

**IN THE HAWKES BAY
LAND VALUATION TRIBUNAL
HELD AT NAPIER**

LVP 18/00

IN THE MATTER OF: The Rating Valuations Act 1998

AND

IN THE MATTER OF: An objection

BETWEEN DOLPHIN HOLDINGS LIMITED

Objector

AND QUOTABLE VALUE NZ LIMITED

Respondent

Tribunal : Chair: His Honour Judge M E Perkins
Members: W J Harvey Esquire, S D Morice Esquire

Hearing: 31 August 2001

Appearances: Ross McKelvie for the Objector
David Nagel for the Respondent

Date of Decision:

DECISION OF THE TRIBUNAL

Introduction

[1] This objection relates to an inner city retail and office building situated at 62-84 Dickens Street, Napier. The objection is to the capital value placed upon the property by the respondent which was carrying out the Napier City's rating role. In objecting to the capital value, the objector takes no issue with the respondent's assessment of land value and the evidence which we heard centred around the issue of the value of improvements since the date of the previous valuation. In order for the objector to succeed it is necessary for him to establish that the valuation was wrong. This burden rests squarely on the objector.

[2] During the course of evidence we heard from Mr Brian George Sides, a registered valuer and associate member of the New Zealand Institute of Valuers. Mr Sides has been employed by the respondent and its predecessor departments over the past 26 years.

[3] Mr Ross McKelvie, Director of the objector gave evidence in support for the objection. Regrettably, despite being given the opportunity to do so, the objector did not produce any valuation evidence on the exact property in question although it did call Mr Max Plested, registered valuer, and principal in the firm of Telfer Young (Hawkes Bay) Limited.

[4] Mr Plested gave evidence in respect of property transactions and investment yield analysis for commercial property within Napier City for periods which may be relevant to this objection. He did not, and indicated that he was not requested to give, a specific valuation on the property the subject of the objection.

[5] The values contended for by the respondent are as follows:

Capital Value	\$1,900,000
Land Value	\$590,000
Value of Improvements	\$1,310,000

[6] The values contended for by the objector are as follows:

Capital Value	\$2,400,000
Land Value	\$590,000
Value of Improvements	\$1,810,000

Evidence

[7] The only professional valuation evidence produced by the objector in support of its objection to capital value set by the respondent was the evidence of Mr Max C Plested. As we have indicated Mr Plested is a registered valuer of Napier and is principal of a New Zealand wide group of land valuation firms. Mr Plested did not present any direct valuation evidence on the property in question but produced and elaborated upon a letter commissioned from him by the objector which outlined a number of commercial sales in the Napier and Taradale area. Mr Plested, who was the sole professional witness for the objector, placed primary emphasis upon the sale of a property at 70 Tennyson Street, Napier, in May 1998 for a consideration of \$850,000. Upon the basis of this information Mr Plested gave evidence as to how he arrived at a yield for the sale of this property of 11.82%. Taking this property into account and the schedule of other sales which he referred to, which numbered 20 in total, his conclusion was that he believed that a 12% net yield after property outgoings as representing a fair capitalisation of the objector's property's net income cash flow.

[8] We point out that a number of properties listed in Mr Plested's schedule were recorded as having been sold after the review date. Mr Plested, however, indicated in evidence that his brief from the objector was to provide a schedule of sales only, not limited to a time before review and that he did not carry out the preparation of the schedule for the purposes of the hearing before the Tribunal. He confirmed that he had not carried out a valuation of the objector's property, nor had he been requested to do so.

[9] The objector's objection to the valuation was based primarily upon the 17.5% reduction in the value of improvements since the 1996 Quotable Value NZ Limited re-valuation of Napier City. Apart from the evidence of Mr Plested no other supporting evidence from a professional witness was put forward to refute the change in value assessed by the respondent.

[10] Prior to the hearing of this matter there had been some disagreement between Mr Ross McKelvie, a director of the objector, and the respondent as to the respondent's professional valuers having access to inspect the property and as to the provision of information of generated net income. Initially the objector had been reluctant to provide information concerning income but eventually it advised the respondent that the property was generating a net income of \$276,085 per annum. During the course of his giving evidence Mr McKelvie further revealed that the property was managing some 30 tenancies, some of which were on a month to month tenure and others ranging from between three and six years. The objector's evidence was that the property was 100% occupied as at the date of the re-valuation. No evidence corroborating Mr McKelvie's evidence as to total income or the terms of

the tenancies was revealed to the respondent prior to the hearing. Nor indeed was such provided at the hearing itself.

[11] The property which is the subject of the objection comprises 12 ground floor lettable spaces with offices on the first and second levels. Mr McKelvie for the objector considered that the property was well maintained.

[12] One unusual feature of this particular objection is that as part of the presentation of written briefs in advance to the Tribunal the respondent filed more than one valuation report. The report initially filed was from Mr Sides. It is undated but it was received by the Court on 28 February 2001. This report adopted a capital value of \$2,000,000. In a subsequent report lodged with the Court on 31 May 2001 that report also from Mr Sides adopted a capital value of \$1,900,000. Some issue was taken in respect of these two valuations. Mr Sides' explanation was that as matters progressed towards a hearing further information was received from the objector, namely the rental income position and also Mr Sides had the opportunity as a result of permission given to him by the tenants to carry out actual inspections. In light of the further information Mr Sides adopted a more pessimistic valuation and indeed his evidence as we understood it was that even by the date of the hearing he felt that he may have been over-optimistic in assessing a capital value of \$1.9million.

[13] In Mr Sides' second valuation upon which he relied as his primary evidence before the Tribunal, statistics were shown that the subject property had a decrease in capital value from the 1996 revision of minus 17.4%, while land value remained static. Mr Sides also provided an average value of movements over 473 improved commercial properties which showed capital value changes of minus 7.9% and land value changes of minus 0.2%. Mr Sides' valuation provided extensive appendices

which set out sale yields and capitalisation rates used upon those sales during the process of revaluation of Napier City. From those schedules Mr Sides proceeded to assess an estimated cash flow for the property, the subject of the objection. He assessed the cashflow for the 12 ground floor spaces at \$200,405.00, two upper floors of multi tenanted offices at \$102,770.00, 12 uncovered carparks at \$7,488.00. The estimated gross rental income was \$310,663.00. After deducting property costs of an estimated \$60,000 a net rental income was assessed at \$250,663.00. The gross income stream adopted by Mr Sides provides a total occupational cost to the ground floor spaces of \$212.29 per square metre with the carparking assessed at \$12.00 per week per park. He apportioned the first and second floor levels after deducting the service areas, ablutions and kitchen facilities to have a net letable area on the first floor of 568 square metres or 78.1% of the floor area to which he allowed rental of \$75.00 per square metre. His second floor apportionment amounted to 547 square metres or 75.2% of the floor area to which he apportioned rental of \$110.00 per square metre. This apportionment provides the \$102,770.00 gross income from the upper floors. Mr Sides considered that these rental apportionments were based on the best comparable properties in the appendices attached to his valuation.

[14] The total rental income assessed by Mr Sides of \$250,663.00 of course compared with the evidence given by Mr McKelvie, but not corroborated or substantiated in any way, of rental income at \$276,085.00.

[15] Mr Sides was closely cross-examined by Mr McKelvie for the objector. During the course of cross-examination Mr Sides elaborated on his contention that the property was not well maintained particularly in the first floor area and he provided a list of items to substantiate this contention. He also provided reasons for

his adoption of 13% as the rate to capitalise the estimated market related net income stream. In reaching this rate he considered the quality of the building, the likely maintenance of rental income and the below standard building maintenance and quality of tenants. Mr Sides also provided his views on the return assessments of Mr Plested.

[16] Mr McKelvie in his evidence submitted that on the basis of the comparative sales information gathered by Mr Plested, the true return on the property is 12% leading to his allegation that the capital value should be somewhere between \$2,100,000 and \$2,600,000. He submitted that the mean between these figures was \$2,400,000 which was the figure adopted by him in his submissions. Mr McKelvie gave no explanation to the Tribunal as to why he had not obtained and presented a valuation for his company's building. We understand his coyness in providing financial information which may be commercially sensitive if that is the reason for his failure to do so. However, the respondent is in a difficult position if no attempt is made to substantiate the allegation as to net income for the building prior to the hearing. His failure to produce any corroborative evidence of this nature to the Tribunal was not explained.

Legal Submissions

[17] Mr McKelvie for the objector, did not present any legal submissions. However, in opening Mr Nagel, on behalf of the respondent, referred to the long accepted principle of valuation (under both the Valuation of Land Act 1951 and the Rating Valuations Act 1998), handed down through numerous Court and Tribunal decisions, that the "unimproved value", (now land value), must be ascertained first,

disregarding any improvements on the land. The value of improvements is the added value they give to the land.

[18] He referred us to the decision of Judge Archer in *Valuer General v Reece* (McVeagh & Babe, Land Valuation Casebook p 464) and in particular the following passage quoted from the judgment:

The valuer's first duty is to fix the unimproved value (land value), and then to ascertain the capital by reference to selling value in the market. The difference between these values must be the added value given by improvements, or in other words the value of the improvements. The breakdown of the improvements is not a matter which the Court is required to consider and is not in our opinion of great importance.

[19] Mr Nagel submitted that the evidence given by Mr Sides as the expert witness for the respondent showed that these principles had been correctly applied to the subject property.

[20] As to Mr McKelvie effectively giving his own evidence as to the value and not relying upon an actual professional valuation of the property, Mr Nagel referred us to the decision again of Judge Archer in *Valuer General v MacPherson* (McVeagh & Babe, Land Valuation Casebook p 421) and in particular the following passage quoted from Judge Archer's judgment:

I think I should point out to the respondent that he must stand or fall in a case of this kind by the opinions of expert valuers. His own evidence is, of course, entitled to sympathetic consideration, but he is a very interested party, and when it comes to valuing a man's own property the Courts have decided that the personal interest involved is so great that it is not safe to rely on his own judgment.

[21] In reaching our decision, again as submitted by Mr Nagel, the Tribunal must have regard to and does take into account s 21 of the Rating Valuations Act 1998.

This statutory provision is set out in full as follows:

21 *Value of land subject to lease*

(1) *For the purpose of determining under this Act the capital value or land value or annual value of land that is subject to a lease,—*

(a) *Regard is to be had to the desirability for rating purposes of preserving uniformity with contemporaneous roll values of comparable parcels of land; and*

(b) *Any lease provisions or circumstances particular to the property concerned that do not reflect the prevailing market conditions at the date of valuation are to be disregarded.*

(2) *This section applies for the purposes of determining valuations for the purposes of this Act and the Rating Powers Act 1988 only, and is not intended to alter the definitions of the terms capital value and land value in the case of valuations made other than for rating purposes under any other Act or document.*

Conclusion

[22] Obviously in a situation where the onus clearly rests upon the objector the absence of evidence on the value of the subject property from a professional valuation witness on behalf of the objector leaves us with little option. However, we have heard nothing during the course of the evidence and the cross-examination of Mr Sides in particular, to suggest that his assessment of capital value for the subject property is otherwise than correct. His evidence clearly discloses significant research undertaken by him. The evidence contained in his final written report was the subject of scrutiny but not resiled from during the course of cross-examination. He has used three separate valuation methods to reach his assessment and each supports his overall valuation. Of the three methods employed by him we prefer his “income capitalisation” approach. It confirms his final capital valuation of \$1,900,000 made up of the land value of \$590,000 (which was not disputed) and the value of improvements at \$1,310,000. We are satisfied by his evidence.

[23] Finally we wish to re-emphasise that in reaching our decision we must base it on the evidence presented to the Tribunal. It is for the objector to persuade us that

the valuation set by the respondent cannot be sustained. The objector has failed to do that in this case and accordingly the objection is dismissed.

Judge M E Perkins (Chairman)

W J Harvey Esquire (Member)

S D Morice Esquire (Member)