

LAND ACQUISITION ACT

APPEALS BOARD

AB 2001.089

In the Matter of the Acquisition of Land at
Lot 4196 of Mukim 22
35 Defu Lane

Between

Peng Hiang Food Industries Pte Ltd

... Appellant

And

Collector of Land Revenue

... Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue of compensation in an amount of \$490 000 in respect of the land at Lot 4196 of Mukim 22 be increased to \$500 000;

And

(2) That the Collector of Land Revenue pay to United Overseas Bank Ltd the mortgagee of the acquired land at the acquisition date for the account of the appellant the amount of such increase together with interest at 6% per year from the date of taking possession;

And

(3) That the deposit paid by the appellant be paid out to the appellant;

And

(4) That there be no order as to costs.

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 28 April 2001 ("acquisition date") a notification was published in the *Gazette* under s 5 of the Land Acquisition Act ("s 5 declaration") declaring that the land ("acquired land") at Lot 4196 of Mukim 22 together with the building unit at 35 Defu Lane 3 ("35DL3") was needed for a public purpose namely Proposed Kallang-Paya Lebar Expressway. The appellant was then the proprietor of the acquired land as lessee for a term of 30 years from 1 August 1981 and is a person interested.

(2) For the purpose of the inquiry held under s 10 the appellant submitted a claim of \$2 000 000 for compensation. The respondent ("Collector") found that the "value of the appellant's interests" in the acquired land as at 28 April 2001 was \$490 000 and on 10 December 2001 he made an award of compensation in that amount.

(3) The appellant appeals against the award. In its petition of appeal it says that the "fair market value" of the acquired land as at the acquisition date was \$750 000 and that it claims compensation in that amount. At the hearing Mr Tay of counsel for the appellant said that "fair market value" was a reference to "market value". A claim for a further \$117 000 was not proceeded.

Acquired Land

(4) Lot 4196 is a rectangular plot at Defu Lane 3 on the East side of Defu Industrial Park ("DIP"). DIP is about 10km from the city centre at Collyer Quay. Vehicular access to it is by way of Hougang Avenue 3 and Tampines Road. It is close to Hougang New Town and has convenient access to community services and facilities. Lot 4196 has a road frontage of about 33.5m and a site area of 1 552.3sm. On site as at the acquisition date was 35DL3 which was an HDB standard built semi-detached single storey with mezzanine floor factory building.

(5) It was not disputed that the site was zoned Light Industry and that the maximum permissible gross plot ratio ("MPGPR") was 2.5. It was agreed that the aggregate gross floor area ("GFA") of 35DL3 was 497sm of which 22 sm was an open sided bottle cleaning area covered by a roof extension. As at the acquisition date the site was developed to a gross plot ratio ("GPR") of only about 0.32 even taking into account the bottle cleaning area.

(6) The appellant was a lessee of HDB in respect of the acquired land and held it under a lease granted by HDB which in turn held it under a lease for 99 years from 1 August 1981 granted by the state but the Collector's award makes no mention at all of HDB or its interest. In these circumstances Mr Chia of counsel for the Collector agreed that for the purpose of this appeal and in the determination of the market value of the acquired land the appellant was to be regarded as a lessee of the state.

Compensation

(7) Section 33 of the Act provides:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall ... take into consideration the following matters and no others:

(a) the market value -

(i) ...

(C) as at 1st January 1995 in respect of land acquired on or after 27th September 1995;

(ii) as at the date of publication of the notification under section 3(1) if the notification is, within 6 months from the date of its publication, followed by a declaration under section 5 in respect of the same land or part thereof; or

(iii) as at the date of publication of the declaration made under section 5,

whichever is the lowest;

...

(5) For the purposes of subsection (1)(a) -

...

(e) the market value of the acquired land shall be deemed not to exceed the price which a bona fide purchaser might reasonably be expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land for the purpose designated in the Development Baseline referred to in section 36 of the Planning Act 1998, whichever is the lower, after taking into account the zoning and density requirements and any other restrictions imposed under the Planning Act 1998 and any restrictive covenants in the title of the acquired land, and no account shall be taken of any potential value of the land for any other more intensive use

No notification under s 3(1) was published and the s 5 declaration was published on 28 April 2001 (the acquisition date as noted earlier) and it is common ground that the market value as at 28 April 2001 was lower than as at 1 January 1995 and it is the market value as at 28 April 2001 that among other matters has to be taken into consideration.

Petition of Appeal

(8) The petition of appeal refers to a report or some other communication of the appellants' valuers which states:

... we are of the opinion that, based on the [market value], as at 28 April 2001, the claim for compensation ... is \$750 000.

In determining the [market value] ... we have adopted the Direct Comparison Approach.

We have also correlated our figure of value derived from the above method by the Income Approach.

It appears that the income approach was used as a check and Mr Tay confirmed that this was the case. The report or other communication referred to in the petition of appeal was not before this Board.

Appellant's Valuation

(a) Direct Comparison Approach

(9) Mr Chan Hiap Kong of Asian Appraisal Company Pte Ltd testifying for the appellant stated in his valuation report dated 21 December 2001 that in determining the market value he used the Market Data Approach. This appears to be what the petition of appeal refers to as the direct comparison approach. He referred to the following transactions:

<i>Property</i>	<i>Tenure</i>	<i>Site Area</i>	<i>Transaction Date</i>	<i>Price \$ \$/sm Site Area</i>
1 15 Defu Lane 12 ("15DL12")	30 yrs from 1983 Apr 1	1 604.9sm	2000 Oct 4	990 000 617/sm
2 10 Defu Lane 7 ("10DL7")	30 yrs from 1983 Apr 1	1 626.9sm	2000 Sep 25	800 000 492/sm
3 11 Defu Lane 6 ("11DL6")	30 yrs from 1980 Oct 1	2 091.6sm	2000 Jul 18	485 437 232/sm

(Note: Areas and unit prices have been re-stated in metric)

All these properties were also leasehold sites in DIP with semi-detached factory buildings and it was not disputed that each of them was comprised in a lease granted by HDB which reserved rent at the same rate and contained the same terms and conditions as the lease for the acquired land except for the specific permitted use in each case.

(10) The valuation report stated that the market value as at the acquisition date was \$750 000 but it was not apparent in the report how the market value was determined. Mr Chan said that in the approach he adopted he would make adjustments for size and other differences but he did not say what adjustments were in fact made by him and his valuation report made no mention of any adjustments.

(11) Under cross examination Mr Chan said that he attributed 40% of the transaction price to the GFA of the factory building and 60% to the site area but he did not show how this would lead to the determination of the market value of the acquired land. He then said that GFA was equivalent to 60% of the site area so that the GFA of the reference properties could be reduced to an equivalent of the site area to be added to the actual site area for what may conveniently be called the site equivalent area ("SEA") to derive an SEA rate of the transaction price. This rate could then be

applied to the SEA of the acquired land. He did not refer to any market evidence in support of the 40:60 apportionment or of the site area equivalent of GFA. It was not apparent how he could have arrived at \$750 000 or any other amount for the market value.

(b) *Income Approach*

(12) Under cross examination Mr Chan also said that he used the income approach to determine that the market value of the acquired land was \$750 000. The analysis appears in Appendix II to the petition of appeal. Before Mr Chan gave evidence Mr Tay had said that the income approach was only used as a check but it appears that he was mistaken. In his analysis Mr Chan assumed a return on investment of 9%/year and that a lessee in the position of the appellant could expect to receive an annual rent of \$189 780 for the remainder of the term of the lease. This was equivalent to a net annual rent of \$117 338 after allowing \$22 774 for property tax and \$49 668 for head rent payable to HDB.

Collector's Valuation

(13) Ms Loh Chye Ling of the Inland Revenue Authority of Singapore testifying for the Collector referred to the following transactions:

	<i>Property</i>	<i>Tenure</i>	<i>Site Area GFA</i>	<i>Transaction Date</i>	<i>Price \$ \$/sm GFA</i>
1	1 Defu Lane 12 ("1DL12")	30 yrs from 1983 Apr 1	1 155.4sm 536sm	2001 May 3	580 000 1 082/sm
2	15 Defu Lane 12 ("15DL12")	30 yrs from 1983 Apr 1	1 604.9sm 996.9sm	2000 Oct 4	990 000 993/sm
3	10 Defu Lane 7 ("10DL7")	30 yrs from 1983 Apr 1	1 626.9sm 995.4sm	2000 Sep 25	800 000 804/sm
4	11 Defu Lane 6 ("11DL6")	30 yrs from 1980 Oct 1	2 091.6sm 462.6sm	2000 Jul 18	485 437 1 049/sm

Except for the first transaction these were the transactions referred to by Mr Chan. The property in the first transaction was also a site in DIP with a semi-detached factory building on it comprised in a lease from HDB reserving rent at the same rate and containing the same terms and conditions (other than as to the permitted use) as the other properties.

(14) Ms Loh identified the 11DL6 transaction as the most comparable. She said that the remainder of the term was the same as that of the acquired land and the GFA was the closest among all the reference properties. She applied the GFA rate of \$1 049/sm to the GFA of 35DL3 excluding the bottle cleaning area. She said the net GFA was 475.73sm from which she obtained the value of \$499 040.77. She then rounded this down to \$490 000 for the market value rather than rounding it off to \$499 000 or \$500 000. She offered no explanation for rounding it down other than that the site area of 11DL6 (2 091.6sm) was larger.

(15) At the commencement of the hearing the GFA was agreed at 497sm which included the bottle cleaning area which was agreed at 22sm. The net GFA would have been 475sm giving a value of \$498 275 but this was of course not known to Ms Loh when she prepared her valuation. In any case this would still be much closer to \$498 000 or \$500 000 than \$490 000.

(16) Ms Loh said that applying the GFA rate was appropriate as the land was held under a lease from HDB and the appellant had to pay ground rent. She said the appellant "did not own the land but owned the building" because it paid HDB a premium said to be for the building. She agreed that on the existing use basis the probable use was as a sauce factory and the probable buyer would buy for this purpose and such buyer would take the site area into consideration as well as the GFA. She agreed that both the GFA and the site area were important and should be "looked at".

Market Value

(17) This Board finds that the appellant has not shown by the direct comparison approach as stated in the petition of appeal and as adopted by Mr Chan that the market value of the acquired land as at the acquisition date was \$750 000 or anything else. No evidence was adduced as to the 40:60 apportionment of the transaction price and its application to the acquired land or to the GFA being equivalent to 60% of the site area. The materials before this Board do not show how the market evidence can be analysed to determine the market value of the acquired land in either versions of this approach and neither Mr Chan in his evidence nor Mr Tay in his submission was able to assist this Board.

(18) This Board further finds that the income approach adopted by Mr Chan is inappropriate in the circumstances of this appeal. He himself has identified 3 transactions as comparable and Ms Loh has further identified a fourth transaction all of which concern sites in DIP with semi-detached factory buildings comprised in 30 year leases granted by HDB reserving rent at the same rate and containing the same terms and conditions other than in regard to the permitted use in each case. Mr Chan has also assumed that the acquired land can be let at an annual rent (net after property tax and head rent) of more than \$117 000. There is no basis for such assumption and this Board finds accordingly. An alternative way of expressing the approach is to treat the market rent as exceeding the head rent by some \$117 000 but in this respect there is also no evidence at all.

(19) Ms Loh said in her valuation report of 27 December 2002 that she had valued the acquired land on the basis of its existing use. It was a term of the lease that the appellant would not use the acquired land (the demised premises) "otherwise than for manufacture of soya bean products and foodstuff except with the consent in writing of the lessor [HDB]" and it was agreed that at the acquisition date and no doubt for some time prior to that the appellant was using the acquired land for the manufacture of soya sauce and that about one-third of the site was covered by the factory building and of the remaining two-thirds of the site about half was directly employed in the manufacturing process as would be necessary for the manufacture of soya sauce. The existing use of the acquired land was use for the manufacture of soya sauce in which about half of the "open" site was directly employed apart from the factory

building on site. As Ms Loh said both GFA and site area were important and should be "looked at" but she has not done so.

(20) Ms Loh derived a value of \$499 040.77 (or \$498 275) after excluding the bottle cleaning area. She offered no explanation for rounding it down to \$490 000 other than that the site area of 11DL6 was larger as noted above. She valued the acquired land on the basis of its existing use but in her approach she omitted to "look at" the site area of the acquired land as she said she should. She has consequently omitted giving any consideration to the "open" site directly employed in the manufacturing process. She has only taken into consideration the GFA and has further excluded the bottle cleaning area. The GFA including the bottle cleaning area showed that the site was developed to a GPR of 0.32 only while the MPGPR was 2.5. In the decision of this Board the derived value should not have been rounded down at all having regard to all the circumstances.

(21) At the commencement of the hearing it was agreed that the market value of the acquired land determined by this Board on the evidence would not exceed the existing use price or the Development Baseline use price.

(22) In the premises this Board finds that:

(a) for the purpose of s 33(1)(a) the market value of the acquired land as at 28 April 2001 was the lowest;

(b) the market value of the acquired land as at 28 April 2001 was \$500 000; and

(c) the market value so found does not exceed the existing use price or the Development Baseline use price determined in accordance with s 33(5)(e).

Award

(23) Taking into consideration the market value as at 28 April 2001 this Board determines that the amount of compensation to be awarded for the acquired land is \$500 000. This exceeds the amount of the Collector's award and this Board orders that the Collector pay to United Overseas Bank Ltd as mortgagee of the acquired land at the acquisition date for the account of the appellant the excess together with interest at the rate of 6% per year from the date of taking possession to the date of payment.

Costs

(24) For the purpose of the inquiry held under s 10 the appellant made a claim of \$2 000 000. This was a claim made pursuant to the Collector's notice under s 8 and as it exceeds the amount awarded by this Board by more than 20% the appellant is not entitled to its costs.

Dated 2003 February 4

Commissioner of Appeals T Q Lim SC
Assessor Y C Wong
Assessor Muhd Faishal Ibrahim