

LAND ACQUISITION ACT

APPEALS BOARD

AB 2001.072

In the Matter of the Acquisition of Land at

- (1) Lot U21768V of Mukim 24
332 Circuit Road,
- (2) Lot U21769P of Mukim 24
334 Circuit Road,
- (3) Lot U21770W of Mukim 24
336 Circuit Road,
- (4) Lot U21760A of Mukim 24
338 Circuit Road, and
- (5) Lot U32510N of Mukim 24
344 Circuit Road

Between

Swee Hong Investment Pte Ltd

... 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 \$9 066 000 in respect of the land at Lots U21768V, U21769P, U21770W, U21760A and U32510N of Mukim 24 be increased to \$10 785 000;

And

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

And

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

And

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

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* under s 5 of the Land Acquisition Act ("s 5 declaration") declaring that the land ("acquired land") at Lots U21768V, U21769P, U21770W, U21760A and U32510N of Mukim 24 together with the building units at 332, 334, 336, 338 and 344 Circuit Road respectively ("332", "334", "336", "338" and "344") was needed for a public purpose namely Construction of Circle Line and Comprehensive Development. The appellant was then the proprietor of the acquired land in respect of each of the Lots 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 of \$18 500 000 for compensation. The respondent ("Collector") found that the market values of the 5 Lots separately were \$1 583 000 for 332, \$1 604 000 for 334, \$1 639 000 for 336, \$1 604 000 for 338 and \$2 636 000 for 344 and that the market value of the acquired land as at 28 April 2001 was the aggregate sum of \$9 066 000 and on 14 December 2001 he made an award of compensation in that amount.

(3) The appellant appeals against the award. In its petition of appeal it says that the award is inadequate. It also says that the Collector was wrong in his valuation of the acquired land. At the hearing the Collector said that the market values of 332, 336 and 344 should be \$1 908 000, \$1 848 000 and \$3 599 000 and not as earlier found and that the market value of the acquired land as at the acquisition date should be \$10 563 000.

Acquired Land

(4) Lot 8156L is a near rectangular plot bounded on the West by Circuit Road, on the North by Circuit Link, on the East by Paya Lebar Road and on the South by the ITE MacPherson Campus I. The site area is 6 880.9sm. As at the acquisition date there were on site two blocks of single storey factory buildings commonly known together as Swee Hong Industrial Building ("SHIB"). The acquired land is part of SHIB together with a share in the common property at Lot 8156L.

(5) SHIB is about 8km from the city centre at Collyer Quay. Vehicular access to it is by way of Circuit Link from both Circuit Road and Paya Lebar Road but vehicles must depart in the direction of Circuit Link only. The locality is largely a mix of HDB part commercial part residential buildings, a food centre, educational institutions, flatted warehouse and factory buildings and terrace and detached factory buildings. As Ms Chee Hok Yean of Jones Lang LaSalle Property Consultants Ltd who testified for the Collector said in her valuation report dated 15 October 2002 public transport facilities are readily available along Paya Lebar Road and vehicular access to other parts of the island is facilitated by the Pan Island Expressway.

(6) It was said for the appellant that according to the building plans for the development which were submitted to the competent authority the site would be

developed for 12 single storey units to a gross plot ratio ("GPR") of 0.42 and that written permission under the planning laws was granted on 29 July 1985 for this development. The maximum permissible gross plot ratio ("MPGPR") for the site at the date of the written permission was 0.44 and there is no evidence that it was any different as at the acquisition date.

(7) As at the acquisition date some of the building units had mezzanine floors while some did not and the floor area of the mezzanine floors in each case was different. A development charge order was made on 19 October 1994 in respect of a mezzanine floor in one of the building units in SHIB (not the subject matter of this appeal) and the development charge was paid. Particulars of the building units and floor areas are as follows:

	<i>Lot</i>	<i>Unit</i>	<i>Floor Area</i>	
			<i>1st Storey Mezzanine</i>	
1	U21768V	332	243sm	158sm
2	U21769P	334	252sm	-
3	U21770W	336	252sm	131sm
4	U21760A	338	252sm	-
5	U32510N	344	473sm	263sm

As at the acquisition date there were 13 units in SHIB and not 12 and from the site plan tendered by the appellant it appears that 344 was a subsequent addition to the original development. The gross floor area ("GFA") of the first storey alone was substantially larger than that of any of the other units and if this were added to the GFAs of the first storey of all the other units in SHIB the GPR would have well exceeded 0.44. In these circumstances Mr Tan of counsel for the appellant said that it was not material for the purpose of this appeal whether the as-built GPR of SHIB was 0.42 or 0.44 or anything else and that no point would be taken as to the effect of the difference on the market value. This was not disputed by Mr Goh of counsel for the Collector.

(8) 332 was a smaller inside corner unit and 334, 336, and 338 were in-line adjacent intermediate units. 344 was the outside corner unit of the same block. 334 and 338 were "pure" single storey units and the other 3 units were single storey units with mezzanine floors. Having regard to the evidence adduced and what was agreed or not disputed by the parties it follows that the retention and use as at the acquisition date of the mezzanine floors and of the 13th unit whether it be 344 or any other unit were not contrary to law and this Board finds accordingly.

Compensation

(9) 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 is no evidence of a s 3(1) notification having been 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

(10) The petition of appeal states:

(e)(1) The Award ... is inadequate

(2) In particular, and without prejudice to the generality of the foregoing, the Collector was wrong in arriving at the valuation of the subject land, in that ...

(particulars given)

What this Board has to find is the market value of the acquired land as at the acquisition date not in any case exceeding the Development Baseline use price. This Board also has to find whether the Collector was wrong as alleged and whether the valuation approach alleged in the particulars should be preferred.

Appellant's Valuation

(a) *Replacement Cost Approach*

(11) Mr Loh Kin Mun Steven of Steven Loh Consulting Pte Ltd stated in his valuation report dated 24 April 2002 that he compared the valuation findings arrived at by the direct comparison approach and the replacement cost approach and said:

4.23 The Replacement Cost Approach was considered more reliable than the Direct Comparison Approach, with its inordinately large valuation adjustments, to fairly and accurately determine the most likely price in a hypothetical bona fide transaction between a willing buyer and willing seller.

Earlier in the report he said:

4.8 The **subject property was unusual** compared to other industrial properties in Singapore because it was **strata-titled, low-rise, low-density, and terraced**.

4.9 These unusual features made it difficult for a valuer to find transactions of suitably comparable properties to value the subject property using the **Direct Comparison Approach**. The resulting need to make inordinately large valuation adjustments to the "comparable" transactions gave rise to risk or uncertainty in the accuracy of the valuation.

The replacement cost approach was not referred to expressly in the particulars in the petition of appeal but it was suggested.

Unusual Features

(i) *Strata-titled*

(12) It was not disputed that each of the units in the acquired land was comprised in a subsidiary strata certificate of title issued under the Land Titles (Strata) Act and in that sense described as "strata-titled". It was also not disputed that there were elsewhere in Singapore factory units which were comprised in leases often for 999 years with an undivided share in the freehold reversion which were registered under the Land Titles Act or the Registration of Deeds Act in respect of which instruments or deeds of assurance for sales and other transactions were capable of being registered under one or the other of those statutes. The units comprised in these registered leases were not "strata-titled". There was this feature which distinguished the units in the acquired land but Mr Tan was unable to say that this feature was capable of having any effect on the market value of the acquired land and no evidence was adduced to show that it did have any such effect at all or that this made it difficult for a valuer to find transactions of suitably comparable properties.

(ii) *Low-rise, Low-density*

(13) It was not disputed that all the factory units were comprised in a single storey development and that written permission under the applicable planning laws had been granted for development of the site to a GPR of 0.42 and that the MPGPR for the site then was 0.44. This Board has not had the advantage of counsel's submission as to whether these features were capable of having any effect on market value but it appears to this Board that they may be so. However, no evidence has been adduced to show that this has made it difficult to find suitably comparable transactions.

(iii) *Terraced*

(14) It was also not disputed that all the factory units were terraced and again this Board has not had the advantage of counsel's submission as to the effect of this feature on market value and no evidence has been adduced to show that this has made it difficult to find suitably comparable transactions. If there were no transactions or insufficient transactions of "terraced" factory units from which to draw any inferences there was also no evidence before this Board that such factory units were different from flatted factory units or first storey flatted factory units or so different that adjustments could not be made for the differences.

(iv) *Cumulative Effect*

(15) While each of the features individually may have had little or no effect on market value or may not have made it difficult to find suitably comparable transactions it remains to consider whether the presence of all or some of the features together in any of the units made it so.

(16) In his direct comparison approach Mr Loh himself referred to the following transactions:

<i>Property</i>	<i>Floor Area</i>	<i>Transaction Date</i>	<i>Price</i>
1 623 Aljunied Rd #01-05/09 Aljunied Industrial Complex ("623")	1 135sm	1999 Oct 20	\$7 200 000 \$6 344/sm
2 625 Aljunied Rd #01-06/08 Aljunied Industrial Complex ("625")	424sm	1999 Nov 29	\$2 600 000 \$6 132/sm
3 627A Aljunied Rd #01-02 BizTech Centre ("627A")	170sm	2000 Aug 21	\$1 244 000 \$7 318/sm

Each of these properties was described as freehold strata-titled industrial space and all of them were on the first storey of multi storey buildings. The first two were warehouse units and the third was a factory unit. They were flatted units. Ms Chee referred to the following transactions:

	<i>Property</i>	<i>Floor Area</i>		<i>Transaction Date</i>	<i>Price</i>
		<i>1st Storey</i>	<i>Mezzanine</i>		
1	330 Circuit Rd SHIB ("330")	252sm	146sm	1994 Mar 10	\$1 705 000 \$6 766/sm (1st St)
2	338 Circuit Rd SHIB ("338")	252sm	Nil	1996 Jan 3	\$1 750 000 \$6 944/sm
3	322 Circuit Rd SHIB ("322")	252sm	252sm	1997 Jul 16	\$3 330 000 \$6 607/sm (1st St/Mez)

All these properties were units in the same development as the acquired land. 338 is also the subject matter of this appeal. These transactions took place in 1994, 1996 and 1997 but it is common ground between the parties that the market value as at the acquisition date was lower than as at 1 January 1995 as noted above and having regard to s 33(1)(a) it would be wrong to disregard these transactions by reason only that they took place some years before the acquisition date.

(17) Mr Loh made substantial upward adjustments in respect of the 623, 625 and 627A transactions including +50% for what he called the "land factor". The MPGPR there was 2.49 while for the site of the acquired land it was only 0.44. He also made adjustments in respect of the SHIB transactions referred to by Ms Chee. He rejected the 338 transaction because it was a "low sale" but gave no reason for his conclusion that the price paid was low other than that the seller told him so. He preferred the 623, 625 and 627A transactions and came up with a plot ratio rate of \$13 000/sm. From the 322 and 330 transactions he derived an average plot ratio rate of \$7 946/sm.

(18) On the evidence adduced this Board finds that other than the +50% adjustment which Mr Loh himself made for the "land factor" for which there was no market evidence there were no "inordinately large valuation adjustments" which had to be made to determine the market value and the features described as unusual did not make it difficult to find transactions of suitably comparable properties. Mr Loh has not shown that the replacement cost approach was more reliable than the direct comparison approach or that in the circumstances of this case it was to be preferred.

(19) It may nevertheless be useful to find a value by the replacement cost approach as a check in some cases. In the present case for the land component Mr Loh referred to the following transaction:

<i>Property</i>	<i>Site Area</i>	<i>Transaction Date</i>	<i>Price</i>
16 & 20 Kallang Pudding Rd ("16/20")	5 422.1sm	2000 Aug 2	\$33 500 000 \$\$2 481/sm

The property was described as freehold industrial land. He made adjustments for time, site area, frontage, accessibility (including ingress/egress to and from site) and neighbourhood for a net aggregate adjustment of +20% and derived an adjusted site

area rate of \$7 400/sm. He applied this to the site of the acquired land with a site area of 6 880.9sm and found a value of \$50 918 000 which he apportioned as to \$3 360 000 for 332, \$3 411 000 each for 334, 336 and 338 and \$10 081 000 for 344. For the building component he applied a replacement cost of development of \$1 300/sm to the GFAs of the units in the acquired land.

(20) Mr Loh has not taken into account the very significant difference in the MPGPR. In the case of 16/20 it was 2.49 while in the case of the site of the acquired land it was only 0.44. In disregard of this difference he adopted a site area rate. A much more meaningful rate to use would be the plot ratio rate. If the plot ratio rate were adopted then for 16/20 it would be about \$2 480/sm. Accepting for the present purpose all the other adjustments made by him and applying this rate to the site of the acquired land the value for the site would only be about \$7 510 000 or \$495 660 for 332, \$503 170 each for 334, 336 and 338 and \$1 486 980 for 344. SHIB was completed in July 1986 when the temporary occupation licence was issued or September 1987 when the certificate of fitness for occupation was issued but Mr Loh has not allowed for depreciation over a period of 24 years down to the acquisition date. Even without providing for depreciation the building component added to the land component would result in a very low value in comparison with a value found by the direct comparison approach.

(21) On the evidence this Board finds that the presence of some or more of the features alleged to be unusual did not make it difficult to find suitably comparable transactions and sees no reason for preferring the replacement cost approach over the direct comparison or inference from past transactions approach to determine the market value of the acquired land. The replacement cost approach preferred by Mr Loh is wholly inappropriate in the circumstances of this case. In so far as the appellant says or implies in its petition of appeal that the Collector was wrong to have adopted the direct comparison approach this Board finds that the Collector was not wrong as alleged and this ground of appeal fails.

(b) *Direct Comparison Approach*

(22) Mr Loh said that he made the following adjustments in respect of 623: +10% for time, +20% for size, +20% for building attributes, -30% for use, +10% for accessibility, +10% for ingress/egress to/from site and +5% for neighbourhood for a net aggregate of +45%. He then adjusted the adjusted rate by a further + 50% for land factor. For time he referred to URA, *Property Market Information, Commercial & Industrial Properties, 2nd Quarter 2001* ("PPI2001Q2") but he looked at the index for all industrial space. For factory space the change was about +17%. For size he analysed transactions of factory units at Tong Lee Building and Kapo Factory Building Block A. He obtained an adjusted floor area rate of \$13 795/sm.

(23) In respect of 625 Mr Loh made the following adjustments: +10% for time, +15% for size, +20% for building attributes, -30% for use, +10% for accessibility, +10% for ingress/egress to/from site and +5% for neighbourhood for a net aggregate of +40% and he adjusted the adjusted rate by a further +50% for land factor. He gave the same reasons for the adjustments. As in the case of the 623 transaction the change from PPI2001Q2 was about 17%. He obtained an adjusted floor area rate of \$12 876/sm.

(24) In respect of 627 Mr Loh made the following adjustments: -15% for size, +10% for building attributes +10% for accessibility +10% for ingress/egress to/from site and +5% for neighbourhood for a net aggregate of +20% and he adjusted the adjusted rate by a further +50% as in the other cases for land factor. His adjusted floor area rate was \$13 170/sm.

(25) 627 was transacted in August 2000 and PPI2001Q2 did not show a significant movement in prices for the relevant period and no adjustment was made for time. It was a factory unit and no adjustment was made for use. In each of the three transactions he did not refer to any empirical evidence to support his adjustments other than for size. An average of the floor area rates would be \$13 280/sm but Mr Loh said he rounded it down to \$13 000/sm. 332, 336 and 344 each had a mezzanine floor and Mr Loh valued the mezzanine floor space at 60% of the first storey space. 334 and 338 were "pure single storey" units and had no mezzanine floors. Applying the floor area rate to the floor areas he determined that the market values were as follows:

332	\$3 730 000,
334	\$3 300 000,
336	\$3 650 000,
338	\$3 300 000, and
344	\$7 000 000;

and that the market value of the acquired land as at the acquisition date was \$20 980 000. He said the range of values which might be inferred from the 322 or 330 or 338 transactions was wider and he preferred the 623, 625 and 627 transactions as comparables.

Collector's Valuation

(26) Ms Chee referred to her valuation report dated 15 October 2002. Her general approach was to value each of the units separately and to find the market value of the acquired land by aggregating the values of the separate units as did Mr Loh. In the valuation of each of the units she adopted the direct comparison approach. She referred to the three SHIB transactions. In the valuation of 332, 336 and 344 (which had mezzanine floors) she referred to the 322 transaction. 322 had a mezzanine floor with the same area of 252sm as the first storey. In the valuation of 334 and 338 (which had no mezzanine floors) she referred to the 330 transaction for one set of values and to the 338 transaction for another set of values. 330 also had a mezzanine floor with a floor area of 146sm but this was added after the transaction date.

(27) In the 322 transaction the buyer acted on the assumption that the mezzanine floor was approved by the planning authorities as a full second storey and that it was buying a 2 storey factory building. The replies it had received from the Chief Planner on 14 July 1997 were to the effect that a development proposal for the "addition of a 2nd storey (for office and ancillaries) to the existing single storey terrace factory" had been approved. In fact it was only approved for 151.2sm or 60% of the whole floor. No evidence was adduced as to the effect this might have had on the price but it is

clear that the price that was paid represented what this buyer would have paid had the approval been for the whole floor.

(28) In her valuation of 332, 336 and 344 Ms Chee derived a floor area rate of \$6 607/sm from the 322 transaction on the basis that the first storey space and the mezzanine floor space had the same value. She made an adjustment of -30% for time in each case. She also made adjustments of +2% for 332 and +3% for 336 for size and +4% for 344 for size, corner unit and condition. She determined that the values were \$1 908 000 for 332, \$1 848 000 for 336 and \$3 599 000 for 344. In her valuation of 334 and 338 she adjusted the transaction price of 330 by +8% for time for a value of about \$1 842 000. The transaction price of 338 was adjusted by -31% for time for a value of about \$1 208 000. She determined that the value of 334 and 338 was \$1 604 000 in each case.

(29) For the adjustments for time Ms Chee referred to transactions of 35 Kallang Pudding Road #02-14 ("35#02-14") in September 1997 and 37 Kallang Pudding Road #07-09 ("37#07-09") in Feb 2001 which showed a fall of about 30.7%, a transaction of 35 Kallang Road #08-04 ("35#08-04") in April 1994 and the 37#07-09 transaction which showed a rise of about 8.6% and a transaction of 37 Kallang Pudding Road #05-06 in February 1996 and the 37#07-09 transaction which showed a fall of about 30.6%. All these properties were flatted factory units in Tong Lee Building. She also referred to other transactions of similar properties in MacPherson Road but in those cases adjustments would have to be made for differences in size.

Market Value

(a) 332, 336, 344

(30) This Board finds that the most reliable comparables are the SHIB transactions. An analysis of the three SHIB transactions and of the 35#08-04 and 35#02-14 transactions all referred to by Ms Chee would suggest that the mezzanine floor in an SHIB unit had a value of about 75% of its first storey and Ms Chee said that 80% would be about right. Mr Loh adopted 60% but he did not refer to any sales evidence to support this. On the evidence adduced this Board finds that the value of the mezzanine floor in each case in this appeal was 80% of the value of the first storey at all material times. This may be represented by adjusting the floor area of the mezzanine floor by -20% and adding the adjusted floor area to the floor area of the first storey. This Board accepts the evidence of Ms Chee as regards the other adjustments to be made in each case and finds that the floor area rate of the 322 transaction price was \$7 341/sm and that the adjusted floor area rates for 332, 336 and 344 are \$5 286/sm, \$5 359/sm and \$5 432/sm and that the adjusted floor areas are 369.4sm, 356.8sm and 683.4sm for the following values:

332	\$1 953 000
336	\$1 912 000
344	<u>\$3 712 000</u>
	\$7 577 000
	=====

(b) 334, 338

(31) Ms Chee referred to the 330 and 338 transactions and after making adjustments of +8% and -31% she concluded that the market value in each case was \$1 604 000 as noted above. On the evidence adduced this Board accepts the adjustments and finds accordingly.

(32) In the premises 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 \$10 785 000;

(c) that the market value so found does not exceed the Development Baseline use price or the existing use price determined in accordance with s 33(5)(e).

Award

(33) 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 \$10 785 000. 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

(34) For the purpose of the inquiry held under s 10 the appellant made a claim of \$18 500 000. 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 its costs.

Dated 2003 January 6

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