Wanganui Racecourse Trustees and Wanganui Jockey Club v Valuer-General

Land Valuation Tribunal, Wanganui
14 December 1979, 4 May 1981
Judge Lowe

Objection – Racecourse reserve – Land held by board of trustees – Basis of valuation affected by limited powers of disposition

The club objected to the value of the unimproved value of the racecourse land. The Reserves and Domains Land Act 1953 applied to racecourse reserves. There was the question also whether a racecourse reserve can also be recreation reserve under the Reserves Act 1977. The valuers for the parties disagreed on the amount of the increase in the value of the land because of its situation and amenities, the allowance to be made for potentiality for a designation release, and any allowance to be made for the restricted powers of disposition of the racecourse trustees.

Held, 1 The Tribunal accepted the Valuer-General's increase for amenities and location at 35% although in the case of a city where rural land is a short distance from the city centre, that figure was considered a maximum.

2 The Tribunal would fix a small percentage for the potentiality of the designation being removed and the land therefore being capable of residential development.

3 The allowance for the restricted powers of disposition should amount to 50% of the total valuation.

4 Where land is held by a Board of Trustees for the purpose of a racecourse reserve with a limited power of leasing the land, it must not be valued upon the basis of an unrestricted estate in fee simple but on the basis of the limited powers of disposition which the Board by law possesses over the reserve.

Case mentioned
Hutt Park Racecourse Board (1907) GLR 12

Judge Lowe: The matter for decision is the value of the Wanganui Racecourse as at 1 October 1976. The objector does not oppose a value of $250,000 being given to improvements, but objects to the unimproved value of $165,000, contending, in the formal objection to valuation, that the value should be $12,000. The objection was heard on 14 December 1979, and on 10 January 1980 counsel were invited to make submissions as to whether ss 32, 33 and 34 of the Reserves and Domains Act 1953 apply to racecourse reserves and as to the precise rights which the objectors contend the public had at the date of valuation in respect of the racecourse land. Unfortunately, those submissions were not received until August 1980.

Sections 32 to 34 are headed "Special Provisions as to Recreation Reserves", ss 35 to 40 are headed "Special Provisions as to Racecourse Reserves". The vexed question is whether a racecourse reserve can also at the same time be a recreation reserve, and the Reserves Act 1977, which came into force after the relevant valuation date in this case, answers that question with effect from its date of commencement as it defines a racecourse reserve as a recreation reserve set apart for racecourse purposes. It seems clear that the public has some undefined rights, whether or not ss 32 to 34 also apply to extend those rights. In that connection, ss 16 and 95 appear to apply generally to all public reserves, as do other provisions of the Act which refer generally to reserves. Certainly the Wanganui Racecourse Trustees have, since the racecourse started, assumed that the public has rights over the racecourse during those periods when race meetings are not being held. The fact that the Reserves

Act 1977 has redefined racecourse reserve suggests that the definition in the Reserves and Domains Act 1953 lacked precision. That definition refers to "a public reserve within the meaning of this Act set apart as a racecourse reserve"; "recreation reserve" is not defined in the 1953 Act. The Tribunal inclines to the view that the submissions of counsel for the Valuer-General are to be preferred, and that ss 32 and 34 of the 1953 Act do not apply to racecourse reserves. Nevertheless, as stated above, the Tribunal does take the view that the public has some rights which will vary from one racecourse to another depending upon the manner in which other provisions of the 1953 Act referable to all reserves have been applied in each particular case. Two other matters which may be relevant to the question of the rights of the public over the racecourse land may be worthy of mention. The first is s 11 of the Reserves and Domains Act 1953. Paragraph (a) of subs 2 of that section stated that the provisions of part II of the Act (and part II includes ss 11 to 40 inclusive) shall be read subject to the provisions of any provincial ordinances in force at the commencement of the Act. Section 2 of the Act defines "administering body: as "the . . . trustees . . . appointed under this Act to control and manage that reserve or in whom that reserve or in whom that reserve is vested under this Act." In s 2 of the 1977 Act "administering body" is defined as "the . . . trustees . . . appointed under this Act or any corresponding former Act to control and manage that reserve or in whom that reserve is vested under this Act or under any other Act or any corresponding former Act." These different definitions suggest that provisions for the 1953 Act do not have such wide application as the provisions of the 1977 Act, particularly when it is noted that in both s 32 and s 35 of the 1953 Act reference is made to "the administering body".

The evidence of Mr James Arthur Brown, who was district valuer of the Valuation Department at Wanganui from 1969 to 1975, was that until his retirement the value of racecourse reserves on a revaluation was based on the average rise in the unimproved value of all the land in the city. He went on to say "this method was obviously not applied in the 1976 valuation because, instead of the rise in value being near the city average of 220%, it is 1550%, and this despite the fact that a nominal reduction was made for the land being designated in accordance with the operative town plan." In these circumstances, one can understand the objectors feeling that the bases of valuation have been changed dramatically and unjustifiably. It is clear that the decision of Mr Justice Cooper in *re Hutt Park Racecourse Board* (1907) GLR 12 is accepted by all parties as authority for the proposition that, where land is held by a Board of Trustees for the purpose of a racecourse reserve with a limited power of leasing the same, it must not be valued upon the basis of an unrestricted estate in fee simple but on the basis of the limited powers of disposition which the board by law possesses over the reserve.

The valuers for the parties disagree only on the following points:

(a) The amount of the increase in the value of land because of its situation and amenities.
(b) The allowance to be made in respect of the potentiality for a designation release.
(c) Allowance to be made for the restricted powers of disposition of the racecourse trustees.

Mr Brown, valuer for the objectors, considers 25% an adequate increase in respect of (a) above, whereas the district valuer thinks 35% to be a more appropriate increase, with some hesitation, the Tribunal accepts the Government Valuer's allowance of 35% in respect of amenities and location, although in the case of a city the size of Wanganui, where rural land is situated within a short distance of the city centre, it is considered 35% is a maximum. As to (b) above, Mr Brown makes no allowance for the possibility of the designation being lifted and the potential of the land being thereby improved. Mr McGowan, without fixing the value of that potentiality, equates it with an allowance to the trustees in respect of their restricted powers of disposition. To support that proposition, Mr McGowan in his evidence at page 6 says that the potentiality of the designation being removed and of the land therefore being capable of residential development is considered to be negated completely by the limited power of disposition held by the objectors. He says that if the objectors had full power to alienate the subject land then there would be some prospect of the designation being removed and therefore of the subject land being capable of residential develop-

ment. It seems, then, that he considers the land to have no such potentiality, and he presumably agrees with Mr Brown's view in that respect. However, having decided there is no potentiality for the designation to be uplifted in all the circumstances, it is difficult to understand the proposition put forward by Mr McGowan and by counsel for the respondent Valuer-General when it is stated that the objectors' limited power of disposition has been given due allowance by not having a percentage for potentiality. The Tribunal would fix a small percentage of the basic value of the land, perhaps 6%, as appropriate for its potentiality. The Tribunal considers, however, that the allowance for the restricted powers of disposition of the owners should amount to approximately 50% of the total valuation ascertained as above.

On the basis, and using Mr McGowan's valuation at appendix 1 of his evidence, but disregarding the nil allowance he makes for (b) and (c) above, we have a value of $165,000 plus 6% for potentiality, totalling approximately $175,000. A reduction of 50% will produce a value per hectare of the land of about $3,500. The area of the land is 25.0294 hectares. The Tribunal accordingly fixes the value of the Wanganui Racecourse Trustees estate in the land as at 1 October 1976 as capital value $337,603, land value $87,603, value of improvements $250,000. It is noted that the resulting valuation still produces an increase several times as great as the average rise for the city.

Mr Maguire for the Valuer-General added to his written submission by suggesting that there should be no departure from the market value willing buyer/willing seller concept in this case and that the restrictions were on the trustees, not on the fee simple. He also referred to the *Hutt Park* case and suggested that Cooper J did not reply to the question regarding restrictions on the disposal of Maori land which, he considers, should be regarded as similar to the present situation. It appears to the Tribunal that His Honour did answer fully those propositions on pages 14 and 15 of the Gazette law report of the case.