

LAND ACQUISITION ACT

APPEALS BOARD

AB 2001.066

In the Matter of the Acquisition of Land at  
Lots 1185 and 366-2 of Mukim 25

Between

Universal Consortium 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 \$2 800 000 in respect of the land at Lots 1185 and 366-2 of Mukim 25 be confirmed;

And

(2) That the costs of the appeal to this Board be paid by the appellant;

And

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

## BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

### *Appeal*

(1) On 28 April 2001 ("acquisition date") a notification No 1156 was published in the *Gazette* under s 5 of the Land Acquisition Act ("s 5 declaration") declaring that the land at Lots 1185 and 366-2 of Mukim 25 ("acquired land") was needed for a public purpose namely Proposed Kallang-Paya Lebar Expressway. The appellant was then the proprietor of the acquired land for an estate in fee simple and is a person interested.

(2) For the purpose of the inquiry held under s 10 the appellant submitted a claim to compensation of \$8 542 200 as to \$8 000 000 for the market value of the acquired land and as to \$542 200 for certain losses and expenses. The respondent ("Collector") found that the market value of the acquired land as at the acquisition date was \$2 800 000 and on 6 December 2001 he made an award of compensation in that amount.

(3) The appellant appeals against the award on the ground that it is inadequate and on other grounds stated in its petition of appeal. In the petition it claims compensation in the amount of \$6 100 000 and it also claims certain other reliefs.

### *Acquired Land*

(4) Lots 1185 and 366-2 are contiguous lots which together form a near rectangular plot bounded on the North by Lots 365, 364 and 366-1, on the East by Lorong 4 Geylang, on the South by Lot 1187 and on the West by Lot 3258. The site areas of Lots 1185 and 366-2 are 1 206.7sm and 337.8sm for a total site area of 1 544.5sm. The acquired land has a frontage to Lorong 4 of about 31m.

(5) The Certified Interpretation Plan ("CIP") dated 29 June 2001 which reflects the position as at the acquisition date as was agreed between the parties shows that as at that date Lot 3258 was State Land and all the other lots by which the acquired land was bounded were privately owned. Part of Lot 3258 adjacent to Lot 1185 was for some time in the past a carpark with direct access to Geylang Road.

(6) The acquired land is about 75m off Geylang Road close to its city end. It is about 5km from the city centre at Collyer Quay. Lot 3258 is the site of the former Gay World Park and the Geylang Indoor Stadium. There are a variety of shops and eating houses in nearby Geylang Road and a number of residential apartment buildings and budget hotels between Lorong 4 and Lorong 8.

(7) It was agreed that as at the acquisition date 571.8sm of the acquired land to the West was zoned Road in the Master Plan and the remaining 972.4sm with the frontage to Lorong 4 was zoned Residential/Institution. The acquired land was also adversely affected by a road line ("RL"). The appellant bought Lot 1185 in January 1995 and Lot 366-2 in March the same year and it was agreed that when the lots were bought about 88% of Lot 1185 and about 92% of Lot 366-2 were adversely

affected by a RL and as at the acquisition date the parts adversely affected were about 82% and 54%. The RL was for a Category 1 (Expressway) road reserve.

(8) On the site of Lot 366-2 there was an old single storey detached house known as 14 Lorong 4 and on the site of Lot 1185 there were some temporary structures known collectively as 18 Lorong 4. It was agreed that as at the acquisition date the acquired land was let to several tenants for the total monthly rent of \$26 400 giving a yearly return of \$316 800 for rent.

### *Compensation*

(9) 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 ....

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*

(10) The petition of appeal refers to "grounds of appeal annexed" and in para 5 of the "grounds" the appellant alleges 5 errors of fact and law as regards valuation of the acquired land. Para 6 contains two further grounds which appear to be conclusions to be drawn from the alleged errors or from two of them. Para 6 states:

c Based on the existing use of the subject property as a development site under the Master Plan 1998 edition, the market value of the subject property as at 28th April 2001 should be S\$6,100,000.00.

d It is both unfair and inequitable to take into account the road reserve line affecting the subject property when arriving at the market value of the subject

property. As such, no consideration whatsoever ought to be given to the road reserve line when valuing the subject property.

The appellant claims compensation in the amount of \$6 100 000, interest and costs. No reference is made to any of the losses or expenses alleged when the claim was made for the purpose of the s 10 inquiry. When Mr Rai of counsel for the appellant opened his case he made no reference to the "grounds of appeal annexed" and did not open any of the "grounds". He merely said that it would be the appellant's duty to show that the award made by the Collector was inadequate.

(11) At the hearing the appellant adduced evidence that the market value of the acquired land was \$7 196 110. There was no evidence that it was \$8 000 000 to support the claim made for the purpose of the s 10 inquiry. There was no evidence that it was \$6 100 000 to support the grounds of appeal and the reliefs claimed in the petition of appeal. There was no application to amend the petition. The Collector adduced evidence that the market value was \$2 800 000.

### *Appellant's Valuation*

(12) Mr Goh Tiam Lock of Lock Property Consultants Pte Ltd testifying for the appellant referred to his report dated 23 September 2003 in which he said in para 6.00:

We have determined the market value of the [acquired land] on two bases, firstly on the basis of its Development Baseline, then on the basis of its existing use.

He went on to say:

We have determined the value of the [acquired land] on the basis of its Development Baseline by adopting the Comparison Method whereby the value is arrived at based on the evidence of sales of comparable private freehold residential properties ....

Under cross examination he agreed that the private freehold residential properties he referred to were all redevelopment sites. In para 7.01 he said he computed the market value on the basis of the Development Baseline to be \$7 413 600.

(13) In para 7.02 of his report Mr Goh said:

As the [acquired land] was actually let at the date of acquisition, we have computed the value of the [acquired land] on its existing use by capitalising the actual net annual rental income by an appropriate rate of return ....

He said he allowed for property tax and assumed a return on investment of 4%/y. He computed the market value of the acquired land on its existing use to be \$7 196 110. In para 8.00 he said:

### CONCLUSION

Based on the two approaches to determining the Capital Value of the [acquired land] as detailed above, and having regard to the provisions of the Land Acquisition Act, we are of the opinion that the freehold interest of the [acquired

land] for the purpose of determining the amount of compensation, with vacant possession and free from all encumbrances, is DOLLARS SEVEN MILLION, ONE HUNDRED & NINETY-SIX THOUSAND, ONE HUNDRED & TEN (\$7,196,110).

(14) Section 33 of the Act further provides:

(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 ....

From Mr Goh's evidence it is clear that the appellant's case is that the market value of the acquired land is what may conveniently be referred to as the existing use price or the Development Baseline use price whichever is the lower and that in the circumstances of this case the market value was the existing use price of \$7 196 110 determined on the basis of the actual net annual rental income. This is substantially a new case and at best it is inconsistent with what is stated in para 6c of the petition. Mr Rai did not open the grounds of appeal in the petition as noted earlier and Ms Tan of counsel for the Collector did not raise any objection.

#### *Collector's Valuation*

(15) Ms Rachel Ng of the Inland Revenue Authority of Singapore testifying for the Collector referred to her valuation report dated 6 October 2003 in which she said:

10.4 We have adopted the Sales Comparison Approach to Valuation in this valuation exercise in estimating the market value of the [acquired land] and in the light of the Appeal's Board (*sic*) recent decision for Appeal No 1/2002 (Lots 364 and 365 Mk 25) and Appeal No 3/2002 (Lot 366-1 Mk 25) at Lorong 4 Geylang.

10.5 We have also checked the valuation against the actual sales of the [acquired land] in 1995.

In the report she referred to the compensation awarded by a differently constituted Board in AB 2002.001 and in AB 2002.003. She also referred to the following transactions:

<i>Property</i>	<i>Site Area</i>	<i>Price /sm Site Area</i>	<i>Transaction Date</i>
1 Lot 366-1 Mk 25	350.6sm	\$838 000 \$2 390	1999 Apr 12

2 Lot 365 Mk 25	434.1sm	\$405 000 \$933	1996 Dec 12
-----------------	---------	--------------------	-------------

Lot 366-1 was the acquired land in AB 2002.003; Lot 365 together with Lot 364 was the acquired land in AB 2002.001.

(16) At the hearing Ms Ng produced her analysis using the 1995 transactions of the acquired land and determined that the market value was \$2 815 000 which she rounded off to \$2 800 000. As stated in her report these transactions were referred to as a check. She also produced an analysis using the Lot 366-1 transaction of April 1999 referred to in her report and the Lot 364 transaction of March 2000. She determined that the market value was about \$2 755 000 which she rounded up to \$2 800 000. She did not explain why she prepared an analysis of the Lot 364 transaction which she did not refer to in her report or why she did not prepare an analysis of the Lot 365 transaction which she did refer to in her report. She was not asked.

#### *Grounds of Appeal*

(a) *The Collector has erred in using as comparables transactions which were not true reflection of fair market value (namely 12 Lorong 4 Geylang Mk 25 Lot 366-1 and Mk 25 Lot 364 Lorong 2/4 Geylang).*

(17) No particulars were provided and Mr Rai made no submissions on this ground. Lot 366-1 is next to Lot 366-2 and on the evidence as to the features of the land and the developments on it and such other evidence before this Board there is no reason why the Lot 366-1 transaction with such adjustments as may be appropriate may not be considered comparable for the purpose of the Collector's approach in the valuation of Lot 366-2. The Lot 364 transaction will be considered below.

(b) *The Collector has erred in using as comparables transactions of property which was an interior plot of land and thus landlocked (namely Mk 25 Lot 364 Lorong 2/4 Geylang).*

(18) It is not disputed that Lot 364 is landlocked. It was bought in March 2000 and at that time the buyer was the owner of Lot 365 which would give it access to that part of Lot 3258 which was formerly used as a carpark and it was also the owner of Lot 366-1 which would give it access to Lorong 4. It would not be landlocked if the buyer was an owner of Lot 366-1 or of Lot 365 but it was landlocked in the hands of the seller before it was sold to the owner of the two adjacent lots. No evidence has been adduced as to the circumstances surrounding the transaction and in the decision of this Board it cannot be said that the Lot 364 transaction is a comparable transaction.

(19) Although the appellant succeeds in this respect it does not follow that Ms Ng's evidence as to the market value of the acquired land is not or cannot be supported by other evidence. And the statutory onus of proving that the award of the Collector is inadequate has still to be discharged by the appellant.

(c) *The Collector has failed to consider more recent comparables of similar properties in the vicinity as set out in Annex A.*

(20) Three of the 4 "similar properties" in Annex A are three of the "private freehold residential properties" referred to in Mr Goh's report and as noted earlier they were all redevelopment sites. The 4th property appears to be a redevelopment site as well but there is no evidence as to any other relevant features of this site or of the transaction. As at the acquisition date the acquired land was not a redevelopment site. It was incapable of any viable redevelopment. As Mr Goh himself said under cross examination there would be nothing left after setback requirements were complied with having regard to the adverse effect of the RL. In answer to this Board he agreed that "property capable of redevelopment needless to say not comparable with property incapable of redevelopment". Needless to say the redevelopment sites are not comparable. The transactions referred to in this ground are not comparable and this ground fails.

(d) (i) *The Collector has erred in law in using as comparables transactions of properties which were affected by road reserve lines at the time of those transactions.*

(ii) *It is both unfair and inequitable to take into account the road reserve line affecting the subject property when arriving at the market value of the subject property.*

(21) There are no merits in either of these grounds and Mr Rai has made no submissions but it is right that this Board should say that in the circumstances of this case there has been no error on the part of the Collector or of Ms Ng or any other persons by whom the Collector was advised as regards the valuation of the acquired land for acting in the manner alleged. The acquired land was adversely affected by a RL as at the acquisition date and it is not wrong in law to take this into account in determining its market value.

(e) (i) *The Collector has failed to adopt the use of the subject property as a development site under the 1998 Master Plan where it was partly zoned 'Residential/Institution' use with Gross Plot Ratio of 2.8 (Lot 1185 Mk 25 634.9 sqm and Lot 366-2 Mk 25 337.8 sqm) and partly zoned road (Lot 1185 Mk 25 571.8 sqm) as the basis for determining existing use.*

(ii) *Based on the existing use of the subject property as a development site under the Master Plan 1998 edition, the market value of the subject property as at 28th April 2001 should be S\$6,100,000.00.*

(22) s 33(5)(e) draws a distinction between *existing use* and *use ... for the purpose designated in the Development Baseline ("Development Baseline use")*. The *existing use* as at the acquisition date was the actual use to which the acquired land was put. The *existing use* was residential as regards 14 Lorong 4 and use for car repair, polishing and waxing services as regards 18 Lorong 4. It was not the *Development Baseline use* or the *Master Plan use* for the purpose of determining the price which a *bona fide* purchaser might reasonably be expected to pay. See *Trustees of the Kheng Chiu Tin Hou Kong and Burial Ground v Collector of Land Revenue* [1992] 1

SLR 425 at pp 434, 435. In that case the distinction was between *existing use* and *use ... for the purpose designated in the Master Plan ("Master Plan use")*. *Master Plan* was substituted by *Development Baseline* referred to in section 36 of the *Planning Act 1998* by a 1998 amendment and s 33(5)(e) has since drawn the distinction between *existing use* and *Development Baseline use*.

(23) Mr Goh clearly understood the distinction in his valuation. It appears that those responsible for the petition did not. It remains to be said that both these grounds fail.

#### *Development Baseline Use Price*

(24) For the purpose of s 33(5)(e) Mr Goh determined the market value on the basis of the Development Baseline use price basis to be \$7 413 600. It should be noted that he has not taken into account the *other restrictions imposed under the Planning Act*. Section 12 of the Planning Act provides:

- (1) No person shall without planning permission carry out any development of any land outside a conservation area.

The acquired land was land outside a conservation area. An application for planning permission is made to the competent authority and s 14 provides:

- (4) Subject to any rules, the competent authority may -
  - (a) grant written permission, either unconditionally or subject to such conditions as he considers fit including those referred to in section 15; or
  - (b) refuse written permission.

and s 15 provides:

- (1) All or any of the following conditions may be imposed on the grant under section 14(4) of any planning permission or conservation permission in respect of any land ...
  - (c) restrictions as to the height, design, appearance and siting of buildings ....

Having regard to the RL and the setback requirements the acquired land was incapable of any viable development or as Mr Goh said there would be nothing left to develop and undoubtedly in those circumstances planning permission would have been refused. The requirement of planning permission is a restriction imposed under the Planning Act and since this has not been taken into account there is no evidence that a bona fide purchaser might reasonably be expected to pay \$7 413 600 for the acquired land in anticipation of its continued use for the purpose designated in the Development Baseline.

#### *Existing Use Price*

(25) For the purpose of s 33(5)(e) Mr Goh determined the existing use price to be \$7 196 110. He said he capitalised the actual net annual rental income by an



appropriate rate of return which he assumed in this case to be 4%/y. He assumed a years' purchase of 25 years adjusted by a factor of 0.97 for the present value of future rental income. The net annual rental income was \$285 120 assuming property tax at 10%.

(26) There is no evidence that such a level of yield from an investment in the acquired land could be expected over a 25 year period. The improvements on site as at the acquisition date comprised an old single-storey detached house (14 Lorong 4) and some temporary structures (18 Lorong 4) as noted in Mr Goh's report. Redevelopment to produce the same or higher rental yield would be extremely unlikely if not impossible and only repairs without increasing the gross floor area would have been permitted under the Planning Act. 571.8sm of the site was already zoned Road and the rest zoned Residential/Institution so that the use of any part of the acquired land for car repair, polishing and waxing services would not have been in conformity with the provisions of the Master Plan and 82% of Lot 1185 and 54% of Lot 366-2 were also adversely affected by a RL.

(27) In the decision of this Board the investment approach in which the net annual rental is capitalised by a return on investment of 4%/y is wholly inappropriate in the circumstances of this case. In the premises there is no evidence that a bona fide purchaser might reasonably be expected to pay \$7 196 110 for the acquired land on the basis of its existing use.

#### *Market Value as at Acquisition Date*

(28) In determining the amount of compensation to be awarded for land acquired under the Act this Board shall under subsection (1) of s 33 take into consideration the market value as at one of the alternative dates under subsection 1(a) and other matters set out under subsections (1)(b) to (1)(f) and no others. Subsection (5) then provides that for the purposes of subsection (1)(a) the *market value shall be deemed not to exceed* the lower of two prices and the two prices are the *existing use price* and the *Development Baseline use price*.

(29) s 33(5)(e) does not provide that the market value *shall be* the lower of the two prices. It provides that it shall be *deemed not to exceed* the lower of the two prices. This is a capping provision. Apart from the effect of s 33(5)(e) the market value may be found on the evidence in an appropriate case to be higher than either of these two prices. If that is the case then it is "capped" at the lower of the two prices. It may be found to be in fact lower. In that case there is no room for the operation of the capping provision. It does not exceed the lower of the two prices. In *Trustees of the Kheng Chiu Tin Hou Kong and Burial Ground* the Court of Appeal called it a statutory limitation on the market value of the land as determined in accordance with s 33(1). See at p 434. See also *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [1988] SLR 44 at p 49; the decision of this Board in *Mustaq Ahmad @ Mushtaq Ahmad (s/o Mustafa) v Collector of Land Revenue* (Unreported. Decision dated 16 July 2001 in AB 1996.374) at paras (32) to (38).

(30) Mr Goh assumed wrongly that s 33(5)(e) was not a capping provision or a statutory limitation on the market value as determined under s 33(1)(a). The appellant bought the acquired land for a total of \$2 900 000 in 1995. Using the two

1995 transactions as comparables he was asked under cross examination what in his opinion would be the market value of the acquired land as at the acquisition date. He had no hesitation in saying that it would be less than \$2 900 000. Ms Ng allowed an adjustment of -15% for time between the transaction dates and the acquisition date and when Mr Goh was asked if the market value would be less than \$2 900 000 by 15% he said 17%. He would have found a market value lower than that which Ms Ng found.

(31) In her analysis based on the two 1995 transactions Ms Ng allowed -15% for time and also allowed +\$350 000 for the value added by improvements of \$600 000 to \$700 000. She said that it was said on behalf of the appellant that when it bought the acquired land it was "muddy garden land" and that expenses were incurred to "reclaim" the land and also to pay off certain tenants. In the result she came to about \$2 815 000 which she rounded down to \$2 800 000. Mr Rai submitted that +\$350 000 was inadequate but he was unable to refer to any evidence that the market value was enhanced or enhanced to any extent greater than that allowed by Ms Ng. On the whole of the evidence before this Board including the letting of the acquired land and its use as at the acquisition date and the amount of the total rent receivable there is no reason why the allowance of +\$350 000 should not be acceptable.

(32) In the decision of this Board the appellant has not discharged the onus of proving that the Collector's award is inadequate. There is no evidence as to any matter to be taken into consideration under s 33 other than the market value of the acquired land as at the acquisition date. This Board accepts the evidence of Ms Ng that the market value as at that date was \$2 800 000. On the evidence such as it is this would not exceed the existing use price or the Development Baseline use price for the purpose of s 33(5)(e). 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 \$2 800 000; 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*

(33) 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 \$2 800 000. This is the sum awarded by the Collector and this appeal fails.

#### *Costs*

(34) The amount awarded by this Board does not exceed the sum awarded by the Collector and in accordance with s 32(1) the costs of the appeal to this Board shall be paid by the appellant.

Dated 5 November 2003

Commissioner of Appeals T Q Lim SC  
Assessor Yang Soo Suan  
Assessor Muhd Faishal Ibrahim