

LAND ACQUISITION ACT

APPEALS BOARD

AB 2012.008

In the Matter of the Acquisition of
Land Lot 610M part TS 13 Strata Lot No. 610-14-F TS 13
at Block 2 Rochor Road #06-590 Singapore 180002

Between

Mr Lim Ngee Sing & Mdm Ong Min Chin

... Appellants

And

Collector of Land Revenue

... Respondent

Mr A Rajandran for Appellants
Mr Abdul Rashid Gani 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 \$521,800 in respect of Land Lot 610M part TS 13 Strata Lot No. 610-14-F TS 13 at Block 2 Rochor Road #06-590, Rochor Centre, Singapore 180002 be confirmed; and

(2) That the costs of this appeal to the Board be paid by the appellants.

Introduction

1. This is an appeal by the owners of a Housing and Development Board flat against a \$521,800 compensation award by the Collector of Land Revenue (hereinafter referred to as "Collector"), being market value compensation of \$510,500 for compulsory acquisition of a flat in Block 2, Rochor Road, #06-590, Rochor Centre, also described as strata lot Lot 610-14-F, Town Subdivision 13 (hereinafter referred to as "the subject flat") and \$11,300 for reasonable expenses incurred by the appellants in being compelled to change their place of residence.

2. The issues raised by the appellants were that the Collector had: a) acted in bad faith in his assessment of market value; b) erred in assessing the market value of the subject flat and in particular, failing to give a premium when making a monetary adjustment in the computations for a specific design feature being a bedroom with an attached bathroom cum WC; c) failed to give proper consideration to the value of fixtures and fittings in the subject flat when assessing market value; and d) accepted the maxim ‘the bigger the flat, the lower the dollar value (\$) per square metre (hereinafter referred to as “\$psm”) as compared to a smaller flat, which was incorrect.
3. The Board dismisses the appeal and awards costs to be paid by the appellants to the Collector. The issue of costs will be dealt with separately.

Background

4. The subject flat was gazetted for land acquisition under the Land Acquisition Act (Cap. 152) (hereinafter referred to as “the Act”) on 15 November 2011 (hereinafter referred to as “the acquisition date”). The acquisition was for a public purpose for the proposed construction of the North South Expressway Stage 2 from Toa Payoh Rise to East Coast Parkway. As it was also regarded as a Selective En Bloc Redevelopment Scheme (SERs) acquisition exercise, the appellants were also offered direct allocation of a replacement HDB flat with the subsidised selling price frozen as at acquisition date.
5. Appellants - The appellants are Mr Lim Ngee Sing and Mdm Ong Min Chin, who were joint tenants of the subject flat. They claimed a \$580,000 market value compensation for the subject flat and dispute the amount awarded for reasonable expenses under section 35(1)(e) of the Act. The appellants, in their closing submission of 29 November 2013, changed their position to state that they were claiming a market value compensation of \$627,464.
6. **Description of subject flat acquired** - The subject flat is in Rochor Centre, which was developed by the Housing and Development Board (hereinafter referred to as “HDB”). There are four 17-storey blocks with a basement carpark, commercial units on the first 4 storeys and residential units on the 5th to 17th storeys.
7. The subject flat is a 6th storey HDB 3 Room New Generation Modified Flat (hereinafter referred to as “3R NG Mod flat”). It is an 82 sq metre corridor-end flat, with a living room, 2 bedrooms, one with an attached bathroom cum WC, and another separate bathroom cum WC accessed through the kitchen. The remaining lease term at acquisition date was about 64 years and 7 months. The appellants bought the subject flat under an option to purchase on 15 July 2010, exercised on 29 July 2010.

8. Market Value of Acquired property - Section 33(5)(e) of the Act provides that: *“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 by or under the Planning Act (Cap. 232) as at the date of acquisition and any restrictive covenants in the title of the acquired land*”

9. Claim for reasonable expenses for change of residence - Section 35(1)(e) of the Act provides that if pursuant to an acquisition, a person, whose property is acquired, *“is compelled to change his residence or place of business,”* he is entitled to claim *“reasonable expenses, incidental to that change.”*

10. Onus and Standard of Proof - Under section 25(3) of the Act, the appellants have the onus of proving on a balance of probabilities that the Collector’s award is inadequate.¹ Case law has recognised that an appellant in a land acquisition case is analogous to a plaintiff.

11. Valuers – The Collector appointed Mr Lau Chee Kin (hereinafter referred to as “Lau”) as his valuer. The appellants appointed Mr Teo Yik Weng (hereinafter referred to as “Teo”) as their valuer. Both used the comparable sales method of valuation.

The Comparable Sales Method – method adopted by both valuers

12. A valuer using the comparable sales method, first selects “comparables”, which are relevant properties that he considers are somewhat similar to a subject flat and for which there are relevant sales transactions, to facilitate comparison with the subject flat. Using his professional judgement, he notes the differences in the subject flat relative to his selected comparables and then makes adjustments in money terms for the differences in value caused by the different features, such as floor level, orientation, whether there is a direct lift landing on the floor, market conditions (time and price movements), design taking into account size, flat model and block model, location, tenure and condition of a flat to arrive at the value in dollars per square metre (hereinafter referred to as “\$psm”) for each comparable. He then averages the \$psm for his comparables and multiplies that average by the floor area of the subject flat to arrive at his assessed market value for the subject flat.

¹ Assistant Development Officer, Bombay v Tayaballi AIR 1933 BOM 361 at 365, Chuah Say Hai & Ors v Collector of Land Revenue, Kuala Lumpur [1967] 2 MLJ 99 at page 101.

Comparables selected by Lau and Teo

13. Lau, the Collector's valuer, selected 2 comparables, one at Buffalo Road and one at Waterloo Street. Teo, the appellants' valuer, selected 4 comparables, two at Rochor Road and two at Waterloo Street.

Lau's Comparables at Buffalo Road and Waterloo Street

S/n	Block	Street	Unit	Type/Model	Lease Commencement Date	Floor Area (sq m/f)	Transacted Price	Regn Date
1	661	Buffalo Road	#14-30	4R Improved	01/05/1982	82sqm 883 sqft	\$455,000/	25/08/2011
2	262	Waterloo Street	#08-222	4R Improved	01/09/1978	82sqm 883 sqft	\$531,000/	18/08/2011

The 2 comparables are 4 Room Improved flats, one at Buffalo Road and the other at Waterloo Street (hereinafter referred to as "4R Improved flats"). A 4R Improved flat has an area of 82 sqm, similar to the area of the subject flat. The flat has a living room, 3 bedrooms, one separate bathroom and one separate WC, both accessed through the kitchen. Lau's adjustments, computations and justification for his comparables are in his valuation report of 23 February 2012, which was enclosed in his 1st affidavit of August 2013.

Teo's Comparables at Rochor Road and Waterloo Street

S/n	Block	Street	Unit	Type/Model	Lease Commencement Date	Floor Area (sq m)	Transacted Price	Regn Date
1	4	Rochor Road	#10-528	3R New Generation	01/06/1977	67sqm 721sqft	\$451,000/-	02/06/2011
2	2	Rochor Road	#11-592	3R New Generation	01/06/1977	67sqm 721sqft	\$455,000/-	14/07/2011
3	263	Waterloo Street	#13-217	3R Improved	01/09/1978	60sqm 646sqft	\$445,000/-	07/10/2011
4	262	Waterloo Street	#07-223	4R Improved	01/07/1978	82sqm 883sqft	\$560,000/-	06/12/2011

Teo's 2 comparables at Rochor Road were 3R NG flats of area 67 sqm, with a design similar to the subject flat except that the subject flat, being a corridor end unit has a larger area of 82 sqm. The 3rd comparable at Blk 263 Waterloo Street was a 3R Improved flat of area 60 sqm with a living room, 2 bedrooms, one separate bathroom and one separate WC accessed from the kitchen. The 4th comparable at Blk 262 Waterloo Street was a 4R Improved flat of area 82 sqm, as described earlier in this paragraph in relation to Lau's comparables.

14. The Board is of the view that Comparable 4 should not be included because the registration date for the sales transaction was 6 December 2011, a date after the 15 November 2011 acquisition date. The fact of land acquisition of Rochor Centre would have had an impact on the movement of prices for comparable flats within the area.
15. ***Allegation of Bad Faith*** - The appellants, in their written submissions, made a serious allegation that the Collector had acted in bad faith in his valuation. The Board finds no merit in this allegation. There were 3 main allegations. One allegation is that although parties had agreed that they could file a 2nd affidavit after the 1st round of affidavits, if so allowed by the Board, the Collector, despite telling the appellants that he would not be doing so, subsequently and belatedly filed Collector's valuer's 2nd affidavit after having had the advantage of having sight of the appellants' valuer, Teo's 2nd affidavit.
16. The following sequence of events is necessary to understand the context and conduct of the parties. Parties exchanged their 1st round of affidavits in August 2013. Lau enclosed in his affidavit, his 23 February 2012 valuation report, which stated: a) his choice of 2 comparables, both 4R Improved flats; and detailed b) his adjustments and computations to justify his \$510,500 market value assessment². In contrast, Teo's 19 February 2013 report in his 1st affidavit, only listed his comparables as shown at paragraph 13 herein but gave no information at all on his adjustments or computations to justify his assessed market value of \$580,000³. The appellants, who were represented, would have been advised on the advisability of Teo, their valuer, submitting an affidavit devoid of justification for claim for a market value assessment of \$580,000.
17. Lau, understandably did not respond to Teo's 1st affidavit as there was nothing to which he could respond. Teo then made his 2nd affidavit on 11 October 2013 to respond to Lau's 1st affidavit⁴. Most notably, Teo then chose to give details only of his adjustment and computation for his 2 Rochor Road comparables, leaving out mention or details of his 2 Waterloo Street comparables (3R & 4R Improved flats) as described in paragraph 13. He disagreed with Lau's 10% premium adjustment for design for 4R Improved flat

² Lau 1(18-21)

³ Teo 1(4-11)

⁴ Teo 2(1-10)

comparables saying, that he, Teo, would have done the reverse and given a 10% discount. Teo said that the value of a 4R Improved flat with 3 bedrooms, none of which had a bedroom with an attached bathroom cum WC, should be discounted by 10%, when compared to the subject flat (a 3R NG Mod flat) with 2 bedrooms, one of which had an attached bathroom cum WC. Teo repeated this at the hearing. It would seem clear that Teo, after reading Lau's 1st affidavit, had changed his tack. As Teo was, at that stage, taking the position that a 3R NG Mod flat had a better design than a 4R Improved flat, he chose to leave out his own selected 3R & 4R Improved flat comparables at Waterloo Street, which he had named in his 19 February 2013 valuation report.

18. This change in position by Teo is borne out by: a) appellants' written opening submissions; ii) appellants' counsel's opening case summary; and iii) Teo's evidence at the start of the 24 October 2013 hearing,⁵ when it was stated that the appellants were relying only on the Rochor Road comparables. However during cross-examination, Teo again changed his position, saying that he had given his Waterloo Street computations to appellants' counsel, who had not given them to the Board.⁶ As the proceedings continued, Teo produced his computations. The computations show that despite Teo's categorical assertions on the better design of a 3R NG Mod flat compared to a 4R Improved flat, he had not made any adjustment at all for this feature. There is no merit in this particular allegation of bad faith in the appellants' closing submission that "Further evidence of bad faith is as regards Mr Lau's strategy in filing a belated reply affidavit, after having sight of the Appellants' 2nd affidavit, despite stating that he would not be filing a reply affidavit."⁷

19. The other allegations in the appellants' closing submissions would seem to stem from their misinterpretation of certain letters. The main allegations are:

a) that contrary to the Collector's letter of 21 December 2012, where Collector had said that their private valuer's valuation were fair and consistent with their valuation of "the other flats at Rochor Road," Lau had instead selected two comparables at Buffalo Road and Waterloo Street in his 23 February 2012 valuation report. In essence, the appellants allege that Lau had crucial and material information on the valuation of other flats at Rochor, which had deliberately not been disclosed to the appellants. This was raised in the appellants' written closing submissions but had not been put to Lau at the hearing. The Board finds no basis for this assertion. It could have been that Collector was seeking to assure the appellants that their private valuer's market value

⁵ Notes of evidence pg 31 line 32

⁶ Notes of evidence pg 49 line 30, pg 93 line 16

⁷ Appellants' closing submission at page 13 paragraph 6.21.

assessment for the subject flat was consistent with their valuations for the other flats at Rochor Road, these being the other acquired flats at Rochor Centre.⁸

b) that Collector in his letter of 20 March 2013 stating that their valuer had “considered the transacted prices of similar properties in the vicinity at around the date of valuation...” must be referring to properties at Rochor Road consistently with Collector’s letter of 21 December 2012, hence Collector’s valuer’s choice of the Buffalo Road and Waterloo Street comparables was proof that Collector had not been forthright or candid in the discharge of his statutory duty. This point was not raised with Lau at the hearing. The Board finds no merit in these allegations;⁹ and

c) that Collector, despite having relevant data had chosen to suppress the data to the detriment of the appellants. The Board finds no merit in this allegation.

Valuer’s Selection of Comparables

20. ***Lau’s Selection of Comparables under the Comparable Sales Method*** - Lau’s evidence in his affidavits and at the hearing was consistent with his assessment of a \$510,500 market value for the subject flat. In his 23 February 2012 valuation report, he gave justification and support for his market value assessment. He gave evidence that he had considered the differences in design for a 3R NG Mod flat compared to a 4R Improved flat, as this was implicit in the “design” factor and that he had factored this into his adjustment and computations.¹⁰

21. ***Teo’s Selection of Comparables Under the Comparable Sales Method*** - Teo in his 2nd affidavit made in October 2013 and evidence at the 24 October 2013 hearing, went on at length on why he would give a 10% premium for the better design of the subject flat, a 3R NG Mod flat with 2 bedrooms, one of which has an attached bathroom cum WC and a 2nd bathroom cum WC accessed through the kitchen, compared to a 4R Improved flat, with 3 bedrooms and with one separate bathroom and one separate WC, both accessed through the kitchen and no attached bathroom. However both his Waterloo Street comparables, as described in paragraph 13, did not have a bedroom with an attached bathroom cum WC. Despite his assertions that he would have given at least a 10% premium for this feature,¹¹ he admitted that he had failed to make any such adjustment in his computation for his two Waterloo Street comparables in his adjustment matrix produced at the Board hearing on 24 October 2013.¹² Teo’s argument on the 10% design feature was clearly an afterthought possibly arrived at after he had read the details of Lau’s computations and adjustments in Lau’s 1st affidavit.

⁸ Appellants’ closing submission at page 10-12 at paragraphs 5.4-5.11.

⁹ Appellants’ closing submission at page 12-14 at paragraphs 5.12-5.18

¹⁰ Notes of evidence at pgs 30-36,

¹¹ Notes of Evidence pg 37 Line 21

¹² A3(1) Notes of Evidence page 19, line 30, page 50 lines 3 and 13, page 68, line 11.

22. Teo's Computations using his 2 selected comparables in Rochor Road and 2 comparables at Waterloo Street.

It would seem from what transpired after the hearing, that Teo could have chosen not to make the adjustments in his computations for his Waterloo Street comparables because doing so, would require a change and a sharp upward adjustment in his \$580,000 market value assessment. Teo's computations for his two comparables in Rochor Road gave him an average of \$7,130 psm.¹³ As for his two Waterloo Street comparables, he arrived at an adjusted average value of \$7,150¹⁴ This gave an adjusted average \$psm for these 4 comparables of \$7,140, which would give a market value of \$585,480 or an approximate figure of \$580,000, as claimed by the appellants. If a 10% premium adjustment was necessary, as asserted by Teo, and if he had indeed made that adjustment, Teo would then be unable to justify his \$580,000 market value assessment.

23. Teo was factually wrong in saying that the sizes of the bedrooms in the subject flat were bigger than a 4R Improved flat,¹⁵ that the subject flat had a storeroom¹⁶ and that the door of the subject flat faced Queen Street instead of Rochor Road¹⁷.

24. The Board does not accept Teo's evidence. Teo's evidence was confused, contradictory and unreliable. His 1st affidavit gave no information to support his \$580,000 market value assessment. His evidence at the 24 October 2013 hearing contradicted his 2nd affidavit and his own oral evidence, when he admitted that despite his assertions in his 2nd affidavit and at the hearing on the superior design of a 3NG Mod flat compared to a 4R Improved flat and a 3R Improved flat, both without a bathroom cum WC attached to a bedroom, he had failed to factor in his computations, a 10% premium for the subject flat relative to his Waterloo Street comparables.

Re-submission of Each Valuers adjustments and computations for their own comparable and for each other's comparables using a template provided by the Board

25. At the 25 October 2013 hearing, the Board directed the valuers to use a template format to re-submit their adjustments and computations for each of their own comparables. This was to facilitate comparison for consistency and clarification in their presentation as each valuer had used different terms. The valuers were told that they were to use the same data and values already given in the valuation reports, their affidavits and oral evidence.

¹³ Teo 2(10)
¹⁴ Exhibit A3(1)
¹⁵ Teo2(2) paragraph 9, Lau2(3) paragraph 4(d) & (e).
¹⁶ Teo1(5)
¹⁷ Notes of Evidence pg

26. **Lau's template submission for his 2 comparables in paragraph 13**, was consistent with his market value assessment of \$510,500.¹⁸
27. **Teo's template submission for his 4 comparables in paragraph 13**, showed a revised market value figure of \$627,464, higher than his earlier \$580,000 market value of \$580,000 claimed by the appellants¹⁹. In his revised workings, Teo introduced adjustments for tenure and location for his comparables 3 and 4, where originally there had been none. He changed his floor level and time adjustments for all 4 comparables. He gave a 6% premium for an attached bathroom instead of the 10% stated in his affidavit and oral evidence. From the changes in this template submission, it is evident that Teo, even in the treatment of his own comparables, is unsure of his valuation of the subject property. The Board does not accept Teo's evidence as it is confused, contradictory and unreliable. This being the case, there is no need for the Board to consider the template submissions by each valuer on each other's comparables.
28. The Board now deals with the other points raised by the appellants.
29. **Failure by Collector to give proper and adequate consideration to the value of the fixtures and fittings in arriving at his market value assessment** - This point is misconceived. Although, one of the appellants, Mr Lim Ngee Sing gave evidence that the renovations cost \$65,000,²⁰ he later revised this to an agreed sum of \$33,298.33. The appellants submitted that the Collector's assessment would have been different if Collector had known of the \$65,000 figure at time of assessment. As an assessment of the condition of a property will take into account all fixtures and fittings, there is no merit in this point. It is noted that Lau had assessed the condition of the subject flat as "above average".
30. **The Collector, in arriving at his market value assessment, had applied the maxim, the bigger the flat, the lower the price per square metre as compared with a smaller flat and this was not correct** - It is generally accepted as market practice, based on market evidence, that a flat with a bigger floor area has a lower \$psm value compared to a smaller size flat. Teo, at different points in his evidence, contradicted himself saying first that the bigger a flat, the higher the value per square metre, then saying the reverse only to contradict himself later.²¹ In any case, nothing turns on this, as both valuers had made adjustments for the size difference in the flats.
31. **Alleged Errors in Collector's assessment** - The appellants say that the Collector made a mistake in his 20 June 2012 letter in stating that there were 3 instead of 4 split air-conditioning units. The Board notes the contents of the letter from Collector to the

¹⁸ Exhibit r2(1)

¹⁹ Exhibit A5(1-7)

²⁰ Lim 1(3) para. 8 and Notes of evidence

²¹ Notes of evidence at pgs 42, 43, 62, 68, 70, 79, 81 and 85

appellants dated 27 November and 12 December 2012 stating that the private valuer apologised for the typographical errors in the number of split unit air conditioners and in missing out the mirror in one of the bathrooms. This issue of whether there was a typographical error relating to the split unit air conditioners was not put to Lau at the hearing. In any case the Board is of the view that omission to take into account a mirror in one of the bathrooms as well as a split unit air-conditioner, if there was such an omission in the latter case, would not materially affect market value assessment.

32. ***Appellants' proposed Use of Collector's compensation awards for two 3R NG intermediate flats in Rochor Centre, as comparables*** -The use of these flats as comparables to assess the market value of the subject flat is not acceptable in valuation practice as they are not market transactions. At best, the Collector's compensation awards for somewhat similar flats within Rochor Centre, where relevant, can be used as a "check" on the assessed market value of a subject flat.

33. ***Collector's assessment of reasonable expenses*** - Although the appellants disagreed with the Collector's assessment under section 33(1) on reasonable expenses incurred in having to change their residence, no evidence was tendered. Section 34(b) of the Act provides that in determining the amount of compensation, the Board shall not take into consideration any disinclination of a person to part with the land acquired.

34. On the evidence and for the reasons given, the Board finds and directs:

a. That the appellants have not discharged the onus of proving that the Collector's award of \$521,800, being \$510,500 for the market value of the subject flat and \$11,300 for reasonable expenses, is inadequate. and

Costs

b. As the amount awarded by the Board does not exceed the sum awarded by the Collector and in accordance with section 32(1), the costs of appeal to this Board are to be paid by the appellants to the respondent.

Dated 3 April 2014

Commissioner of Appeals Ms Foo Tuat Yien
Assessor Mr Chua Koon Hoe
Assessor Ms Poh Kwee Eng