LAND ACQUISITION ACT

APPEALS BOARD

AB 2001.074

In the Matter of the Acquisition of Land at
Lot 385-20 of Mukim 24

Between

Fadlon binte Ali Bahajaj

... Appellant

And

Collector of Land Revenue

... Respondent

Mr Adrian Tan for Appellant
Mr Leonard Goh for Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue of compensation in an amount of $500 000 in respect of the land at Lot 385-20 of Mukim 24 be confirmed;

And

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

And

(3) That the deposit paid by the appellant be paid out to the Collector of Land Revenue to account of costs.

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 28 April 2001 ("acquisition date") a notification No 1156 was published in the *Gazette* under s 5 of the Land Acquisition Act ("s 5 declaration") declaring that the land at Lot 385-20 of Mukim 24 ("acquired land") was needed for a public purpose namely Proposed Kallang-Paya Lebar Expressway. The appellant was then the proprietor of the acquired land for an estate in fee simple and is a person interested.

(2) For the purpose of the inquiry held under s 10 the appellant submitted a claim to compensation of $3 540 000 for the market value of the acquired land. The respondent ("Collector") found that the market value of the acquired land as at the acquisition date was $500 000 and on 12 December 2001 he made an award of compensation in that amount.

(3) The appellant appeals against the award on the ground that it is inadequate and on other grounds stated in her petition of appeal. In the petition (as amended) she claims compensation in the amount of $1 560 000 and certain other reliefs.

Acquired Land

(4) The acquired land is a rectangular plot on the North side of Lorong Tahar which is a short street between Lorong 5 Geylang to the West and Lorong 7 Geylang to the East. It is about 50m from Sims Avenue and about 6km from the city centre at Collyer Quay. The site area is 685sm. Ms Goh Seow Leng a director of Colliers Jardine Consultancy & Valuation (Singapore) Pte Ltd who testified for the appellant said in her report dated 31 July 2001 that the acquired land had a frontage to Lorong Tahar of about 38m and a depth of about 18m and this is not disputed.

(5) It is not disputed that on site as at the acquisition date there were temporary structures and that they were in poor condition. Down to about May 2001 there were 3 tenants. Ong Ban Lee Sing Motor Workshops carried on business on part of the acquired land paying a monthly rent of $600; Yong Phua Motor Service carried on business on another part paying a monthly rent of $750; and International Electrical Contractors carried on business on yet another part paying a monthly rent of $800. Mr Heikel Bafana a lawyer who represented both the appellant and the predecessor in title Mr Abdol Rahman bin Abdol Rahim in the sale and purchase of the acquired land said that apart from the areas which he described as workshops which were occupied by the 3 tenants (for convenience they will be described as the workshops in this decision) there were 8 "small rooms at the back" which were rented out "as sleeping quarters" at $200/m as he was told (also for convenience these rooms will be referred to as the rooms at the back in this decision). That was in 1999 when the appellant acquired an option to purchase the acquired land. The structures were referred to as 18A and 18B Lorong Tahar but there was no evidence to identify them with any degree of certainty. Ms Goh said that she inspected the site on 9 July 2001 and that it was "currently vacant and cleared of all structures".

(6) As at the acquisition date the acquired land was zoned Residential/Institution. This is not disputed and it is also not disputed that as at that date the acquired land was adversely affected by a road line ("RL") for a Category 1 (Expressway) road reserve ("Expressway RL") and also a RL for a reserve along Lorong Tahar ("Lorong Tahar RL"). The Collector said in his grounds of award that about 79% of the site was adversely affected. The Road Line Plan ("RLP") in the affidavit of Ms Lau Ching Yu a planner with URA shows that as at the acquisition date all that was left of the site of the acquired land after allowing for the effect of the 2 road lines (RLl) was a trapezoidal plot that was at no point wider than 5.6m from the Expressway RL.

Compensation

(7) 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;
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> (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
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> (iii) as at the date of publication of the declaration made under section 5,
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> whichever is the lowest ....

No notification under s 3(1) was published and the s 5 declaration was published on 28 April 2001 (the acquisition date as noted earlier) and it is common ground 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

(8) Para 1(e)(i) of the petition of appeal says -

> The award of $500 000 by the Collector of Land Revenue is inadequate, unrealistic and not reflective of the market value of the [acquired land] as at the [acquisition date].
>
> a The [acquired land] is zoned Residential/Institution with a gross plot ratio of 2.8 in the 1998 Master Plan. The market value of the [acquired land] at this plot ratio ... is estimated by the appellant's valuer to be approximately $3 540 000.

> b In the alternative, the value of the land calculated at the Development Baseline plot ratio of 2.072 is estimated by the appellant's valuer to be $2 900 000.

It is apparent that sub-paras (a) and (b) are particulars of para 1(e)(i). At the commencement of the hearing the claim was amended to $1 560 000 for market value and in the closing submissions it was further reduced to $1 389 000. Para 1(e)(ii) says -

> The Collector of Land Revenue has wrongfully taken into account and/or given inappropriate or excessive weight to certain irrelevant factors when making the Award, including but not limited to:
>
> a the existing use of the [acquired land].... The [acquired land] was not being used as a workshop on [the acquisition date] but was vacant at that time....
>
> b the price at which the [acquired land] was transacted. The last transacted price of [the acquired land] is entirely irrelevant to the issue of compensation (see *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [1988] SLR 44).
>
> c The Collector appears to have wrongfully relied on the fact that 79% of the [acquired land] is affected by the road line. This factor is irrelevant. It is illogical and/or unconscionable and/or manifestly unjust for the Collector not to attribute any value to that part of the [acquired land] affected by the road line. Indeed, if the [acquired land] was not [affected] by the road line, there would be no acquisition in the first place!

No other factors were identified and there were no particulars of any other factors.

Appellant's Valuation

(9) At the hearing Mr Tan of counsel for the appellant tendered a bundle which included Ms Goh's report dated 31 July 2001 in which she said that the market value was $3 540 000 and another report by her dated 30 April 2004 in which she said that the market value was $1 560 000. There was another report dated 15 November 2002 also prepared by her and which was produced by the Collector. In this report Ms Goh said that the market value was $2 100 000. At the hearing she testified that she would give the acquired land a value of $1 400 000.

(10) Ms Goh referred to her report dated 30 April 2004 in which she said in para 8.0:

> We have valued the subject property by the Direct Comparison Method. In this method, a comparison is made with sales of similar properties in the vicinity or in similar localities and their differences in location, size, road frontage, site configuration and topography, zoning and plot ratio, date of sale, etc., are taken into account before arriving at the value of the subject property as at the two material dates.

She was not asked but presumably the two material dates were the statutory date (in this case 1 January 1995) and the acquisition date and she valued the acquired land as at the acquisition date.

(11) Ms Goh referred to the following transactions:-

	Property	*Site Area*	*Price /sm Site Area*	*Transaction Date*
1	Mk 25 Lot 366-1	350.6sm	$838 000 $2 390/sm	1999 Dec 4
2	Mk 24 Lot 385-22	227.4sm	$450 000 $1 979/sm	2001 Apr 28
3	Mk 25 Lot 366-1	350.6sm	$800 000 $2 282/sm	2001 Apr 28

In Transaction 1 the date appears to be the date when the option to purchase was exercised. Transactions 2 and 3 are not sales but awards of the Collector in compulsory acquisition proceedings which in the case of Transaction 3 was confirmed by this Board. Ms Goh made adjustments for time (except for Transactions 2 and 3), for site area and for road frontage and took an average of the adjusted values for Transactions 1 and 3 for a market value of $1 560 000. She said these 2 transactions were the best and she disregarded Transaction 2.

(12) Lot 366-1 was the subject land in AB 2002.003 and the relevant circumstances surrounding the purchase of the land by the appellant in that appeal are set out in the decision of this Board dated 7 July 2003. See paras (17), (26) and (27) of the Reasons. The appellant in AB 2002.003 bought Lot 365 in January 1997, Lot 366-1 in November 1999 (the option was exercised in December 1999) and Lot 364 in March 2000 and intended to "collect" or acquire more land. Its intention was to develop apartments or high rise buildings. Lot 366-1 by itself was incapable of development for the purpose intended. Notwithstanding this additional information about the transaction Ms Goh said that no further adjustment would be made.

(13) Lot 366-1 was let to Chin Loy Electrical Works at $2 800/m rent to house their workmen and also as a store. There was a single storey raised detached building on site. See para (31) of the decision in AB 3/2002. Ms Goh said that having regard to the reasons in that decision she would take $80 000 off the sale price in her analysis. In the result she said the market value would be $1 400 000. She later explained that $80 000 represented the depreciated replacement cost of the building. She produced her revised analysis in which she took into account the $80 000. This gave a value of $1 406 927. In this analysis she also took $80 000 off the award in Transaction 3 and would have obtained an average of $1 406 829. Presumably she rounded this down to $1 400 000 for the market value.

(14) Continuing her evidence the following day she corrected her evidence as to the effect of the circumstances surrounding the purchase of Lot 366-1 and said that a negative adjustment would have to be made but that she had no market evidence on the basis of which to determine what adjustment to make. It could be -10% to -30% but she could not say what it should be. She went on to say that the Lot 366-1 transaction of 1999 was the only comparable she could find and in the absence of any other comparable she would use it. The appellant's purchase of the acquired land itself was in her view not an arm's length transaction and was not really

comparable. When it was put to her by Mr Goh of counsel for the Collector that the rental capitalisation method was the correct method to determine the market value she said she did not agree.

Collector's Valuation

(15) The bundle produced by Mr Tan also included the report of Ms Rachel Ng of the Inland Revenue Authority of Singapore dated 16 April 2004. Ms Ng testified for the Collector. In para 11.1 of her report she said:

> Having regard to all the relevant information, and taking into consideration the actual sale price of $500,000 in 1999, I am of the opinion that the market value of the [acquired land] as at the [acquisition date] under the provisions of the Land Acquisition Act is $500 000 with vacant possession.

It appears that in the report Ms Ng was drawing an inference as to the market value from a past transaction.

(16) At the hearing Ms Ng said that when she reviewed the matter for the appeal she took into consideration that the acquired land together with the temporary structures on site was let to 3 tenants separately paying a total rent of $2 150/m. This was equivalent to $25 800/y. She was clearly referring to the workshops only. She accordingly adopted the rental capitalisation method of valuation and said that the market value as at the acquisition date was $430 000. She would take the rooms at the back into consideration but she was unable to say what the rental value of the acquired land would then be. She assumed a yield of 6%. Although Lot 366-1 to which she was referred disclosed a yield of about 4% she said there was a single storey building on it as opposed to temporary structures on the site of the acquired land and there was also a speculative element in the Lot 366-1 transaction and she preferred 6%. She no longer relied on her report dated 16 April 2004.

(17) Ms Goh was recalled with the leave of this Board to testify as to the rental capitalisation method of valuation. She said that if she were to use this method she would give the acquired land a rental value of $8.64/sm/m for the site area of 685sm. She derived $8.64 from the total monthly rent paid for Lots 364, 365 and 366-1 for the total site area all taken from the decision in AB 2002.003. In AB 2002.003 the actual yield was about 5.46% and she adopted a yield of 5.5% for an investment in the acquired land. The market value would then be $1 291 000. Excluding Lot 366-1 the rental value would be $8.91/sm/m and at a yield of 5.5% the market value would be $1 331 000. She did not think that the rent in each case for Lots 364, 365 or 366-1 was high.

Method of Valuation

(a) Direct Comparison

(18) Ms Goh adopted what she called the direct comparison method and she explained that in this method a comparison was made with sales of similar properties in the vicinity or in similar localities and differences were taken into account before arriving at the market value of the acquired land. She referred to only one sale and that was of Lot 366-1 to the appellant in AB 2002.003 in 1999. When she was

referred to the circumstances surrounding the transaction she said (correcting her earlier evidence) that a negative adjustment would have to be made but she had no market evidence on the basis of which to determine what adjustment to make. She said it could be -10% to -30% but she could not say what it should be. She said that the Lot 366-1 transaction was the only comparable she could find.

(19) S 34 of the Act provides:

> In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall not take into consideration -
>
> ...
>
> (h) evidence of sales of comparable properties, unless the Board is satisfied that the sales are made bona fide and not for speculative purposes and the onus of proving that the transactions are made bona fide and not for speculative purposes shall lie with the appellant.

As noted above the appellant in AB 2002.003 bought Lot 365 in January 1997, Lot 366-1 in November 1999 and Lot 364 in March 2000 and intended to "collect" or acquire more land. Its intention was to develop apartments or high rise buildings. Lot 366-1 by itself was incapable of development for the purpose intended. It intended to buy Lot 1183 which together with Lots 365, 366-1 and 364 would give it a near rectangular site with a total site area of 1 749.2sm but had not done so as at the acquisition date in that case (which was the same as in this case). See para (27) of the Reasons in the Decision in AB 2002.003.

(20) At para (32) of the Reasons this Board said:

> So long as the planning restrictions and the development guidelines which were in force when the Lot 364 transaction took place remained in force the appellant could not carry into effect its intention to develop the properties whether for apartments or for any high rise building and whether taking each Lot singly or taking two or three Lots together. It had to "collect" more land. The RL and planning restrictions had to be favourably changed.

The same can also be said for Lot 366-1.

(21) In the decision of this Board the appellant has not discharged the statutory onus of proof. This Board is not satisfied that the Lot 366-1 transaction was not for speculative purposes and it will not be taken into consideration in determining the market value of the acquired land and the amount of compensation. It is not a comparable for the purpose of the method of valuation adopted by Ms Goh and as she could find no other comparable as she said and could refer to no other comparable sale transaction the method of valuation was in the circumstances inappropriate.

(22) As noted above Ms Goh did refer to the Collector's award for Lot 366-1 as a comparable. The amount of that award was determined after taking into consideration the market value as at the same acquisition date. The award in that case was made on 27 November 2001 (see para (2) of the Reasons) which is well

after the acquisition date and in all cases an award can only be made after the relevant acquisition date and this Board can see no basis for any reference to such an award as a comparable to determine the market value of any other land as at the same acquisition date. In the decision of this Board the Collector's award for Lot 366-1 is not a comparable for the purpose of determining the market value of the acquired land as at the same acquisition date.

(b) Rental Capitalisation

(i) Principle

(23) Ms Ng adopted the rental capitalisation method of valuation. Whipple, *Property Valuation and Analysis* (1995) says at p 312:

> When a property generates an income, or is capable of doing so, the valuer has available another method of estimating the price it will probably fetch.
>
> This applies when the market associates productivity with the property's income stream and the items making up the property's productivity are organised to that end - or largely so.
>
> Properties which fall into this category are office buildings, shopping centres, rental shops and flats, land subdivisions and other development projects - in fact, anything that produces a flow of cash over time. Investors regard such properties as cash-generating vehicles and tend to assess them as they would any other investment such as equities. For this reason, methods of valuing these properties tend to have much in common with techniques for analysing investments in general.

Although this book was published in Australia there is no reason to think that the market and investors in Singapore would act in a substantially different way. See also *Principles and Methods of Valuation* by Michael Fibbens in *Valuation Principles and Practice* (Australian Institute of Valuers and Land Economists (Inc), 1st Ed 1997) at p 4.

(ii) Probable Use

(24) The acquired land was as at the acquisition date capable of generating an income in the form of rent. It is not disputed that there were 3 tenants carrying on business there and they paid a total of $2 150/m rent. They were given notice to quit in August 2000 but as the appellant said in her affidavit in this appeal:

> ... the tenants were refusing to vacate the [acquired land] .... A final settlement was reached with the 3 occupants on 31 May 2001 when I agreed to pay each of them compensation of $5 000.

Mr Bafana also said that he was told some of the rooms at the back were let as "sleeping quarters" at $200/m but he did not verify this himself. He was not satisfied with the status of the tenants of the rooms. He was not satisfied as to their right to enter or remain in Singapore and was more concerned with evicting or removing them. He said he saw the rooms and in relation to the construction of the rooms he said:

> The floor itself was concrete but the wall itself, there was some which was partly brick, which was the remnant of the old building that was on the property, it turned out; while the rest were essentially plywood hoardings that were put up in various ways to demarcate the area.

Mr Bafana described the place as "quite a warren of rooms".

(25) In June 2000 2 notices under the Fire Safety Act were issued to the owner or occupier of 18A Lorong Tahar. One of the notices required the owner or occupier "TO REMOVE THE UNATHORISED PARTITIONS AND TO TAKE ALL STEPS NECESSARY TO PREVENT THE RECURRENCE OF SUCH FIRE HAZARD". It was alleged that "illegal addition/alteration works" namely "erection of timber partitions" had been carried out. This notice would have related to one or more of the rooms at the back. The other was a notice to compound the offence of "CHANGE OF USE - FROM RESIDENTIAL TO MOTOR WORKSHOP". This notice would have related to one or more of the workshops. 2 other notices were issued to the owner or occupier of 18B Lorong Tahar. They were identical in their material terms with the 2 notices in respect of 18A Lorong Tahar and similarly one would have related to the rooms at the back and the other to the workshops.

(26) No consideration appears to have been given to the alleged offence of "change of use" under the Fire Safety Act but the appellant's lawyers issued a notice to the 3 tenants on 21 July 2000 referring to the Fire Safety Act notices received and requiring them to immediately cease operating their business in the workshops occupied by them. They followed this up by another notice issued on 1 August 2000 in which they reiterated that continuing the business would constitute an offence. The appellant appeared to have been anxious to clear the land and soon after she reached a settlement with the 3 tenants on 31 May 2001 all the structures were demolished. The rooms at the back were also demolished. They had all been demolished by 9 July 2001 when Ms Goh inspected the acquired land.

(27) The whole of the acquired land was zoned Residential/Institution. The use which the 3 tenants were putting the workshops to was General Industry and no evidence has been adduced as to when such use commenced on the acquired land and no submission has been made to this Board as to whether the continued use for that purpose was contrary to law whether under the Planning Act or the Fire Safety Act. The rooms at the back apparently could continue to be let as "sleeping quarters" or for residential use but this Board has heard no evidence that the plywood partitions could be removed to comply with the Fire Safety Act notices and other partitions or structures could be put up without offending the Planning Act or the Fire Safety Act.

(28) The acquired land in this case was also incapable of any development as at the acquisition date because of the RLI. Ms Lau said in her affidavit:

> ... in relation to the potential for development on the Acquired Land, the firm position as at 28 April 2001 was as follows:
>
> > a) No developments would have been permitted in any area within either the Geylang-Sims RRL or the Lorong Tahar RRL.

b) After complying with the set-back requirements, the portion of the Acquired Land not affected by the Geylang-Sims RRL or the Lorong Tahar RRL would not have been capable of any development.

Geylang-Sims RRL and Lorong Tahar RRL are references to those parts of the site of the acquired land adversely affected by the Expressway RL and the Lorong Tahar RL. The set-back requirements included a set-back of 15m from the Expressway RL for Institution development and 24m from the Expressway RL for Residential development. As noted above no part of the site of the acquired land which was not adversely affected by the RLl was wider than 5.6m from the Expressway RL.

(29) Ms Ng assumed that the acquired land could generate an income by way of rent of $2 150/m or $25 800/y but having regard to the uncertainty of such income continuing for long she adopted a yield of 6%. She determined that the market value was $430 000. Ms Goh did not rely on the actual rent paid by the tenants. She analysed the rent paid for Lots 364, 365 and 366-1 and applied the derived site area rate of rent to the site area of the acquired land. The site area rate was $8.64/m and she adopted a yield of 5.5% for a market value of $1 291 000. Excluding Lot 366-1 the site area rate was $8.91/m which would give a market value of $1 331 000.

(30) As noted above as at the acquisition date the site of the acquired land was not capable of any development. This was also the position when the appellant bought the acquired land. An intending buyer in the market who was reasonably informed about the nature and characteristics of the acquired land would not have been unaware of it and it is improbable that he would have been willing to buy the acquired land for redevelopment for Residential or Institution use. The only other use or uses which may be considered are the use of the workshops for General Industry and the use of the rooms at the back for residential purpose (for convenience these uses will be referred to collectively as "the existing use") but the existing use and the rental income derived from it are not without serious uncertainties. Notwithstanding these uncertainties the probable use of the acquired land as at the acquisition date appears to be the existing use.

(31) This Board has heard no evidence that any buyer would invest in comparable land for the rental income that it would generate. The buyer of Lots 364, 365 and 366-1 bought with a view to "collect" and to develop apartments or high rise buildings. The rental income was incidental and would only serve to lower the holding cost. That is not evidence that the buyer associated the productivity of the land with its income stream. There is no evidence that the market would associate the productivity of the acquired land with any anticipated stream of rental income or that there would be a flow of cash to be produced over any period of time. It is clear that the appellant herself did not. Soon after she bought the acquired land she set about to demolish the structures on the site and effectively to destroy any capability the acquired land ever had to earn an income from rent for the existing use.

(32) Where the probable use is the existing use and rental income is generated by such use rental capitalisation may be an appropriate method of valuation. To use this method of valuation in the particular circumstances of this case allowance must be made for the uncertainty of the amount of the income and of the income continuing to be generated. There was uncertainty over the Fire Safety Act notices.

There was uncertainty over Planning Act considerations. There was uncertainty created by the RLI. And there is no evidence to determine what the allowance should be. Ms Goh's assumptions as regards the site area rate of rent and the yield do not take into account any allowance or any sufficient allowance for these uncertainties but it must be said that she does not accept that the rental capitalisation method of valuation is correct in this case. Ms Ng's rental value of $25 800/y is derived from the gross rent received but also does not allow for the uncertainty of the income continuing. The rooms at the back are fraught with too much uncertainty and no substantial rental value can be given to them. Having regard to all the circumstances a yield of 6% appears to be low for an investment in the acquired land.

Grounds of Appeal

> (a) *The [acquired land] is zoned Residential/Institution with a gross plot ratio of 2.8 in the 1998 Master Plan. The market value of the [acquired land] at this plot ratio ... is estimated by the appellant's valuer to be approximately $3 540 000.*

(33) Mr Tan has not addressed this ground of appeal and it appears that the appellant has abandoned it. Nevertheless it has to be said that it is totally misconceived. As at the acquisition date the acquired land was incapable of any development for Residential/Institution use by reason of the RLI. Ms Goh's evidence was that she had not known about the RLI and with such knowledge she no longer estimated the market value to be $3 540 000. In the decision of this Board this ground of appeal fails.

> (b) *In the alternative, the value of the land calculated at the Development Baseline plot ratio of 2.072 is estimated by the appellant's valuer to be $2 900 000.*

(34) Ms Goh no longer estimated the market value to be $2 900 000 and for the same reasons this ground of appeal fails.

> (c) *The award of $500 000 by the Collector of Land Revenue is inadequate, unrealistic and not reflective of the market value of the [acquired land] as at the [acquisition date].*

(35) This has not been pleaded in the petition of appeal as a distinct ground but it may be conveniently and briefly dealt with. Section 25(3) of the Act provides:

> The onus of proving that the award is inadequate shall be on the appellant.

Ms Goh used the direct comparison method of valuation. She referred to the Lot 366-1 transaction and this Board has found that the appellant has not discharged the onus of proof under s 34(h) and has not satisfied this Board that the Lot 366-1 transaction was not for speculative purposes. This Board has further found that the Collector's award for Lot 366-1 is not a comparable for the purpose of determining the market value of the acquired land as at the same acquisition date. Ms Goh's assumptions as regards the rental value and yield have not taken into account the

uncertainties noted above and in the circumstances this Board finds that the appellant has not adduced any evidence to show that the award of $500 000 is at all inadequate. The appellant has not discharged the statutory onus of proof and in the decision of this Board this ground of appeal fails although it has not been pleaded as a distinct ground.

> (d) *The Collector of Land Revenue has wrongfully taken into account and/or given inappropriate or excessive weight to certain irrelevant factors when making the Award, including but not limited to:*
>
> > *(i) the existing use of the [acquired land].... The [acquired land] was not being used as a workshop on [the acquisition date] but was vacant at that time....*

(36) The existing use of the acquired land (as at the acquisition date) is always a relevant matter to be taken into consideration. See s 33(5)(e) which caps the market value at the lower of the existing use price and the Development Baseline use price. It is relevant to the question of the market value. Further the evidence is that the appellant only settled with the tenants on 31 May 2001 which was more than one month after the acquisition date. Although the appellant appears to have abandoned this ground of appeal it is right that this Board should say that there is no merit in it and this ground of appeal fails.

> > *(ii) the price at which the [acquired land] was transacted. The last transacted price of [the acquired land] is entirely irrelevant to the issue of compensation (see Teng Fuh Holdings Pte Ltd v Collector of Land Revenue [1988] SLR 44).*

(37) In Ms Ng's report of 16 April 2004 she said that she took into consideration the price of $500 000 paid by the appellant when she bought the acquired land. The appellant's advisers in preparing the petition of appeal may have assumed that she had in mind s 33(5)(d). She did not. It is apparent that she made no reference to the date when the conveyance was presented for stamping (although it was within 2 years of the acquisition date). Ms Ng said that the valuation was done by another valuer who had since left the service and she took over only in March or April 2004. She thought she could not value the acquired land at less than the award of $500 000 and she referred to the price paid by the appellant. She would have valued the acquired land at $430 000 as she has done for the purpose of this appeal.

(38) The price paid in a recent comparable transaction is relevant and it appears that the appellant's advisers have misunderstood the judgment in *Teng Fuh Holdings Pte Ltd*. In the case before this Board the land is comparable. It is the same land and there is no evidence of any change in the relevant characteristics except as regards the title. The appellant obtained from Mr Abdol Rahman an option to purchase the land in July 1999. At that time Mr Abdol Rahman claimed title only by reason of adverse possession. The terms of the option included:

> V(C) The Vendor shall apply forthwith to the High Court of the Republic of Singapore for a declaration from the Court that by reason of his said adverse possession of the Property, he is the legal and beneficial owner of the Property....

> VII The Purchaser agrees to bear all the legal fees incurred in the execution of the legal action necessary to obtain the declaration from the Court, in consideration of the Vendor agreeing that the legal fees incurred shall be set off by the Purchaser against the Purchase Price should the Purchaser decide to exercise the Option to Purchase subsequently.
>
> VIII Upon the date on which the declaration of the Court, which declares that the Vendor by reason of his said adverse possession of the Property is the legal and beneficial owner of the Propertv, is obtained, the Vendor shall have a period of 2 weeks within which to exercise the Option to Purchase, failing which the Option to Purchase shall be deemed to be lapsed....

The terms of sale upon the exercise of the option included:

> 5 The title shall be properly deduced and free from encumbrances.

A judgment for the declaration was in due course obtained and the appellant completed the sale by conveyance dated 18 November 1999. Any difference in regard to the title between the date of the option when the price was agreed and the acquisition date was clearly provided for by the terms of the option and of the sale. In the circumstances the terms of the transaction were not so unusual that the transaction could not be regarded as comparable. The appellant said that subsequently she paid the legal fees without any set off against part of the price but this does not change the position as at the date when the price of $500 000 was agreed. However this does not conclude the matter.

(39) At the time of the 1999 transaction the acquired land was incapable of redevelopment. It was adversely affected in its entirety by the Expressway RL as it then was before it was shifted to the position as at the acquisition date. The appellant made some reference to an intention to redevelop the site together with a relative's land nearby and also that of some neighbours which she did not identify. Her relative's land did not adjoin the acquired land and was itself adversely affected in its entirety by the Expressway RL. Before she bought the acquired land she knew of the RLl but she said she did not know that she could not redevelop the site. Earlier she said that after her father's family home had been compulsorily acquired she thought of owning some land on which to build a small house for the family to live in together even if it could not be developed for condominium apartments.

(40) On the evidence this Board is not satisfied that the 1999 transaction was not for speculative purposes. The appellant has not discharged the statutory onus of proof and the evidence of this transaction cannot be taken into consideration in determining the market value of the acquired land and the amount of the compensation. Another difficulty in the way of the appellant if she were to rely on this transaction as a comparable for valuation purposes is that she was a "special" buyer. In buying the acquired land she acted neither knowledgeably nor prudently as regards the effect of the Expressway RL or she was not sufficiently informed as to the development potential or potential use. In the circumstances no inference can be drawn as to the market value of the acquired land from the price which she agreed to pay. Returning to the ground of appeal pleaded it is sufficient to say that in the decision of this Board this ground fails.

> *(iii) The Collector appears to have wrongfully relied on the fact that 79% of the [acquired land] is affected by the road line. This factor is irrelevant. It is illogical and/or unconscionable and/or manifestly unjust for the Collector not to attribute any value to that part of the [acquired land] affected by the road line. Indeed, if the [acquired land] was not [affected] by the road line, there would be no acquisition in the first place!*

(41) There is no merit in this ground of appeal and in the decision of this Board this ground fails. The effect of the RLl is certainly relevant. Besides the Collector has not omitted to attribute any value to any part of the acquired land or any part that is adversely affected. When the Collector made his award he acted on the evidence then available to him which was to the effect that the market value was $500 000 and reference was made to the price of the appellant's 1999 purchase. There is nothing either in the Collector's grounds of award or Ms Ng's report to suggest that no value was attributed to the part adversely affected by the RLl. For the hearing of the appeal Ms Ng used the rental capitalisation method and for this purpose she took into account the rent paid by the tenants for the workshops. The site of the workshops was adversely affected by the RLl. There is no basis for the allegations against the Collector. It remains to be said that scheme losses are not compensable. See *Ng Boo Tan v Collector of Land Revenue* [2002] 4 SLR 495.

(42) As noted above no other factors were identified as "certain irrelevant factors" which the appellant says the Collector has "wrongfully taken into account and/or given inappropriate or excessive weight to". This Board finds that on the evidence the appellant has not made good her allegation that in making the award the Collector had taken into account any irrelevant factor whether wrongfully or otherwise or that he had given any inappropriate or excessive weight to any irrelevant factor.

Market Value

(43) Section 33(5)(e) of the Act 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 ....

Subsection (1)(a) refers to the market value and it has been cited above.

(44) Ms Lau said in her affidavit:

2 The Development Baseline for Lot 385-20 Mk 24 (the "Acquired Land"), its Gross Floor Area and Use Group is shown below:

Lot No.	*Site Area (m2)*	*GFA (m2)*	*Use Group*
Lot 385-20 MK 24	685	1,421.8134	B2

The Acquired Land is located in development charge sector 102. A table showing the use group and the development charge rates in force at 28 April 2001 is exhibited at "LCY-1".

The Development Baseline is the value of one of the developments specified in s 36(1) of the Planning Act (as it was as at the acquisition date) which when calculated in accordance with the prescribed method and rates gives the highest value. According to the Use Groups Tables referred to in Ms Lau's affidavit the purpose for which development is permitted or is to be authorised under Use Group B2 (with effect from 1 March 2001) is Residential (non-landed residential building). The rate for Sector 102 for Use Group B2 is $1 250/sm and the Development Baseline of the acquired land is calculated by multiplying this by the GFA (or Gross Floor Area) of 1 421.8134sm which comes to about $1 777 267. This is the value of one of the developments specified.

(45) Ms Lau did not identify the particular development specified in s 36(1) of the Planning Act the value of which she adopted for the Development Baseline. She was not asked. On the evidence the *purpose designated in the Development Baseline* under s 33(5)(e) of the Act is Residential (non-landed residential building) with a GFA of 1 421.8134sm. Taking into account the restrictions imposed under the Planning Act there may well be no Development Baseline use as the RLl have effectively rendered the acquired land incapable of any development for the purpose designated in the Development Baseline. See para (24) of the Reasons in the Decision of the Board in AB 66/2001 dated 5 November 2003 as to restrictions imposed under the Planning Act. The foundation of the Development Baseline use would have "disappeared" when the RLl were drawn and adopted. See *Official Assignee of the Property of Prabhaker Chandulal Shah v Collector of Land Revenue* [1984-1985] SLR 105. However there may be an alternative Development Baseline use in view of the "temporary structures" and the "remnant of the old building" on site but there is no evidence to come to any finding as to what it is.

(46) The existing use price is the price that a bona fide purchaser might reasonably be expected to pay for the land on the basis of its existing use subject to the concluding words of s 33(5)(e) beginning with "after taking into account". This is not likely to be different from the market value determined by the rental capitalisation method adopted by Ms Ng notwithstanding the difficulties as regards the rental value and the yield. It is not likely to be different from the Development Baseline use price on the basis of the alternative Development Baseline use. In the premises this Board finds that:

(a) for the purpose of s 33(1)(a) the market value of the acquired land as at 28 April 2001 was the lowest;

(b) the market value of the acquired land as at 28 April 2001 was not more than $430 000; and

(c) 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).

Award

(47) Section 35(1) of the Act provides:

> Where the applicant (*sic*) has made a claim to compensation pursuant to any notice under section 8, the amount awarded to him shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 10.

The reference to *applicant* is clearly intended to be a reference to *appellant*. It is not disputed that the appellant has made a claim to compensation pursuant to a notice under s 8 and accordingly the amount of the compensation to be awarded by this Board may not be less than the amount awarded by the Collector namely $500 000. Taking into consideration the market value as at 28 April 2001 and the amount awarded by the Collector this Board determines that the amount of compensation to be awarded for the acquired land is $500 000. This is the sum awarded by the Collector and this appeal fails.

Costs

(48) 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 appellant.

Dated 2004 August 28

Commissioner of Appeals T Q Lim *SC*
Assessor Teo Pin
Assessor Yang Soo Suan