

# LAND COURT OF QUEENSLAND

CITATION: *Arthur v Department of Natural Resources and Water* [2009] QLC 0062

PARTIES: Raymond and Jeanette Arthur  
(appellants)  
  
v.  
Chief Executive, Natural Resources and Water  
(respondent)

FILE NO: AV2007/0669

DIVISION: General Division

PROCEEDING: Appeal against Unimproved Valuation

DELIVERED ON: 6 May 2009

DELIVERED AT: Brisbane

HEARD AT: Rockhampton

MEMBER: Mr BR O'Connor

ORDER: **The appeal is dismissed and the respondent's valuation of One hundred and thirty-four thousand dollars (\$134,000) is affirmed**

CATCHWORDS: Valuation – Allowance for easements – Aircraft noise Local authority precinct areas

APPEARANCES: Mr R Arthur, on his own behalf  
Mr M De Longville, Principal Lawyer,  
Department of Natural Resources and Water  
fro the respondent

[1] This is an appeal against the Chief Executive's valuation of a rural residential property north west of Rockhampton. The subject land contains

a total area of some 22.664 hectares and is located at Laurel Bank Road, Alton Downs. The Chief Executive has determined the unimproved value of this land at \$134,000.00; the appellants contended for an unimproved value of \$100,000.00. The relevant date of the valuation is 1 October 2006.

[2] Evidence for the appellant was given by Mr Raymond Arthur, a co-owner, who was the sole witness for the appellant. Evidence for the respondent was given by Mr David Drew, a departmental valuer with extensive experience in the Rockhampton district and in particular in the area in which the subject land is located. Mr Drew was the sole witness for the respondent. Both witnesses tendered written reports which were supplemented by sworn oral evidence.

[3] After carefully reviewing the written material of both sides and the transcript of the Court proceedings, it appeared four (4) issues of dispute can be identified:

- a) has the Chief Executive made adequate allowance for the easements (electricity transmission and water pipeline) which transgress the property;
- b) has the Chief Executive failed to make adequate allowance for the adverse effects for the property's location in respect of the flight paths of aircrafts using the Rockhampton airport;
- c) does the fact that the subject or sales fall within Precinct areas (1 or 2) in the local authority planning scheme impact on the valuation;
- d) do the sales evidence used by the respondent's valuer support the respondent's case

### **The Easement Issue**

[4] The subject land is bisected by two (2) easements – one for electricity transmission lines and the other for a water pipeline. There is no actual electricity line in place at the relevant date although the resumption for this easement was effected back in 1982. An underground pipeline was in place at the relevant date within the water easement. The appellants are permitted to draw (at a cost) for stock and domestic purposes from this pipeline and have made use of such a facility. Mr Drew claimed this to be an obvious advantage of what was otherwise seen to be solely a burden on the subject land.

- [5] As to the electricity easement, there seemed to be no great dispute between the two witnesses as to the restrictions imposed by such easement. Should greater problems become evident once the line is constructed (no transmission towers are proposed for the easement on the subject land) this can be considered in some subsequent valuation period. At present, the question is whether the allowance made by Mr Drew is adequate.
- [6] Neither side was able to identify any relevant sales evidence affected by similar easements. Mr Drew's approach was to arrive at a figure for the unencumbered land (\$160,000.00) based on his local sales evidence and then apply an allowance for the easements and also for the aircraft noise (discussed below). He used as support the 10% discount for the easements made in a previous Land Court decision in 1991 (by Mr Carter Member.)
- [7] While the initial valuation for the subject land was arrived at by a factor increase using a mass appraisal approach, Mr Drew stated in evidence that he revisited his figure and allowance after a Court supervised Preliminary Conference earlier conducted in this matter. He had thus specifically addressed what he considered to be an appropriate allowance for the effect of the easement and noise factors.
- [8] In all the circumstances, I am satisfied that an allowance of 10% is proper for the impact of the current easements. The 10% of course is a 10% discount over the total property valuation and not merely over the "easement areas".
- [9] Mr Arthur also alluded to a proposed further "utilities" easement to cross his property. Again, the additional impact for this easement can be considered when and if such is in place of a future valuation period.

### **Noise from flight paths**

- [10] Mr Arthur gave evidence that his property is in the flight path for the Rockhampton airport and suffers to a considerable degree from noise from both commercial and military aircraft. He stated that, while the later are less frequent, they create a greater short term problem. Mr Arthur referred to the increasing problem caused by the extension of the airport runway. Mr Drew did not dispute that there are aircraft noise problems and acknowledged that the occupier, Mr Arthur, would be in a better position to accurately comment on the noise factor. However, Mr Drew did make further inquiries from air services personnel responsible for the flight

regulation at the airport in order to appreciate the issue for his valuation exercise.

[11] While Mr Drew's figure of \$134,000 is really a global figure after making all appropriate allowances, it appeared to include an allowance for \$10,000 for aircraft noise factors.

[12] In the absence of more precise evidence, I am prepared to find that this is a sufficient allowance. I base this conclusion on Mr Drew having made a physical inspection of the area, his consultation with relevant airport regulatory personnel and his standing as an experienced professional valuer within the area.

### **Precinct Impact and Sales Evidence**

[13] Mr Arthur gave evidence of two (2) town planning Precincts- One and Two- in the Alton Downs area and what he claimed to be the considerable advantage that Precinct One has over Precinct Two (the subject land being located in the later). The potential to subdivide in Precinct One was stressed by him. Mr Drew acknowledged the difference between the precincts but stated that his sales one, two and three are in the same precinct in the as the subject land; sale four which is located in Precinct One was only some 7ha in area and could not be further subdivided.

[14] In short, Mr Drew claimed the difference between the precincts become irrelevant given the sales evidence before the Court (Mr Arthur did not produce relevant sales evidence to the contrary). I am in agreement with Mr Drew that the precincts were not relevant, given the basic sales evidence now before the Court. Mr Drew had produced four sales in the general vicinity with similar rural residential use as the subject. For current purposes it was not necessary to go into further details for each individual sale. The appellant had not challenged the sales to require such analysis. Mr Drew had used sales to arrive at a figure of \$160,000 for the subject land and made further allowances as discussed above.

[15] I am satisfied that such exercise of comparison and allowance had been carried out adequately. Such exercise of course involved a reliance on judgment of a professional valuer rather than being able to be done with more mathematical precision. Counsel for the respondent stressed to the Court the burden of proof in this appeal lay with the appellants by virtue of section 45 (4) of *The Valuation of Land Act*. Counsel also drew to the

Court's attention to section 33 of the *Valuation of Land Act* which deems the Chief Executive's valuation to be correct unless proved otherwise. Both these points are acknowledged.

**Order**

[16] The respondent's valuation of One hundred and thirty-four thousand dollars (\$134,000.00) is upheld and the appeal is dismissed.

**BR O'Connor  
JUDICIAL REGISTRAR**