IN THE APPEALS BOARD (LAND ACQUISITION) SINGAPORE

Appeal No. AB 2020.002

In the Matter of Compulsory Acquisition of Part of Lot 2056N Mukim 11

Between

EXXONMOBIL ASIA PACIFIC PTE. LTD.

… *Appellant*

And

THE COLLECTOR OF LAND REVENUE

… *Respondent*

DECISION

Tan Kay Kheng and Goh Ziluo (WongPartnership LLP) for the Appellant
Jeyendran Jeyapal, Christopher Zheng, and Kenneth Mak (Attorney-General's Chambers) for the Respondent

The decision of the Board is:

(a) That the award of the Collector of Land Revenue of compensation in the sum of $69,600.00 in respect of part of Lot 2056N Mukim 11 at 50 Choa Chu Kang Avenue 3, Singapore 689858 be confirmed; and

(b) That the appeal be dismissed with costs to the Respondent to be taxed if not agreed.

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Introduction

1 This matter concerns the compulsory acquisition of part of Lot 2056N Mukim 11 at 50 Choa Chu Kang Avenue 3, Singapore 689858 ("Lot 2056N"). The acquired part of Lot 2056N concerns a land area of 156.2sqm ("Acquired Land"). The Appellant submitted a claim of $2,480,000.00 on 28 January 2019. On 9 March 2020, the Collector of Land Revenue ("Collector", or interchangeably "Respondent") issued an award of $69,600.00 as compensation for the Acquired Land. On 30 March 2020, the Appellant filed a Notice of Appeal against the Collector's Award.

2 The hearing for the appeal took place on 18 September 2023. Closing submissions were filed on 20 November 2023 and reply submissions were filed on 8 December 2023. Having considered the facts of the case and the Parties' submissions, the Board dismisses the appeal with costs to the Respondent to be taxed if not agreed. Our reasons are set forth herein.

Background Facts and Acquisition

3 Lot 2056N is a rectangular piece of land of about 1,972.7sqm, with a road frontage of approximately 56.55m. Erected on Lot 2056N is an Esso Petrol Service Station ("Esso Station"). The Esso Station comprises, *inter alia*, a retail area, an ancillary office/store area, and a canopied area built over nine pump islands with 18 pumps.[1] The leasehold estate for Lot 2056N is for 30 years commencing on 8 March 1999 and it is zoned in the Urban Redevelopment Authority's ("URA") Master Plan 2014 as "Transport Facilities".

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[1] Paragraph 6 of the Agreed Statement of Facts and List of Issues.

4 By notification No. 1247 dated 3 May 2018 and published in the Government Gazette, Electronic Edition on 9 May 2018, part of Lot 2056N was declared to be required for road works in relation to the Jurong Region Mass Rapid Transit Line along Jurong Town Hall Road, Jurong Pier Road, Jalan Boon Lay and Choa Chu Kang Avenue 3.

5 The Acquired Land concerns a land area of 156.2sqm, comprising Lot 2056N's entire road frontage to Choa Chu Kang Avenue 3 with a depth of approximately 2.8m from the road frontage.[2] It is flat and at access road level. As at the acquisition date, it was common ground that the Acquired Land formed part of the setback requirements for the petrol station development and the approved Gross Floor Area ("GFA") of 986.32 square metres was fully utilised by the Appellant's petrol station. Approximately 10.84 years of the lease remained as at the acquisition date.

Award and Issue in Dispute

6 Pursuant to s. 10 of the then Land Acquisition Act, Chapter 152 (currently the Land Acquisition Act 1966) ("LAA"), a Collector's Inquiry was held on 19 July 2018. The Appellant submitted a claim of $2,480,000.00 on 28 January 2019. On 9 March 2020, the Collector issued an award of $69,600.00 as compensation for the Acquired Land. On 30 March 2020, the Appellant filed a Notice of Appeal against the Collector's Award. The Collector lodged his Grounds of Award on 10 January 2022, and the Appellant filed its Petition of Appeal on 7 February 2022.

7 As agreed between the Parties, the sole broad issue in dispute for adjudication is the appropriate basis for determining the value of the Acquired

[2] Paragraph 5 of the Agreed Statement of Facts and List of Issues.

Land.[3] The Appellant contended that the "piece meal method" of valuation should apply. The Respondent contended that the "income method" of valuation should apply, and that the Acquired Land should be valued as a car park. In both methods, the market value of Lot 2056N in its entirety (as derived by the Appellant and the Respondent respectively) has been used as the starting point.

8 A total of four witnesses were called to give evidence for the Parties' respective cases:

For the Appellant

(a) Mr Ong Say Keong, the Commercial Portfolio Manager for the Appellant.

(b) Ms Chua Beng Ee ("Ms Chua"), the Director of Acreage Property Consultants LLP who was engaged by the Appellant as the valuer in their appeal.

For the Collector

(c) Mr Wang Zhenxu Gavin ("Mr Wang"), the Collector in charge of the compulsory acquisition of the Acquired Land under the LAA.

(d) Mr Tan Keng Chiam ("Mr Tan"), a qualified real estate valuer who is presently the Executive Director and Head of Valuation & Advisory Services at Colliers, which was engaged by the Collector to advise on the statutory compensation arising from the compulsory acquisition of the Acquired Land.

[3] Paragraphs 7 – 8 of the Agreed Statement of Facts and List of Issues.

9 In addition to the above, the evidence of Mr Kelvin Ng Wai Keong ("Mr Ng") for the Collector was admitted by consent, on the basis that Mr Tan will give the same evidence. It was the subsequent and consequential treatment of Mr Tan's evidence that was put in issue by the Appellant in its Closing Submissions. We have addressed this as a preliminary issue at [14] – [15] below.

Applicable Law & Principles

10 Pursuant to ss. 33(1) and (5) of the LAA and taking into account the issues adjudicated in this appeal, the Board is to take into consideration the following matters and no others in determining the amount of compensation to be awarded for the Acquired Land:

> (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board must take into consideration the following matters and no others:
>
> > (*a*) where the date of acquisition of the land is on or after 12 February 2007, the market value of the acquired land —
> >
> > …
> >
> > > (ii) as at the date of the publication of the declaration made under section 5, in any other case;
> >
> > …
>
> (5) For the purposes of subsection (1)(a) or (1A)(a)
>
> > (*e*) the market value of the acquired land is deemed not to exceed the price which a bona fide purchaser might reasonably be willing to pay, after taking into account the zoning and density requirements and any other restrictions imposed by or under the Planning Act 1998 as at the date of acquisition and any restrictive covenants in the title of the acquired land, and no account is to be taken of any potential value of the land for any other use more intensive than that permitted by or under the Planning Act 1998 as at the date of acquisition.

11 The onus of proving that an award is inadequate is on the Appellant. See s. 25(3) of the LAA. In other words, the Appellant bears the burden of proof in the appeal.

Preliminary Issues

12 There were two preliminary issues to be considered before proceeding to the merits of the appeal.

General Principle of Leaning in Favour of Claimants?

13 The first pertains to the Appellant's submission that as a matter of general principle, the "proper approach in land acquisition matters is generally to lean in favour of the claimant"[4]. The Appellant cited the case of *Rigby v Secretary to the Department of Sustainability and Environment* [2012] VSC 427 ("*Rigby*") by the Victoria Supreme Court. The Respondent submitted that the Appellant's submissions was erroneous, baseless, and contradicts the established approach in the LAA in previous cases before the Board.[5] In doing so, the Respondent submitted that the Appellant's reliance on *Rigby* was misplaced. We agree with the Respondent entirely. The general principle advanced by the Appellant is inconsistent with s. 25(3) of the LAA wherein it is expressly laid out that the onus of proving that an award is inadequate lies with the Appellant. The Appellant's submission simply cannot be sustained.

Valuation Report and Mr Tan's Expert Evidence

14 The second pertains to the conceptual treatment of Mr Tan's evidence, an expert witness engaged by and called by the Respondent. The Appellant

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4 Pages 5 – 7 paragraph 13 and page 51 paragraph 116 of the Appellant's Closing Submissions

5 Pages 1 – 2 paragraphs 2 – 4 of the Respondent's Reply Submissions.

submitted, *inter alia*, that Mr Tan's evidence was neither neutral nor independent on account that he did not prepare the valuation report that was used to support the Respondent's valuation of the Acquired Land. That valuation report was prepared by another valuer, Mr Ng. The Respondent submitted that the Appellant's submission was misguided. Mr Ng was the Senior Director of Colliers' Valuation & Advisory Services while Mr Tan was the Executive Director and Head of that Department. While Mr Ng had prepared and signed the valuation report dated 28 February 2020, he was retiring and it was therefore left to Mr Tan to give evidence before the Board in this Appeal. By agreement between the Parties, Mr Ng's attendance at the hearing was dispensed with and Mr Tan was made available for cross-examination. The Respondent made further submissions on this matter, but we need not deal with those submissions in light of the grounds of our decision on this preliminary issue.

15 To avoid doubt, we are not at this stage making any assessment on whether Mr Tan's evidence was neutral or independent insofar as its substantive content is concerned. Rather, our focus at this stage pertains to whether Mr Tan's evidence is to be perceived as such, solely on account of Mr Ng's absence. We found the Appellant's submissions on this issue to be disingenuous and curious since they agreed to dispense with Mr Ng's attendance. During the Pre-Hearing Conference on 12 January 2023, the issue of Mr Tan being cross-examined on Mr Ng's evidence was raised by the Deputy Commissioner, but the Appellant's Counsel indicated that they had no issues with such an approach. If the Appellant truly had issues with Mr Tan's evidence as it pertains to Mr Ng's valuation report, the Appellant should have either sought to call Mr Ng to the stand to be cross-examined, or should not have agreed to dispense with Mr Ng's attendance. The Board was accordingly unpersuaded by this aspect of the Appellant's submissions.

16 We now turn to the substantive merits of the appeal.

Overview of the Parties' Cases – Appropriate Basis for Determining the Market Value of the Acquired Land

Appellant's Case

17 The Appellant contended that the "piece meal method" of valuation should apply.[6] This method was described as being able to be used to determine compensation where only part of the land is acquired, and should be adopted when only a small piece of land is acquired or significant improvements are located on the residue land and the difference in value resulting from the acquisition is too small or to be reliably measured during the before-and-after method. The Appellant submitted that this method is fully supported by the Valuer General's Policy on "Compensation following compulsory acquisition" issued by the Office of the Valuer General of New South Wales, Australia, on 27 November 2014.

18 Broadly, the piece meal method entailed the following steps:

(a) Ascertaining the market value of the wider lot, *i.e.* Lot 2056N, in its entirety. The Appellant relied on the "sales comparison method", *i.e.* reference is made to evidence of successful tender bids of petrol station sites, and arrived at a market value of $31,420,583;[7]

(b) Deriving a rate per square metre. In view of the Appellant's purported market value above, the rate per square metre was $15,877; and

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6 Pages 26 – 30 paragraphs 45 – 54 of the Appellant's Closing Submissions; pages 3 – 4 paragraphs 8 – 9 and pages 17 – 18 of Ms Chua's 1st Affidavit.

7 Page 39 of Ms Chua's 1st Affidavit.

(c) Applying the rate to the Acquired Land. This resulted in $2,480,000, which was the claim amount submitted by the Appellant.

Respondent's Case

19 The Respondent submitted that the piece meal method of valuation is not an accepted method of valuation in Singapore and is also unprincipled and results in a grossly inflated assessment of the compensation payable.[8] The Respondent instead contended that the "income method" of valuation should apply, and that the Acquired Land should be valued as a car park.[9]

20 The Respondent explained that the typical adoption of the before-and-after method for petrol station sites could not be used in the circumstances of this case because the throughput loss caused by the acquisition is minimal or non-existent. As such, the application of the before-and-after method would lead to minimal or no compensation. Rather than valuing the Acquired Land as a strip of green space and given that the zoning of the Acquired Land as "Transport Facilities", the Acquired Land was identified as a parking space for the purposes of valuation in the circumstances of this case. Against this reasoning, the income method was used to derive the potential income from the use of the Acquired Land as a parking space.

21 The market value of the Acquired Land employing the income method was calculated as follows:

> 23. We considered that the fees payable for a temporary occupation licence for a typical carpark lot on State land is $51.00 per month, and that the typical size of the carpark lot was 11.52 square metres. Multiplying this by the remaining

8 Pages 9 – 12 paragraphs 14 – 21 of the Respondent's Closing Submissions.

9 Pages 7 – 9 paragraphs 10 – 14 of the Respondent's Closing Submissions.

> lease of the Acquired Land (*ie*, approximately 10.8 years) with an appropriate discount for time, this yielded an average rate per square metre of $418.94 for the value of the land as a car park, or approximately 2.50% of the value of the land as a petrol station. We therefore assessed the market value of the Acquired Land as being $69,600.00…[10]

Decision

Appropriate Basis for Determining the Market Value of the Acquired Land

Whether the "piece meal method" is an acceptable method of valuation per se

22 The Appellant robustly argued that the piece meal method is an established method of valuation that is applied for compulsory acquisitions. In response, the Respondent submitted that the piece meal method is not an accepted method of valuation in Singapore primarily on account that the method was not included in the valuation standards and practice guidelines issued by the Singapore Institute of Surveyors and Valuers ("SISV Guidelines"). Those guidelines would contain established, tried and tested valuation methods that have been used in Singapore.

23 With respect, the absence of a valuation method from the SISV Guidelines does not mean that the method is *unacceptable per se*. Materially, neither party provided sufficient evidence for this Board to categorically conclude that the piece meal method is either an acceptable or an unacceptable method of valuation in Singapore in *all manner of circumstances*. While the acceptability of the piece meal method *per se* may be revisited in the future by the Board, we are of the view that it is premature to arrive at the conclusion sought by either party. What is material to this Appeal on the facts is whether the piece meal method is an appropriate basis for valuing the Acquired Land and it is that issue that we now turn to.

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[10] Page 10 of Mr Tan's AEIC.

Whether the piece meal method is an appropriate basis for valuing the Acquired Land

24 We are of the view that the piece meal method is not an appropriate basis for valuing the Acquired Land. We disagree with the Appellant's submissions as we broadly accept the submissions advanced by the Respondent.

25 First, there is no evidence before this Board that the piece meal method is *the* established method of valuation that is applied for compulsory acquisitions of small pieces of land *in Singapore*. The basis of the Appellant's submissions is a policy document by the Valuer General of New South Wales and the Appellant argued that the legislative provisions of the New South Wales Land Acquisition Act is similar to and not inconsistent with the LAA. This reasoning is misplaced, and the Appellant has not shown *any* evidence that the piece meal method is an established method in Singapore.

26 Second, and most critically, the piece meal method fails to take into account the limited use of the Acquired Land and the consequential impact on its market value. The Appellant extensively submitted that undue emphasis was placed on the above-mentioned limitations on the Acquired Land.[11] We were not persuaded by these submissions. The piece meal method assumes that the Acquired Land has an identical market value per square metre throughout Lot 2056N. This is erroneous in the circumstances of this case because the Acquired Land is constrained against further development, and this has a significant and material negative impact on its market value. The residual portion of Lot 2056N comprises the *entirety* of the petrol station and its main revenue-generating infrastructure. Critically, the Acquired Land formed part of the setback requirements for the Appellant's petrol station and was not capable of independent development. Similarly, the GFA for Lot 2056N has been fully

[11] Pages 47 – 55 paragraphs 80 – 101 of the Appellant's Closing Submissions.

utilised so the Appellant could not embark on further development on the Acquired Land. In light of these limitations on the Acquired Land, it would be erroneous to assume an identical market value per square metre throughout Lot 2056N. The Appellant curiously submitted that the Respondent's expert evidence unwittingly applied the piece meal method as well because of the application of a uniform rate.[12] We found this comparison to be misplaced as the subsequent remnant land factor of 2.50% that was used appropriately accounted for the limitations affecting the Acquired Land.

27 Third, on a related point, the piece meal method fails to take into account the dispensations afforded to the Appellant on the residue portion of Lot 2056N that was not acquired. Even though the Acquired Land was part of the setback requirements and that the GFA was fully utilised, no subsequent directions were made to the Appellant to address any consequential shortfalls.

28 In respect of the GFA, despite the plot ratio of the remaining land on Lot 2056N being increased by 8% following the acquisition, the URA confirmed with the Appellant that it will safeguard the approved GFA despite the acquisition. In respect of the setback requirements, there was no evidence that the Appellant was required to reinstate any setback requirements following the acquisition.

29 We further note that the Appellant advanced an argument that *if* Lot 2056N were to be redeveloped in the future, additional land would be required to meet setback requirements. We did not find merit to this submission because there is no evidence of such a requirement to be imposed in the future and there was no evidence of any plan for Lot 2056N to be redeveloped. The Appellant's argument was accordingly speculative in the circumstances of this

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[12] Pages 45 – 46 paragraphs 77 – 78 of the Appellant's Closing Submissions.

case. Be that as it may, the reality is that any purported negative impact on the market value arising from setback requirements or GFA was mitigated in favour of the residue portion of Lot 2056N and the piece meal method failed to account for this.

30 Fourth and finally, s. 33(5) of the LAA provides that the market value of the acquired land is deemed not to exceed the price which a *bona fide* purchaser might reasonably be willing to pay. In light of the limitations of the Acquired Land highlighted earlier, we agree with the Respondent's submissions that no *bona fide* purchaser would be willing to pay the same rate per square metre for the Acquired Land as Lot 2056N as a whole. Accordingly, the piece meal method and the consequent value relied upon by the Appellant far exceeds the price which a *bona fide* purchaser might reasonably be willing to pay for the Acquired Land. To this end, we observe that the Appellant has not adduced any evidence of any *bona fide* purchaser willing to pay $2,480,000.00 for the Acquired Land, or for that matter, a price that exceeds the $69,600.00 in compensation that was awarded.

Whether the income method and valuing the Acquired Land as a car park was irrational

31 The Respondent submitted that it was unable to adopt the before-and-after method used in past part-lot acquisitions of petrol station sites because the throughput loss caused by the present acquisition was minimal or non-existent particularly given that none of the pumps on the Appellant's petrol station were shut down because of the acquisition. Adopting such an approach would lead to minimal or no compensation. It was against this backdrop that it was considered whether potential alternative uses of the Acquired Land existed such that a higher market value could be ascribed to the Acquired Land. To this end, the

income method and the potential use of the Acquired Land as a car park was selected.

32 It is important to note that the Appellant did not challenge the actual computation used by the Respondent. The Appellant's objection was on principle, *i.e.* the selection of the income method and the consequential treatment of the Acquired Land as a car park. The Appellant submitted that the Respondent's method of valuing the Acquired Land was irrational and illogical for the following reasons:[13]

(a) Using Lot 2056N as a car park is not a permitted use for the site and there is no approval from URA for Lot 2056N to be used as a car park;

(b) The Acquired Land is smaller than the minimum size requirements set out under Part 2 Division 1 of the Schedule to the Parking Places (Provision of Parking Places and Parking Lots) Rules 2018; and

(c) The state lease relating to the Acquired Land overrides/limits the land use zoning under the URA Master Plan and it therefore can only be valued as a petrol station as opposed to a car park.

33 We found the Appellant's submissions to be misplaced and did not appear to appreciate the context of the Respondent's approach. In our view, for the reasons set out in [26] and [27] above, the Respondent would not have erred had it awarded minimal or no compensation to the Appellant for the Acquired Land. The Respondent nevertheless proceeded to take the Appellant's case in the best possible light notwithstanding the existing limitations so as to arrive at

[13] Pages 55 – 60 paragraphs 102 – 114 of the Appellant's Closing Submissions.

a *higher* value in favour of the Appellant, within reason – the selection of valuing the land as a car park was not inconsistent with the zoning of the Acquired Land as 'Transport Facilities'. In our view, such an approach was not irrational as it served to benefit the Appellant. The onus of proving that an award is inadequate is on the Appellant. On the facts of this case, the Appellant could not prove that the award was *inadequate per se* because it was only entitled to minimal or no compensation.

34 The Appellant drew an interesting analogy with a situation where strips of land that are incapable of independent development are acquired from land that is part of a Good Class Bungalow ("GCB"). The Appellant argued that valuing those strips as green strips of land, which was not what it was intended to be used for, would not be fair and reasonable. Such a concern is further compounded if repeated similar acquisitions are made. We agree with the Respondent that both of these arguments are to be rejected. The analogy drawn with the GCB is false since it wrongly assumes that the land being acquired in that context would be valued as a green strip of land, especially given the exclusive possession and enjoyment of the said land in the GCB context. The inability of independent development is just one factor to be considered when deriving the value of land. The Appellant's analogy, whilst interesting, was not however grounded by logic and context. It is also unnecessary for this Board to deal with the Appellant's further submission on repeated acquisitions since this is a purely hypothetical situation, the facts of which are not before the Board.

Impartiality of the Expert Witnesses

35 Both Parties spent considerable parts in their submissions undermining the credibility of the expert witnesses giving evidence for the opposing party. Given our findings and grounds above, it is unnecessary for us to address and adjudicate on those submissions. We nevertheless wish to make an observation

on how the Parties have generally run their respective cases on this issue when considered in relation to the broader issue in dispute.

36 The legal issue and arguments put forward for adjudication were not complex, the determination of which would have disposed of the matter efficiently and fairly. The attacks on the impartiality and credibility of the various expert witnesses were unnecessary, disproportionate, and were in poor taste. Both Parties were culpable in this regard. Parties should recognise that it is reasonable for experts to have differing *professional* opinions. Where they are not on common ground, the Parties are more than capable of disagreeing agreeably. In this case, we did not find any sufficient basis to conclude or make any finding that any of the expert witnesses were not impartial.

Conclusion

37 In light of the above, we are of the view that the Appellant did not satisfy its burden of proving that the award for the Acquired Land is inadequate and we confirm the award of $69,600.00. We therefore dismiss the appeal with costs to the Respondent to be taxed if not agreed.

Dated 21 June 2024

Deputy Commissioner of Appeals Darryl Soh
Assessor A/P Ang Sock Tiang
Assessor Chng Shih Hian