

LAND ACQUISITION ACT

APPEALS BOARD

AB 2001.030

In the Matter of the Acquisition of Land at
Lot 1117 of Mukim 24
191A Paya Lebar Road

Between

Yong Fah Lin

... 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 \$320 000 in respect of the land at 191A Paya Lebar Road on Lot 1117 of Mukim 24 be increased to \$327 000;

And

(2) That the Collector of Land Revenue pay to the appellant the balance of the award together with interest at 6% per year from the date of taking possession;

And

(3) That the deposit paid by the appellant be repaid to her;

And

(4) That there be no order as to costs of this appeal.

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 28 April 2001 ("acquisition date") a notification was published in the *Gazette* of a declaration made under s 5 of the Land Acquisition Act ("s 5 declaration") that the land at Lot 1117 of Mukim 24 together with the building unit on it at 191A Paya Lebar Road ("191APLR") was required for a public purpose namely Construction of Circle Line and Comprehensive Development. The appellant was then the proprietor of 191APLR for the residue of the term of 9 999 years from 1 November 1959 created by the lease registered in the Registry of Deeds in Volume 1380 No 48 ("lease 1380-48") and of one undivided half share of Lot 1117 for an estate in fee simple (together "acquired land") and is a person interested.

(2) For the purpose of the inquiry held under s 10 the appellant submitted a claim of \$466 000 for compensation. The respondent ("Collector") found that the market value of the acquired land as at the acquisition date was \$320 000 and on 12 November 2001 he made an award of compensation in that amount.

(3) The appellant appeals against the award. In her petition of appeal she complains that the award is inadequate. She refers to her letter of 4 June 2001 and claims other sums including \$200 000 for *ex gratia* compensation.

Acquired Land

(4) Lot 1117 is a rectangular plot on the West side of Paya Lebar Road to the North of its junction with Beng Huat Road. The site area of Lot 1117 is 156.4sm. On site is 191/A Paya Lebar Road which is an intermediate two storey shop-house in a terrace block of three shop-houses at the Beng Huat Road junction. It is divided into two building units and 191APLR is the second storey unit. The floor area of this unit is 106.5sm. The front of the shop-house facing Paya Lebar Road is served by a walkway at first storey level and a lock-up staircase from the walkway provides access to the second storey unit.

(5) The land on which the terrace block stands is set back from the main line of Paya Lebar Road and this provides a short service road in front of the shop-houses. Beng Huat Road is a cul-de-sac off Paya Lebar Road. The terrace block is served by a back lane and this back lane appears to continue along the side of the other corner shop-house in the block and end at Paya Lebar Road. It appears that the whole of the terrace block is surrounded by the cul-de-sac on the South, the back lane on the West, the continuation of the back lane on the North and the service road on the East and this sets it apart from the main thoroughfare along Paya Lebar Road.

(6) The site of the acquired land is zoned Residential in the 1998 Master Plan. In 1999 written permission was granted for the Retention of Use of the 2nd Storey Residential Flat as an Office subject to the condition that "the use [was] approved for three years to cease on 29 July 2002" which was after the acquisition date. The appellant bought the acquired land in April 1996 and written permission for change of

use of the residential flat as an office was subsequently granted although the building unit was in fact used as an office when she bought it. She carried out improvement works and let it out to a few tenants in succession and as at the acquisition date and for some time after that it was occupied by a tenant and used as an office. The last tenant had a lease of two years and paid a monthly rent of \$1 750.

(7) The acquired land is about 8km from the city centre at Collyer Quay. The locality is largely industrial and commercial in character with a mix of landed factories and warehouses, flatted industrial buildings, detached factory buildings and retail shops. Residential developments nearby include Happy Gardens and MacPherson Green and the HDB MacPherson Estate. The first storey below 191APLR and the first storeys of each of the other shop-houses in the terrace block were used for commercial purposes as at the acquisition date. Paya Lebar Road is well served by a public bus system.

Compensation

(8) Section 33 of the Act provides:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall ... take into consideration the following matters and no others:

(a) the market value -

(i) ...

(C) as at 1st January 1995 in respect of land acquired on or after 27th September 1995;

(ii) as at the date of publication of the notification under section 3(1) if the notification is, within 6 months from the date of its publication, followed by a declaration under section 5 in respect of the same land or part thereof; or

(iii) as at the date of publication of the declaration made under section 5,

whichever is the lowest;

...

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

...

(e) the market value of the acquired land shall be deemed not to exceed the price which a bona fide purchaser might reasonably be expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land for the purpose designated in the Development Baseline referred to in section 36 of the Planning Act 1998, whichever is the lower, after taking into account the zoning and density requirements and any other restrictions imposed under the Planning Act 1998 and any

restrictive covenants in the title of the acquired land, and no account shall be taken of any potential value of the land for any other more intensive use

There was no s 3(1) notification and the s 5 declaration was published on 28 April 2001 (the acquisition date as noted earlier) and it is not disputed 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

(9) In para 1(e) of the petition of appeal the appellant says that the award is inadequate and in para 2 she refers to her letter of 4 June 2001 and claims \$640 000 for compensation for the acquired land and other sums for loss of anticipated appreciation in value of the acquired land, loss of opportunity to start a business, renovations, expenses for stamp duty, valuation and professional advice concerning the acquisition and a further sum of \$200 000 for *ex gratia* compensation.

Appellant's Valuation

(10) The appellant was unrepresented at the hearing. She said she could not afford to appoint a lawyer and with the leave of this Board she was assisted by her brother. She employed Newman & Goh Property Consultants (Pte) Ltd who issued her a valuation report dated 14 May 2001 and another dated 18 April 2002 both appearing to have been prepared by Mr Tham a valuer but she informed the Board that she could not afford to pay further fees for Mr Tham or any other valuer to give oral evidence. Mr Tham's reports are in the bundle of documents before the Board. In the first report Mr Tham said that the market value of the acquired land as at the acquisition date was \$460 000 for commercial use as an office and in his second report he said that the market value was \$400 000 for residential use as a flat. Mr Tham did not testify before this Board.

(11) The appellant also referred to the following transactions:

	<i>Property</i>	<i>Contract Date</i>	<i>Price</i>	<i>Floor Area</i>
1	510 Geylang Rd #04-01 ("510#04-01")		\$168 000	280sf (26sm)
2	510 Geylang Rd #04-04 ("510#04-04")		\$320 000	624sf (58sm)
3	510 Geylang Rd #04-02 ("510#04-02")		\$275 000	484sf (45sm)
4	701 Geylang Rd #02-04 ("701#02-04")	(Not sold)	\$493 700	110sm
5	701 Geylang Rd #02-06 ("701#02-06")		\$430 760	96sm

6	701 Geylang Rd #03-04 ("701#03-04")		\$305 000	68sm
7	701 Geylang Rd #04-01 ("701#04-01")	(Not sold)	\$471 210	105sm
8	701 Geylang Rd #04-02 ("701#04-02")	(Not sold)	\$493 700	110sm

701#02-04, 701#04-01 and 701#04-02 were not sold and the prices are the seller's indicated prices only. The appellant did not give the dates of the transactions.

Collector's Valuation

(12) Ms Chee Hok Yean of Jones Lang LaSalle Property Consultants Pte Ltd testifying for the Collector referred to her valuation report dated 31 March 2003 and said that the market value as at the acquisition date was \$327 000. She said she adopted the inference from past transactions approach. She produced an analysis in which she referred to the following transaction:

<i>Property</i>	<i>Contract Date</i>	<i>Price</i>	<i>Site Area</i>	<i>Floor Area</i>
191A Paya Lebar Road	4 Apr 1996	\$392 000	156.4sm	106.5sm

The property in this transaction was the acquired land itself and the buyer was the appellant.

(13) Ms Chee made adjustments of +10% for mortgage sale and -31.76% for time for a net adjustment of -21.76%. The adjustment for time was made on the basis of the indices in URA, *Property Market Information* ("PPI"). -31.76% was derived from PPI for residential non-landed apartments. She referred to paired transactions in Jalan Wangi and Pillai Road which would tend to support the adjustment for time derived from PPI. She obtained an adjusted value of about \$306 700. She added the value of the improvements made after the transaction which she determined to be \$20 000 for a market value of say \$327 000.

(14) Ms Chee explained that in this analysis she had assumed that the market value was not to exceed what might conveniently be described as the Development Baseline use price under s 33(5)(e) and that the Development Baseline use was residential. Leaving aside s 33(5)(e) she would have found that the market value was \$349 000 for commercial use as an office which was the existing use as at the acquisition date. Her valuation was based on the same 191APLR transaction of April 1996 with an adjustment for time of -26% by reference to PPI for office space.

(15) Mr Tham referred to the following transactions in his first report:

	<i>Property</i>	<i>Contract Date</i>	<i>Price</i>	<i>Floor Area</i>
1	24B Lorong 23	20 Aug 1999	\$464 380	106sm

	Geylang ("24BL23")			
2	26B Lorong 23 Geylang ("26BL23")	20 Aug 1999	\$455 620	104sm
3	255A Geylang Rd ("255AGR")	9 Jun 1999	\$600 000	156sm
4	418B Geylang Rd ("418BGR")	12 Oct 1997	\$1 280 000	184sm

In his analysis of the 24BL23 transaction Mr Tham made an adjustment for time and for floor area for an adjusted value of \$466 000. When Ms Chee was referred to these transactions and the analysis she said she would not dispute the adjustment for time and that there should be no adjustment for floor area but she added that she would "at least make one more adjustment - it would be for location and between Geylang and Paya Lebar". She said it would probably be about -20%. On the basis of the 24BL23 transaction she said the market value would be \$395 000.

(16) Mr Tham referred to the following transactions in his second report:

	<i>Property</i>	<i>Contract Date</i>	<i>Price</i>	<i>Floor Area</i>
1	19A Pillai Rd ("19APR")	11 Jun 2001	\$450 000	101sm
2	315 Upper Paya Lebar Rd ("315UPLR")	29 Mar 2001	\$430 000	120sm (Estimated)
3	73A Jalan Wangi ("73AJW")	25 May 2001	\$365 000	98sm

He concluded that the market value of the acquired land as an apartment was \$400 000 as at the acquisition date. No analysis was given in his report. Ms Chee was unable to confirm the 315UPLR transaction. 19APR is a 9 999 year leasehold second storey duplex apartment and 73AJW is a freehold second storey apartment above a shop.

(17) Ms Chee was referred to the transactions referred to by the appellant. She said that 510#04-01 was disclosed as an internal transfer for \$156 000 and the contract date was 23 February 2000. 510#04-04 was transferred on 14 March 2001 and the contract date for the 510#04-02 transaction was 27 September 2002. These were freehold office units in a part 2/part 4/part 8 storey mixed commercial and residential development at Geylang Road and Lorong 28 Geylang. The development was completed about three and a half years ago.

(18) Ms Chee said that the units in 701 Geylang Road were 99 year leasehold units in a part 2/part 4 storey fully commercial development. 701#02-06 was sold in December 2002 for \$355 000 and 701#03-04 was sold in February 2003 for \$266 000. This is a new development. The 99 year terms commence from February 2001.

Market Value

(19) There is no direct evidence as to whether 191APLR was transacted in April 1996 as a residential unit or as an office unit. Ms Chee said that from another valuer's report which she had seen she believed there was written permission for change of use but she produced a report by Knight Frank Pte Ltd dated 26 June 1996 which stated that only provisional permission had been granted for change of use and this had expired by June 1993 and there had been no written permission to use 191APLR as an office. The report was addressed to Overseas Union Trust Ltd ("OUT"). The seller would or should have known that it was used as an office without written permission for change of use and a reasonably informed market including the appellant was likely to have known of it. The acquired land was transferred to the appellant who mortgaged it to OUT and both the transfer and the mortgage were dated one day after the date of the report.

(20) Ms Chee was content to accept that the price (adjusted for mortgage sale) could be adjusted for time by reference to PPI for residential non-landed apartments or for office space to derive the market value for residential use or for office use and it appears that to her there was no significant difference in the market value reflected by the price whether 191APLR was transacted as a residential unit or as an office unit in the April 1996 transaction. On the evidence there was no reason why this should not be so and this Board finds accordingly.

(21) For office space it appears that Ms Chee referred to PPI for Central Area but the acquired land is in Fringe Area and not Central Area. Both Fringe Area and Central Area are in Central Region and the mistake made by her while giving oral evidence is not uncommon. Mr Tham referred to PPI for Fringe Area in his analysis of the 24BL23 transaction. If Ms Chee had relied on PPI for Fringe Area she would have found a fall in value substantially greater than the -26% she adopted or even the -31.76% she adopted for residential non-landed apartments and she would have found that the market value for office use was even less than \$327 000. PPI also shows that between the third quarter of 1993 and the second quarter of 2001 the median price of office space in the Fringe Area was at its peak in the second quarter of 1996 and at its lowest in the second quarter of 2001.

(22) There was written permission for retention of office use as at the acquisition date. However this was limited to expire three years from its grant in July 1999 and would have been due to expire about 15 months after the acquisition date and if there was no application for further written permission for retention of office use then 191APLR which was originally constructed as a residential apartment would have reverted to its original residential use. In the premises it is unlikely that the office use price can be less than the residential use price notwithstanding the sharper fall in office space prices in the relevant period and this Board finds accordingly.

(23) Ms Chee said she would at least make one more adjustment and allow -20% for location between Geylang and Paya Lebar. There is a significant difference for location but there is no sales evidence in relation to this. Where there is such a difference it cannot be resolved by an arbitrary adjustment without any support from sales evidence.

(24) There may also be planning differences. 191APLR is in the Residential zone in the 1998 Master Plan. Of the 4 Geylang properties referred to by Mr Tham both 24BL23 and 26BL23 appear to be in the Residential with Commercial at First Storey zone and 255AGR and 418BGR appear to be in the Commercial zone and not as Ms Chee assumed from Mr Tham's report. There is no evidence as to written permission for use as offices where such written permission was or would have been required. Where written permission was required and has been granted there is no evidence as to the conditions to which such written permission might be subject particularly conditions as to time of expiry.

(25) In the premises these transactions offer no assistance for determining the market value of the acquired land on the basis of or limited by the office use price. This Board has also considered the transactions referred to by the appellant. The properties are commercial units in new developments and the transactions are not comparable. The other transactions referred to by Mr Tham have also been considered. The 19APR and 73AJW transactions took place after the publication of the notification of the s 5 declaration and the wide publicity as to the proposed intended development and there is no evidence as to the effects of such publicity. No analysis is given in Mr Tham's report and Ms Chee has not been asked to offer any. In the decision of this Board no assistance can be derived from these transactions.

(26) On the evidence adduced such as it is and the facts agreed or not disputed this Board finds:

- (a) that for the purpose of s 33(1)(a) the market value of the acquired land was the lowest as at 28 April 2001;
- (b) that the market value of the acquired land as at 28 April 2001 was \$327 000;
- (c) that 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).

Other Losses and Expenses, ex gratia Payment

- (a) *\$250 000 for loss of appreciation of value*

(27) The appellant said in her letter of 4 June 2001 that this was a likely gain as the acquired land would be at the entrance to the MRT station. This was a reference not to a station which existed at the acquisition date but to a station which was proposed to be constructed at a future date. There is no evidence of any future development which will have an MRT station near the acquired land but the purpose of the acquisition as noted earlier is Construction of Circle Line and Comprehensive Development. If an MRT station was proposed to be constructed at or near the acquired land then the proposal was likely to be part of the scheme of which acquisition of the land was an integral part. Unless the land was acquired the purpose in the scheme could not be carried out.

(28) Where as in this case notification of a s 5 declaration is published that land is required for a purpose specified in the notification and proceedings are taken for the acquisition of the land in order that the purpose may be carried out and the scheme to acquire the land for that purpose involves a particular development such a development is not a matter that can be taken into consideration in determining the market value of the land as at the date of publication of the notification. The concept of market value leaves no room for any such consideration. This is a matter of valuation but if any authority is required reference may be made to *Pointe Gourde Quarrying & Transport Co Ltd v Sub-Intendent of Crown Lands* [1947] 1 AC 565. But see also s 34(e) which provides:

In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall not take into consideration ...

(e) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired

The alleged loss is in respect of an increase to the value that is likely to accrue from the use to which the acquired land will be put when it has been acquired.

(b) *\$30 000 for disruption*

(29) There are insufficient particulars to identify this claim but giving it the best interpretation it appears to be a claim for the loss of use of the acquired land for the purpose of the appellant's intended business. Such loss is not and does not arise under any one or more of the matters to be taken into consideration in determining the amount of compensation under s 33 and s 33 further provides that no other matters are to be taken into consideration.

(c) *\$50 000 for renovation*

(30) The appellant said she spent \$50 000 on renovation. The expenditure as such is not any one of the matters to be taken into consideration under s 33 but if it added value to the acquired land then it would be reflected in the market value determined in the ordinary way. Ms Chee allowed \$20 000 for value added to 191APLR after its purchase by the appellant and determined that the market value as at the acquisition date was \$327 000 and this Board has taken such market value into consideration.

(d) *\$25 000 for stamp duty and legal costs*

(31) Again there are insufficient particulars to identify this claim and again giving it the best interpretation it appears to be either a claim for expenses incurred in the purchase of the acquired land in the April 1996 transaction or for expenses to be incurred in buying an alternative property. In either case it is not and it does not arise under any one or more of the matters to be taken into consideration under s 33. The Collector has in the past conceded that expenses of buying an alternative property may be expenses incidental to a change of place of business under s 33(1)(e) but in this case the appellant did not occupy any part of the acquired land at any material time at all. She did not carry on any business there. It was not her place of business. She has not been compelled in consequence of the acquisition to change

her place of business and there can be no expenses incidental to the change of place of business.

(e) \$1 000 for valuation report

(f) \$5 000 for professional advice in and about the acquisition

(32) These expenses are not and they do not arise under any one or more of the matters to be taken into consideration under s 33. They are in the nature of costs and where the appellant is entitled to any costs under s 32 they may be taken into consideration for that purpose.

(g) \$200 000 *ex gratia* payment

(33) This Board is constituted under the Act and its jurisdiction and powers are defined in the Act. It does not have any power to order or direct the Collector or the Government or any of its agencies to make any *ex gratia* payment.

(34) In the decision of this Board there are no matters to be taken into consideration in determining the amount of compensation to be awarded for the acquired land under s 33 other than its market value as at the acquisition date.

s 33(5)(e)

(35) In the course of the hearing Ms Tan of counsel for the Collector submitted that for the purpose of s 33(5)(e) the Development Baseline use of the acquired land was residential (non-landed). On the evidence adduced this Board has found that the market value as at the acquisition date was \$327 000 and that it did not exceed the existing use price or the Development Baseline use price whether the Development Baseline use was residential (non-landed) or commercial (office) and it would not be necessary to deal with Ms Tan's submission. It may be helpful though that this Board should express its views on the question but bearing in mind that it has not had the advantage of any submission to the contrary.

(36) The Act empowers the State to acquire land compulsorily and under s 5 whenever "any particular land is needed" (for a prescribed purpose) the President may "declare the land to be required". "Land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth". See s 2(1). It will include the acquired land in this case and the acquired land in this case comprises two distinct interests. The appellant was entitled to a leasehold interest in the second storey unit at 191APLR and she was also entitled one undivided half share of the land at Lot 1117.

(37) The Development Baseline use price is "the price which a bona fide purchaser might reasonably be expected to pay for the land ... 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". The "land" is the acquired land. It comprises 191APLR (the second storey unit) and one half share of Lot 1117 (the site).

(38) Section 36 of the Planning Act provides:

(1) Subject to this section, the Development Baseline for any land shall be the value of one of the following developments which, when calculated in accordance with the prescribed method and rates, gives the highest figure:

(a) any development for which that land was allocated in the Master Plan as approved by the Governor in Council on 5th August 1958 under the provisions of Part IV of the Singapore Improvement Ordinance (Cap. 259, 1 955 Ed)

(b) any development for which that land was allocated in the Master Plan as the result of any alteration or addition made under section 6 (1) of the repealed Act prior to 24th April 1982; or

(c) any development of that land in respect of which -

(i) development charge, where payable, has been paid;

(ii) no development charge is payable by reason of any exemption under this Act or the repealed Act; and

(iii) development charge is not payable under the written law in force when written permission was granted for the development of that land or any part thereof.

"Land" includes buildings and any estate or interest in or right over land. See s 2. See also s 3 which provides:

(1) Subject to subsections (2) and (3), in this Act, except where the context otherwise requires, "development" means the carrying out of any building ... operations in, on, over or under land, or the making of any material change in the use of any building or land ... and "develop" and "developing" shall be construed accordingly....

(3) For the avoidance of doubt, it is hereby declared that for the purposes of this section ...

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

(39) Lot 1117 (the site) was "developed" when 191/A Paya Lebar Road was erected on it. That could have been in 1959 when the term under lease 1380-48 commenced or earlier when building operations were carried out but there is no evidence as to this. 191APLR (the second storey unit) was "developed" when there was a change of use from residential to office. Written permission was granted for retention of office use in 1999. That was also a "development" and no development charge was payable under the Planning Act. The use for the purpose designated in the Development Baseline for Lot 1117 was probably either residential or residential with commercial at first storey as the first storeys of all three buildings in the terrace block appear to have been used for commercial purposes. For 191APLR it was probably commercial (office).

(40) The Collector elected not to call the competent authority under the Planning Act or any of his officers to testify as to matters concerning the Development Baseline for the acquired land and this Board has made findings on fact only on such evidence as has been adduced and such inferences as may have been drawn. It remains to be observed that where there are strata interests or several interests in a development on land to which different persons are entitled and the intention is to acquire the interests of all persons interested then the acquisition should be of the entire site together with the development on it and one award should be made by the Collector with an apportionment of the compensation among the several persons interested.

Award

(41) After 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 \$327 000. This exceeds the amount of the Collector's award and this Board orders that the Collector pay to the appellant the excess together with interest at the rate of 6% per year from the date of taking possession to the date of payment.

Costs

(42) For the purpose of the inquiry held under s 10 the appellant made a claim of \$466 000. This was a claim made pursuant to the Collector's notice under s 8 and as it exceeds the amount awarded by this Board by more than 20% the appellant is not entitled to her costs.

Dated 2003 May 7

Commissioner of Appeals T Q Lim SC
Assessor Wong Yui Cheong
Assessor Muhd Faishal Ibrahim