

LAND ACQUISITION ACT

APPEALS BOARD

AB 1997.012

In the Matter of the Acquisition of Land at
Lot 603 of Town Subdivision 17

Between

Stage Development Pte Ltd (formerly known
as Stage Professional 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 \$1 800 000 in respect of the land at Lot 603 of Town Subdivision 17 be confirmed;

And

(2) That the Appellant pay the costs of the Collector of Land Revenue;

And

(3) That the deposit paid by the Appellant be paid out to the Collector of Land Revenue.

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 4 March 1996 a notification was published in the *Gazette* under s 3(1) of the Land Acquisition Act that the land at Lot 603 of Town Subdivision 17 was likely to be needed for a public purpose. On 28 June 1996 ("acquisition date") a declaration under s 5 in respect of the same land was published in the *Gazette*. The Appellant was then the proprietor of a leasehold estate in the acquired land for the unexpired residue of the term of 99 years from 7 August 1947 and is an interested person. As at the acquisition date the term would have had about 50 years more to run.

(2) At the inquiry held under s 10 the Appellant made a claim of \$10 000 000 for compensation for the acquired land. The Respondent ("Collector") found that the market value of the acquired land as at 1 January 1995 was \$1 800 000 and on 31 January 1997 made an award of compensation in that amount.

(3) The Appellant appeals against the award on the ground that is inadequate. In its petition of appeal it claims \$4 500 000 for the market value of the acquired land and \$800 000 for "re-location and re-installation costs". Mr Michael Hwang of counsel for the Appellant said that this was a claim for reasonable expenses under s 33(1)(e). No claim for any re-location or re-installation cost or for such expenses had at any time been made until the amended petition in this appeal was filed nearly a year after the original petition was filed.

Compensation

(4) 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 the 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;

...

(e) if, in consequence of the acquisition, [the person interested] is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to that change;

...

(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 Master Plan, whichever is the lower, after taking into account the zoning and density requirements and any other restrictions imposed under the Planning Act 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

(as it was in force as at the acquisition date)

(5) The notification under s 3(1) was within 6 months of its publication followed by the declaration under s 5 and it was not in dispute that the market value as at 1 January 1995 was the lowest for the purpose of s 33(1)(a). It was also agreed between the parties that as at the acquisition date the acquired land was zoned "Residential" under the Master Plan.

Acquired Land

(6) The acquired land comprises 960.2sm of land at Lot 603 of Town Subdivision 17 together with a single storey building on it known as 69 Boon Keng Road. On 18 January 1955 written permission was given under the Singapore Improvement Ordinance (repealed) to use Lot 264 of Town Subdivision 17 "for industrial purposes to contain a store". Lot 264 has since been subdivided into Lots 602 and 603. Lot 602 (with which this appeal is not concerned) is a strip of land measuring about 65sm at the North-West boundary of the acquired land.

(7) The Appellant purchased the acquired land for \$1 110 000 in 1991 and since then had carried on its business there until sometime after the award was made. As at the acquisition date the business of the Appellant was that of providing theatrical and entertainment services and marketing lighting and sound systems and for the purpose of its business the acquired land was used as a warehouse and showroom where sales were conducted.

Market Value

(8) Mr Tan Keng Chiam of Chesterton International Property Consultants Pte Ltd testifying for the Appellant referred to the following sales:

<i>Property</i>	<i>Site Area</i>	<i>Tenure</i>	<i>Date</i>	<i>Price</i>
1 8 JI Lembah Kallang	1 218sm	99 yrs fr 1 Jul 63	12 Jun 95	\$4 500 000 \$3 695/sm
2 5 Chang Charn Rd	1 161.5sm	99 yrs fr 1 Jan 58	3 Oct 94	\$4 500 000 \$3 874/sm

Both the properties were single storey detached factories. He made aggregate adjustments of +20.5% for 8 Jalan Lembah Kallang and +30.5% for 5 Chang Charn Road (including in both cases +10% for use) and derived values of \$4 275 266 and \$4 854 358. He concluded that the market value of the acquired land as at 1 January 1995 was \$4 550 000. He valued the acquired land on the basis of the use of the building on it for a "warehouse-cum-showroom". He assumed that a building which was permitted to be used as a warehouse could also be used for a factory but a building permitted to be used for a factory could not be used for a warehouse but there was no basis for such assumption. Mr Tan Keng Chiam obtained a site area rate of \$4 739/sm.

(9) Ms Rachel Ng of Inland Revenue Authority of Singapore testifying for the Collector referred to the following sales:

<i>Property</i>	<i>Site Area</i>	<i>Tenure</i>	<i>Date</i>	<i>Price</i>
1 16 JI Lembah Kallang	1 199.7sm	99 yrs fr 1 Nov 64	12 Feb 96	\$4 000 000 \$3 334/sm
2 7 JI Lembah Kallang	861.5sm	99 yrs fr 1 Jul 63	15 Jun 96	\$5 050 000 \$5 862/sm

Both the properties were 2 storey detached factories. She made aggregate adjustments of -46% (including -20% for time or date of transaction) for 16 Jalan Lembah Kallang and -68.5% (including -25% for time) for 7 Jalan Lembah Kallang (and including in both cases -11% for tenure and -5% for use) and derived values of \$1 728 792 and \$1 772 998. She concluded that the market value of the acquired land as at 1 January 1995 was \$1 800 000. She valued the acquired land on the basis of the use of the building on it for a "store" or a warehouse. Ms Ng obtained a site area rate of \$1 865/sm.

(10) Mr Tan Keng Chiam also referred to the transaction relating to 7 Jalan Lembah Kallang. He made aggregate adjustments of -31% (including -30% for time, -11% for tenure and +10% for use) and derived a value of \$3 883 797. Again he valued the acquired land on the basis of the use of the building on it for a "warehouse-cum-showroom". He obtained a site area rate of \$4 045/sm.

Increase In Value By Reason Of "Unlawful" Use

(11) Mr Tan Hee Joek of counsel for the Collector submitted that the market value of the acquired land should be assessed on the basis of the use of the building on it for a store only as Ms Ng has valued it and not for a warehouse and showroom or

warehouse-cum-showroom as Mr Tan Keng Chiam has valued it. He referred to s 33(5)(b) which provides:

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

...

(b) if the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court or is contrary to law ... the amount of that increase shall not be taken into account

(12) Mr Tan referred to the Appellant's application for change of use dated 8 November 1993 in which the Appellant stated that the then present use was for "store cum factory" and the evidence that the use to which the acquired land was put by the previous owner was for "bicycle shop and service centre for cars". He submitted that there must have been a "material change of use" after 8 November 1993 or after the Appellant purchased the acquired land in 1991 and the use which involved the making of the material change could be restrained or was contrary to law. He referred to s 10(1) of the Planning Act ("Planning Act (repealed)") as it was in force as at the acquisition date. It is apparent that neither of the two uses identified by Mr Tan involved use for a showroom or for a showroom in conjunction with a warehouse in a warehouse-cum-showroom.

(13) Section 10 of the Planning Act (repealed) provides:

(1) No person shall, without the written permission of the competent authority, develop any land.

...

(8) any person who contravenes subsection (1) ... shall be guilty of an offence

and s 12 provides:

(1) In this Part, except where the context otherwise requires, "develop" means to carry out any building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or land:

...

(2) For the avoidance of doubt, it is hereby declared that for the purpose of this section -

...

(c) the use for other purposes of a building or part of a building originally constructed as a dwelling house involves a material change in the use of the building.

The Planning Act (repealed) came into force on 1 February 1960 and "this Part" referred to in s 12 includes s 10.

(14) There is no evidence that the building on the acquired land was originally constructed as a dwelling house or that at any time at all it had been used as such or was fit for use as such. The written permission granted in 1955 was to use the land "for industrial purposes to contain a store" and the building was constructed after the written permission was granted. On the evidence this Board finds that the building on the acquired land was not originally constructed as a dwelling house and accordingly its use by the Appellant for a "warehouse-cum-showroom" does not involve a material change for the purpose of s 12(2)(c) of the Planning Act (repealed).

(15) There is no evidence that the building was or was not used for a showroom or warehouse-cum-showroom at any time before the Planning Act (repealed) came into force but Mr Tan submitted that it was not "crucial" to show the use to which it was put as at 1 February 1960 or immediately before that date and that as long as there was an "unauthorised material change of use" since that date the "unauthorised use" should not be taken into account to determine the market value. Presumably "unauthorised material change of use" was a reference to a change of use for which written permission under s 10(1) of the Planning Act (repealed) had not been granted and "unauthorised use" was a reference to the use to which the building or land was put following the change of use and his submission was that the use in that manner could be restrained by a court or was contrary to law for the purpose of s 33(5)(b) of the Land Acquisition Act. He referred to *Chuan Hoe Engineering Pte Ltd v PP* [1996] 3 SLR 544.

(16) In the *Chuan Hoe Engineering Pte Ltd* case written permission was granted in 1951 to develop a number of shophouses and the second storey of one of these was only approved for residential purposes. It was in fact used as a store and no written permission had been granted for this use or change of use and the court below found that it had been so used since before 1960. The issue was "whether the change of use in this case, *which was made before the Act came into effect*, could be said to be 'in contravention of s 10' of the Act" (italics added). See at p 549. There was clearly no "making of any material change" while the Act was in force and consequently no contravention of s 10 of the Act for making any material change.

(17) The question in this case is whether the value of the acquired land is increased by reason of its use in a manner which could be restrained by any court or which was contrary to law. (For convenience the use of the building or the land in either manner will be referred to as "unlawful use".) Mr Tan Keng Chiam allowed +10% for the difference between use for a factory and use for warehouse-cum-showroom and Ms Ng allowed -5% for the difference between use for a factory and use for a store or warehouse only. Curiously neither of them valued the acquired land on the alternative basis i.e. Mr Tan Keng Chiam on the basis of use for warehouse only and Ms Ng on the basis of use for warehouse-cum-showroom but on the evidence it appears that the value of the acquired land is increased by reason of its use for a showroom or for a warehouse-cum-showroom. The question then is whether its use for either purpose was an unlawful use.

(18) There is no evidence as to the use to which the land or the building on it was put ("pre-existing use") immediately before the Planning Act (repealed) came into force. It could have been used for a store or warehouse. It could have been used for a warehouse and also for a showroom or a showroom in conjunction with a warehouse in a warehouse-cum-showroom. That was more than 40 years ago and the ownership of the land has since changed and there were occupiers who had used it other than the previous owner.

(19) It might have been an offence to have used it for one of these purposes under the Singapore Improvement Ordinance (repealed) or under some other ordinance to which this Board's attention has not been drawn but there is no provision in the Planning Act (repealed) to the effect that it was an offence to have so used it before 1 February 1960 or to have continued to so use it after that date. If the pre-existing use included use as a showroom and such use continued into the period current as at the acquisition date then there could not be a change in use after 1 February 1960 and such use will not be an unlawful use for the purpose of s 33(5)(b) of the Land Acquisition Act. It was not contrary to law and there is no reason to think that it could be restrained by any court.

(20) Mr Lim Chek Meng was the managing director of the Appellant when it made the application for the change of use and he signed the application form in November 1993 which contained the statement as to the use of the land. He testified that he did not notice the statement then and that "the building [had] been a showroom cum warehouse". This Board finds that the Appellant did use the building on the land for a showroom in conjunction with a warehouse or as a warehouse-cum-showroom notwithstanding the statement in the application.

(21) The evidence is that Hock Swee Leong & Co were the last occupiers of the acquired land before the Appellant bought it and they carried on the business of selling bicycles and motor car tyres and batteries there. Mr Lim Chek Meng said that he lived down the road and visited the premises and had even bought a bicycle from them. He said he observed that they kept stocks of tyres and batteries within the premises. These goods must have been displayed for potential customers to see along with the bicycles that they dealt in. Part of the building must have been used for the display of goods. It is not disputed that they would have used the building on the land for the storage of their stocks as well and this Board finds that Hock Swee Leong & Co did use the building on the land for a warehouse-cum-showroom.

(22) There is no evidence that there has been a change in use after the Planning Act (repealed) came into force on 1 February 1960 and this Board finds that it has not been proved that the use of the acquired land or the building or any premises on it for a showroom or for a showroom in conjunction with a warehouse in a warehouse-cum-showroom is a use in a manner which could be restrained by any court or which is contrary to law.

(23) As pointed out above Ms Ng allowed -5% for the difference between a factory and a warehouse but did not say what she would have allowed for the difference between a factory and a warehouse-cum-showroom. Mr Tan Keng Chiam allowed +10% for such difference but in doing so he assumed incorrectly that a building permitted to be used for a warehouse was also permitted to be used for a factory.

Some part of the allowance must be discounted and the other factors referred to by both Ms Ng and Mr Tan Keng Chiam will also be taken into consideration. On the evidence this Board finds that the market value of the acquired land as at 1 January 1995 would have been \$3 000 000 but for the effect of s 33(5)(e) which will now be considered.

Master Plan Use Price

(24) s 33(5)(e) provides that for the purposes of s 33(1)(a) the market value is deemed not to exceed the lower of two prices which a bona fide purchaser might reasonably be expected to pay for the land. The first is the price expected to be paid "on the basis of its existing use" ("existing use price"). The second is the price expected to be paid "in anticipation of the continued use of the land for the purpose designated in the Master Plan" ("Master Plan use price"). In the circumstances of this case the existing use price is not different from the market value (apart from the effect of this provision) and would be \$3 000 000 and it remains to find the Master Plan use price.

(25) "Master Plan" as defined in the Planning Act (Repealed) includes the written statement. See s 2. Para 8.1 of the Written Statement (To Accompany the Revised Master Plan 1985) which was current as at the acquisition date provides:

8.1 Within the zones shown on the Maps, it is intended that the Competent Authority shall control development in such a manner as to preserve or promote the character of the areas as indicated by the notations on the Maps or on any further development scheme plans as approved from time to time. It is intended that such control shall be exercised by the Competent Authority in accordance with Table 14 in the Appendix to this Statement which indicates, for the various zones, the purpose of which it is intended that:-

- (i) buildings/land may be used;
- (ii) buildings/land may be used only subject to special consideration by the Competent Authority;
- (iii) buildings/land may not be used.

(26) Table 14 in the Appendix to the Written Statement indicates that for Residential zone the "purpose for which buildings and lands may be used" ("Category 1") is limited only to Detached House, Semi-detached House and Terrace House while the "purpose for which buildings and lands may be used subject to special consideration" ("Category 2") includes Residential Flat, Shop and Petrol Filling Station and Auto Service and the "purpose for which buildings and lands may not be used" includes Warehouse and Godown. No other categories of purposes are indicated in Table 14 and it appears that these three categories are the three categories referred to in Para 8.1.

(27) To "designate a purpose" for the use of land is to indicate a purpose for its use and "use of the land for the purpose designated in the Master Plan" means use of the land for a purpose indicated in the Master Plan. The Master Plan indicates three categories of purposes. Category 3 is clearly inappropriate in the context of an

inquiry into the price to pay for land to use for that purpose. That leaves only Category 1 and Category 2 as purposes designated in the Master Plan for the use of land.

(28) "in anticipation of the continued use" means in anticipation of the use for the purpose designated in the Master Plan continuing or remaining unchanged. A price that a purchaser may pay in anticipation of any change of zoning or change of purpose for which land may be used is excluded for the purpose of determining the upper limit of the market value for the purposes of s 33(1)(a). This is consistent with the exclusion provision at the end of s 33(5)(e).

(29) At the hearing before this Board Mr Tan Keng Chiam said that the Master Plan use price was \$4 500 000. Ms Rachel Ng said that it was \$912 000. Both of them estimated the Master Plan use price as at 1 January 1995 on the basis of use of the acquired land for the purpose of residential flats. There is no evidence of the Master Plan use price on the basis of use for any other purpose such as shops or a petrol filling station or for any other purpose whether in Category 1 or Category 2. The evidence clearly is that the probable use of the land is for residential flats and on the evidence this Board finds accordingly.

(30) In his written submissions Mr Hwang stated that having made the award of compensation on the basis of the existing use of the acquired land the Collector had made an irrevocable determination that the existing use price was lower than the Master Plan use price and was estopped from changing the basis of his valuation. He referred to Wade, *Administrative Law* (8th Ed) p 236 where there is a reference to certain cases which "illustrate situations in which the court will hold administrative decisions to be irrevocable" and to one of those cases namely *Re 56 Denton Road, Twickenham* [1953] Ch 51.

(31) In *Re 56 Denton Road, Twickenham* Vaisey J said at pp 56, 57:

... the plaintiff's counsel offered for my acceptance the following proposition: that where Parliament confers upon a body such as the War Damage Commission the duty of deciding or determining any question, the deciding or determining of which affects the rights of the subject, such decision or determination made and communicated in terms which are not expressly preliminary or provisional is final and conclusive, and cannot in the absence of express statutory power or the consent of the person or persons affected be altered or withdrawn by that body. I accept that proposition as well founded and applicable to the present case.

(32) The War Damage Act 1943 provided for claims to be made by the owner of property damaged by enemy action and for payment to be made on a "total loss" basis or a "cost of works" basis and for the War Damage Commission to determine the kind of payment to be made. The Commission was also empowered to make a cost of works payment in certain cases notwithstanding that the damage involved total loss. A claim having been made the Commission first communicated its determination to the owner that a cost of works payment would be made and later purported to revoke its determination and to make a total loss payment which was substantially less. It was held that by the first determination the Commission had determined finally and irrevocably that the damage suffered by the owner was one for

which a cost of works payment ought to be awarded. There was no provision for an appeal under the 1943 Act.

(33) *Re 56 Denton Road, Twickenham* is clearly distinguished. It was for the Commission to determine what kind of payment to make. It had power to award a cost of works payment in certain cases even if the damage involved total loss. It had made a determination and there was no provision enabling it to review its own determination or to alter or withdraw it. It was for the Commission to make the determination and it had done so and there was no provision for an appeal from its determination.

(34) The scheme under the Land Acquisition Act is quite different. Under s 10 the Collector inquires into the value of the acquired land and certain other matters and after the conclusion of the inquiry makes an award of the "compensation which in his opinion should be allowed for the land". The award will also deal with other matters which are not relevant for the present purpose. s 15 provides that in determining the amount of the compensation the Collector shall take into consideration the matters mentioned in s 33 and shall not take into consideration the matters mentioned in s 34. Section 11(1) provides:

The Collector's award shall, except as hereinafter provided ... be final and conclusive evidence as between the Collector and the persons interested ... of the ... value of the land

(35) Section 23 provides that any interested person who is aggrieved by an award made under s 10 may appeal to this Board and s 27(3) provides:

The Board may, after hearing an appeal, confirm, reduce, increase or annul the award or make such order thereon as to it may seem fit.

Section 33(1) which has been set out above provides for the matters to be taken into consideration by the Board in determining the amount of compensation and s 34 provides for the matters which shall not be taken into consideration.

(36) Section 35 provides:

(1) Where the [Appellant] has made a claim to compensation ... the amount awarded to him shall not exceed the amount so claimed or be less than the amount awarded by the Collector under s 10.

(2) Where the [Appellant] has refused to make such a claim, or omitted without sufficient reason ... to make such a claim the amount awarded by the Board may be less than and shall in no case exceed the amount awarded by the Collector.

(3) Where the [Appellant] has omitted for a sufficient reason to make such a claim, the amount awarded to him by the Board may be less than or may exceed the amount awarded by the Collector.

The compensation awarded by the Board may be less than that awarded by the Collector where the appellant has omitted to make a claim whether or not he has a sufficient reason but in this case the Appellant has made a claim and subsections (2) and (3) do not apply.

(37) Where there is an appeal the award of the Collector is clearly not final and not conclusive evidence of the value of the acquired land as between the parties under s 11. The Board has to determine the amount of the compensation and for this purpose it has to take into consideration the market value under s 33(1)(a) (and the other matters set out in paras (b) to (f) of s 33(1)) and the effect of other provisions such as s 33(5)(b) and s 33(5)(e). The Board has to find the existing use price and the Master Plan use price (or the Development Baseline use price where the acquisition date is 1 April 1998 or a date after that) and to find the market value of the acquired land which shall be deemed not to exceed the lower of these two prices.

(38) It would be wholly inconsistent with the scheme of the Act and these provisions in particular to hold that the Collector's determination that the existing use price is lower than the Master Plan use price (if he has in fact made such a determination) is irrevocable and thus binding on this Board or that he is estopped from changing the basis of his valuation. It is not even his valuation. He takes into consideration the market value. The valuation is that of an expert witness whose evidence he has received for the purpose of his inquiry. The circumstances are in material respects different from those in *Re 56 Denton Road, Twickenham* and in the other cases referred to in *Wade, Administrative Law* (8th Ed). In the decision of this Board it is open to this Board to find if the evidence so warrants it that the Master Plan use price is lower than the existing use price and that the market value shall not exceed the Master Plan use price.

(39) Mr Tan Keng Chiam referred to sales of freehold development sites in Geylang and derived a plot ratio rate of \$7 110/sm. He made aggregate adjustments of -35% for certain differences including an adjustment of -25% for tenure to convert the rate for freehold land to that for leasehold land with about 50 years left as at the acquisition date. He derived a plot ratio rate of \$4 622/sm for the acquired land which has a site area of 960.2sm and for which he attributed a plot ratio of 2.8 and concluded that the capital value was \$4 500 000. The underlying assumption is that the acquired land will be developed for residential flats and that the residential flats will have a certain market value. There is no direct evidence as to the market value of a leasehold residential flat with about 50 years left (or less when the development is completed). -25% was what Mr Tan Keng Chiam obtained by looking up what is commonly referred to as Bala's Table.

(40) Mr Tan Keng Chiam also used an alternative approach. He used the residual method. He assumed a development for residential flats with an aggregate net floor area of 2 262.423sm with a market value of about \$5 382/sm which after allowing for development and other costs and charges and a profit of 10% would yield a residual land value of \$4 424 679. He assumed that the leasehold term would be extended to 99 years from the date of the development and he allowed a charge for it. Under cross examination his evidence was:

Q ... if the Government does not permit such top-up, would your analysis still hold – would any developer conceivably develop this as residential apartments?

A No, in a general sense, no.

If the leasehold term is not extended there would be less than 50 years left and what a bona fide purchaser might reasonably be expected to pay for the land might well depend on his assessment of the likelihood of a "top-up".

(41) Ms Ng referred to a sale of a freehold development site at St Francis Road from which she derived a plot ratio rate of \$2 094/sm. She made aggregate adjustments of -75% for certain differences including an adjustment of -60% for tenure and derived a plot ratio rate of \$523/sm. Assuming the maximum achievable plot ratio was 1.8 and making an adjustment of +10% for this she derived a plot ratio rate of \$576/sm. She concluded that the value was \$995 058. Using data obtained from the sale of a development site at Moonstone Lane she estimated a value of \$828 380 giving an average of \$912 000 from the two transactions. The underlying assumption here is the same - that the acquired land will be developed for residential flats and that the residential flats will have a certain market value.

(42) Ms Ng made an allowance for tenure of -60% which she derived from an analysis of sales of two leasehold properties in Jalan Uji with 51 and 52 years left and sales of two freehold properties in nearby Chestnut Avenue. All the four properties were single storey detached residential houses. She was unable to find sales of leasehold residential flats with comparable remaining years left.

(43) Assuming that the maximum permissible plot ratio of 2.772 could be achieved Ms Ng said that she derived a value of \$1 253 774 from the St Francis Road transaction. This transaction involved a development achieving a plot ratio of 2.772 also but she made an adjustment of -10%. She explained that in making this adjustment she took into account the higher construction costs per unit of floor area and the lower ratio of net saleable area to gross floor area resulting from such a development of the acquired land. From the Moonstone Lane transaction she derived a value of \$1 084 350 for an average of \$1 169 000 from the two transactions.

(44) Ms Yap Pek Ching a Planner with Urban Redevelopment Authority testifying for the Collector said that there was no height restriction for the site of the acquired land. She also said that for a 12 storey building a buffer of 7.6m from Boon Keng Road and Bendemeer Road and a set-back of 8m from the boundary on the "landward" side were required. It is apparent that this would leave a footprint of only about 144sm or a maximum gross floor area of 1 728sm which would achieve a gross plot ratio of only about 1.8. It is apparent that to achieve a gross plot ratio of 2.772 which is the maximum permitted for that site it would have to be developed to a gross floor area of about 2 662sm or to a height of 18 storeys on a footprint of 144sm or 18 small flats one on each floor. This would result in higher construction costs and a lower ratio of net saleable area to gross floor area as Ms Ng said.

(45) This Board finds on the evidence:

- (a) that the Master Plan use price determined in accordance with s 33(5)(e) is lower than the existing use price determined also in accordance with s 33(5)(e);

(b) that the Master Plan use price as at 1 January 1995 does not exceed \$912 000 and accordingly for the purposes of s 33(1)(a) the market value of the acquired land as at 1 January 1995 shall be deemed not to exceed \$912 000.

Reasonable Expenses

(46) The Appellant's claim is for reasonable expenses incidental to a change of place of business under s 33(1)(e) and there is no claim for damage for what may be conveniently called injurious affection under s 33(1)(d) or for any other loss, expense or damage. No part of the cost or expenses claimed has been paid or incurred by the Appellant and this is not in dispute. Mr Robert Chan of Jones Lang LaSalle testifying for the Appellant said in his report dated 14 March 2001 that "taking into consideration the monumental task in dismantling, moving, re-installing the equipment, as well as the renovation and preparation of the intended destination premises" he was of the opinion that the cost of re-siting the equipment for an identical business would be \$800 000.

(47) Mr Chew Guan Seng Phillip testifying for the Collector said that he inspected the acquired land with a view to providing a quotation on the cost of re-locating the business of the Appellant to a new place of business. Including "dismantling of the equipment on site by qualified technicians, packing, transportation to a new place of business, and re-installing of the equipment by qualified technicians" he estimated that the re-location cost should not exceed \$95 000. He referred to a quotation he received.

(48) There is no evidence that any part of the equipment referred to by Mr Chan and Mr Chew has been dismantled or transported to any premises for the continuation or resumption of the business of the Appellant or for any other purpose at all. There is no evidence of the market value of the very large number of items comprised in the equipment. There is no evidence that any consideration has been given as to which of the items should be transported or which should be sold or otherwise disposed of.

(49) The award was made on 31 January 1997 and the compensation was paid to the Appellant as to 20% on 23 June 1997 and as to the balance on 24 September 1998. Some time between the payment of the balance and 9 October 1998 the Collector took possession of the acquired land and offered the Appellant a temporary occupation licence from 9 October 1998 to 31 July 1999 at \$1 500 a month. The Appellant did not accept the offer and did not pay for the occupation of the acquired land because it could not afford to pay \$1 500 a month for rent or licence fees although it left its property there and retained the keys to the building on it.

(50) The last annual return filed by the Appellant in compliance with the Companies Act was dated 12 June 1997 which was stated to be the date of its last annual general meeting at which its financial statements made up to 30 June 1995 were laid before its shareholders and no financial statements for any period since that date have been prepared and the Appellant is in default of the provisions of the Companies Act in relation to its financial statements among other matters.

(51) The only shareholders of the Appellant are Mr Lim Chek Meng who holds 100 000 shares of \$1 each and his wife who holds 50 000 shares of \$1 each. Mr Lim

Chek Meng who was the managing director of the Appellant is an undischarged bankrupt and has ceased to be a director. The only remaining director is his wife and there is no evidence that another director has been appointed.

(52) Mr Lim Chek Meng cannot be a director or take part in or be concerned in the management of the Appellant without leave of court or the written permission of the Official Assignee. He has not obtained any such leave or written permission and there is no evidence that he has made any application for such leave or written permission.

(53) Testifying for the Appellant Mr Lim Chek Meng said that the Appellant made a profit of about \$200 000 in 1996 and about the same level of profit in 1997 but from 1998 it has suffered losses at increasing levels each year. When he was giving evidence he said he did not know the date to which the financial statements of the Appellant were made up and he was referring to the calendar year in each case. From October 1998 the Appellant employed no staff.

(54) Mr Lim Chek Meng also said that the liabilities of the Appellant included more than \$1 500 000 still due to a bank after it had been paid \$1 800 000 which the Appellant had previously received for compensation. The bank is a secured creditor. The liabilities are further secured by personal guarantees of Mr Lim Chek Meng and his wife. He said that the Appellant also owed "a few hundred thousand dollars" to others and its assets included "a few hundred thousand dollars" in debts due to it. He said a number of the debtors were overseas based and were unable to pay in view of the regional economic crisis.

(55) The last audited statutory financial statements show that for the financial year ended 30 June 1995 the Appellant made a modest profit of about \$16 000 compared to a loss of about \$65 000 for the previous year and the accumulated losses amounted to about \$189 000. As at 30 June 1995 the current liabilities exceeded the current assets by about \$538 000. The current assets amounted to about \$2 237 000 and included more than \$1 000 000 as "amount due from directors" which Mr Lim Chek Meng said was the aggregate of the debts due from him and his wife. The fixed assets amounted to about \$1 106 000 and included substantially the Appellant's interest in the acquired land and the non-current liabilities amounted to about \$607 000.

(56) As at 30 June 1995 the issued capital of the Appellant had been totally lost and its total liabilities exceeded its total assets. This was so even without making any provision for the "amount due from directors" of more than \$1 000 000 and the amount due from trade debtors. Without additional capital or other financial support the Appellant was insolvent and was in no position to continue its business.

(57) There is no evidence that any further capital or other financial support is or has been made available to the Appellant. A creditor for about \$70 000 filed a petition on 23 May 2000 for the compulsory winding up of the Appellant on the ground that it is insolvent and the petition is pending. A bank creditor is still owed more than \$1 500 000 after it has been paid the amount of the compensation awarded by the Collector for the acquisition. Mr Lim Chek Meng and his wife are guarantors and he is an undischarged bankrupt and they owe the Appellant more than \$1 000 000.

(58) The Appellant has not secured premises for the continuation or the resumption of its business or for any business at all. In his report dated 14 March 2001 Mr Chan referred to certain premises at Central Warehouse to which the Appellant was proposing to move. The Appellant has not ascertained if its business existing as at the acquisition date namely that of providing theatrical production and entertainment services and marketing of lighting and sound systems can be carried on at the Central Warehouse premises and whether the Central Warehouse premises can be used as a warehouse and showroom where sales are conducted. There is no evidence that such business can be carried on there or that the premises can be used for that purpose.

(59) Mr Chan said that the rent for the Central Warehouse premises was \$22 000 a month (at about \$2.50 per square foot per month) or \$264 000 a year. This is well in excess of the yearly profit for each of the last two years when the Appellant made a profit as Mr Lim Chek Meng claimed. He said that the Appellant could afford to pay \$22 000 a month to rent premises for it to carry on business but there is no evidence of any additional capital or other financial support being available to the Appellant for it to do so.

(60) This Board finds on the evidence:

- (a) that the Appellant has not changed its place of business;
- (b) that by the acquisition date the Appellant was unable to carry on its business and it has no real intention of doing so and there is no real likelihood that it will resume its business;
- (c) that by about October 1998 the Appellant's business which was until some time previously carried on at the acquired land was effectually extinguished;
- (d) that the Appellant has no real intention of changing its place of business and there is no real likelihood that it will do so;
- (e) that the Appellant has no real intention of incurring any part of the cost or expenses claimed or any other cost or expenses as incidental to a change of place of business and there is no real likelihood that it will do so;
- (f) that a reasonable businessman in the position of the Appellant would not secure the Central Warehouse premises or any other premises at about the same rent to resume the business there or relocate his business there and if the cost or expenses claimed by the Appellant were incurred as incidental to the change of place of business they would not be reasonable; and
- (g) that the Appellant is not compelled to change its place of business in consequence of the acquisition and the cost and expenses claimed are not incidental to such change.

Decision

(61) Taking into consideration the Master Plan use price of the acquired land determined in accordance with s 33(5)(e) and the market value of the acquired land as at 1 January 1995 which is deemed not to exceed the Master Plan use price so determined and the claim of the Appellant in respect of reasonable expenses under s 33(1)(e) this Board finds on the evidence that the Appellant has not proved that the award is inadequate. The amount awarded by the Collector under s 10 is \$1 800 000. In accordance with s 35(1) this Board confirms the award of compensation in the same amount.

Dated 2001 August 21

Commissioner of Appeals T Q Lim
Assessor Keith A K Tay
Assessor Assoc Prof Lim Lan Yuan