industrial, or other non-farming development.

"(2) The rates postponement value of any land shall be determined by the Valuer-General or by the Valuer under this section—

"(a) So as to exclude any potential value that, at the date of valuation, the land may have for residential purposes, or for commercial, industrial, or other non-farming use; and

"(b) So as to preserve uniformity and equitable relativity with comparable parcels of farmland the valuations of which do not contain any such potential value.

"(3) Notwithstanding anything in subsection (2) of this section, no such rates postponement value need be determined by the Valuer-General or the Valuer, unless in his or her opinion the amount of such value is less than the capital value if the capital value system of rating is in force, or less than the land value if the land value system of rating is in force, or less than the annual value if the annual value system of rating is in force.

"(4) Sections 18 to 25 of this Act, as far as they are applicable and with the necessary modifications, shall apply with respect to the notification of, and objection to, any rates postponement values determined under this section.

"(5) No objection to the amount of any rates postponement value determined under this section shall be upheld except to the extent that the objector proves that the rates postponement value does not preserve uniformity with existing roll values of comparable parcels of land having no potential value for residential purposes, or for commercial, industrial, or other non-farming development."

The first matter which must be established before a rates postponement value can be determined is that the land in question is farmland as defined in s 2 of the Rating Powers Act 1988, ie rateable property "used exclusively or principally for agricultural, horticultural, or pastoral purposes, or for the keeping of bees or poultry or other livestock". Land which is principally used for a non-farming purpose, such as for a residence on a "hobby farm", is not farmland and s 25A cannot apply to it even if the land also has potential for some other form of non-farming development.

The second qualification is that the value of the land must be "in some measure" attributable to the potential use of the land for the specified purposes. But whereas under the old s 25A those were restricted to building purposes or commercial or industrial use only, the new s 25A extends to land which may be put to "residential, commercial, industrial, or *other non-farming development*" (emphasis added). Two points may immediately be made about these words. If taken at face value, they appear to extend the rates postponement regime to land with *any* potential for development other than farming. But, secondly, and very importantly, rating relief is related to potential for development or use for development rather than merely to potential for use. There was argument before us concerning what was and what was not a "use" of land. It was suggested by Mr McGuire that land is not "used" in a valuation sense when it lies idle, as it would do if it had been purchased merely for purposes of conservation. It is unnecessary for us to decide this point, but we incline to the view that all land at all times has a use, even if only an intended future use, as in the case of land earmarked for future development but presently

lying idle. Certainly, we would regard conservation land as being used for the purpose of conserving its special features or for recreational purposes. On the other hand, it would not ordinarily have a use for development.

Where land qualifies under s 25A(1) the rates postponement value is to be determined under subs (2)(a) so as to exclude the potential value that it has for residential purposes or for commercial, industrial or other non-farming use. Here again we emphasise that the "use" being spoken of is a development use in each case.

The rates postponement value must also be determined so as to preserve uniformity and equitable relativity with comparable parcels of farmland, the valuations of which do not contain any such potential value for development use: subs (2)(b). Furthermore, subs (5) confirms that an objection must not be upheld except to the extent that the objector proves that the rates postponement value does not preserve uniformity with existing roll values of comparable parcels of land having no potential value for residential purpose or for commercial, industrial or other non-farming development. Any residential purpose involving the erection of a dwelling is, of course, a development. In summary, then, the essential requirements of the new s 25A are that the application relates to farmland (as defined) and that the farmland in question has potential for some kind of non-farming development.

Policy of the legislation

It seems reasonably plain to us that there has been a gradually evolving parliamentary intent to protect the owners of farming properties from the extraordinary impact of rates levied by territorial authorities in circumstances in which, and to the extent that, those rates are fixed in relation to land values which reflect something more than the value of the farm as a productive unit and as a home for someone who uses the property principally for farming purposes. The protection afforded by s 25A, and to a more limited extent by its predecessor, relates not to added value caused by *actual* non-farming use but to added value from a *potential* use, ie one which has not yet occurred, but could occur in the foreseeable future. It is not necessary that the use will definitely occur; it can be a mere possibility. Nevertheless, the possibility must be a real one before it can be said to give rise to potential value. That is probably self-evident, for it is unlikely that a property will gain added value from a theoretically possible future use which intending purchasers would see as being something most unlikely to occur in reality within the foreseeable future.

The policy which must underlie this parliamentary intention seems equally obvious. The New Zealand economy depends very substantially upon the produce of its farms. If farming operations suffer the impost of excessive rates which are unrelated to the value of the farm as a productive unit, that will work as a disincentive to farming production and capital expenditure directed at preserving or increasing levels of production. Such a disincentive would be contrary to the national interest. In the case of coastal properties of outstanding scenic beauty capable of being developed for non-farming purposes, high levels of rates driven by high valuations which are unrelated to farming values may be a factor in encouraging the departure of genuine farmers.

As we have said, taken at face value the new s 25A extends the ability to apply for a rates postponement value to all farmland with any non-farming development potential. Looking at the new section against its legislative background and what we conceive to be the legislative intention, we have come to the conclusion that it should not be given an unnecessarily restrictive interpretation unless that is really required for consistency with accepted valuation principles.

Valuation principles

Mr McGuire stressed to us that a valuation must focus on the present value

alone of the advantages which the land being valued possesses. In relation to potential uses that means the uses to which the land is reasonably capable of being put in the future. Counsel cited *Cedars Rapids Manufacturing and Power Company v Lacoste* [1914] AC 569 and *Vyricherla Narayana Gajapatiraju v The Revenue*
5 *Divisional Officer, Vizagapatam* [1939] AC 302. We think that it will be clear from what we have said already that we readily accept this submission. Potential use means a use which is a realistic possibility in the foreseeable future. Moreover, foreseeable future itself does not have a very extended life. Without trying to be definitive about it we think that it is unrealistic to anticipate that a purchaser of
10 land will, except in the most extraordinary circumstances, be thinking ahead much more than the next decade. That is, therefore, the timeframe of the foreseeable future in this context. Furthermore, potential which will be realised, if at all, towards the end of the period of the foreseeable future is much less likely to be reflected in the value of land than something which has a realistic possibility of
15 occurring within the next few years. There is no rule of thumb for this kind of assessment and it is unlikely to be helpful if we were to explore it further. In each case, it is, as Mr McGuire says, a matter of determining the present value of the potentialities of the particular piece of land. We bear in mind also that the Privy Council in *Vyricherla Narayana Gajapatiraju v The Revenue Divisional Officer,*
20 *Vizagapatam* at p 316 directed that:

> ". . . the value of the potentiality must be ascertained . . . on such materials as are available . . . without indulging in feats of the imagination."

Mr McGuire also urged upon us that a valuation of land must value it for
25 the most advantageous purpose for which it is adapted: a principle known as valuation for highest and best use. As is pointed out in an Australian text to which he referred us, Rost and Collins, *Land Valuation and Compensation in Australia* (3rd ed, 1984) p 90, recognition of the willing seller-willing buyer concept necessarily involves valuation for the highest and best use for which land is adapted; for a
30 prudent and well-informed vendor (whose existence must be assumed) would not willingly part with his land for a price less than that appropriate to its highest and best use; and the well-informed buyer would not expect to be able to purchase it for less. At p 91 of that text the authors say:

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> "The valuation of land for its highest and best use demands that due weight be given to its potential utility and to the probability of consent being given for such potential use.
>
> "Potential utility refers to a latent and more beneficial use which may be capable of coming into being, or a use existing as a possibility only."

40 Later on the same page the authors point out that the principle of including all the potentialities of land must, however, exclude all purely speculative considerations. Again, we think it will have emerged from the earlier portions of this judgment that we accept the guidance of these principles.

We also agree, and it is self-evident from the language of s 25A(1)(b), that
45 any potential value, in order to be taken into account, must be capable of measurement in normal valuation terms. How else could it be a value which is "in some *measure* attributable to the potential use to which the land may be put" for the various forms of non-farming development? (Emphasis added.) So the potential of the farmland, in order that it be recognised for the purposes of s 25A,
50 must be susceptible of something more than mere guesswork. On the other hand, valuation principles have never prevented valuers from assessing the price which a purchaser would be willing to pay for a property with a view or a property which is near a beach. Valuers have no difficulty in concluding that properties with such amenities have a greater value than otherwise identical properties which do not and they are prepared to make assessments of the difference. They are also

commonly prepared to attribute value to the possibility that a new form of use may be opened up by a change in zoning or other restrictions, although, as we have noted, there are limits on the extent to which this can be done and the possibility in question must be a realistic one within a proper timeframe. 5

Non-farming potential of the Tepene property

We have already stated our conclusion that the value of the Tepene property on the open market is well in excess of its value as a farm even allowing for the fact that this particular farming property has most attractive amenities as a family home for a farming family to occupy as their principal residence. What then are 10 the factors which force the value of the property upwards beyond that level? We believe that there are several reasons. First, even in a depressed economic climate the property will be seen by some buyers as having potential for subdivision along the coastline, particularly on the tablelands on top of the sea cliffs and adjacent to the three main beaches. In the former case a subdivider would no doubt ensure 15 that persons acquiring clifftop lots had appropriate means of access to one or more of the beaches. Because of the spectacular outlook and the quality of the beaches we think it likely that, were planning consent obtained and appropriate roading and other services provided for the lots in the subdivision, those lots would command very substantial prices. But for the success of the subdivision they would 20 certainly have to do so, as the cost of providing roading and other services will be very high. We heard no evidence on this latter question, but we had the advantage of viewing the property and it was not difficult to see that extensive roading will be necessary for such a development. We are conscious of the fact that the economics of subdivisions of land into sections for sale have not been favourable 25 over the last 20 years or so as local authorities have gradually imposed more and more stringent requirements in relation to services for subdivisions. Then, too, there is the cost of the delays inherent in resource applications.

Before the tribunal, counsel for Tepene called the evidence of a town planner, Miss Den Ouden, who said that the subdivisional potential of the land was great. 30 Although she noted that subdivisions of coastal properties have to satisfy the requirements of the Town and Country Planning Act 1977 (now replaced by the Resource Management Act 1991), she was still of the view that subdivision could occur down to very small areas if the development was provided with a proper sewerage system. It was her view that the district scheme encouraged subdivision 35 for residential purposes in a coastal environment. She said that past decisions of the county council indicated that "repopulation of the County in this locality is of prime importance and overrides any considerations of conservation or protection of the coastal environment". In his submissions to us Mr McGuire quite properly made certain criticisms of that evidence. He pointed out that the reference in the 40 planning legislation to matters of national importance and the inclusion therein of preservation of the coastline was something which should in theory make permission to subdivide a property like the Tepene property difficult to obtain. He also noted, as did Miss Den Ouden herself, that the new Far North District Council adopts a more restrictive attitude towards subdivisional consents and that 45 at least one of the proposed subdivisions on an adjacent property (the Vink subdivision) had not yet become a reality because of planning hiccups. He further pointed out that one of the subdivisions which has actually taken place in the district utilised the existing and formed Takou Bay Road and that the subdivider had not had to contend with the cost of internal roading. Mr McGuire also queried whether 50 there really was demand at the present time for a subdivision of the kind hypothetically in consideration. Then, turning to the evidence of Mr Nicholls before the tribunal, Mr McGuire drew our attention to the fact that Mr Nicholls would only go so far as to say that the property had excellent "long-term" potential for future development and that Mr Nicholls concentrated on its possibilities as a farm

park development or for tourist accommodation and condominiums. Mr Nicholls, in cross-examination, had also agreed that there had not been any genuine coastal subdivisions in recent times along this coast. In the case of a subdivision at Otangi, which was said to be the closest to a coastal subdivision, only three out of 11 lots had been sold at the time of the hearing before the tribunal.

For Tepene, Mr Smith emphasised the evidence of Mr Nicholls relating to the suitability of the land for a country club or golf club development and its potential as a large-scale tourist resort. Mr Nicholls had compared the property with a site on the Karikari peninsular where it was formerly proposed to build a large luxury resort complex. (That project fell through after a Court of Appeal decision overturning planning consent: *Environmental Defence Society Inc v Mangonui County Council* [1989] 3 NZLR 257.) Mr Nicholls had said in evidence that the Karikari property was "not a patch on Tepene". He could foresee such a development being undertaken at Tepene within seven to 10 years.

Mr Smith also submitted, basing himself again on the evidence of Mr Nicholls, that the property had potential for development as a farm park along the lines of one developed at Manganese Point on the Whangarei harbour. This was suggested as an inventive way of optimising the use of the beaches on the property. A farm park consists of a number of houses scattered throughout a property which continues to be farmed. It utilises one of the common forms of title system originally designed for the holding of title to apartment buildings—cross-leases, unit titles or company shares—thereby apparently achieving some reduction in subdivisional costs. Another possibility which was mentioned is a division of the relevant portion of the property into "lifestyle" blocks of some 10 to 20 hectares in area on which residences would be erected by purchasers.

Having viewed the Tepene property and considered the opinions of the experts called on both sides as they appeared in their briefs of evidence and in cross-examination, we have come to the conclusion that this property has definite potential for development of the several kinds which have just been mentioned. While there is no certainty that any such development could be carried through by a purchaser of the property within the foreseeable future, we find that there is a realistic possibility that all or some of the types of development could be achieved within the next decade and that the existence of this realistic possibility is a significant factor in producing a market value for the land far and away above its farming value.

Furthermore, we can see another kind of non-farmer buyer who might very well be interested in acquiring this magnificent property. Several properties in close proximity have already been acquired by wealthy New Zealand and overseas businessmen or companies controlled by them. In one case an investor, whom we were told had homes in several desirable parts of the world, had acquired a 20-hectare property almost immediately to the south of the Tepene land at a price of $700,000. It appears that this person wanted the property on which to put up a private residence which he presumably intended to occupy for short periods each year in the course of his perambulations around the globe. The price was, of course, quite unrelated to any small value this limited area of land—of an irregular and elongated shape with a relatively small beach frontage of some 300 or 400 metres—would have as a farming proposition. Other nearby properties mentioned as having passed into the hands of wealthy businessmen were the Vink property, owned by an overseas-based industrialist intent on subdividing it, and one just north of Matauri Bay belonging to the private investment company of a very wealthy New Zealander.

In the case of an overseas businessman or businesswoman the purchase of a property like Tepene would require consent under the Land Settlement Promotion and Land Acquisition Act 1952, but such consents are sometimes available; notwithstanding the policy underlying Part IIA of that Act, there are not infrequent examples

of the acquisition of New Zealand farming properties by persons who are not New Zealand citizens. Moreover, despite the depredations of the sharemarket crash and its aftermath, there is still a number of New Zealanders well able to afford to acquire coastal farming properties with a view to building a substantial home thereon. 5

Mr McGuire, when the potential use of the property as the home for a wandering millionaire was raised in argument, sought to convince us that, even if the property did have this potential, it was a matter falling outside s 25A because it would involve continuation of farming operations and that any development would be merely the erection of a new house on the property. He made the same 10 argument in relation to the potential of the property as a farm park or for division into blocks of 10 to 20 hectares as a "lifestyle development". In both of those cases investors would build houses on the property, but farming operations would continue in one form or another either, as at present, in one large farm or, in the case of lifestyle developments, with separate farmlets around each house. 15

We would agree with Mr McGuire on this point if our hypothetical millionaire were a farmer seeking to acquire the property on which to build his principal place of residence from which he or she could superintend farming operations. The construction of a new farmhouse for farmer occupation is, we think, a farming, rather than a non-farming, development. But where the purpose of the acquisition 20 is to erect a home for an absentee land owner and the new home is not used in connection with farming operations in anything other than an incidental way, its construction would be a residential or non-farming development. Similarly, we would not regard the building of houses on a farm park or on 10 to 20-hectare allotments as being a farming development merely because, in the first case, the 25 original farm continued to operate or, in the second case, some agricultural activity took place on the balance of the property. Unfortunately, we are dealing here in hypothetical situations rather than addressing a concrete and detailed proposal. We can therefore only express our views in a generalised way. The question of whether a particular proposal can be viewed as a farming or non-farming matter 30 may well be a matter of degree as, indeed, is the whole question of division between the potential value of a property as a farming proposition and its non-farming potential. However, in our view, by requiring a determination to be made of potential value for a non-farming development, disregarding potential value for a farming development, s 25A necessarily requires us to make a judgment upon 35 such hypothetical situations.

It was also argued for the Valuer-General that the hypothetical millionaire's house, even if substantial in itself by comparison with the size of other houses, would occupy only a very small portion of a large property and that this in some way precluded it from being counted, except in some way so minimal as to be 40 incapable of determination, as a non-farming development. However, it does not seem to us to be of any moment that the particular feature of the property which produces the potential value may be in itself of limited dimensions. It can be said that the extensive view from the chosen house site will take in a large portion of the property and its environs. But that is not the real answer, which is that the 45 question is whether the existence on the property of the house site contributes in a measureable way to the current market value of the property as a whole. If it does, then, on the basis that the building of the millionaire's mansion would be a non-farming development, the land has to that extent a value attributable to a potential use for a residential or non-farming development. We have discussed 50 the potential of the property for development in this way at some length because it seems to us to be fairly readily capable of achievement in the near to medium future if the property were on the market for sale.

Because of the potential of the Tepene property for development by way of subdivision or as a tourist resort or golf club or a farm park or for lifestyle

developments and because it could attract someone of great wealth looking for a coastal property on which to establish a home, but not principally seeking the property merely to farm it, we are in agreement with the view of the North Auckland Land Valuation Tribunal that the respondent has established on the balance of probabilities that it is entitled to relief under s 25A of the Valuation of Land Act 1951.

Apportionment of coastal influence value

The next question is the extent of that relief. We have already found that the market value of coastal land of this kind exceeds that of land unaffected by coastal influence in part because it has amenities which are attractive to a person buying it solely as a farm. This is merely a locality factor, to be distinguished from the potential of the property for non-farming development of the kinds which we have just discussed. So the additional market value over and above the value that a comparable property would have free of all coastal influence must for the purposes of s 25A be divided into two components, as was done by this Court in relation to the former s 25A in *J P Foote & Co Ltd v Valuer-General*. We see this as being required by the statute and as being not inconsistent with valuation principles.

In his evidence before the tribunal Mr Nicholls expressed the opinion that coastal influence comprises two assessable components which he called "static site coastal influence", namely the value of one prime site which would be occupied by the owner of the property and "variable coastal influence", which measures the degree of potential in the land for residential or other non-farming development. He attributed some $500,000 of value to static site coastal influence. From a reading of the final decision of the tribunal in its judgment of 28 January 1992, we are not certain whether the tribunal accepted Mr Nicholls' thesis, which we were told from the Bar seems to be original to him. However that may be, the decision of the tribunal that the capital value of the land for rates postponement purposes should be $1.8 million seems to have resulted from an apportionment of the coastal influence value somewhat similar in dollar terms to that made by Mr Nicholls. We ourselves think that the Nicholls formula perhaps oversimplifies the apportionment of coastal influence on a particular property. There is no doubt that the attractiveness of the outlook from the farmer's residence will be a significant ingredient in the coastal influence value. But so will the accessibility of beaches and any other amenities which are enjoyed by a coastal property and not by one further inland. The value attributed to amenities of this kind is a matter of impression upon which opinions will legitimately differ. It is very much something for the skills of rural valuers based upon their knowledge of the locality and the evidence available to them of recent transactions with comparable properties.

Having concluded that it is proper and necessary to apportion what has been called the coastal influence factor and to take into account for the fixing of a rates postponement value only that proportion related to the potential value of the property for residential or other non-farming development, and being in that respect in agreement with the judgment of the tribunal, we are not disposed on the evidence before us to disturb the apportionment made by the tribunal and the rates postponement values which it has fixed.

Observations

Lest the impact of our decision should be exaggerated, and because of concerns about an aspect of the wording of s 25G, we make some final observations. Section 25A is concerned with potential for development and gives rise to rating relief where the development in question has not yet occurred. It is designed for the protection from excessive rating of those who are continuing their farming operations and have not yet sought to take advantage of the potential which their

farms have for other uses. An application cannot be made under s 25A where a property is not being farmed or where farming is not the exclusive or principal use of the property. Nor can a rates postponement value be fixed so as to give relief to the extent that the land has already been the subject of a non-farming development: that is an actual rather than a potential use and falls outside s 25A(1)(b).

It does not follow from our decision that farms with attractive outlooks from a house site or some other amenity not enjoyed by comparable properties will thereby qualify for relief pursuant to s 25A. Qualifying properties are only those which have unused capacity for a non-farming development. The vast majority of farms, even on the coastline or alongside a lake or river, do not have this potential. There is no realistic possibility of any such development occurring in the foreseeable future and their market values have not been inflated by any expectation of it. Relatively few farming properties situated beyond the limits of urban development are capable of being subdivided or used for a commercial purpose. Even fewer would attract the attention of a would-be absentee owner looking for a house site for personal occupation and prepared to pay an inflated price for the farm in order to get it.

As we have said, the intention behind s 25A is to give rating relief until non-farming development occurs and not thereafter. Section 25G(2) therefore requires that where "any land the rates-postponement value . . . of which has been determined under sections 25A to 25F of this Act ceases to be used for the purpose authorising the determination of that rates-postponement value", ie farming, the ratepayer must give notice to the Valuer-General. The rates postponement value is then deemed to be removed from the roll. We have some concern that the drafting of this provision may give rise to a problem in a case where part only of the land is involved in a non-farming development or otherwise ceases to be used exclusively or principally for farming and farming continues on the balance. The subsection might be improved by explicit provision for apportionment. But that question does not arise here and we do no more than draw attention to it.

The appeal is dismissed with costs of $5000 for the respondent.

Appeal dismissed.

Solicitor for the appellant: *C J McGuire* (Auckland).
Solicitor for the respondent: *M V Smith* (Wellington).

Reported by: D C McCaskill, *Barrister*