Valuer-General v Addington Raceway Ltd

Land Valuation Court Christchurch
21 October, 11 November 1968
Tompkins J

Valuers and valuations – Particular kinds of valuation – Government valuation – Unimproved value – Land zoned for recreation purposes on operative district scheme – Possibility of rezoning as residential – Whether to be taken into account in valuation – Lease – Whether lease to be taken into account – Principles to be applied in arriving at valuation – Valuation of Land Act 1951, ss 2, 45.

The unimproved value must be fixed on a consideration of the land as bare land with no improvements and with no lease in existence but with the designation for which it was zoned on the operative district scheme under the Town and Country Planning Act 1953. The chance of obtaining a change of zoning affecting the value of the property must be taken into account when assessing what a hypothetical purchaser would pay for the unimproved value as should the possibility of the lessee of the property being a potential purchaser.

Cases mentioned
Canterbury Club Inc v Christchurch City Council (1961) 1 NZTCPA 150
Valuer-General v Epps [1964] NZLR 810
Tetzner v Colonial Sugar Refining Co Ltd [1958] AC 50
Colonial Sugar Refining Co Ltd v Valuer-General [1927] NZLR 617; [1927] GLR 433
In re Whareroa 2 E Block [1959] NZLR 7
Re an Arbitration between the Auckland Hospital Board and the Auckland Rugby League (Inc) [1966] NZLR 413
Hutt River Board v Lower Hutt City Council [1960] NZLR 1107
Valuer-General v General Plastics NZ Ltd [1959] NZLR 857
Royal Sydney Golf Club v Federal Commissioner of Taxation (1957) 97 CLR 379
Thomas v Valuer-General [1918] NZLR 164
Raja Vyricherla Narayana Gajapatiraju v Revenue Divisional Officer, Vizagapatam [1939] AC 302

Appeal by the Valuer-General and the North Canterbury Hospital Board against the decision of the Canterbury Land Valuation Committee fixing at £75,900 the unimproved value, as a freehold, as at 1 November 1965, of an area containing 94 acres 3 roods 2.2 perches owned by the North Canterbury Hospital Board and leased to Addington Raceway Ltd.

Orr, for the appellant, Valuer-General.
Gould, for the appellant, North Canterbury Hospital Board.
Mahon, for the respondent.

Cur adv vult

The judgment of the Board was delivered by
Tompkins J: Seeing that the circumstances dealt with all referred to a time before the introduction of decimal currency, we will, in this judgment, speak in terms of the old currency.

By consent, the Court allowed the record of the evidence taken before the Committee to be taken as the evidence in this appeal, and no further evidence was given.

The Valuer-General, on a periodical revaluation as at 1 November 1965, fixed the unimproved value of the above-mentioned land at £105,000. Addington Raceway Ltd objected to this valuation

Source: New Zealand Institute of Valuers (1993). Land valuation cases 1965-1992. Hutcheson Bowman & Stewart Ltd, Wellington.

and, upon the hearing of its objection, the Land Valuation Committee reduced the unimproved value to £75,900; hence these appeals. The lease from the North Canterbury Hospital Board to Addington Raceway Ltd was originally for ten years from 26 November 1947, with successive rights of renewal on the expiration of each ten-year period, until 26 November 2047. There is accordingly approximately 80 years to run if each right of renewal is exercised. The lease restricts the use of the land to the

> "purpose only of conducting meetings of trotting clubs and matters incidental thereto or for the purposes of carrying on other sporting or recreational activities."

The land is situated in the Waimairi County. The operative district planning scheme of that county designated this land as "private open space for recreational purposes". Such a designation may be made under s 21 of the Town and Country Planning Act 1953 and in accordance with the Second Schedule, para 3. There is no "underlying zone", as was recommended to be made, where land is designated in this way, by the Town Planning Appeal Board in *Canterbury Club Inc v Christchurch City Council* (1961) 1 NZTCPA 150. Section 33A, which was added to the Town and Country Planning Act 1953 by s 28(1) of the Town and Country Planning Amendment Act 1966, was not in force at the date at which the valuation in this appeal is to take effect, namely 1 November 1965. This new section requires all land designated, *inter alia,* for any existing or proposed purposes to be zoned, not later than at the next five-yearly review of the scheme.

The Valuer-General valued the unimproved value of this land as follows:

Unimproved value as designated, that is as a private open space for recreational purposes, 94 acres 3 roods 2.2 perches at £800 per acre			£75,900
Plus chances of changing of zoning			29,100
			£105,000
The added amount of £29,100 was made up as follows:			
Valuation to determine potential:			
Gross sales of sections (433)			£383,915
Less Legal 433 at £10		£4,300	
Less Commission 5% on £21,700	£10,850		
Less Commission 2-1/2% on £166,915	4,170		
		15,020	19,350
			£364,565
Profit and risk 25% – 1.5th			72,910
			291,655
Interest: 1/2 of 4 hrs at 6% – 12%		35,000	
Advertising		1,300	
Rates		2,625	
Land Tax		1,750	
Development costs, roading, etc		140,400	
			181,075
			110,580
Legal expenses of purchase			1,250
			109,330
Less loss in time in obtaining zoning in lieu of designation – 4%		4,330	
			£105,000

This represents £1,107 per acre.

It will be seen from the above that the Valuer-General placed the chances of rezoning the land at 100%. All parties to this appeal agreed to accept was correct the unimproved value of £800 per acre for the land, as designated, for recreational purposes. They also agreed to accept the sum of £29,100

as being correct, so far as amount is concerned, to represent the subdivisional potential value of this land if the designation were removed and the whole area zoned as residential. The Land Valuation Committee held that the potential value, based on the chance of a change of zoning, was nil. Accordingly, it fixed the unimproved value of the land at £75,900, the amount of its value as designated, with nothing added for potential value. This appeal accordingly centres round whether an amount should be added to the unimproved value for the potential value of the land, if the designation were removed and the land zoned residential.

Section 2 of the Valuation of Land Act 1951 defines unimproved value as follows:

> "Unimproved value" of any land means the sum which the owner's estate or interest therein, if unencumbered by any mortgage or charge thereon, 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 impose, and if no improvements (as hereinbefore defined) had been made on the said land:

Section 45(1) says:

> Where land is subject to a lease or in any other case where there are more interests therein and more owners than one, the united capital values, values of improvements, and unimproved values respectively of the interests of all the owners shall not be estimated at less than the capital value, value of improvements, and unimproved value of the land would be estimated at if held by a single owner in fee simple and free from any lease or encumbrance, anything to the contrary in this Act notwithstanding.

We now endeavour to state the principles applicable in fixing unimproved values as follows:

1. The land must be taken as bare and unimproved at the relevant date and as if no improvements had been made upon it. In *Valuer-General v Epps* [1964] NZLR 810, Archer J said: "In substance, however, the principles laid down in *Toohey's Ltd v Valuer-General* [1925] AC 439 appear to stand unimpaired, and it is still necessary in our opinion for a valuer, when assessing the unimproved value of land, to consider what the land would realise in the market if it were without buildings or other improvements" (*ibid*, 812).

Further, in *Tetzner v Colonial Sugar Refining Co Ltd* [1958] AC 50, Lord Keith, in giving the judgment of the Privy Council said: "What, in their opinion, is required in the present case is that the physical improvements, with any value which they attach to the land on which they are situated, be excluded from the valuer's computation. The land will then be valued as land void of buildings but situated in the community with the amenities and facilities which have grown up round it. Their Lordships see no objection in the process of valuation to regarding the land as land situated in a sugar town" (*ibid*, 57).

2. The unimproved value must be calculated as if held by a single owner and free from any lease or encumbrance: s 45 (*supra*).

3. The use to which the land is put is immaterial: *Colonial Sugar Refining Co v Valuer-General* [1927] NZLR 617; [1927] GLR 433 per Reed J at pp 626, 437.

4. Subdivisional potential must be included: *In re Whareroa 2E Block* [1959] NZLR 7; See also *Valuer-General v Epps* (*supra*).

5. Town planning restrictions and the possibility of their removal must be taken into account. In the case of *Re an Arbitration between the Auckland Hospital Board and the Auckland Rugby League (Inc)* [1966] NZLR 413, Perry J said at 421: "The necessity to take town planning restrictions into account in valuations of land in New Zealand has been so determined by the Land Valuation Court in *Hutt River Board v Lower Hutt City Council* [1960] NZLR 1107, and *Valuer-General v General Plastics NZ Ltd* [1959] NZLR 857."

Later, after reviewing various Australian and New Zealand cases he said, at 426: "I adopt with respect the approach made by Kitto J and adopted by Else-Mitchell J as the correct approach in New Zealand to the valuation of land affected by planning zoning or designations."

He finally gave the following direction: "The law requires you to take into account in your valuation the chance if any of permission being obtained for some other use at some future time and to value such chance and to add such figure (if any) to the valuation otherwise reached on the assumption that there is no possibility of its being used for any other purpose than as designated."

In the case of *Royal Sydney Golf Club v Federal Commissioner of Taxation* (1957) 97 CLR 379, Kitto J had held that the correct method was to value the land as if it were reserved for open space and then to allow for such chance as there was that the restrictions would be removed.

6. The land must be valued as if free from restrictions which do not bind a purchaser, such as restrictive covenants in a lease: *Thomas v Valuer-General* [1918] NZLR 164.

Applying such of the above principles as are applicable to this case, the unimproved value must be fixed on a consideration of this land as bare land, with no improvements, with no lease in existence, but designated as "private open space for recreation purposes". The parties agreed, as we have already said, upon £800 per acre as its reasonable unimproved value as designated. It was not disputed that if the land were free from designation a sum of £29,100 would be an appropriate sum to add for the potentiality of the land as upon a subdivision into residential sites. The question is, what would a purchaser pay for the chance of obtaining a removal of the present designation and a residential zoning, which would enable him to cut up and sell the property. Mr Orr, for the Valuer-General, submits that the property must have been designated as an open space because of the existence of the lease and that, once the lease is disregarded, as s 45 says it must be disregarded, then the chance of having the designation removed is 100%. Mr Mahon, for Addington Raceway Ltd submits that s 45 does not forbid taking the lease into account in respect of a change of zoning; and that, having regard to the existence of the lease, the chance of a change of zoning is nil. We think that both these submissions are untenable, because both involve taking the lease into account in the fixing of the amount to be added to the unimproved value for the chance of a change of zoning. Section 45 says categorically that, in fixing the unimproved value, the lease must be disregarded. But nevertheless, even though the lease be disregarded, it must, we think, be held that the land has been designated for recreational purposes because it was so used and not because of the existence of any lease. If a change from the designation of open space to residential zoning were sought by a hypothetical purchaser he would have to apply to the Waimairi County Council, as planning authority for this land, under s 35 of the Town and Country Planning Act 1953. He would have first to persuade the Council that it is desirable to revoke its designation for recreational purposes in order to allow him to subdivide the property for residential sites. The proposed change would then have to be advertised for objections. A well informed and prudent though willing purchaser must, we think, anticipate that there would be many objections to changing the use of this land from the existing recreational use, and that he would have a poor chance of obtaining a complete revocation of the designation, which would have the effect of denying the use of any part of this land for recreation purposes and would, of course, terminate its character as an open space. Even if the Council removed the designation, objectors might appeal. Mr Parker, the town planning officer for the Waimairi County, gave evidence that, in his opinion, if the land was unimproved and with no buildings and was not being used as a racecourse and not subject to a lease, it would have been zoned residential; but he qualified this by saying that he thought that the designation of some of it would be retained for playing fields and some further area rezoned. But, after all, Mr Parker was only making a guess, though as a town planning expert, as to what the Council as town planning authority might do. Mr Orr contended that if the designation of some of the land were retained for recreational purposes the Council would have to take that portion. We do not think this necessarily follows; but even if it did we think that a purchaser would take into account that what he way buying might include a hypothetical claim for compensation for land taken. Furthermore, it has been held that a lease may be taken into account as a hypothetical purchase. See *Colonial Sugar refining Co Ltd v Valuer-General* (*supra*) as per Reed J at 626, 437, and *Re an Arbitration between the Auckland Hospital Board and the Auckland Rugby League (Inc)* (*supra*) per Perry J at 420. See also *Raja Vyricherla Narayana*

Gajapatiraju v Revenue Divisional Officer, Vizagapatam [1939] AC 302. This is extremely relevant here, because Addington Raceway Ltd made an offer on 2 September 1965, just before the relevant date here, namely 1 November 1965, to purchase the owner's interest in this land at £77,000, which was the then existing Government unimproved value of £70,000 plus 10%. This offer was not accepted. However, Addington Raceway Ltd must be considered as a possible purchaser when endeavouring to assess what a hypothetical purchaser would pay for the unimproved value.

Mr Mahon's submission, on the other hand, that the lease may be taken into consideration in assessing the chance of a change of zoning, is, we think, equally unsound. We are concerned here only with unimproved value and s 45 provides that the unimproved value shall be estimated as if held by a single owner, in fee simple, free from any lease. In our view the section forbids taking the lease into account, even when considering the chance of a change of zoning. With the greatest respect, we do not agree with the following statement made in the judgment of the Land Valuation Committee:

> "The existence of the lease must be entirely disregarded when valuing the land. That is clear. But when the chance of a change in zoning is considered from the point of view of a prospective purchaser this lease would assume grave proportions."

We accordingly reject Mr Mahon's submission, and hold that the lease cannot be considered at all in assessing the potential due to the chance of a change in zoning. In the result, we think that a hypothetical purchaser, negotiating for the purchase of this land in its unimproved state, with no lease, but being used for recreational purposes as designated, would consider his chance of obtaining a revocation of the designation of the whole area as being remote. On the other hand, he may well consider that an area of 95 acres is probably a larger area than is required for sporting or recreational purposes, and that he would have a good chance of having portion of the land freed from the designation, as being surplus to the reasonable requirements of the use of the land for recreational purposes. We have already said that Mr Parker, the town planning officer, thought that some area would be reserved for playing fields and that some additional area might be rezoned. A hypothetical purchaser, taking these matters into consideration, would, we think, be prepared to pay a fairly substantial sum for his prospect of obtaining a change in designation of part of the land. Taking into consideration the whole of the evidence and making the best estimate we can, we think that a hypothetical purchaser would add 10% to its value, as designated, for this chance.

We accordingly allow the appeal and fix the unimproved value at the amount of £75,900 plus 10%, a total of £83,490 or $166,980.

We are unanimously of opinion that each party should pay his own costs. Accordingly we make no order as to costs.

Judgment accordingly

Solicitors for the Valuer-General: *Crown Law Office* (Wellington).
Solicitors for the North Canterbury Hospital Board: *Lane, Neave and Co* (Christchurch).
Solicitor for the respondent: *P T Mahon* (Christchurch).