

LAND ACQUISITION ACT

APPEALS BOARD

AB 2001.081

In the Matter of the Acquisition of Land at
Lot 2151pt of Mukim 24
28 Sims Avenue

Between

Unitra Jaya Trading 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 \$243 000 in respect of the land at Lot 2151pt of Mukim 24 be increased to \$248 000;

And

(2) That the Collector of Land Revenue pay to 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* of a declaration made under s 5 of the Land Acquisition Act ("s 5 declaration") that the land at Lot 2151pt of Mukim 24 together with the building unit at 28 Sims Avenue ("acquired land") was required for a public purpose namely Proposed Kallang-Paya Lebar Expressway. The appellant was then the proprietor of the acquired land as to the building unit ("28") for the residue of a lease for 999 years from 1 January 1962 and as to Lot 2151 for an estate in fee simple as to one undivided 6th share and is a person interested.

(2) For the purpose of the inquiry held under s 10 the appellant submitted a claim of \$700 000 for compensation. The respondent ("Collector") found that the market value of the acquired land as at 28 April 2001 was \$243 000 and on 14 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 award is grossly inadequate. It also says that the market value of the acquired land should be determined on the basis of its use "as an office and for commercial purposes and not a flat". It was not disputed that at the acquisition date 28 was used as a shop for the sale of tyres and accessories for motor vehicles and that written permission for its use as a trading office lapsed on 15 July 1996. It was also not disputed that Lot 2151 was zoned residential in the Master Plan and that the use for the purpose designated in the Development Baseline was residential (non-landed residential building) and that for the purpose of s 33(5)(e) the Development Baseline use price was lower than the existing use price. In the circumstances Mr Pillai of counsel for the appellant quite properly conceded that the market value should be determined on the basis of residential use for a flat and other claims made in the petition of appeal were not proceeded with.

Acquired Land

(4) Lots 2150 and 2151 are adjacent plots of land on the South side of Sims Avenue between Lorong 5 and Lorong 7 Geylang. On site is a 3 storey building with 24/A/B and 26/A/B on Lot 2150 and 28/A/B and 30/A/B on Lot 2151. The acquired land consists of 28 which is an intermediate residential flat on the first storey of this building and an undivided one 6th share in Lot 2151. The site area of Lot 2151 is 387.2 sm and the floor area of 28 is 105.9 sm. The site area of Lot 2150 is 402.8 sm.

(5) The 3 storey building is served by a walkway in front. A yard at the back opens to a road reserve with access from Lorong 5 and Lorong 7. Lots 2150 and 2151 (and the adjacent Lot 966) are set back from the main line of Sims Avenue and this provides a service road in front of the 3 storey building. Between the service road and Sims Avenue is a public walkway.

(6) The acquired land is about 5km from the city centre at Collyer Quay. The locality is largely a mix of private residential apartments, HDB flats, industrial buildings and shop houses. It is in an area well known for the many eating houses and food centres a large number of which operate through the night or much of it. Sims Avenue is well served by a public bus system and Kallang MRT Station is nearby.

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

There is no evidence of a s 3(1) notification having been 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 states:

2(ii) The sum awarded by the Collector is grossly inadequate....

2(iv) ... The appellant contends that the value awarded by the Collector for the said "flat" in the vicinity is too low.

What this Board has to find is the market value of the acquired land as at the acquisition date not in any case exceeding the Development Baseline use price.

Appellant's Valuation

(9) Mr Ho Chi Chew Paul of CKS Property Consultants Pte Ltd in his valuation report dated 20 June 2001 stated that he was of the opinion that the value of the acquired land was \$700 000 but it was clear that he had conducted his valuation on the basis that 28 was a 1st storey shop unit in a 3 storey building with apartment units on the upper storeys. In his letter to the appellant's solicitors dated 24 October 2002 he stated that the "revised value based on the subject property being a residential apartment as at 28 April 2001 [was] \$350 000".

(10) At the hearing Mr Ho testifying for the appellant said that he adopted the comparison approach and he referred to the following transactions:

	<i>Location</i>	<i>Contract Date</i>	<i>Price Floor Area Rate</i>	<i>Floor Area</i>
1	134A Sims Ave ("134A")	5 Jun 2001	\$280 000 \$2 171/sm	129sm
2	134B Sims Ave ("134B")	15 Mar 2001	\$315 000 \$2 442/sm	129sm
3	136A Sims Ave ("136A")	25 Jun 2001	\$270 000 \$2 596/sm	104sm

134/A/B and 136/A/B are intermediate adjacent units in a 3 storey walk-up building on the same street as the acquired land between Lorong 17 and Lorong 19 Geylang. From *Singapore Street Directory* (2000/2001) these properties appear to be about 400 m to the East of the acquired land. On the upper storeys are residential flat units including all the 3 units referred to. On the 1st storey below 134A and 134B is a unit used as an eating house and on the 1st storey below 136A is a shop unit.

(11) Mr Ho said that he made the following adjustments in respect of 134A: +4.62% for size, +20% for location and +5% for storey level; in respect of 134B: +4.62% for size, +20% for location and +10% for storey level; and in respect of 136A: +20% for location and +5% for storey level. He derived adjusted floor area rates of \$2 861/sm from 134A, \$3 371/sm from 134B and \$3 267/sm from 136A and he adopted a floor

area rate of \$3 305/sm. Applying this to the acquired land with a floor area of 105.9sm he said that the market value was \$350 000.

(12) Mr Ho said that he had done a regression analysis on apartments based on floor area. He did not have it with him but he referred to sales transacted between July and December 2001 of 8 apartments at Sims Residences a multi-storey residential apartment building at Lorong 39 Geylang. Leaving aside the differences in storey level and transaction dates these transactions show that for floor area down from 131sm to 110sm the floor area rate was up from \$4 420/sm to \$4 573/sm which would support an adjustment of about +3.5%. Having regard to this Mr Ho said that he would revise his adjustment for size to +3.5% in place of +4.62%.

(13) Mr Ho said that in comparison with the location of the acquired land the location of 134/A/B and 136/A/B was "more congested" and there were "a lot of shops below". He said there was "a lot of traffic" and there was a "parking problem". He said the acquired land had a "car park in front" and an "open yard and access to footpath behind". He said that the adjustment of +20% for location was based on his judgment. He had not carried out an analysis to compare prices and he had not looked at any transactions to show the difference.

(14) Under cross examination Mr Ho said that he knew about a road line that adversely affected the acquired land but not that it affected it in its entirety as shown on the road line plan. If it was adversely affected to this extent then he would take 10% off his valuation. The road line plan shows that the whole of Lots 2150 and 2151 would be partly in the tunnel which is part of an expressway and partly in the expressway near the entrance to the tunnel. Under further cross examination he agreed that the cost of converting 28 for residential use at April 2001 prices would be "probably \$20 000 to \$25 000 or up to \$30 000". Mr Ho was not cross examined as to the 136A transaction.

Collector's Valuation

(15) Ms Chee Hok Yean of Jones Lang LaSalle Property Consultants Pte Ltd testifying for the Collector referred to her valuation report dated 1 November 2002. In her report she also referred to the same transactions in respect of 134A and 134B as Mr Ho but she made no adjustments for any differences. It appears that she adopted the average of the floor area rates derived from the two transactions and applied it to the floor area of 28 and took off the odd amount of not much over \$1 000 for storey level and determined that the market value as at the acquisition date was \$243 000. She was not cross examined and the appellant's case was not put to her at all by counsel for the appellant. In answer to this Board she said that she had no empirical evidence as to the difference in the floor area rate for size and would not consider an adjustment of +3.5% but if she made an adjustment she would adopt +2% at most. She said -\$1 000 for storey level was "too minor a difference to measure".

Market Value

(15) Ms Chee referred to the transactions in respect of 134A and 134B as did Mr Ho. Mr Ho also referred to the 136A transaction but Ms Chee did not and she has given no explanation for this. 136A is right next to 134A and is on the same storey level.

The floor area of 136A is 104sm while the floor area of 28 is 105.9sm which is so close as to require no adjustment for size. 134A and 134B both have floor areas of 129sm for which difference she would allow up to +2% if she made an adjustment. 136A was transacted within 2 months of the acquisition date. On the evidence before this Board I see no reason why the 136A transaction cannot be at least as good a comparable as the 134A and 134B transactions. The floor area rate derived from the 136A transaction is \$2 596/sm while the floor area rates derived from the other two transactions are significantly lower at \$2 171/sm and \$2 442/sm and if \$2 596/sm is taken into account and applied in the same way as Ms Chee has done with the floor area rates derived from the other two transactions then the market value would have been higher than \$243 000.

(16) Ms Chee has referred to the 134A and 134B transactions only but she would allow up to +2% if she made an adjustment. Having regard to the significant difference in the floor area rates between the 134A transaction and the 136A transaction I think she would have made an adjustment of +2% and I find accordingly. On the evidence adduced I find that an adjustment of +2% should be made to the floor area rates derived from the 134A and 134B transactions. This adjustment will give an average floor area rate of \$2 353/sm and a value of about \$249 183 when it is applied to the floor area of 28. Ms Chee took off an amount for the difference in storey level that was "too minor to measure" and on the evidence I would take an amount off to obtain a value of \$248 000.

(17) Mr Rashid Gani of counsel for the Collector submitted that the cost of converting 28 for residential use estimated at up to \$30 000 by Mr Ho should be taken into account. His argument is that the price which a bona fide purchaser might reasonably be expected to pay for the acquired land in anticipation of the continued use of the land for the purpose designated in the Development Baseline would reflect such cost. However there was no direct evidence to support his submission. Mr Pillai of counsel for the appellant submitted that such cost ought not to be taken into account.

(18) In para 2.00 of Ms Chee's valuation report dated 1 November 2002 she stated that her instructions were:-

... to determine the market value of the subject property as at April 28, 2001, the date of Gazette made under Section 5 of the Land Acquisition (Amendment) Act 1995, or the market value as at January 1, 1995, whichever is lower.

and in para 5.00 she stated:-

TOWN PLANNING

Master Plan Zoning (1998 Edition)	:	Residential/Institutional with a plot ratio 3.0.
Development Baseline	:	802.2784 sq.m. (Group B2)
Planning Application	:	Approval was granted on April 15, 1958 for use as flat unit. Subsequent temporary

permission for change of use to an office has lapsed.

I think Ms Chee had in mind the Act as it was in force at the acquisition date and the reference in her report to s 5 of the Land Acquisition (Amendment) Act 1995 was intended to be a reference to s 5 of the Land Acquisition Act as it was in force at that date. The reference to the Development Baseline in s 33(5)(e) came about only in 1998.

(19) In para 6.00 of the report Ms Chee stated:

EXISTING IMPROVEMENTS

As at the date of inspection on July 20, 2001, the subject property comprises a flat unit, used as a shop unit, located on the first storey of a 3-storey walk-up commercial-cum-residential building, completed circa 1960s.

In para 7.00 she described the accommodation and finishes and in para 11 she stated:

CONDITION OF BUILDING

The building and compound are in average state of repair and maintenance having regard to its age and type of construction on the date of inspection.

and in para 13.00 she stated:

In accordance to the approved use, *we have valued the subject property as a flat unit.* [italics added]

We arrived at our valuation by direct comparison with transactions of comparable properties within the vicinity and elsewhere around the material dates of valuation. In arriving at our valuation figure, we have taken into consideration the market conditions then and have made due adjustments of differences between the subject property and the comparables in terms of location, tenure, size, shape, design and layout, age and condition of buildings, dates of transactions, road lines, and other factors affecting its value.

Ms Chee was aware that 28 was used as a shop unit. The comparables she referred to were residential flats and she was aware of that as well. If there was a difference in this respect she has made "due adjustments" as she has stated in her report. She has not stated what adjustments were made or ought to be made for this difference but it does not mean that no adjustments were made. Some adjustments cancel each other out and it is not unknown for valuers to leave them out altogether when they do.

(20) In para 14.00 Ms Chee stated:

VALUATION - as at April 28, 2001

Having regard to all relevant information, we are of the opinion that the market value of the property, with vacant possession and free from encumbrances, is S\$243 000/- (Singapore Dollars Two Hundred and Forty-Three Thousand).

She arrived at her valuation by direct comparison with transactions of comparable properties. She identified the 134A and 134B transactions as the transactions with which direct comparison was made. She has given her opinion as to the market value of 28 as a residential flat unit.

(21) In the approach to the valuation which Ms Chee adopted what had to be taken into account were the differences between the reference property in the comparable transaction and 28 and the adjustments to be made for such differences. Where as in this case the subject property is a shop unit which is to be valued as a residential flat unit and a transaction of a residential flat unit is identified as comparable a measure of the adjustment to be made for the difference may be the cost of rendering the subject property the same as the reference property or as close to it as is feasible in so far as values are concerned. There is no evidence as to the nature or condition of the reference property that the subject property is to be rendered the same as. There is no evidence as to the cost of doing so. In my decision and on the evidence before this Board the conversion cost is not to be taken into account.

(22) In the premises I find:

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

(b) that the market value of the acquired land as at 28 April 2001 was \$248 000;

(c) that the market value so found does not exceed the Development Baseline use price or the existing 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 \$248 000. This exceeds the amount of the Collector's award and this Board orders that the Collector pay to 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 \$700 000. 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 2002 November 30

T Q Lim
Commissioner of Appeals