

LAND ACQUISITION ACT

APPEALS BOARD

AB 2007.037

In the Matter of the Acquisition of Land at
Lot U15496P of Mukim 4
Block 10 Ghim Moh Road #01-98

Between

Yap Cheng Swee
Tan Yong Kwee

... Appellants

And

Collector of Land Revenue

... Respondent

Mr David Liew for Appellants
Mr Kesavan Nair for Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue ("Collector") of compensation in an amount of \$844 100 in respect of the land at Lot U15496P of Mukim 4 ("acquired land") be confirmed;

And

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

And

(3) That the deposit paid by the appellants be paid to the Collector to account of costs.

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 2006 December 8 ("acquisition date") a notification No 3307 was published in the *Gazette* under s 5 of the Land Acquisition Act ("s 5 declaration") declaring that "the pieces of land situated in Mukim 4 ... more particularly described in the Schedule" were needed for a public purpose namely "Selective En Bloc Redevelopment Scheme - Ghim Moh Road" ("SERS-GMR"). The Schedule included the land described as:

<i>LOT NO</i>	<i>MK/TS</i>	<i>AREA IN SQ M</i>	<i>OWNER</i>
3815N	MK 4	1 561.8	HDB
<i>Strata Lot</i>	<i>Name of Lessee</i>	<i>Chargee</i>	<i>Mortgagee Caveator</i>
U15496P	[Appellants]	-	UOB -

(2) The Collector took proceedings for the acquisition of Strata Lot U15496P ("acquired land") and pursuant to the Collector's notice under s 8 and for the purpose of the inquiry held under s 10 the appellants made a claim to compensation of \$1 100 000. The Collector found that the market value of the acquired land as at the acquisition date was \$817 000 and he allowed \$27 100 for certain expenses. He took these into consideration and on 2007 August 31 he made an award of compensation in the amount of \$844 100. The first appellant is the wife of the second appellant and it was agreed that they were the only persons interested and the Collector awarded the whole of the compensation to them.

(3) The appellants appeal against the award of the Collector. They claim that the award should be increased to \$1 200 000.

Acquired Land

(4) Ghim Moh Estate was in the early years of its development an HDB mixed residential and commercial development comprising some 27 multi storey blocks on a site to the North of Commonwealth Avenue West. Of these, Blocks 9, 9A, 10, 11, 12 and 12A are bounded on the South by Commonwealth Avenue West, on the West by Ghim Moh Road, on the North by the Ghim Moh Bus Terminal and the Ulu Pandan Community Club, and on the East by the KTM (Malayan Railway) railway line. A pedestrian overhead bridge near Block 10 allows access across the railway line to North Buona Vista Road and a more extensive HDB development at Holland Drive. Ghim Moh Estate now comprises only these 6 blocks. The blocks to the West of Ghim Moh Road now form part of Ghim Moh Garden and hereafter in this Decision the expression "Ghim Moh Estate" will refer only to that part of the development comprising these 6 blocks.

(5) Ghim Moh Estate was developed on land at Lots 3813A, 3814K, 3815N, 3816X, 3817L, 3818C and part of 6461M of Mukim 4. Lot 3815N is comprised in Certificate

of Title in Volume 209 Folio 168 for a leasehold estate of 103 years expiring on 2079 April 30. This is a state lease and HDB is the lessee of the state. The acquired land is located at Block 10 Ghim Moh Road #01-98. It is a first storey commercial unit with walk-up living quarters on the second storey together comprised in lease I/HB78499W for Strata Lot 15496P for a leasehold estate of 82 years expiring on 2076 March 31. HDB is the lessor and the appellants are the lessees. Block 10 lies wholly within Lot 3815N.

(6) SERS-GMR is an HDB scheme and it is HDB that has the conduct of these proceedings in the acquisition and in this appeal. In these circumstances it is not in dispute that for the purpose of this appeal the acquired land is the whole of Lease I/HB 78499W for Strata Lot U15496P and does not include the interest of the lessor HDB or of any other person and in this decision any reference to "Lease I/HB 78499W" or "Lot U15496P" or "#01-98" wherever it appears is as well a reference to the acquired land. It is also not in dispute that SERS-GMR in its implementation includes an offer by HDB to the appellants of a replacement unit at Commonwealth Avenue West which is expected to be completed in mid-2011 and that the offer has been accepted.

Compensation

(7) The s 5 declaration in this case was published before 2007 February 12 and in accordance with s 12(1) of the Land Acquisition (Amendment) Act 2007 ("2007 Act") the acquired land will be dealt with in accordance with the Act as if the 2007 Act had not been enacted. Section 33 of the Act (as it was before the enactment of the 2007 Act) provided:

(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;

...

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

No notification under s 3(1) was published and it is not in dispute that the market value was the lowest as at the acquisition date and it is the market value as at this date which is to be taken into consideration.

Petition of Appeal

(8) In their amended petition of appeal the appellants say:

1 The Award is inadequate and does not reflect the market value of the [acquired land] and the market value as at the acquisition date should be \$1,100,000.00.

2 The market value of the [acquired land] should be determined on the basis of its use for commercial purposes as well as for residential purposes.

3 The Award should take into consideration the reasonable expenses to be incurred in the sum of \$100,000.00 by the Appellants who are compelled to change their residence / Living Quarters as well as their place of business in consequence of the acquisition.

The appellants claim that the award be increased to \$1 200 000 notwithstanding that as noted above they made a claim of only \$1 100 000 pursuant to the Collector's notice under s 8 and for the purpose of the inquiry under s 10.

Market Value

Appellants' Case

(9) Both the appellants testified before this Board but neither of them is competent to give any evidence as to the market value of the acquired land and they made no attempt to give any direct evidence in this respect. In their joint affidavit they say that they have obtained a valuation of the acquired land and they exhibit what appears to be a valuation report dated 2008 April 23 signed by Mr Liaw Hin Sai of PREMAS Valuers & Property Consultants Pte Ltd. Mr Liaw did not testify and gave no evidence whether before this Board or during the inquiry before the Collector and the report has not been proved. The appellants also say that the replacement unit has been offered to them at an estimated price of \$328 000 to \$442 500 for an area of 54.6sm to 59sm for commercial use for a lease of 30 years. This refers to the offer of a replacement unit that they have accepted as noted above.

(10) Mr Liew submitted that this Board should nevertheless admit the valuation report of Mr Liaw. He referred to s 25(4)(d) which empowers the Board to admit any evidence adduced whether it is admissible or inadmissible under the Evidence Act. His main submission however appears to be that the intended transaction in respect of the replacement unit should be adopted as a comparable transaction from which to infer the market value of the acquired land. He derived an area rate of \$7 500/sm from \$442 500 for 59sm for a 30 year lease for commercial use and submitted that

this was equivalent to about \$15 000/sm for 69 years which is the remainder of the lease of the acquired land. He went on to submit that the market value of the commercial part of the acquired land with an area of 68sm would alone exceed \$1 000 000.

Respondent's Case

(11) Mr Lee Zee Ming the Chairman and Managing Director of Prosperco International Property Consultants Pte Ltd testified for the Collector. He produced his valuation report dated 2007 June 14 in which he said that he adopted first the comparable sales method to determine the market value of the acquired land and secondly the capitalisation of net income method in respect of the shop component. He did not say in his report how he determined the value of the living quarters component but he said in evidence that he derived the value by comparison with transactions of 3 room flats in Ghim Moh Estate.

(12) For the purpose of the comparable sales method he identified 3 transactions shown in Table 1 below.

Table 1

	<i>Location</i>	<i>Price (\$)</i>	<i>Contract Date</i>
1	Block 11 GMR #01-72	650 000	2004 Jul 01
2	Block 11 GMR #01-74	670 000	2004 Aug 01
3	Block 19 GMR #01-251	790 000	2004 Nov 30

GMR = Ghim Moh Road

Each of these units is a first storey commercial unit with an area of 68sm with living quarters on the second storey with an area of 69sm under an HDB lease of 82 years expiring on 2076 March 31. In these respects these units are the same as the acquired land which is at Block 10 Ghim Moh Road #01-98.

(13) Mr Lee referred to URA Property Price Index for shops for the relevant periods and adjusted the prices for transactions #1 and #2 by +17.52% for time and for transaction #3 by +16.97% for time. Block 19 is across Ghim Moh Road in Ghim Moh Garden while Block 11 is in Ghim Moh Estate as is the acquired land. Mr Lee referred to a unit in Block 21 in Ghim Moh Garden which was transacted at \$1 100 000 on 1995 January 31 and a unit in Block 11 in Ghim Moh Estate which was transacted at \$955 000 at the same date and concluded that there was a difference for location of about 15%. He adjusted the price for the Block 19 transaction by -15% for location. In his opinion the market value of the acquired land as at the acquisition date was \$788 000 as determined by the comparable sales method.

(14) For the purpose of the capitalisation of net income method Mr Lee referred to the evidence of rent shown in Table 2 below.

Table 2

	Location	Rent/m (\$)	Premises	Remarks
1	Block 10 GMR #01-86	1 800	1/2 Shop	-
2	Block 10 GMR #01-88	1 800	1/2 Shop	-
		900	LQ	-
3	Block 10 GMR #01-92	1 800	1/2 Shop	-
4	Block 10 GMR #01-94	1 800	1/2 Shop	2 year tenancy wef 06/09/01
5	Block 10 GMR #01-98	1 600	1/2 Shop	Tenancy just started
		1 400	1/2 Shop	-
6	Block 10 GMR #01-100	2 000	1/2 Shop	-
7	Block 11 GMR #01-60	3 600	Whole shop	Renewed few months ago for 2 years
8	Block 11 GMR #01-62	1 700	1/2 Shop	-
		1 600	1/2 Shop	Month to month
9	Block 11 GMR #01-72	4 000	Shop and LQ	Tenancy commenced 4 months ago for 2 + 1 years
10	Block 11 GMR #01-76	3 800	Shop and LQ	-

GMR = Ghim Moh Road; LQ = Living Quarters

Not unexpectedly the rent for a "half shop" varied from unit to unit and in this case it varied from a low of \$1 400/m to a high of \$2 000/m. For the acquired land which is #5 in the table the rent received or receivable for one "half shop" was \$1 600/m and the other half was vacant but Mr Lee adopted a combined rent income of \$3 200/m to determine the present value. When he was asked in cross examination how he arrived at \$3 200/m he said that someone who identified himself to him as the owner of the unit during his site inspection said that he had just let the vacant "half shop" out for \$1 600/m.

(15) Assuming a rent receivable of \$3 200/m or \$38 400/y Mr Lee found a present value of \$650 029. His workings are shown in Table 3 below.

Table 3

Market rent of the 2 half-shops	\$3,200/m x 12	\$38,400/y
Less: Estimated outgoings:		
a) Property tax @ 10%	\$3,840	
b) Repairs & Maintenance @ 1%	\$384	
c) Conservancy charges \$150.86 x 12	\$1,810.32	
d) Insurance	\$180	
		\$32,185.68/y
Years Purchase factor @ 4.75%/y for 69 years		20.1962 x
Therefore, Present Value of \$32,185.68/y @ 4.75% for 69 years		\$650,029
		=====

[The Years Purchase factor was taken from a published table.]

To the present value of \$650 029 he added \$166 980 for the value of the living quarters which he determined by a comparison with the transacted prices of Block 10 Ghim Moh Road #03-80 of \$155 000 and of Block 10 Ghim Moh Road #09-84 of \$170 000. These are 3-room residential units under separate titles and the transactions were registered with the HDB on 2006 June 6 and 2006 September 4 respectively. He rounded it up to \$817 000 and said that he was of the opinion that it (meaning \$817 000 as opposed to \$788 499 if he had capitalised the net rent at 5%/y in place of 4.75%/y) was more reflective of the market value as at the acquisition date. By reference to the rent receivable in #9 in Table 2 above (Block 11 Ghim Moh Road #01-72) and the transacted price in #1 in Table 1 above Mr Lee had derived a return on investment of 5.167%/y. He did not attempt a valuation of the living quarters by the capitalisation of net income method and under cross examination he explained that there was insufficient evidence of lettings of the living quarters.

(16) Under cross examination Mr Lee's attention was drawn to Block 10 Ghim Moh Road #01-104 which was transacted at \$1 000 000 under a transfer dated 2004 January 15. He was asked why he had not taken this transaction into consideration in his comparable sales method. He said that he made inquiries in the course of his investigation and he learned that this was not a sale of what he called the "shop-house" but a going concern sale of a (medical) clinic together with a shop-house. The replacement shop of 59sm was offered to the appellants at a price equivalent to \$7 500/sm and Mr Lee was asked if it was a reasonable approach to take this to be equivalent to \$15 000/sm for 60 years to determine the market value of the commercial part of the acquired land of 68sm. He said this was not how valuation was done. Besides this was an estimated sale price from HDB to a special buyer and in 2007 prices had moved up. He said that the value of a 60 year lease was not the same as the value of 2 leases of 30 years.

Board's Decision

Valuation Report dated 2008 April 23

(17) The valuation report dated 2008 April 23 says at the foot of page 4: "This valuation report is subject to the attached Limiting Conditions" and para 13 of the attached conditions says:

This valuation report shall not be used as evidence in court or for purposes of compensation under the Land Acquisition Act.

Mr Liaw who appears to be the writer of this report has not testified as noted above and has given no reasons or any explanation for this condition. In the decision of this Board it would be unsafe to admit this report in defiance of the condition placed on it by the writer of the report himself whatever his reasons may have been or whatever the explanations he may have for having done so.

(18) In the paragraph under "Introduction" at page 1 the writer of the report said that his instructions were to advise on the "*Current* Open Market Value" (italics added) of the acquired land and he proceeded to make his report following that Introduction. The report is dated 2008 April 23 and the "Date of Inspection" given on page 4 was

2008 April 14 and in the second paragraph under "Valuation" on page 4 the writer said:

In view of the foregoing and from our knowledge of the *current* market conditions (italics added), we are of the opinion that the [acquired land] is valued at S\$900,000 (Singapore Dollars Nine Hundred Thousand Only).

The opinion proffered relates to the open market value as at 2008 April 23 and there is nothing in the report as to its relationship to the market value as at the acquisition date (2006 December 8) which is the market value to be taken into consideration. As noted above when Mr Lee who testified for the Collector was asked by Mr Liew about the price offered by HDB for the replacement unit he said that prices had moved up in 2007. In the decision of this Board the opinion in the valuation report is unreliable as to the market value of the acquired land as at the acquisition date.

(19) The valuation report does not disclose the method of valuation adopted by the writer or the approach taken by him or any analysis of relevant data and it is not supported by any other evidence before this Board and for these and the reasons noted above this Board declines to admit the valuation report dated 2008 April 23 which appears to have been written by Mr Liaw or any part of its contents.

Market Value

(20) Para 1 of the appellants' grounds of appeal says that the award is inadequate and does not reflect the market value of the acquired land and s 25(2) provides that "the onus of proving that the award is inadequate shall be on the appellant[s]". It is the appellants who have to satisfy this Board that the award is inadequate. They go on to say in their grounds of appeal that the market value as at the acquisition date should be \$1 100 000 although they have themselves adduced no evidence of the market value. But there is evidence of the market value before this Board and this Board has to consider all the relevant evidence at the conclusion of the hearing and find whether or not the award is inadequate and if it is then to determine what the amount of compensation should be in accordance with the relevant statutory provisions.

(21) Mr Liew submitted that the market value of the commercial part of the acquired land alone (without the living quarters on the second storey) under a lease with 69 years more to run exceeded \$1 000 000 on the basis of an area rate of \$15 000/sm derived from HDB's offer of \$442 500 for 59sm for a 30 year lease. The offer was from HDB as a seller. The offer price was the estimated price at which HDB was willing to sell a replacement unit. In his evidence Mr Lee said this was not how valuation was done. For the purpose of determining the amount of the compensation to be awarded for the acquired land this Board agrees that this is not how the market value of the acquired land is to be determined.

(22) Section 33 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

Whatever may be said of *market value* in s 33(1)(a) it cannot in any case exceed the price a bona fide buyer might reasonably be expected to pay for the acquired land on the basis and under the conditions prescribed.

(23) The price which the bona fide purchaser might reasonably be expected to pay (which may for convenience be referred to as "buyer's expected price") may be different from and is likely to be less than what the seller may offer to sell his land for or be willing to sell it for. A *past* transaction may be evidence of the buyer's expected price. In the comparable sales method past transactions are analysed so as to enable the valuer to infer what the probable price or market value of the subject property or in this case the acquired land may be. This would not be different from the buyer's expected price. The market value of the acquired land as at the acquisition date is not derived from the price for which HDB offers to sell a replacement unit. It is not derived from the selling price in an offer for sale and much less in an offer for sale made *after* the acquisition date. In the decision of this Board the market value of the commercial part of the acquired land as at the acquisition date is not determined by applying to its area the rate of \$15 000/sm derived from HDB's offer price. A market value of or exceeding \$1 000 000 for the commercial part of the acquired land cannot be inferred from HDB's offer to sell a replacement unit of 59sm for \$442 500 made after the acquisition date.

(24) In his comparable sales method Mr Lee analysed the transactions in Table 1. He adjusted the prices for time by reference to URA Property Price Index ("PPI") for shop space. PPI is derived from transactions of private property (or property other than HDB property) and there is no evidence that it is applicable to HDB property transactions. The underlying properties are not comparable. The acquired land is an HDB lease of 82 years with about 69 years to run comprising a commercial unit of 68sm on the first storey with living quarters of 69sm on the second storey. Transactions of comparable HDB properties for the relevant periods should have been identified and the data analysed to derive the adjustments for time (just as Mr Lee himself has done to derive the adjustments for location).

(25) The following table is prepared from transactions of comparable HDB properties in evidence before this Board.

Table 4

	<i>Location</i>	<i>Price (\$)</i>	<i>Contract Date</i>
1	Block 19 GMR #01-251	790 000	2004 Nov 30

GMR = Ghim Moh Road

Transaction #1 in this Table is the same as transaction #3 in Table 1. These transactions are taken from HDB records which were produced at the hearing and the "Date of Transfer" for #1 was 2004 December 10 while the contract date was 2004 November 30 or about 10 days earlier. The 2 properties are comparable and assuming that the contract date for transaction #2 is not before the 4th Quarter (October 1 to December 31) of 2006 this pair of transactions would indicate an adjustment of about +12.03% which is significantly less than the +16.97% derived from PPI for private property. The evidence before this Board gives only this pair of comparable transactions and it is from Ghim Moh Garden and there is none from Ghim Moh Estate or any other HDB estate.

(26) Notwithstanding the observations noted above the methodology in the approach adopted by Mr Lee is not wholly unacceptable although it appears to this Board that by adjusting for time using PPI rather than a factor derived from transactions of comparable HDB properties or checked against such a factor he is likely to have inflated the market value. Mr Lee disregarded the transaction relating to Block 10 Ghim Moh Road #01-104 for the reasons noted above and this Board sees no reason not to agree with him.

(27) Mr Lee's second approach was to determine the market value of the commercial part of the acquired land using the capitalisation of net income method and to add to that the market value of the living quarters using the comparable sales method. There were of course no sales transactions of properties comparable to the living quarters and he looked at the prices of transactions of 3-room HDB apartments in Block 10. There are serious difficulties in the way of attempting to infer the market value of the living quarters in this way. The living quarters and the commercial part of the acquired land are together comprised in one strata lot and together held under one lease and they cannot be severed. The living quarters cannot be sold separately from the commercial part. In the decision of this Board the transactions in respect of the 3-room apartments are not comparable transactions and the market value of the living quarters cannot be inferred from transactions of 3-room HDB apartments but this does not exclude consideration of these transactions as a check or for some other purpose.

(28) Mr Lee said in evidence that from the rent income he had to allow for vacancy and agency commissions which he estimated at one and a half month's rent per year. His workings in Table 3 do not show that he has allowed for any such vacancy or commission. If these 2 items are taken into consideration the net income for one year would be reduced by \$4 800 to \$27 385.68. This would reduce the derived present value from \$650 029 to about \$553 087. This assumes a return on investment of 4.75%/y although Mr Lee found a return on investment of 5.167% by analysing the rent of transaction #9 in Table 2 (\$4 000/m at the time of inspection in 2006 December) and the value of #1 in Table 1 (\$650 000 at the date of transaction 2004 July 1). The present value found in this way is the present value of the commercial part only. If Mr Lee added \$166 980 for the living quarters as he did in his valuation he would have found a value of only \$720 067.

(29) Table 2 discloses 2 units which were let in their entirety. The rent for one is \$4 000/m and for the other \$3 800/m. Mr Lee said in evidence that to bring the acquired land to a condition to command a rent of \$4 000/m a total of \$40 000 would have to be expended. For a rent income of \$4 000/m he said that on his approach the market value would be about \$822 000 but he would have to allow for vacancy and agency commissions equivalent to one and a half month's rent. "His approach" was a reference to the workings shown in Table 3. Allowing for vacancy and agency commissions and following those workings including applying a return on investment of 4.75%/y the present value would only be about \$701 414.

(30) Adopting the comparable sales method Mr Lee found a market value of \$788 000 but he adjusted for time by reference to PPI. Adopting the capitalisation of income method for the commercial part and the comparable sales method for the living quarters he found a market value of \$817 000 but he did not allow for vacancy and agency commissions which he said he would have to and he took into account transactions of 3-room HDB apartments which were not comparable. This is not intended to be a criticism of Mr Lee's evidence. He was constrained by lack of basic data in the way of sales or rental evidence as he himself pointed out and he could only do what he could in the circumstances and in so doing he was inclined towards a nominal valuation as opposed to an objective valuation. The market value of the acquired land as at the acquisition date or the buyer's expected price is likely to be lower than \$788 000 or \$817 000. On the evidence such as it is this Board finds that the appellants have not shown that the market value of the acquired land as at the acquisition date is \$1 100 000 or that the market value of the commercial part of the acquired land as at the same date would exceed \$1 000 000.

Expenses

(31) In para 3 of the grounds of appeal the appellants say:

The Award should take into consideration the reasonable expenses to be incurred in the sum of \$100,000.00 by the Appellants who are compelled to change their residence / Living Quarters as well as their place of business in consequence of the acquisition.

What this Board has to take into consideration (apart from the other matters mentioned in s 33) are the "reasonable expenses *incidental to* that change" if in consequence of the acquisition the appellants are compelled to change their residence or place of business. See s 33(1)(e). These are not just *expenses to be incurred* which may include a wide range of expenses. To be taken into consideration they must be expenses incidental to that change. They must be expenses *liable to happen as a consequence* of that change. That is the ordinary dictionary meaning of the expression *incidental to*.

(32) In their joint affidavit the appellants say:

... in recent years, we have been running an interior design renovation business under the name "Glodesign Worx" under Samlo Design Group Pte Ltd on the commercial portion on the ground floor of the [acquired land]. Exhibited herein

and marked as "E" is copy of the instant information search of our company, Samlo Design Group Pte Ltd.

According to Exhibit "E" Samlo Interior Design Pte Ltd was incorporated in 1996 and in 2007 January it changed its name to Samlo Design Group Pte Ltd ("SDGpl"). The address of its registered office was changed to 10 Ghim Moh Road #01-98 (which is the address of the acquired land) in 2008 February. Both changes took place after the acquisition date. The only shareholders and directors of SDGpl are the appellants and their address has been 85 Cashew Road #02-04 without any change since it was first disclosed to the regulatory authority. SDGpl carries on business as Glodesign Worx and this is not disputed.

(33) Under cross examination the appellant Tan Yong Kwee said that in 2006 from January to December part of the first storey commercial unit was rented out to a foot reflexology business. He called this part shop #2. On 2006 December 11 Mr Lee Zee Ming wrote to the appellants (and to other persons in Blocks 10 and 11 of Ghim Moh Estate) to advise that valuers from his company proposed to visit their "HDB shop with living quarters on 21st December 2006 ... for an inspection, including the taking of photographs" and he requested that a representative be present as the "valuers will be asking [their] representative[...] for tenancy details if it is rented out". He duly attended at the site on December 21 and photographs attached to his valuation report show shop #2 occupied by a foot reflexology business and the other part ("shop #1") vacant. Under cross examination he said that the representative of the owners represented to him that they had let out shop #1.

(34) The appellants also say in their joint affidavit:

The Living Quarters on the first floor was lived in since we are carrying on business there. We refer to the utilities bills for the period from March 2006 to December 2007 showing utilities expenses incurred for both the commercial and the residential portions of the [acquired land] and a set of recent photographs of the [acquired land] taken by us, collectively exhibited herein and marked as "F".

One set of the utilities bills which were dated between 2006 October and 2007 December show that the appellant Tan Yong Kwee was the registered consumer for "Non Domestic" utilities supplied to #01-98 but otherwise without any distinction as to whether the utilities were supplied to the living quarters or to the commercial part and another set which were dated between 2006 March and 2007 December show that Mr Tan was the registered consumer for "Domestic" utilities supplied to 85 Cashew Road #02-04. They all show that Mr Tan's address was 85 Cashew Road #02-04. Under cross examination Mr Tan said that he thought the photographs were taken by the valuer and he did not know when they were taken. This Board has declined to admit the valuation report dated 2008 April 23 and noted that the report gave the date of inspection as 2008 April 14. There is no evidence of any other valuer who had or might have taken the photographs mentioned by the appellants in their joint affidavit.

(35) The appellants also say in their joint affidavit:

Over the years, we used the [acquired land] for our own business. At times, part of the [acquired land] was subletted.

Under cross examination Mr Tan said that when the first storey shops were let out he and his family sometimes lived there at the living quarters. He also said that in 2006 December he and his family were not residing at the second storey living quarters.

(36) As at the acquisition date and for the best part of 2006 it was the foot reflexology business that had its place of business at shop #2 on the first storey as tenants of the appellants and when Mr Lee inspected the acquired land on 2006 December 21 shop #1 was vacant and he was informed by a representative of the appellants on site that it had been let out. There is no evidence that either of the appellants carried on any business at any part of the acquired land as at the acquisition date or for any period of time immediately prior to that or that he or she had a place of business there. On the evidence this Board finds that as at the acquisition date and for some time prior to that the appellants did not have a place of business at the acquired land or any part of it or anywhere which they are or will be compelled to change in consequence of the acquisition.

(37) Mr Tan said the appellants sometimes lived at the living quarters but in 2006 December they did not reside there. The living quarters were the property of the appellants they were entitled to stay there from time to time and at any time if they wished whether or not they had a residence anywhere else. The question is not whether they lived there. The question is whether they had a residence there. There is no evidence that they had their home there or that at any time at all they made or attempted to make their home there. There is no evidence that they lived there with any degree of permanence for any length of time. They might have "lived" there but only "sometimes" but they always had their residence at 85 Cashew Road #02-04 and they still do. On the evidence this Board finds that as at the acquisition date and for some time prior to that the appellants did not have their residence at the living quarters or any part of the acquired land or anywhere which they are or will be compelled to change in consequence of the acquisition.

(38) The Collector made his award of compensation on 2007 August 31 but he has not taken possession of the acquired land yet. This is a SERS-GMR acquisition and in its implementation it includes the offer of a replacement unit in Commonwealth Avenue West. This is expected to be completed only in mid 2011. As noted above the appellants have accepted the offer. Mr Liew submitted that if subsequent to the acquisition date the appellants have a residence or place of business at the acquired land and in consequence of the acquisition they are compelled to change their residence or place of business then the Board would have to take into consideration the reasonable expenses incidental to that change under s 33(1)(e). SDGpl is carrying on business at the acquired land now having relocated there in January this year and he submitted that the appellants have a place of business which is the place of business of SDGpl. He submitted that the expenses of the change of residence and place of business would amount to \$90 000 and these expenses have to be taken into consideration.

(39) Mr Nair conceded that if in the circumstances of this case the appellants move in after the acquisition date and are later compelled to change their residence or place of business in consequence of the acquisition then the expenses can be taken into consideration provided that they are reasonable and are incidental to that

change. He submitted that the appellants have not established a place of business at the acquired land. The business that is now there is that of SDGpl and not that of the appellants.

(40) Section 33(1)(e) has been quoted above and is repeated here for convenience:

(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:

...

(e) if, in consequence of the acquisition, *he* is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to that change [italics added]

In paras (b), (c) and (d) of s 33(1) the person to whom the benefit accrues or by whom the damage is sustained is identified as the *person interested* and it is clear that the personal pronoun *he* in para (e) refers to *the person interested* and a *person interested* as defined includes every person claiming an interest in compensation to be made on account of the acquisition.

(41) The Collector has not taken possession of the acquired land yet. This is a SERS-GMR acquisition and the appellants have accepted HDB's offer of a replacement unit and it is unlikely that possession of the acquired land will be taken before the replacement unit is completed in mid-2011. Until the replacement unit is ready the appellants will continue to have possession of the acquired land. They can occupy it themselves or they can let it out. They can occupy it themselves by having their residence in the living quarters or by having a place of business in the first storey commercial unit or by doing both. The Collector has made his award and he must pay to the appellants the compensation awarded or if possession of the acquired land has not been taken by him then he must apply to the Registrar of the Supreme Court for an order to deposit the amount of the compensation in court. See s 40. It is also open to him to take possession, pay the compensation awarded and lease the acquired land back to the appellants for a short term or periodically as has been done in other cases. In this case he has not done any of these things.

(42) If the appellants have their residence or place of business there they will be compelled to change it when the Collector takes possession and there may be expenses incidental to such change and if such expenses cannot be taken into consideration under s 33(1)(e) by reason only that the appellants' residence or place of business was established after the acquisition date then they are disadvantaged in regard to their rights as lessees of HDB. But the language of s 33(1)(e) does not support such an interpretation. It does not provide that the person interested must have his residence or place of business as at the acquisition date before the expenses can be taken into consideration. In the decision of this Board the expenses incidental to a change of residence or place of business to be taken into consideration under s 33(1)(e) apply as well to a residence or place of business existing as at the acquisition date as to one established after that date in the circumstances of this case.

(43) The appellants say in their joint affidavit:

Our intention was to downgrade our residence to a HDB flat in our later years after our three children have grown up, to continue to live in the Living Quarters of the [acquired land].

An HDB flat is quite different from the living quarters of the acquired land. An HDB flat has direct and exclusive access by a front door to a common area which is usually a corridor. From the description of the acquired land in Mr Lee's valuation report the first storey of the acquired land comprises a retail or shop area in front, an open area at the rear, a bathroom and a toilet. Access to the living quarters is by the back door leading into the open area at the rear and by the staircase past the bathroom and toilet all of which are in the first storey. Access to the staircase can also be gained from the front door through the retail area. Unless the living quarters and the commercial unit are occupied together special arrangements will have to be made for convenient access to the living quarters.

(44) The appellants have their residence at 85 Cashew Road #02-04. This appears to be a condominium unit in a good residential area off Upper Bukit Timah Road. They know that the replacement unit will be ready in about mid 2011. They say they intend to "downgrade their residence to a HDB flat in [their] later years". They have not "downgraded" yet and there is no evidence that they have acquired or made any attempt to acquire an HDB flat for their residence in their later years. They have not moved into the living quarters to establish their residence there yet. And if they do that they would soon have to move out again to move to an HDB flat as is their intention as they say. On the evidence this Board finds that a reasonable person in the position of the appellants would not move out from where he is now to establish his residence at the living quarters on the second storey of the acquired land only to have to move out again shortly after that to an HDB flat (if the intention to downgrade to an HDB flat is to be fulfilled) or to somewhere else and further finds that the appellants have not satisfied this Board that they have any real intention of doing so.

(45) The appellants say in their joint affidavit:

We have renovated the commercial portion extensively to market our interior design and renovation business at the [acquired land]. Copies of the photographs of our office at the [acquired land] can be found in the Valuation Report from Premas in exhibit "H" herein.

Mr Tan said under cross examination that SDGpl was registered on 1996 May 9 and that previously he did business as Samlo Interior Design in partnership with his wife. His present occupation as he said in evidence is that of a director of an interior decoration company. As noted above he is one of the two directors of SDGpl.

(46) The former name of SDGpl was Samlo Interior Design Pte Ltd and the name was changed to SDGpl on 2007 January 22. There is no evidence that the appellants have carried on any business on their own account since the incorporation of SDGpl and if they did have the partnership business before it appears to have been taken over by SDGpl and it is SDGpl that is now carrying on its own business at the acquired land. SDGpl is a corporate body with a distinct identity of its own separate from the appellants even if they own all its issued shares and are its only

directors. It is SDGpl that has a place of business at the acquired land. On the evidence this Board is not satisfied that the appellants on their own account now have or have any real intention of having a place of business at the acquired land.

(47) SDGpl may be compelled to change its place of business in consequence of the acquisition and there may be expenses incidental to such change but the expenses will be those of SDGpl and there is no provision in the Act for such expenses to be taken into consideration to determine the compensation to be awarded to the appellants who have suffered no direct loss by reason of these expenses.

(48) On the evidence and for the reasons given above this Board finds:

(a) that the appellants have not discharged the onus of proving that the award is inadequate and para 1 of the grounds of appeal fails;

(b) that Mr Lee was the only witness who gave evidence of valuation and there is no basis whatsoever for the suggestion in para 2 of the grounds of appeal that he was in error in the manner alleged and para 2 of the grounds of appeal fails;

(c) that the market value of the acquired land as at the acquisition date was less than \$817 000;

(d) that the appellants did not have as at the acquisition date and have not satisfied this Board that they will have at any time after that date their residence or place of business at the acquired land;

(e) that the appellants have not satisfied this Board that in consequence of the acquisition they or either of them will be compelled to change their residence or place of business; and

(f) that there are no expenses to be taken into consideration under s 33(1)(e) and para 3 of the grounds of appeal fails.

Award

(49) This appeal fails and in accordance with s 35(1) this Board confirms the award of the Collector.

Costs

(50) 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 appellants.

Dated 2008 August 29

Commissioner of Appeals T Q Lim SC
Assessor Tan Kim Choon
Assessor Associate Professor K S Leong