

LAND COURT OF QUEENSLAND

CITATION: *McVicker & Anor v Valuer General* [2018] QLC 43

PARTIES: **Robert McVicker and Tracy McVicker**
(appellants)

v

Valuer-General
(respondent)

FILE NO: LVA266-17

DIVISION: General

PROCEEDING: Appeal against objection decision under section 155 of the
Land Valuation Act 2010

DELIVERED ON: 14 November 2018

DELIVERED AT: Brisbane

HEARD ON: 29 August 2018

HEARD AT: Brisbane

MEMBER: WA Isdale

ORDERS:

- 1. The appeal is allowed**
- 2. The site valuation of Lot 2 on Survey Plan 176476 as at 1 October 2016 is reduced to Three Hundred and Twenty-five Thousand Dollars (\$325,000) to correctly make the valuation under the *Land Valuation Act 2010*.**

CATCHWORDS: REAL PROPERTY – VALUATION OF LAND – OBJECTIONS AND APPEALS – Queensland – where site value is the basis of valuation – where the highest and best use of the land is not in dispute – direct comparison of sales is the best method of valuation – onus of proof on the appellants

Land Valuation Act 2010 s 169(3), s 170(b)

Clough v Valuer-General (1981-82) 8 QLCR 20, applied

Fairfax v Department of Natural Resources and Mines
[2005] QLC 11, applied
Finlayson & Anor v Valuer-General (2013) 34 QLCR 101,
applied
Hans and Else Grahn v Valuer-General (1992-93) 14 QLCR
327, applied
NR and PG Tow v Valuer-General (1978) 5 QLCR 378,
followed

APPEARANCES: R McVicker, the appellant, in person

I Pepper, Legal Officer, Department of Natural Resources,
Mines and Energy, for the respondent

- [1] The appellants are the owners of land at 41-53 Challen Road, Logan Village. They are joint tenants. The land is Lot 2 on Survey Plan 176476 and has an area of 2.059 ha. There is a 935 m² access easement over it. The respondent conducted a routine valuation of the appellants' land. The valuation is used for rating purposes by the local government. The valuation, made under the *Land Valuation Act 2010* is on the basis of the land as a site, a term defined in the Act and which it is not necessary to consider as there is no dispute in relation to it. The land was valued at 1 October 2016, at \$335,000.

The notice of appeal

- [2] The appellants had objected to the valuation by way of a process internal to the respondent's administration and they have not met with success. The appellants have appealed the Valuer-General's objection decision to the Court and their Notice of Appeal contended that the correct valuation is \$234,450. The grounds of appeal are to the effect that the respondent has not used comparable sales or properly allowed for the constraints on the land.

The nature of the process

- [3] The appellants have brought their dispute to this Court, which is independent of the respondent and which must decide the appeal on the evidence put before it. The appellants have provided their objection material along with their Notice of Appeal. Section 169(3) of the Act puts the burden of proof on the appellants for each of the

grounds of appeal. The respondent does not have to prove the valuation. It is for the appellants to prove that the valuation for which they contend is correct.¹

The applicable law

[4] This Court is not an inquisitorial body. It is a Court which must consider the evidence put before it by parties.² The appellants must prove their case, a task often facilitated by the assistance of a registered valuer.³

[5] This Court is bound by the decisions of the Land Appeal Court. That Court said in *NR and PG Tow v Valuer-General* that:

“Courts of the highest authority have laid down that the best test of value is to be found in the sales of comparable properties, preferably unimproved, on the open market around about the relevant date of valuation and between prudent and willing, but not over-anxious parties.

...

It follows that a large increase over and above a previous valuation is in itself not a relevant issue provided bona fide sales of comparable parcels support the new valuation.”⁴

[6] This Court has said:

“A valuation deduced from relativities with other valuations made by the Valuer-General and that were not themselves tested in the present proceedings by reference to sales evidence cannot safely be relied upon. Where, as in the present case, the subject valuation is said to be incorrect, it would not be safe to rely on other valuations and to assume that they are correct so as to draw a conclusion about the valuation of the subject land.”⁵

[7] In *Hans and Else Grahn v Valuer-General*, the Land Appeal Court considered the previous Act. The Court’s comments are equally applicable to the current Act. The Court said:

“The decision of the High Court of Australia in *Brisbane City Council v The Valuer-General* ((1978) 140 CLR 41, 5 QLCR 283) and the decisions of the Land Appeal Court in cases such as *WM and TJ Fischer v The Valuer-General* ((1983) 9 QLCR 44) and *R and MM Barnwell v The Valuer-General* ((1989) 13 QLCR 13) are authority for the following propositions:

- (a) It is desirable that valuations made for the purposes of the *Valuation of Land Act 1944* of comparable lands should bear proper relativity, one to the other, so long as the valuations are soundly based. It is, however, untenable to adopt a value for one parcel on relativity with another which has no sound basis

¹ *Finlayson & Anor v Valuer-General* (2013) 34 QLCR 101.

² *JL & I Qualischefski v Valuer-General* (1976) 6 QLCR 167, 172.

³ *Ibid.*

⁴ (1978) 5 QLCR 378, 381.

⁵ *Finlayson & Anor v Valuer-General* (2013) 34 QLCR 101, [30].

(*R and MM Barnwell v The Valuer-General* (1989) 13 QLCR 13, at p 16 and cases cited in it).

- (b) The best basis for assessment of unimproved value is the use of sales of vacant or lightly improved parcels of land (*WM and TJ Fischer v The Valuer-General* ((1983) 9 QLCR 44, at p.46; *R and MM Barnwell v The Valuer-General* ((1989) 13 QLCR 13. At p. 17).
...
- (e) Whilst maintenance of correct relativity is of considerable importance for rating valuations, the use of the principle of relativity should not be preferred to the exclusion of relevant (even if not ideal) sales evidence (*WM and TJ Fischer v The Valuer-General* ((1983) 9 QLCR 44, at p.46).
- (f) If possible, the Valuer-General should obtain uniformity between different blocks in the same land category or type, but should do so (preferably by reference to sales of comparable land) by correcting inaccuracies rather than by making an inaccurate assessment in order to secure uniform error (*R and MM Barnwell v The Valuer-General* (1989) 13 QLCR 13, at pp. 16-17 and cases cited in it).”⁶

[8] The superiority of sales evidence when valuing land is illustrated by the words of the learned President in *Fairfax v Department of Natural Resources and Mines*:

“The principles for determination of the "market value" of land were established by the High Court in *Spencer v The Commonwealth* (1907) 5 CLR 418. In that case, the High Court found that the value of land is determined by the price that a willing but not over-anxious buyer would pay to a willing but not over-anxious seller, both of whom are aware of all the circumstances which might affect the value of the land, either advantageously or prejudicially, including its situation, character, quality, proximity to conveniences or inconveniences, its surrounding facilities, the then present demand for land and the likelihood of a rise or fall in the value of the property. (See Griffith CJ at 432 and Isaacs J at 441).

It has been well established that the unimproved value of land is ascertained by reference to prices that have been paid for similar parcels of land. In *Waterhouse v The Valuer-General* (1927) 8 LGR (NSW) 137 at 139, Pike J said that:

"Land in my opinion differs in no way from any other commodity. It certainly is more difficult to ascertain the market value of it but - as with other commodities - the best way to ascertain the market value is by finding what lands comparable to the subject land were bringing in the market on the relevant date - and that is evidenced by sales.”⁷

⁶ (1992 93) 14 QLCR 327, 328, 329.

⁷ [2005] QLC 11, [11] to [12].

The case for the appellants

- [9] The case put before the Court on behalf of the appellants did not include any expert evidence from a registered valuer. Mr McVicker was the appellant, advocate, and the sole witness in the appellants' case.
- [10] In his opening, Mr McVicker made clear that there were four matters to which attention would be drawn. They were:
- (i) That comparison sales used by the respondent were properties with superior attributes to the subject land.
 - (ii) Those comparisons have improvements.
 - (iii) Regulated vegetation on the subject land imposed significant constraints that are required to be disclosed to, for instance, a prospective purchaser.
 - (iv) Out-of-sequence development in the area was bringing more population density with associated negative impacts on the rural character of the area.
- [11] Items (i) and (ii) together were said by Mr McVicker to provide about one-third of the overall impact on land value, and item (iii) about two-thirds.
- [12] The appellants contended that the valuation ought to be \$234,450. How this was arrived at by the appellants will be discussed below.

The appellant's documentary evidence

- [13] The appellants produced a large number of coloured photographs which provided a detailed understanding of the land and its surroundings as well as of other areas to which attention was directed. The photographs were also utilised in the cross-examination of the respondent's valuer. They became Exhibit 1.
- [14] An aerial photograph and maps of two properties at Chandler were made Exhibit 2.
- [15] A Development Decision relevant to the land which included the subject land became Exhibit 3, and a single sheet headed 'Land Valuation Objection' became Exhibit 4.

The appellant's valuation methodology

- [16] Exhibit 4 contains a table which sets out the method by which the appellants arrive at the valuation of \$234,450. Mr McVicker is not a registered valuer; he is however involved in the management of a portfolio of assets.

The subject land is compared to a sale of 8,000 m² of land on 12 September, 2016. It is helpful to set the table out in full.

Property Address	My Land	Recent Sale		
Property Description	41-53 Challen Road Logan Village	Lot 5 25-29 Inspiration Drive, Logan Village		
	Lot 2 SP176476	Lot 15 SP268153		
Constraints			The comparative effect to my land value	Argued Percentage effect
Recent sale price	-	\$299,950		
Land sale date	-	12-Sep-16		
Was the subject land vacant sale land	-	Yes		
Land size	20590m2	8000m2	\$24,000	8%
Zoning	Rural Residential – Park Living	Rural Residential		
Distance to Logan Village Shops	3.3km	4.0km	\$3,000	1%
Is the land itself flood effected? (sic)	No	No		
Is access to the land easily lost in moderate flood events (Eg. May 2015)	YES	No	-\$15,000	-5%
Is the use of the land restricted by defined building envelope	YES 85% Loss	Yes 75% Loss		
Registered Easement	YES 935m2	No	-\$4,500	-1.5%
Topography constraints Eg. Landslide Hazard and Steep Slopes	Yes	Yes		
Bushfire Covenant on DA	Yes	Yes		
Regulated Vegetation Management Category B “Locally significant remant (sic) vegetation area” and effect to land development potential	YES	No	-\$45,000	-15%
Value adds				
Culdesac (sic) Street	Yes	Yes		
Quality full width road	No (one car width only 3.8m wide)	Yes	-\$6,000	-2%
Street Lighting	None	Yes every 100m	-\$3,000	-1%
Rezoned family safe 50km speed limit	No	Yes	-\$3,000	-1%
Underground power	No	Yes	-\$6,000	-2%
Cleared and maintained nature strips entry into street (eg. dead trees and declared weeds removed)	No	Yes	-\$3,000	-1%
Improvements	None provided	Yes sale included culvit (sic) crossing and asphalt (sic)driveway into property. Partial decorative fencing.	-\$7,000	
		Total Net Constraint Value	-\$65,500	
		Therefore My Land Value	\$234,450	

- [17] The concept is that if this sale was compared to the subject, it would indicate that the subject was worth \$234,450.
- [18] There are difficulties with this approach. Firstly, it is a sample of one. There are no other comparison sales provided by the appellants. Secondly, a very large total net allowance of minus \$65,500 has been made, once positive allowances are taken into account, to arrive at a value. The estimates have been made by a layman in the expert field of valuation. Exactly how the allowances were quantified was not shown to have a supportable basis.
- [19] The net allowance is so large, and subject to such uncertainty, that it cannot be said that the actual sale is being relied on at all.⁸ There is no evidence or workings to substantiate the justification of the allowance amounts relied on by the appellants. What is being relied upon is a theoretical construct of estimated value guessed at by the appellants.
- [20] As has been explained, the best test of value is to be found in comparable sales. What is relied upon by the appellant does not, when such allowances are made, amount to making a comparison to a sale. It is a work of theory.
- [21] In *Clough v Valuer-General*,⁹ the Land Appeal Court pointed out that the reason for preferring comparable sales of unimproved land was the obvious one, that there is no room for error in analysing the value of improvements.¹⁰ Experts may struggle to value improvements and, similarly, it is a difficult matter to estimate the effect on value of, for instance, certain vegetation restrictions on the sale property. A figure of \$45,000 was placed by the appellants on the comparative effect of vegetation restrictions. It was not explained how the market would demonstrate the accuracy of this estimate, made by a person not qualified in valuation. The Court is unable to accept that the valuation methodology applied by the appellants has been shown to be reliable. The same may be said of all of the allowances made by the appellants in relation to the comparisons made between the subject land and Lot 5, 25-29 Inspiration Drive.

⁸ *Liat Nominees Pty Ltd v Chief Executive, Department of Lands* (1996-97) 16 QLCR 687, 705-706.

⁹ (1981-82) 8 QLCR 20, 26.

¹⁰ *Ibid.*

[22] This, by itself, would be enough to dispose of the appeal. The appeal as it stands would be unable to succeed as the implementation of the chosen method of valuation is not able to be accepted as a reliable one.

[23] This is not the end of the matter however, as the respondent elected to provide evidence and called a witness, registered valuer Richard Fernandez. The Court is able to consider all of the evidence put before it.¹¹

The case for the respondent

[24] Mr Fernandez prepared a detailed valuation report, which became Exhibit 5, he gave evidence, and he was also cross-examined.

Planning restrictions

[25] The valuation report sets out the town planning constraints over the land. It is not necessary to set them out in full because there is no dispute in relation to their existence. They were also a focus of the appellants' case. In brief, they are constraints in relation to vegetation management and State and local matters of environmental significance. There are both high and medium bushfire hazard areas and an impact buffer bushfire hazard area. Additionally, there is a 15% or greater slope hazard area.

[26] The valuation recognises that the subject land is zoned Rural Residential – Park Living with an estimated building envelope of 3,000 m² for dwelling and associated buildings.

Highest and best use

[27] It is not in dispute that the highest and best use of the subject land is for a “Rural Home Site”,¹² which is consistent with the zoning.

[28] The valuation report recognises that the subject land is rectangular in shape and situated above road level. It has frontage of about 100 metres and is in a good position within Challen Road. There is an easement along the eastern boundary. The easement

¹¹ *State Government Insurance Office (Queensland) v Valuer-General* (1980-81) 7 QLCR 171, 193-194; *Perpetual Trustee Company Limited v Department of Natural Resources, Mines and Water* (2006-2007) 27 QLCR 64, [56]-[59].

¹² Exhibit 5, p 8, para 2.8.

is four metres wide and has an area of 935 m². The easement provides access to land at the rear of the land.

[29] Challen Road is a quiet cul-de-sac serving the subject and surrounding rural residential land. The location in Logan Village is around 20 km from Beenleigh and is serviced by a small shopping centre there. The road is a relatively narrow bitumen road without proper curb and channel structures. There is electricity, telecommunications and rubbish collection available, but no town water or sewerage. According to the respondent's valuation report, this is typical of the area.

[30] The land is not itself subject to flooding but access to it was flooded in the March 2017 flood event.

Valuation method

[31] The valuer has come to a site value of this land by using the method of direct comparison with sales of vacant land for rural residential purposes. The sales are said by Mr Fernandez to have similar attributes to the subject land and have been sold as near as possible to the date of valuation.

The valuer's sales

[32] The valuer, in the exercise of his professional judgement, chose a basket of four sales.

Sale 1

[33] 24-32 Starlight Court, Carbrook has an area of 4 ha and sold on 22 October 2016 for \$625,000. It is zoned as Environmental Management and has vegetation management restrictions, State and local matters of environmental significance, a medium bushfire hazard area and wetland buffer. The land has a slightly irregular shape and moderate vegetation coverage. It is on a quiet no through road in a rural residential development. There are no easements or flood impact considerations. It is 32 km from the subject land. There is no town water or sewerage. The valuer considers it superior to the subject due to its large size and better location.

Sale 2

[34] 50-60 Navereno Ct Mundoolun has an area of 1.927 ha and sold on 11 October 2016 for \$350,000. The site value is assessed at \$340,000. It is zoned for Rural Farming

and has vegetation management restrictions, State and local matters of environmental significance, high bushfire hazard area, impact buffer bushfire hazard area, flood inundation areas and a 15% or greater slope hazard area. There are no easements or, the valuer reports, flood impact, despite the constraint regarding flooding. The block is reasonably regular in shape and above road level. It is partly cleared and does not have town water or sewerage. It is located about 23 km from the subject land. There are some good rural views. The area is removed from access to shops, being in an outer part of Logan City. The valuer considers it to be, overall, similar to the subject land.

Sale 3

[35] 2-6 Inspiration Drive, Logan Village, has an area of 8,000 m². It sold for \$299,950 on 12 September 2016. It has a zoning of Rural Residential – Park Living. There are constraints on the land in relation to vegetation management, State and local matters of environmental significance, high and medium bushfire hazard areas, impact buffer bushfire hazard area and a 15% or greater slope hazard area. Sale 3 is a rectangular block located on a corner, it is above road level and rises significantly to the rear. There is a clearing at the front. There are no easements or flood impacts. There is no town water or sewerage. This block is about 3 km from the subject land and is in the same rural locality of Logan Village. The zoning and constraints are identical to those applying to the subject. The building area is 2,000 m² compared to 3,000 m² for the subject. The valuer sees this land as inferior to the subject due to its' smaller size and is of the opinion that it provides a good indication of value for the subject land. It is also the sale used by the appellants.

Sale 4

[36] 152 Rose Farm Lane, Logan Village has an area of 1.42 ha. It sold for \$320,000 on 4 April 2016. The site value is assessed at \$290,000. This is an irregular interior block, the rear of which has been cleared. It is zoned Rural Residential – Park Living. There are constraints on the land for vegetation management, biodiversity corridor, matters of State and local environmental significance, medium bushfire hazard area, impact buffer bushfire hazard area, 15% or greater slope hazard area, 275 kv powerline corridor and its buffer, and a minor waterway area. The actual powerlines are nearby but do not directly impact the land. There is no flooding impact. There is no town

water or sewerage. There is easement access of about 2,893 m² in area. This land is about 10 km from the subject land and is in Logan Village. It has an approximately 3,000 m² building area. In view of the inner location of the block, that it is smaller in size, battle-axe shape and the proximity of the power lines, the valuer considers it inferior to the subject and a good indication of the value of the subject.

The Valuer's reasoning

[37] In paragraph 6.4 of his report as originally drafted, Mr Fernandez sets out his comparison of the four sales with the subject land. Sale 1 he sees as superior, Sale 2 as similar and Sale 3 and 4 as inferior to the subject. By direct comparison of the sales to the subject, Mr Fernandez concludes that the site value of the subject must be more than the inferior Sale 4 (\$320,000) and comparable to Sale 2 (\$350,000). He considers that the zoning and constraints are essentially the same on the subject and all of the sales.

[38] Assessing the value conservatively, which is appropriate in a rating valuation such as this, he valued the subject at \$335,000 as at 1 October 2016.

Correction of the valuation

[39] The matter did not rest there. Mr Fernandez realised that there was a structure on Sale 4 that he had not allowed for and corrected his report to reduce the analysed sale price to \$300,000; a \$20,000 reduction.

[40] The effect of this was to change the range within which the value of the subject would be from \$320,000 to \$350,000, to between \$300,000 and \$350,000. That this would be likely to reduce the valuation was immediately apparent to the appellants.

[41] Mr Fernandez, acting very properly in pursuance of his duty to the Court, re-estimated the value of the subject land to be \$325,000.

[42] Mr Pepper, in accordance with his duty to properly represent his client, a model litigant, adjusted the respondent's case to accord with the evidence and rightly conceded that the value contended for was now \$325,000.

Other evidence

- [43] In other evidence for the respondent, Mr Fernandez produced a site value comparison statement, Exhibit 6, which explains that the sales relied on by the respondent have building envelopes ranging in size from 2,000 m² to 3000 m², the larger ones being found on the larger blocks.
- [44] In Exhibit 7, Mr Fernandez provided a comparison of the vegetation management status of the sales he had used and two other sales referred to in paragraph [46] below.
- [45] Exhibit 8 is a collection of 27 colour photographs of relevant aspects of the properties being considered.
- [46] Exhibit 9 is a valuation of 1147-1155 Stoneleigh Road, Logan Village, which was discussed along with Exhibit 10, a valuation of 83 Rose Farm Lane, Logan Village.
- [47] While their comparability was discussed, the respondent did not rely on these sales in arriving at the valuation so it is unnecessary to consider them further.

Resolution

- [48] The appellants must prove their case as required by s 169(3) of the Act.
- [49] The Court has considered all of the evidence which the parties have chosen to put before it. There is only one body of expert evidence, that called by the respondent. The respondent's valuer has acknowledged and corrected a significant error of fact in his original valuation.
- [50] While the choice of comparable sales is a matter for the expert valuer, it was properly open to the appellant to test those choices and their comparability. This was done thoroughly.
- [51] The appellants did not establish any reliable basis for a valuation of \$234,450 either in their own case or when the respondent's evidence was also taken into account.
- [52] When the evidence called on behalf of the respondent is taken into account, the appellants have discharged their onus of proof under s 169(3) since the evidence does show that the respondent's use of comparable sales was not correct; a deficiency remedied in Court.

[53] The Court, in accepting the corrected evidence of the valuer for the respondent, must allow the appeal and correct the valuation to \$325,000 in accordance with s 170(b) of the Act.

[54] The Court was assisted in its' task by the clearly presented submissions made on behalf of the appellants, the professionalism of Mr Fernandez, and the well-focused written submissions provided on behalf of the respondent whose conduct, through the lawyer representing him, was that of a model litigant.

Orders:

- 1. The appeal is allowed**
- 2. The site valuation of Lot 2 on Survey Plan 176476 as at 1 October 2016 is reduced to Three Hundred and Twenty-five Thousand Dollars (\$325,000) to correctly make the valuation under the *Land Valuation Act 2010*.**

**WA ISDALE
MEMBER OF THE LAND COURT**