

LAND ACQUISITION ACT

APPEALS BOARD

AB No. 2012.010

In the Matter of the Acquisition of Land at
Part of Lot 8101V of Mukim 17

Between

The Management Corporation Strata Title Plan No. 2504

... Appellants

And

The Collector of Land Revenue

... Respondent

Solicitor for the Appellant
Leo Cheng Suan
Teh Ee-Von
Infinitus Law Corporation

Solicitor for the Respondent
Lee Cheow Han
David Lee
Elsie Lee
Attorney-General's Chambers

DECISION

The decision of this Board is:

- (1) That the award of the Collector of Land Revenue of compensation in an amount of \$556,000 in respect of the acquired land at part of Lot 8101V Mukim 17 be confirmed;

And

Costs of the Appeal

- (2) that the costs of this appeal to the Board be paid by the Appellant.

STATEMENT OF REASONS

Introduction

- (1) Part of Lot 8101V Mukim 17 (“acquired land”), being a strip of land of area 600.9 sq metres (sqm) forming part of the common property of and running along the eastern boundary of Thomson 800 condominium (“condominium”), was gazetted for land acquisition on 19 January 2011 under section 5 of the Land Acquisition Act (“Act”). This was for a public purpose namely the construction of the North South Expressway Stage 1 from Admiralty Road West to Toa Payoh Rise and for comprehensive redevelopment.
- (2) Compensation Award by Collector –The Collector of Land Revenue (“Collector”) awarded statutory compensation of \$556,000 as market value for the acquired land. Collector also offered an ex-gratia payment of \$58,380 making a total compensation of \$614,380.
- (3) Appellant’s compensation claim – The appellant, Management Corporation Strata Title Plan No. 2504 (“MCST”), which represents the subsidiary proprietors of the strata units in the condominium appeal for higher compensation. The compensation amounts put forth in connection with the appeal are:
 - a) 5 December 2011 and the Petition of Appeal of 20 March 2013 -A claim for \$8.61 million based on a 11 October 2011 valuation report by Ms Liow Pick Yuen from M/S CKS Property Consultants Pte Ltd (“CKS”);
 - b) 17 February 2014 – A claim of \$6 million stated in the affidavit of Chairman of the MCST Council; and
 - c) 6 March 2014 –Claim for \$8.61 million with an alternative \$5.835 million as “fair and reasonable compensation” based on Ms Liow’s 2nd valuation report of 17 December 2014¹.

The two amounts of \$8.61 million and \$5.835 million are confirmed in the MCST’s opening statement and closing submission.

- (4) Onus of Proof on Appellant - Pursuant to section 25(3) of the Act, the onus of proving, on

¹ Affidavit of Liow Pick Yuen at [31] and LPY-4 at page 36 para 11.10 and

a balance of probabilities, that the Collector's award is inadequate is on the MCST. Case law has recognised that an appellant in a land acquisition appeal is analogous to a plaintiff.²

- (5) Valuers involved in Witness Conferencing – The MCST's valuer at the hearing in July 2014, was Mr Tay Choon Kwan Richard from CKS, who replaced Ms Liow, who had, by then, left CKS. Mr Tay adopted the entirety of Ms Liow's evidence in her affidavit of 6 March 2014 except for a correction, which is not disputed. Collector had 2 valuers, Ms Kwang Heng Lee from Premas Valuers and Property Consultant Pte Ltd ("Premas") and Mr Tan Keng Chiam from Jones Lang LaSalle Property Consultants Pte Ltd ("JLL"). The valuers gave evidence using the witness conferencing process.
- (6) Brief Description of Thomson 800 - This is a private freehold condominium of land area 28,573.9 sqm, completed in the late 1990s. It is bounded by Thomson Road and Marymount Road and shares a boundary with Mount Alvernia Hospital. There are 375 apartments, 10 duplex penthouses and 5 single penthouses in a 4-storey block and three 20-storey blocks. The communal facilities include a club house with an air-conditioned multi-purpose hall, gymnasium cum aerobics room, free-form swimming pool, "champagne pool" featuring water cascades and children's fund/splash pool, outdoor Jacuzzi, poolside sun deck, tennis courts, squash court, 3 golf driving practice ranges, children's play area, barbeque picnic area, sauna rooms, steam rooms, changing rooms, jogging path, landscape garden with pavilions and water features.
- (7) The condominium buildings and facilities will remain after Collector takes possession of the acquired land. According to the Land Transport Authority ("LTA"), the future North South Expressway along Marymount Road on the acquired land stretch will be fully underground, when completed and Marymount road along this stretch will remain a 3 lane road³.

Details of the Condominium Property and Acquired Land

- (8) The whole condominium, including the acquired land, is zoned "Residential" with an

² *Tan Kok Wah Dennis Christopher & anor v Collector of Land Revenue AB 2011.026 at [13]*

³ Affidavit of Lim Choon Huang at [8]

approved gross floor area (“GFA”) of 61,990.58 or an equivalent gross plot ratio of 2.17. This is the maximum allowable intensity for the development.

- (9) The acquired land is “narrow and elongated in shape,”⁴ resembling a trapezoid with an area of 600.9 sqm (2.1% of the condominium land area). Sloping downwards and with a maximum width of 10 metres, it runs below Marymount Road, along the eastern boundary at the back of the condominium.⁵ It shares a common boundary with Mt Alvernia Hospital at the north boundary.
- (10) There is a 6.6 kV electrical substation, 13 car park lots, part of the driveway, part of the boundary fence and landscaping on the acquired land⁶. The LTA will, at their cost, reinstate the structures on the remaining property, create another 4 carpark lots to replace those affected by the proposed relocation of the electrical substation and replace the trees affected by acquisition. The greenery and foliage shown in the pictures produced are largely outside the condominium property on an adjoining state reserve.⁷
- (11) There was some issue on the extent to which the acquisition will affect the condominium internal two-way driveway. The covered carpark exit opens into this driveway. According to the LTA, the driveway will be slightly realigned but will still comply with the minimum requirements under Part II of the Schedule to the Parking Places (Provision of Parking Places and Parking Spaces) Rules and its functionality will not be affected.⁸ The MCST’s valuers, CKS, say however, that the acquired land forms some 15% of the surface vehicular access /surface visitor lots⁹. This issue is dealt with in paragraph 21.
- (12) As the acquired land with a width of about 10 metres, is next to a “Category 2: Major Arterial Road” (Marymount Road), it falls within the road and/or green buffer of the

⁴ Affidavit of Liow Pick Yuen at LPY 4, page 34 at para 8.1.

⁵ See map at 1st affidavit of Kwang Heng Lee at Tab KHL-2 at page 18, Exhibits A-3, A4-1 and A4-2

⁶ Affidavit of Lim Choon Huang at LCH-1 page 06, Exhibit A4-1, Exhibit A4-2, Affidavit of Tay Choon Kwan at TCK-2 pages 24 and 25.

⁷ Exhibits A2-6 – A2-7, A-3, A4-1, NE 22 July 2014 at pages 127:1 – 127:18

⁸ Affidavit of Lim Choon Huang at [7]

⁹ Affidavit of Liow Pick Yuen at [15] and at page 35 (para 8.6 of 17 December 2013 report), Affidavit of Tay Choon Kwan at [10].

common property.¹⁰ The planning guidelines provide that the buffer can be used for greenery and where appropriate for ancillary structures such as a bin centre, guard-house, electric substation, water tank, swimming pool, car parks, etc.

(13) The relevant provisions of Section 33 of the Act are reproduced:

(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) 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 made under section 5, in any other case;

.....

(c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing that land from his other land;

(d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner;

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

(5) For the purpose 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 willing to pay, after taking into account the zoning and density requirements and any other restrictions imposed under the Planning Act (Cap 232) as at the date of acquisition and any restrictive covenants in the title of the acquired land”

Issues

(14) There are two main issues. Parties agree substantively on a base valuation of about \$11

¹⁰ 1st affidavit of Kwang Heng Lee at paragraph 34 of Part 2: General Considerations in the handbook on Development Control Parameters for Residential Development” which requires a Road Buffer of 15 metres within which there is a 5 metre Green Buffer.

million, upon which to assess the market value of the acquired land. CKS and Premas, adopting the common assumptions that the acquired land is zoned “Residential “ with a Gross Plot ratio of 2.17 and using the sales comparison method, but using different property transaction comparables and separate workings, arrived at the base valuations of \$11 million and \$11,100,382 respectively. They agree that the acquired land should be valued on the basis of its “highest and best use” as defined in section 4.1(a) of the Singapore Institute of Surveyors and Valuers’ (“SISV”) Valuation Standards and Guidelines (“the SISV”s guidelines”) (March 2000 edition) which is “*the most probable use of an asset which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the asset being valued.*” They differ on what is the highest and best use of the acquired land and the extent to which the base valuation should be adjusted or “discounted” to arrive at a market value of the acquired land taking into account the specific actual features of the acquired land relevant for market valuation. Collector’s valuation was pegged at 5% of the base value whilst the MCST’s valuation was some 80%. The 2nd issue is whether the Board is precluded by the Act from taking into account an ex-gratia payment made in other cases of land acquired under the Act

(15) Grounds in the Petition of Appeal of 20 March 2013 – The Petition of Appeal stated that Collector’s award of \$556,000.00 “is clearly too low and grossly inadequate.”¹¹ The “Collector had erred in not giving any or adequate consideration to the *Market value of the acquired land*” under the provisions of Section 33 of the Land Acquisition Act.¹² It was further argued:

- 1) that the sole basis for Collector’s valuation was that the approved Gross Floor Area (GFA) had been fully utilised However the acquired land is freehold and the plot ratio may be increased in future;
- 2) that the acquired land is not vacant land or waste land and should not be treated as such. The land is marked as “Residential” under the Master Plan 2008; and
- 3) that Collector had failed to consider the damage sustained by the MCST by reason of “severing the acquired land from the rest of the property.” The acquired land added

¹¹ Paragraph 8 of the Appellant’s Grounds of Appeal (“NL-8”, page 58).

¹² Paragraph 1 of the Appellant’s Ground of Appeal (AB2012.010) in “NL-8” (page 56).

value to the MCST property: it is currently used and enjoyed by the subsidiary proprietors who comprise the MCST. The loss of use of the parcel of land is a loss of amenities that causes damage to the overall value of the development and in the loss of facilities enjoyed by the subsidiary proprietors.¹³

- (a) The ambience of the development (with a nice greenery forest/wooded view, as one of the selling points), is affected by the acquisition. There will be at least 10 mature trees affected by the acquisition.
- (b) There will be increased noise levels based on the loss of mature trees which filter some of the noise from outside the development;
- (c) Relocation of the substation due to the acquisition will narrow the driveway.
- (d) The to-be re-located substation causes the only exit driveway from the covered carpark serving the entire development to be narrowed.
- (e) By narrowing the driveway, there will be congestion of traffic within the development. The inconvenience caused to the subsidiary proprietors also affects the well-being of the subsidiary proprietors, which ought to be considered by the Collector.
- (f) There will be increased dust levels because of the acquisition resulting from the road being closer to the nearby units at Block 808.
- (g) The loss of 13 car park lots results in loss in income to the MCST, at S\$107 per month. This is freehold land.
- (h) It reduces the grandeur of the development because the exit is now narrowed.

Paragraph 13(3) above on the severance damage would seem to fall under section 33(1)(d) of the Act.

- (16) Collector's basis of valuation - The market value of the acquired land is to be determined as at date of acquisition. The acquired land was both physically and legally incapable of residential or any development taking into account density requirements and planning restrictions as: 1) the GFA of the development had been fully utilised and there was no allowable GFA on the acquired land; and 2) use for an existing "road and/or green buffer" was the highest and best use for the acquired land as it was within the minimum road

¹³ MCST's Petition of Appeal

and/or green buffer; limiting the ancillary structures that could be built thereon¹⁴. To value the acquired land on any other basis, when there was no evidence of any plans by the Urban Redevelopment Authority to allow an increase in plot ratio, would be to give the MCST an underserved windfall.¹⁵

(17) As there were no sales transactions of land with use as “road and/or green buffer,” Ms Kwang used rental evidence for a playfield transaction along Upper Thomson Road in the relative vicinity of the condominium, as being akin to use as a “road and/or green buffer” and derived a percentage factor of 3% (by dividing the monthly rent of \$0.53 per sqm of the playfield site by \$17.69 sqm per month, being the minimum rental of non-landed residential units contracted in January 2011). Taking into consideration the land area and location of the acquired land, she found 5% to be an appropriate factor and applied it to arrive at a figure of \$555,019 (5% X \$11,100,382) rounded up to \$556,000¹⁶ for the acquired land.

(18) 2nd Opinion from Collector’s 2nd valuer - Mr Tan, who was appointed by Collector to give a 2nd opinion on the market value of the acquired land, adopted the Income Method¹⁷ in his valuation. In his report of 24 October 2014, he derived a market value of \$315,000 based on the existing use of the acquired land as carpark and garden land. His method was as follows:¹⁸

- (a) He first determined the gross rental income of the acquired land based on the number of car parking lots and garden area affected by the acquisition. He used a rental rate of \$107 per car park lot per month¹⁹, and also the annual rent of \$2,524 for the approximately 397 sqm garden land, and derived a gross annual income of \$24,352;
- (b) He then deducted vacancy and maintenance expenses to derive the net annual

¹⁴ Section 33(5) of the Act read with the SISV’s Valuation Standards and Guidelines on the “highest and best use” of a piece of land.

¹⁵ Swee Hong Investment Pte Ltd v Collector of Land Revenue [2004] SGCA 5.

¹⁶ 1st affidavit of Kwang Heng Lee at [22] –[24] and KHL-9.

¹⁷ Para 3.5.1 of the SISV’s “VS3: Methods of Valuation, that states that the income or investment method is a method of estimating the present worth of rights to future benefits to be derived from the ownership of a specific interest in a specific property under given market conditions. In property valuation, these rights are often expressed as future income in the form of prevailing and sustainable rent.

¹⁸ Affidavit of Tan Keng Chiam at [10] -

¹⁹ \$107 per carpark lot per month was the figure stated in the Petition of Appeal.

income of \$19,482;

- (c) He next applied a capitalisation rate of 6% to discount the net income to perpetuity to obtain the market value of \$324,697 for the acquired land; and
- (d) After deducting the cost of reinstatement for the 17 carpark lots, he estimated the market value of the acquired land at \$315,000.

In cross-examination, Mr Tay, MCST's valuer, whilst disagreeing with the use of the method, conceded that the income method could be used to determine the present value of rental income from freehold land and that from the Income method perspective, Mr Tan's assumptions and figures were reasonable.²⁰

- (19) MCST Basis for Valuation - The MCST's compensation claim ranged from \$5.835 million up to \$8.61 million. The MCST's valuer, Mr Tay, could not satisfactorily explain how CKS, through Ms Liow, had derived a market value of \$8.61 million using two different approaches, the first in her report of 11 October 2011 based on 3 property transaction comparables and the second, in her 2nd report of 17 December 2013 based on the same 3 property transaction comparables together with another 10 property transaction comparables.
- (20) 1st Report of 20 October 2011 relating to claim of \$8.61 million market value - Mr Tay's evidence at the hearing was that the \$8.61 million market value figure in the 11 October 2011 report was based on only 2 out of 3 property transaction comparables in the report.²¹ This evidence is contrary to the report, which states unequivocally that CKS "had taken into cognisance" the 3 property transaction comparables.²² Mr Tay, in his affidavit of 16 April 2014, had adopted this report without qualification.²³ The adjustments and workings for the 3 property transaction comparables produced by Mr Tay at the hearing²⁴ were different from that in Appendix A of Ms Liow's 2nd report of 17 December 2013. The Board does not accept this conflicting evidence.
- (21) 2nd report of 17 December 2013 relating to Claim for \$8.61 million - In her 2nd report of

²⁰ NE on 17 July 2014 at page 63:27 – 64:2, NE 18 July 2014 at page 84:10 – 88:7

²¹ NE on 17 July 2014 at page 25:4 – 28:7.

²² Affidavit of Tay Choon Kian at TCK-1, page 23 para 8.

²³ Affidavit of Tay Choon Kian at [6]

²⁴ Exhibit A-5. NE 22 July 2014

17 December 2013, Ms Liow, using the 3 property transaction comparables together with 10 more property transaction comparables, derived a base value of \$11 million for the acquired land using the assumptions outlined in paragraph 14. After considering specific features of the acquired land, she assessed the market value to be some 80% of \$11 million, that is she “discounted” 20%. She considered the following: 1) the acquired land formed an integral part of the whole development; 2) the acquired land formed some 15% of the surface vehicular access/surface visitor lots; and 3) some owners would be affected by noise/pollution/loss of privacy as a result of the close proximity of the replacement car park lots and the noise from the road (from the removal of the mature trees).²⁵ According to Mr Tay, CKS had provided this 2nd report when they were tasked to relook the market valuation after they were given Collector’s valuation of \$556,000.²⁶

- (22) Mr Tay could not explain how CKS had arrived at a figure of \$8.61 million based on a 20% “discount” on \$11 million, as such a “discount” would yield a figure different from \$8.61 million. When he said that they had rounded down the “discount” from 21.7% to 20% for the 17 December 2013 valuation, he could not explain why with the rounding-down, the \$8.61 million figure had remained and had not been similarly “rounded” and adjusted for consistency. He could not explain CKS’ reasons for arriving at a “discount” of 20% beyond restating the points in paragraph 21. He conceded that the choice had been “basically very judgmental.”²⁷ Although one of the reasons given by CKS in the report and in Ms Liow’s affidavit was that the acquired land formed some 15% of the surface vehicular access/surface visitor lots,²⁸ Mr Tay’s evidence was inconsistent with this assertion.²⁹ The Board accepts the evidence of the LTA that with the relocation of the

²⁵ Affidavit of Tay Choon Kian at [10] subparagraphs [10] – [15]

²⁶ NE 17 July 2014 at pages 28:13 – 28:27 and pages 84:20 – 85:5, NE 18 July 2014 at page 92:20 – 95:7

²⁷ NE 17 July 2014 at pages 56:4 – 56:28 – “ In Ms Liow’s valuation, she had deliberated that the total land value is 11 mil, right, and taking into account that the acquired land is part of the development land and it form 15% of surface vehicular access area. Based on the analysis, we actually used a factor of 20%. Regards to how, at the end of the day, we used 20%, basically it’s we actually using 15 because we take into consideration these few factors and reckon that 15% of the area was affected, it’s basically, constitute the, vehicular access area. So, we actually rounding up Rounded up and used 20%. It’s basically very judgmental. It’s based on judgment.” NE 18 July 2014 at pages 96:25 – 102:32.

²⁸ Affidavit of Liow Pick Yuen at [15] and at page 34 para 8.7.

²⁹ NE 18 July 2014 at pages 80:19 – 83:32, where Mr Tay said that the surface vehicular access was 7,530.5 sqm. He seemed to say at various times that the acquired land of 600.9 sqm formed 15% of the surface vehicular access and also that 15% of the acquired land area (or 90.14 sqm) formed part of the internal driveway.

electric substation and the 17 carpark lots, the condominium internal driveway will need to be only slightly realigned and that its functionality will not be affected.

(23) 2nd report of 17 December 2013 relating to Claim for \$5.835 million – The report had proposed \$5.835 million as an alternative valuation, that was “fair and reasonable compensation.”³⁰ This was the average of 2 values of the acquired land assessed as follows:

- i) \$6.6million based on 60% of the full market value of \$11 million. The assumption was that the acquired land is an integral part of the condominium and therefore should be more valuable than remnant land. When government sells remnant lands, a 50% factor is usually applied to the full market value to compute the value of the remnant lands;³¹ and
- ii) \$5.07 million based on the assumption that the acquired land has a gross plot ratio of 1.

The flaws in this alternative are: a) in relation to the valuation of \$6.6 million, the acquired land has no unutilised GFA. The 50% factor determination of land value for remnant land stems from the unutilised GFA, that can be used to increase the development potential or GFA of adjoining land to be developed; and b) as regards the valuation of \$5.07 million, there was no evidence why CKS had assumed a plot ratio of 1 for the acquired land, when there was effectively a zero plot ratio.

(24) Alleged Severance Damage in paragraph 13(3) - The Board notes and accepts the LTA’s representative’s evidence that: (i) the future North-South Expressway along Marymount Road would be fully underground for the acquired land stretch of Marymount Road; (ii) that the slight realignment of the existing internal driveway as a result of the loss of the acquired land would not affect its functionality as a 2-way access; and iii) that LTA would carry out at its own cost, reinstatement works to the acquired land and would replace any fences, steps, gates and landscaping affected by

³⁰ Affidavit of Tay Choon Kian adopting the whole of Ms Liow’s affidavit of 6 March 2014 at [10] including paragraph 31 of Ms Liow’s affidavit.

³¹ AOS(1-30) at Tab C pages 28-30.

acquisition. A road side table with a pedestrian footpath, landscaping and covered roadside drains were planned for construction after completion of the expressway.

- (25) It also emerged at the hearing, that the greenery, that could be removed due to the acquisition, comprised largely trees and foliage outside the condominium boundary on an adjoining state reserve, for which there can be no claim for compensation.³² As the Board is of the view that the claims of noise, dust, traffic congestion along the internal driveway and loss of grandeur of the development, that could be caused as a result of the acquisition have not been proven, there is no need to decide the further issue as submitted by Collector, that the severance damage claims in the Petition of Appeal are not compensable under section 33(1) of the Act.
- (26) Ex-gratia payment - The MCST Council Chairman had said³³ that “the fair and reasonable amount for compensating for acquiring the 600 sqm land is \$6,000,000.00.” No basis was provided. He referred to a condominium, where Collector had, upon acquisition of part of the common property for construction of a mass rapid transit line, made an ex-gratia payment, that was higher than the total compensation offered by Collector in this MCST case. That condominium, which is in a different area, was part of a different land acquisition exercise.
- (27) In determining the amount of statutory compensation for acquired land, the Board takes into account the factors as provided in the Act and cannot consider an ex-gratia payment.³⁴ An ex-gratia payment is a goodwill payment of additional monies made by the Government to mitigate the financial impact of land acquisition on affected owners and offered at the discretion of Government.³⁵

³² NE 22 July 2014 at page 126:30 to 127:22

³³ Affidavit of Meyer Gunther Richard at [29]

³⁴ *Seah Hong Say (trading as Seah Heng Construction Co) v Housing and Development Board [1992]*

³⁵ Affidavit of Nelson Liew at page 43 (Collector’s letter of 5 July 2012 para 6)

(28) The Board finds that the MCST has not proved that the Collector's statutory award of compensation is inadequate. The award of the Collector stands.

Dated: 29 December 2014.

Commissioner of Appeals Foo Tuat Yien
Assessor Rita Soh Siow Lan
Assessor Dr Sing Tien Foo