

**BEFORE THE NORTH AUCKLAND
LAND VALUATION TRIBUNAL**

LVP No. 3/01

IN THE MATTER of objections to entries in the district
Valuation Roll for Whangarei, Kaipara,
Rodney and Far North Districts

BETWEEN **CARTER HOLD HARVEY FORESTS
LIMITED**

Objector

AND **KAIPARA DISTRICT COUNCIL**

Respondent

TRIBUNAL

Chair: His Honour Judge J D Hole

Date of Hearing: 29 July 2002

Date of Decision: 6 August 2002

Counsel: Mr G Curry for the Objector
Mr G J Mathias for the Respondent

RULING OF THE TRIBUNAL
[as to jurisdiction]

Solicitor for Objector: Russell McVeagh, DX CX10085 Auckland
Solicitor for Respondent: Thomson Wilson, DX AP24512 Whangarei.

INTRODUCTION

[1] On or about 13 December 1999 Mr Nicholls, a registered valuer of Whangarei, received instructions from the objector to lodge an objection with the respondent under s 32 Rating Valuations Act 1998 in respect of Forestry lands situated within the Kaipara District. He was unaware of the procedure for lodging objections. He knew that time was of the essence. Accordingly, on 15 December 1999 he telephoned Mr Eady who was a senior valuer for Quotable Value New Zealand. He says that he explained to Mr Eady that he had seen copies of the Kaipara values, that they were high, and that, on behalf of the objector, he was lodging an objection to them. He believed that a valid objection to the 1999 Kaipara District Roll Valuation had been lodged.

[2] Four issues arise:

- (1) Can an objection under s 32 be lodged orally?
- (2) Can a pro forma objection be lodged?
- (3) Was such an objection lodged on behalf of the objector?
- (4) Did the respondent fail to properly exercise its duties under the Act and Rating Valuations Regulations 1998?

CAN AN OBJECTION UNDER SECTION 32 BE LODGED ORALLY?

[3] Section 32 of the Act provides for the lodging of objections. Section 32(2) is mandatory and requires that the objection is made within the time and within the manner specified in regulations made under the Act.

[4] Regulation 7 reads:

7. Information to be contained in objection – An objection must contain the following information:

- (a) The relevant valuation reference number:
- (b) The capital value, land value, annual value, special rateable value, rates postponement value, and value of improvements of the land (whichever 1 or more is applicable) as stated in the notice of valuation:
- (c) The reason for objecting:
- (d) The relevant value contended for by the objector:

- (e) The name, postal address, and contact telephone number of the objector, and the objector's address for service;
- (f) The capacity in which the person is objecting (whether as owner, occupier, both owner and occupier, or neither);
- (g) If the objection is by an agent, the name of the person who the agent is representing.

[5] The respondent concedes that there is no specific requirement in the regulations requiring an objection to be lodged in writing. However, it contends that if the information required by Regulation 7 is to be provided, then it must be in writing. Further, under Regulation 4 an objection "must be lodged": the act of "lodging" something requires more than a verbal statement. Finally, Regulation 9 provides that an objector who is not both the owner and occupier of the land must within the time for objecting send a copy of the objection to the owner or occupier. The respondent asks how can a copy of an objection be sent if it is not in writing?

[6] The starting point is s 5(1) of the Interpretation Act 1999 which provides that the meaning of an enactment must be ascertained from its text and in the light of its purpose. The purpose of the Act can be ascertained from its preamble which refers amongst other things to the introduction of contestability to rating valuations. Thus, one of the purposes of the legislation is to enable objections to be determined. Plainly, if there is to be an objection it must be communicated to the relevant local authority.

[7] I accept that there is some force in the respondent's submissions. At first glance the general tenor of the regulations implies that objections will be in writing. However, the purpose of the legislation can also be achieved by the making of an oral objection. It is quite possible for all the information referred to in Regulation 7 to be given orally. If this were done one would expect the officer of the respondent to take full details of the objection. Then a copy of those details could be sent in terms of Regulation 9.

[8] The Court of Appeal in *Northland Milk Vendors Association Inc v Northern Milk Ltd* [1998] 1 NZLR 530 has held that where there is a gap in legislation the Courts may fill it. However, here there is no gap. The legislation can work on its own.

[9] I conclude that in the absence of clear language in the Regulations requiring an objection to be lodged in writing, the respondent does not have the statutory power to require an objection to be lodged in writing.

CAN A PRO FORMA OBJECTION BE LODGED?

[10] It is possible to lodge a pro forma objection. Whilst Regulation 7 is set out in a mandatory way, Regulation 8 envisages situations where insufficient information is supplied.. Regulation 8 qualifies Regulation 7. The purpose of the regulations is to make certain that the requisite information is obtained.

WAS SUCH AN OBJECTION LODGED ON BEHALF OF THE OBJECTOR?

[11] In his affidavit, Mr Nicholls says that he filed a pro forma objection orally. Mr Eady, under cross-examination, acknowledged that whilst he had not made a record of such an objection it was possible that Mr Nicholls' recollection of the telephone conversation is correct. However, Mr Eady says that if somebody had attempted to telephone him to file an objection he would have told that person to file it in writing. If necessary, he would have sent that person an objection form. Mr Eady was not talking to a layman: he was talking to a registered valuer whom he might have expected to have understood the procedure. In those circumstances, it is possible that Mr Eady would not have asked Mr Nicholls to file a written objection.

[12] Significantly, the respondent, until November 2000, acted as if an objection had been lodged. It is apparent that the respondent reviewed the objection in accordance with s 34 of the Act and, on 26 June 2000 (exhibit C to Mr Nicholls' affidavit) it notified Mr Nicholls of the result of the review. Mr Eady says that the heading on this document "Carter Holt Harvey Objections" was an error, and that he had used a form applicable to other objections by mistake. Maybe this is so. However, the document itself seems to comprise a notification which accords with s 35 of the Act. Notifications of reviewed valuations for the Whangarei and Far North Districts (pursuant to objections lodged on behalf of the objector) were undertaken in May 2000. It is clear that the same process was undertaken about the same time in respect of this objection.

[13] The evidence establishes that a valid objection was lodged on behalf of the objector.

DID THE RESPONDENT FAIL TO PROPERLY EXERCISE ITS DUTIES UNDER THE ACT AND RATING VALUATION REGULATIONS 1998?

[12] Regulation 8 does impose a duty or obligation on the respondent to obtain from an objector the information referred to in Regulation 7. By failing to do this, the respondent failed to properly exercise its duties under the regulation. However, it is apparent from a perusal of exhibit C to Mr Nicholls' affidavit that the respondent had obtained the information (or most of it) from other sources. In my view nothing turns on this issue.

Judge J D Hole (Chairman)