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BNZ Properties Auckland Ltd v Auckland City Council [2006] NZLVT 26 (22 November 2006)

BEFORE THE AUCKLAND

LAND VALUATION TRIBUNAL LVP 009/04

IN THE MATTER of the Ratings Valuations Act 1998

AND IN THE MATTER of an objection under sections 32 and 36 of the Act

BETWEEN BNZ PROPERTIES AUCKLAND LIMITED

Objector

AND AUCKLAND CITY COUNCIL

Respondent

Before the Auckland Land Valuation Tribunal

Chair: His Honour Judge J D Hole

Members: K G Stevenson Esq

I W Gribble Esq

Date of hearing: 2 November 2006

Appearances: S N Dean (Valuer) for Objector

S H Smith for Respondent

Date of Decision: 22 November 2006

DECISION OF TRIBUNAL

Introduction

1. As at 1 September 2002 the Council revalued the property at 9 Fort Street, Auckland, for rating purposes. As the Council had adopted the annual value system of rating it was necessary to determine the annual value of the property.

2. Section 2(1) Rating Valuations Act 1998 defines "annual value" as the greater of:

(a) the rent at which the property would let from year to year, reduced by-

(i) 20 percent in the case of houses, buildings, and other perishable property; and

(ii) 10 percent in the case of land and other hereditaments:

(b) 5 percent of the capital value of the fee simple of the property.

3. Capital value is defined in s 2(1) of the Act as:

... the sum that the owner's estate or interest in the land, if unencumbered by any mortgage or other charge, might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to require.

4. The statutory definition does not refer to actual rent but a hypothetical rent. One hypothetical tenant is envisaged. It is anticipated that the rental will be for a term of one year.

The Property

5. The legal description of the property is Lot 1, DP 129112, having an area of 733 square metres, being all the land comprised and described in C/T NA75D/102. It is situated in the heart of the central business district of Auckland one lot back from the east side of Queen Street and enjoys good exposure having frontage to Fort Street, Shortland Street and Jean Batten Place.

6. The building on the land comprises a nine-level office building (eight floors plus basement) constructed about 1937. It is commonly known as the Jean Batten Building. It is of reinforced concrete construction and was built to government specification.

7. About 1991 the building was converted for use as backpacker accommodation. It was used for those purposes until April 2002.

8. The building is adjacent the Bank of New Zealand building which has a frontage to Queen Street, Shortland Street and Jean Batten Place.

9. Both properties are owned by the objector.

10. Auckland Central Backpackers leased the building for a six-year period commencing 1 September 1999. The lease expired on 31 August 2001 and Auckland Central Backpackers vacated the premises in April 2002. The original rental paid by Auckland Central Backpackers was \$250,000 per annum plus GST. The rental was increased to \$300,000 per annum plus GST some time after Postbank relinquished the tenancy of the bottom floor of the premises.

11. Thus, as at the date of revaluation, the property was vacant.

12. The reason that the property remained vacant is that the objector had plans to demolish both its buildings and, accordingly, was prepared to offer any incoming tenant a month-to-month tenancy only. Significantly, the previous tenancy in favour of Auckland Central Backpackers contained a six-months demolition clause. A demolition consent had been granted by Auckland City Council by way of a non-notified consent on 3 December 1998 and, as at the revaluation date, was still current.

Differences in Valuation

13. The valuation by the Council which is objected to was as follows:

Land Value \$2,700,000

Improvements \$ 800,000

Capital Value \$3,500,000

Annual Value \$ 319,415

Objector's opinion:

Land value \$3,665,000

Improvements -\$1,172,800

Capital Value \$2,500,000

Annual Value \$125,000

14. From the foregoing it will be apparent that the annual value assessed by the Council was on the rental value which the Council contended could be obtained from the property. Mr Dean's valuation was based on 5 percent of the capital value of the property's fee simple. Mr Dean, for the objector, contended that the property was incapable of generating rental.

Onus of Proof

15. The objector bears the onus of proof pursuant to s 38(2) Rating Valuations Act 1998. The objector is obliged to satisfy its onus of proof on the balance of probabilities: *Taylor v Valuer-General* [1990] DCR 113.

The Issue

16. The sole issue is whether or not the property was capable of generating rental income as at the date of the revaluation.

17. Mr Dean says that the building had reached the end of its natural life. Accordingly, the only practicable use for the building was demolition of the building or, alternatively, it would require complete gutting and refurbishment.

18. Mr Woodhouse, the valuer who gave evidence for the Council, contended that the property was capable of generating income. He noted that it had done so up until April 2002. He recognised that some refurbishment of the property was necessary but if this was done the property could have been let again as backpackers' accommodation.

19. In assessing his rental at \$110 per square metre, Mr Woodhouse allowed a global sum for refurbishment.

Determination

20. Mr Dean considered two possibilities of use for the building only. In his opinion, the building should be demolished. He contended that if it were demolished then the costs of demolition should be deducted from the overall capital value. It is for this reason that he reached his capital value in the sum of \$2,500,000. His alternative use was to completely gut the building and refurbish it as character offices. It is clear, from his calculations, that such a redevelopment would be uneconomic and, accordingly, would not be undertaken.

21. Mr Woodhouse considered that it was possible to undertake relatively minor refurbishment works so as to make the property lettable as at the revaluation date. The refurbishment works which he considered necessary included such matters as painting the interior, putting down new floor coverings, and providing fittings such as cooking equipment (including stoves), washing machines and similar items. Plainly, the toilet facilities required upgrading.

22. Whilst Mr Dean was of the opinion that the evidence disclosed that the lift was hopelessly inadequate, Mr Woodhouse was of the opinion that as it was working as at April 2002 one could assume that it would have continued to do so.

23. Mr Dean strongly contended that if the type of refurbishing work suggested by Mr Woodhouse were undertaken, this would trigger resource management and Building Act consents. As soon as these types of consents were required then, in order to obtain them, the Auckland City Council would require much more fundamental work to be undertaken. Mr Woodhouse disagreed.

24. The Tribunal is not satisfied on the evidence that the sorts of consent, which Mr Dean suggested would be necessary, would in fact be required. Mr Dean was unable to satisfy the Tribunal that consents would be required for interior painting works, the placement of new floor coverings or putting new fittings inside the building. There was some debate over whether a new lift would require any of the consents envisaged by Mr Dean: Mr Dean was unable to provide any evidence that the Auckland City Council would require consents if a replacement lift was introduced into the premises. Mr Woodhouse, who regularly sees building consents coming through his office, could not recollect having seen a consent being given for a replacement lift. Thus, even if a replacement lift were required as part of the refurbishments necessary to introduce a tenant, there is no compelling evidence before the Tribunal indicating that resource management or Building Act consents would be required.

25. Mr Dean endeavoured to persuade the Tribunal that as soon as the type of refurbishing work contemplated by Mr Woodhouse were undertaken, almost certainly this would require additional fire precautionary measures to be undertaken such as the introduction of rising valves into each floor. The Tribunal accepts that this would depend upon the extent of the refurbishing works required. However, Mr Dean did not satisfy the Tribunal that the sort of work contemplated by Mr Woodhouse would trigger these measures.

26. Mr Dean also indicated that the nature of backpacker businesses has altered and that backpackers in September 2002 generally required more sophisticated accommodation than previously. In those circumstances the refurbishment work suggested by Mr Woodhouse would need to have been of a higher standard and could well have triggered the necessity for the consents envisaged by Mr Dean.

27. Mr Dean was unable to produce any concrete evidence that the more sophisticated type of accommodation would in fact be necessary. Further, there was the email sent by Mr Shepherd (who was the manager of Auckland Central Backpackers) to the effect that were it not for the demolition plans proposed by the objector, Auckland Central Backpackers might possibly have taken a lease of the premises for a further three year term. This indicates that as far as Auckland Central Backpackers were concerned, the nature of the accommodation which it had previously provided up to April 2002 might well have been sufficient for its purposes for a further three year term.

28. The Tribunal concludes that the objector has failed to satisfy it on the balance of probabilities that the premises could not have been let as at the revaluation date.

Conclusion

29. The objection is disallowed.

Judge J D Hole

(Chairman)