

**LAND COURT,**

**BRISBANE**

**11 September 1998**

**Re: Determination of Unimproved Value -  
City of Brisbane: Division of Enoggera.  
(Ref. V97-391).**

**Stay Developments Pty Ltd as trustee for DWS Family Trust**

**v.**

**Chief Executive, Department of Natural Resources**

### **D E C I S I O N**

This appeal lies against the determination by the Chief Executive of an unimproved value of \$250,000 for a 1214 square metre parcel of land situated at 71 Osborne Road, Mitchelton, and which is more particularly described as Lots 56 and 57 on RP 18795, Parish of Enoggera. The land was rezoned from "Residential A" to "Business" under the provisions of the Brisbane City Council Town Planning Scheme, the gazettal having taken place on 13 September 1996. The relevant date for the determination of the unimproved value is 1 October 1996. The date upon which the valuation notice issued was 20 May 1997. The appellant contends within the notice of appeal for an unimproved value of \$64,000, which value is related to the value of the land within the "Residential A" zoning. The grounds of appeal pursued by the appellant were that at the date of valuation, the use of the land was not for business purposes as there was a sole occupancy residence erected upon it and that to that time the land had never been able to be used for business purposes because no vehicular access could be legally obtained from Council.

The case for the appellant was conducted by Douglas Wesley Stay, who confirmed that the gazettal of the rezoning was made on 13 September 1996. Mr Stay told us that at that time there was a dwelling house on the land which was occupied as a single dwelling. Mr Stay informed the Court that an approval for the construction of a commercial building (shops) was gained from Council on 7 January 1997, and construction of the building commenced in February 1997. It was completed in September 1997.

Mr Stay tendered in evidence a copy of the rezoning conditions attaching to the land. He stressed that these included that temporary access may be gained from Osborne Road until such time as legal access through existing Lot 3 on RP 131006, (which is a Brisbane City Council owned "Residential A" zoned parcel of land abutting the subject land on its northern boundary) to the legal access point at the eastern end of the northern boundary of the subject site is able to be obtained. The conditions also provide that a 6.5 metre access easement, in favour of Lots 54 and 55 on RP 18795 (owned by the Catholic Church) and Lot 67 on RP 845230 (owned by the Department of Social Security) be registered for the full length of the eastern alignment of the subject site, as shown on an approved Plan No S10395/1.

Now Mr Stay says that there have been legal problems with these parts of the Brisbane City Council rezoning conditions. Firstly, Lot 3 on RP 131006 provides access from Osborne Road to the nearby Brookside Shopping Centre which was once owned by Grovenor Properties. But in March 1997, Grovenor sold out to a company called U. Feng Pty Ltd, and the purchaser put on hold expansion plans Grovenor had for the shopping centre. This in turn affected Council's policy in respect of the rezoning of Lot 3 from "Residential A" to "Business", and Mr Stay's advice is that legal access cannot be obtained over "Residential A" zoned land to service "Business" zoned land. Further advice suggested to Mr Stay that there are difficulties arranging the easement access along the eastern boundary of the subject land, the adjoining Lots 54 and 55 and Lot 67 since the owner of the subject land cannot give an easement in favour of a block of land that does not adjoin the subject property and Lot 67 (Social Security) does not adjoin the subject land. So at the present time, access matters are back with Council to see just how they can be resolved. Council wants the owner of the subject land to submit a fresh rezoning application, but Mr Stay is reluctant to do this as it throws up the danger that U. Feng, or anyone else in the community, could lodge a valid objection to the proposed use of the land for "Business" purposes and of course by now the commercial building is already constructed upon it.

Mr Stay thinks a valuation of \$250,000 for the subject land is reasonable as a business site but for the legal problems his company faces about the Council-imposed rezoning conditions relating to the provision of access to the site. But because of the problems, he suggests that there should be some "discount of some amount".

The valuation under appeal was made by Registered Valuer Mervyn Wellesley Cowley, who is in the employ of the State Valuation Services. Mr Cowley describes the nature of the land as being comparatively low in relation to the surrounding area. Natural topography included a gentle to moderate slope falling from south-east towards the north-west. Mr Cowley confirmed that as at the date of effect of the valuation (30 June 1997), a commercial/retail building with a floor area of approximately 900 square metres was under construction on the site.

Mr Cowley has had regard to the analyses of two sales as a basis for the valuation of the subject land. His main basis is the sale of the subject land itself from NV McKillop to Stay Developments as trustee for DWS Family Trust on 13 December 1995 for \$260,000. Mr Cowley has valued the then-existing dwelling on the land at \$8,000, and after allowing a nominal sum for clearing has analysed the sale to show an unimproved value of \$250,500.

Now Mr Cowley informed the Court that the valuation under appeal issued as a result of his Department becoming aware that the use of the land had changed. He says that Council records show that in the month of June 1997 there was a commercial building on the subject land, and that on 28 November 1995 there was an application for rezoning of the property and an application for the construction of business premises on it. Further, there was an application for a house removal on the property on 20 June 1996, and on 11 July 1996 that application was approved by Council. Mr Cowley does not have the exact date upon which the house was removed from the site but he says it was not on the property when he inspected it in October/November 1996.

Mr Cowley is aware of the Brisbane City Council rezoning conditions. They are included within his tendered valuation report. But he says that at the time he inspected the land, there was a concrete driveway constructed over Lot 3 to the subject land and it is currently in use, and he says that in any event until the legal access through Lot 3 is arranged, access from Osborne Road will remain available.

The Land Appeal Court in *Re: Appeals by GA and BH Walker v. The Valuer-General* (1978) 5 QLCR 347 - in confirming a decision by former President of this Court (Mr Smith) told us that the period during which the then section 11(1)(vii) of the *Valuation of Land Act* 1944 (now section 17 of the Act) had application for valuation purposes, commenced upon the date at which the value has to be found and

ended on the date of issue of the notice of valuation. Now in this case, these dates are respectively 1 October 1996 and 20 May 1997. Now on the evidence it is clear that during this period the dwelling house was removed and the construction of the commercial building commenced. It follows that the land cannot be valued under the provisions of section 17(1) of the Act as land used exclusively for the purpose of a single dwelling house. It is to be valued as did Mr Cowley, as for its highest and best use (business purposes).

Now with regard to the legal problems faced by the appellant (and the Brisbane City Council) about the non-compliance with the conditions of approval of the rezoning, it must be said that these too appear to have developed, to a significant extent at least, since the date of issue of the notice of valuation which has given rise to this appeal. It is perhaps significant that until the provision of access to the subject property and the neighbouring properties to the south from a roadway through Lot 3 is available, then temporary access remains available from Osborne Road. So it cannot be said that the unimproved value of the subject land is affected by the problems concerning the implementation of the development conditions.

In these circumstances, I cannot find that the onus resting upon the appellant under the provisions of section 45(4) of the Valuation of Land Act has been discharged. It follows that the appeal be dismissed, and that the unimproved value of Lots 56 and 57 on RP 18795, Parish of Enoggera, as determined by the respondent Chief Executive in the sum of \$250,000, be affirmed.

(CH Carter)

**Member of the Land Court**