[2022] JMRC 03

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE REVENUE COURT

REVENUE COURT APPEAL NO. 2021 RV00004

BETWEEN CLIVE MARTIN APPELLANT

AND COMMISSIONER OF LAND VALUATIONS RESPONDENT

Michael Powell instructed by Huntley Martin, Attorney-at-Law for the Appellant

Lisa White instructed by the Director of State Proceedings for the Respondent

IN OPEN COURT

Heard: 22nd September and 2nd December 2022

Land Valuation - Sections 20 and 22 Land Valuation Act - Whether grounds of appeal prescribed by statue exist

Land Valuation Act - Section 2 - Unimproved Value - Whether appropriate comparables used in determining unimproved value of property - Onus of proof

Revenue Appeals Division Act - Section 4 (3) - Power of RAD to consult and obtain assistance

Revenue Appeals Division Rules - Rules 7, 10, and 14 - Power of Revenue Appeal Division - To collect necessary information - Obtain and consider relevant evidence

C. BARNABY J

INTRODUCTION AND SUMMARY CONCLUSION

[1] The Appellant, Clive Martin is the surviving Executor of the Estate of Mavis Martin. In that capacity, Mr. Martin is a registered proprietor of lands in the parish of Hanover registered at Volume 1256 Folio 295 of the Register Book of Titles

(hereinafter referred to as "the Ramble Property", which is agreed by the parties as being comprised of 143.18 hectares or 353.81 acres.

[2] In or around 2017, the Respondent Commissioner - appointed pursuant to section 16 of the **Revenue Administration Act** (hereinafter called "the RAA") and having responsibility for land valuations - commissioned a valuation of the Ramble Property in exercise of powers under the **Land Valuation Act** (hereinafter called "the LVA"). The property was valued on the unimproved basis pursuant to section 2 of the LVA at **Seventy-One Million Dollars ($71,000,000.00)** as at 1st July 2013. On the Appellant's objection to the valuation, it was reduced by the Respondent to **Forty-Seven Million Dollars ($47,000,000.00)**.

[3] Still dissatisfied with the reduced valuation, the Appellant appealed to the Revenue Appeals Division (hereinafter called "the RAD") on 10th October 2018. In the course of determining the appeal, the RAD instructed Breakenridge & Associates, a firm of valuers who prepared a "*Report & Valuation"* and supplemented by letter dated 28th August 2020 in respect of the Ramble Property (hereinafter called "the Breakenridge Valuation"). The Breakenridge Valuation was prepared following an inspection of the property on 28th May 2020.

[4] By decision dated 15th February 2021, which followed a formal hearing, the RAD confirmed the unimproved value of the Ramble Property at **Forty-Seven Million Dollars ($47,000,000.00)** as at 1st July 2013. It is from that decision that the Appellant now appeals to this court on the grounds reproduced below.

> a. *The Respondent agreed at the Hearing on July 17, 2019 with the Appellant's contention that the value of 99.62 acres of the Ramble Property was mountainous, non-arable land, unsuitable for agriculture and had a value of $99,000.00. The Revenue Appeals Division fell in error in discarding this acknowledgement of fact by the Respondent - which would have reduced the value of the property to*

$33,827,471.00, and the per acre value to $95,780 per acre, without taking any other matters into consideration;

b. *The Revenue Appeals Division erred in substituting a valuation done in 2020 by Breakenridge & Associates for the Valuation done by the Commissioner of Land Valuation in 2013. The Appellant contends the valuation done by the Commissioner of Valuations should be left to stand or fall on its own merit and not be substituted by another Valuation - done in 2020;*
c. *The Revenue Appeals Division erred in excluding the evidence of the only sale comparable put forward by the Appellant, of a Highgate property on the basis that the sale of same in 2019 was too far from the 2013 valuation date to be considered; and*
d. *The Revenue Appeals Division erred in disregarding and failing to take into account cogent evidence that the Commission of Valuations himself, had valued the said Highgate property at the material time in 2013 at $42,328 per acre.*

[5] On the 22nd September 2022, being the date of the hearing of this appeal, judgment was reserved to today's date.

[6] On consideration of the issues set out subsequently, I find that the appeal is to be determined in favour of the Respondent with the costs thereof to be taxed if not sooner agreed.

ISSUES

[7] The following issues arise for determination on the appeal.

i. Whether the grounds of Appeal stated by the Appellant are grounds which are permitted to be appealed pursuant to section 20 of the **LVA**.
ii. Whether the RAD erred in excluding the Highgate comparable put forward by the Appellant in assessing the value of the Ramble Property as at 1st July 2013.

iii. Whether the use made by the RAD of the Breakenridge Valuation is permitted by its enabling legislation.

REASONS

(i)

Whether the grounds of Appeal stated by the Appellant are grounds which are permitted to be appealed pursuant to section 20 of the LVA.

[8] It was contended *in limine* by Counsel Ms. White for the Respondent that where there is an objection to a valuation it must be on the basis of grounds prescribed at section 20 of the **LVA**; and that the grounds of appeal to this court must also be those raised at the objection stage, unless an application is made to argue further grounds on appeal pursuant to section 22 of the said Act. Reference was also made to rule 4 of the **Revenue Appeals Division Rules** which requires appeals to that tribunal to be made in writing and include, among other things, the grounds of appeal. She contended further that none of the section 20 grounds of appeal were identified by the Appellant throughout the objection and appeal stages which should cause the instant appeal to come to an end.

[9] Section 20 of the **LVA** provides that:

> *20. Any person who is dissatisfied with a valuation made under this Act may, within sixty days after service of the notice of valuation, post or lodge with the Commissioner an objection in writing against the valuation stating the grounds upon which he relies: such objection shall be in the prescribed form and shall be limited to one or more of the following grounds-*
>
> *(a) that the values assessed are too high or too low;*
>
> *(b) that lands which should be included in one valuation have been valued separately;*
>
> *(c) that lands which should be valued separately have been included in one valuation;*

(d) that the person named in the notice is not the owner of the land.

[10] To the extent relevant, section 22 states:

(1) Any person who is dissatisfied with the decision of the Commissioner upon an objection may, within sixty days of the service of notice of that decision, or such longer period as may be permitted by or pursuant to rules of court, appeal to the Revenue Court…

(2) An appeal shall be limited to the grounds stated in the objection: Provided that the Revenue Court may in its discretion permit the ground of appeal to be amended…

[11] While the submissions of Ms. White as to the applicable law were unassailable, so too the observations of counsel that none of the grounds of challenge as stated in section 20 of the **LVA** are expressly stated on the Appellant's papers either at the objection or appellate stages, I am unable to agree that the appeal should be dismissed on the basis. It is apparent on the face of the record before the court that the Appellant challenged the valuation on the basis that it was too high, which was in fact recognized by the Respondent at paragraph 2 (b) of the Statement of Case and Amended Statement of Case filed in these proceedings on the 30th September and 17th November 2021 respectively. Further, the Respondent had not asserted at any of the case management events ahead of the hearing of the appeal that the Appellant should not be permitted to pursue the grounds of appeal contained in the Notice of Appeal filed in the proceedings. I, therefore, determined that the appeal should not be dismissed on the preliminary point and that it should proceed to a determination on its merits. It is to that enquiry that I now turn.

(ii)

Whether the RAD erred in excluding the Highgate comparable put forward by the Appellant in assessing the value of the Ramble Property as at 1st July 2013.

[12] It is submitted by the Appellant that the Revenue Appeals Division erred in excluding the evidence of the only comparable put forward by him, land part of Highgate, Darliston, Westmoreland identified under Valuation Roll No. 07802015001 (hereinafter called "the Highgate Property"). The property was excluded by the RAD on the basis that the 2019 date of valuation was too far from 1st July 2013, the valuation date for the Ramble Property, to be a suitable comparable. The submission is without merit.

[13] The Ramble Property was valued pursuant to section 2 of the **LVA.** In **Valuations Commissioner v Hall** (1963) 5 W.I.R. 401, 404 on which both parties rely, Lewis JA said this of the provisions.

> *There is no dispute that these provisions require the Commissioner in valuing the land to visualise a hypothetical sale of the land as one parcel by a willing seller to a willing buyer. The implications of the willing seller and willing buyer concept are now well established and have, with modifications, been codified in the land Acquisitions Statutes of many Commonwealth countries.*

[14] It is equally well established, that in arriving at a value of land on the basis of a hypothetical sale by a willing seller to a willing buyer, the comparable sales method may and is often utilised. It was aptly and succinctly stated by Rowe P in **Keith C. Burke v Commissioner of Valuations** (1987) 24 J.L.R. 368, 372 that in establishing whether or not a neighbouring property is a comparable,

> *… the onus is upon the party submitting such evidence to prove that the sales were in fact comparable and where there is divergence of opinion as to which sales are comparable sales, the burden may shift to the other party*.

[15] As is the case in these proceedings, the Appellant did not provide a valuation prepared by any person trained in land valuation to the Respondent or the RAD. He was content to rely on the views of a family member who describes himself as a landscaper and part-time farmer, who is well acquainted with the Ramble Property in excess of forty (40) years; and with all aspects of cattle rearing in excess of twenty (20) years. The witness does not claim any expertise in land valuation but says he knows *"… the cost of preparing land, planting out grass, putting in fence posts, running barb wire fencing, cleaning pastures, caring for animals etc."*

[16] It appears to me that where one is contending that a property is a suitable sale comparable for valuation purposes, the property must have been sold in the open market. A tax receipt, which is what the Appellant supplied, does not suffice. There is no evidence of sale of the Highgate Property, in fact, the property was rejected as a comparable by the Respondent, and properly so, on the basis that it *"… was **not the subject of an actual sale**…"* [**Emphasis added**]

[17] As regards the exclusion of the Highgate Property as a comparable on the basis that it is too far removed from the 2019 valuation date for the Ramble Property, that too is in order.

[18] The date of sale of the comparable must be sufficiently close to the date of the valuation of the subject property so that the "market price" could not have changed. Whether or not a comparable sale is "sufficiently close" will depend on the circumstances of the case and for that reason it would be unwise to propose a cut-off date for suitable comparable. While determination of "market price" is no doubt improved where there is comparable sales data for the period of the subject property valuation, where there is no sale comparable at the exact time, it is the practice of valuers to make adjustments for time. I can see no harm in such practice. Where trained, competent and careful professional valuers have identified comparable sales more proximate to the subject valuation, which is the situation here, the court would be loathed to doubt their opinion in that regard.

[19] In the circumstances, the Appellant has not discharged the burden placed upon him in this appeal to prove that the Highgate Property is an appropriate sales comparable to engage the shifting of the burden to the Respondent to prove that the comparables used by him in determining the value of the Ramble Property were appropriate.

(iii)

Whether the use made by the RAD of the Breakenridge Valuation is permitted by its enabling legislation.

[20] It is not disputed that section 4(3) of the **Revenue Appeals Division Act** (hereinafter called "the RADA") empowers the RAD, for the purposes of carrying out its functions under the Act, to consult with and seek assistance from technical experts or other persons as the Commissioner of the division considers appropriate. Neither is it in issue that the comparable sales method may be engaged in determining the value of the Ramble Property.

Power to consult and obtain assistance

[21] It is among the submissions of the Appellant however, that the power of the RAD at section 4(3) of the **RADA** is limited to obtaining "technical expertise opinion" on evidence before the RAD, for example, opinion on adjustments to be made when comparing lands as to size, location and other variables. I find that there is merit to the submission.

[22] So far as relevant, section 4 of the **RADA** states that:

> *(1) Subject to the provisions of this Act, the **principal function** of the Division is **to facilitate the determination of appeals by taxpayers against the decisions of Revenue Commissioners**, regarding their revenue liability under the revenue laws.*
> *(2) …*
> *(3) Subject to the provisions of this Act, the Division may **for the purpose of carrying out its functions, consult with and seek assistance from***

such technical experts *or other persons as the Commissioner considers appropriate.*

[Emphasis added]

[23] Pursuant rule 9 of the **Revenue Appeals Division Rules** (hereinafter called "RADR"),

The Commissioner [of the RAD] may determine an appeal by -

(a) convening a formal hearing;

(b) accepting a settlement agreement; or

(c) otherwise arriving a decision based on all the relevant information gathered, in accordance with rule 7.

[24] On the determination of an appeal by a formal hearing or resolution by other means, the Commissioner of the RAD may, pursuant to rule 12(1) of the RADR,

(a) dismiss the appeal and confirm the decision;

(b) allow the appeal and set aside the decision;

(c) reduce the amount determined under the decision;

(d) vary the decision other than in relation to the amount determined; or

(e) remit the matter to the relevant Revenue Commissioner in the circumstances specified in paragraph (2) [which is not immediately relevant].

[25] It is clear from the foregoing that the power reserved to the RAD at section 4(3) of the **RADA** is to enable it to determine the appeal by the taxpayer against the decision of a relevant Revenue Commissioner in any of the manners prescribed by the rules. It is my view that the power is similar to that which is given to a court to appoint assessors for example, to assist it in understanding technical evidence and in advising the judge with regard to evidence of expert witnesses which have been called by parties in the proceedings. That is an indispensable power for a tribunal which may be required to evaluate technical evidence outside of its area of expertise. Consequently, any consultation and assistance obtained pursuant to the section ought properly to be limited to support for capacity deficits

at the RAD, which must be informed by the information or evidence which the RAD has before it for consideration in the appeal.

[26] This power at section 4(3) of the **RADA** is not to be conflated with the power of the RAD to collect necessary information to facilitate the determination of the appeal however, which appears to me to be investigative in character; or the power to obtain and consider relevant evidence, for which separate provision has been made in the RADR.

*Power to collect necessary **information** to facilitate determination of appeals*

[27] Pursuant to rule 7 of the RADR,

> *(1) In accordance with paragraph (2), the Commissioner or the authorized officer* ***shall collect all necessary information to facilitate a determination of the appeal including new and additional information, being information that had not been made available to the relevant Revenue Commissioner at the time of the relevant decision.***
>
> ***(2) For the purposes of paragraph (1) the Commissioner may -***
>
> *(a) contact the appellant or relevant Revenue Commissioner by any means of communication;*
>
> *(b) invite either or both of the parties to an informal meeting;*
>
> *(c) subject to paragraph (3),* ***give any party from whom further information is required*** *fourteen days notice, or notice for a shorter period with the agreement of all parties in writing, specifying what further information is required;*
>
> ***(d) use any other lawful means that the Commissioner considers to be suitable to collect the relevant information.***
>
> ***[Emphasis added]***

[28] I make a number of observations about the scope of rule 7.

[29] Firstly, that by prefacing *"new and additional"* with the word "*including",* it is not intended to limit the information which is to be collected by the RAD to material

which *"had not been made available to the Relevant Revenue Commissioner at the time of the relevant decision."*

[30] Second, the use of the word *"being",* which appears after *"including new and additional information"*, delimits the scope of what information may be considered *"new and additional"*, to information which was not made available to the Relevant Commissioner at the time of the relevant decision.

[31] Third, that rule 7(1) does not say from whom the information is collectable.

[32] The question which would then arise, is whether rule 7(2)(d), which permits the use of any other lawful means which is considered suitable to collect the relevant information limits the sources from whom the information may be collected. It is my judgment that it does not.

[33] In the first instance, there is specific reference to one or other of the parties at rule 7(2)(a) to (c). While there is no such express reference in rule 7(2)(d), the provision appears to be referable to the methods which the RAD is permitted to use in collecting necessary information from the parties, expanding on the methods of collection prescribed in the preceding paragraphs. This is accomplished by commencing paragraph (d) with the words *"use any other lawful means*" ahead of the words *"that the Commissioner considers reasonable."* The information must be necessary to facilitate determination of the appeal however, pursuant to rule 7(1). The information must therefore concern the parties and subject of the appeal, but it need not be collected from the parties themselves.

Power to obtain and consider relevant ***evidence***

[34] The power to collect information is also to be distinguished from the power reserved to the RAD to obtain relevant evidence, including evidence that had not been made available to the relevant Commissioner at the time of decision, for which provision is made at rules 10 (2) (b), (c) (ii) and (iii), as well as 14 of the RADR.

[35] The relevant parts of rule 10 provide as follows.

> *(2) In the case of a formal hearing … the [RAD] Commissioner -*
>
> *(a)…*
>
> *(b) may hear on oath or otherwise the appellant, the relevant Revenue Commissioner or any other person; and*
>
> *(c) shall give to each party and opportunity to -*
>
> *(i)…*
>
> *(ii) give evidence including, where the Commissioner [of the RAD] considers it just and reasonable in the circumstances, evidence that had not been made available to relevant Revenue Commissioner at the time of the relevant decision;*
>
> *(iii) call witnesses and put questions to any witnesses called to give evidence.*

[36] Rules 14 states that,

> *14. The [RAD] Commissioner may on **his own motion or upon the application of either party, summon to attend before him for examination** on oath or otherwise, any person who he believes is able to **give evidence** in relation to the relevant decision.*
>
> ***[Emphasis added]***

[37] In the premises of the foregoing, it is my view that the statutory scheme for the determination of appeals by the RAD intends the tribunal, where the RAD Commissioner considers it appropriate, to consult with and seek assistance where there is a capacity deficit or problem within the tribunal. The need for such consultations or assistance must of necessity be informed by the information or evidence which the RAD has before it in the appeal, if arbitrary exercise of the power is to be avoided. That, in my view, is the nature of the power reserved to the RAD at section 4(3) of the RADA.

[38] There is a separate and distinct power which is exercisable to put the RAD in the position to determine the appeal, the power to collect all necessary information

pursuant to rule 7; and yet another power, which permits the RAD to obtain evidence for the purpose of determining appeals before it pursuant to rules 10 (2) (c) (iii) and 14 of the RADR.

Breakenridge engagement

[39] By letter dated 13th December 2019 the RAD advised the parties to the appeal before it that it had

> *… decided to engage the services of an independent valuation surveyor to aid the consideration of the evidence gathered in the appeal… This is in order as section 4(3) of the RAD Act makes provisions for the Commissioner to consult with or seek assistance from technical experts or others as is considered appropriate in deciding the appeal. Additionally, Rule 7(d) of the RAD Rules of the RAD Act allows the Commissioner the right to use any lawful means to collect information deemed relevant in investigating issues under the appeal.*

[40] On the evidence before me, neither party objected to the RAD exercising the powers given to it by the enabling statute.

[41] Breakenridge & Associates, Chartered Valuation Surveyors were engaged and the Breakenridge Valuation prepared and submitted to the RAD. In the said document, the Commissioner of the RAD is stated as having *"…confirmed instructions to provide an expert opinion on determining the unimproved value of [Land Part of Ramble Pen, Hanover] as at July 1, 2013 pursuant to provisions of the Revenue Appeals Act 2015, section 4(3)."*

[42] It sets out matters relating to proprietorship of the property; encumbrances; general information in respect of utilities and services, and an analysis of the general area; matters relating to the property under consideration vis-á-vis its location and boundaries, plot size, features, utilities and development; a valuation to include a market profile of the property; and assumption in respect of easement observed. The unimproved value of the Ramble Property with easement and ignoring easement was determined at **$52,484,000.00 (Fifty-Two Million Four**

Hundred and Eighty-Four Thousand Dollars) and **$52,660,000.00** respectively **(Fifty-Two Million Six Hundred and Sixty Thousand Dollars)**. Documents, including a calculation of land area as at 1st July, 2013; comparable data analysis; and market data in respect of six properties, only one of which was among the comparable data referenced in information before the RAD, "the Copse Property".

[43] It suffices to say that with the exception of the Copse Property and another property (hereinafter called "Ramble Comp.") which were regarded by Breakenridge as suitable comparables, all comparables referenced by the Respondent were regarded as unsuitable. In respect of the latter property it was not analysed by the firm of valuers. The sole comparable submitted by the Appellant, the Highgate Property, was also regarded in the Breakenridge Valuation as an unsuitable comparable.

[44] The relevant data analysis in respect of the Copse, Ramble Comp. and Highgate properties which appear in the Breakenridge Valuation are reproduced below.

Property Identification	***Date of Transfer***	***Consideration***	***Remarks***
Lot 168 Copse P.A., Hanover. Identified under Valuation Roll No. 04003002029 [Copse Property]	*January 7, 2009*	*$5,500,000.00*	*This parcel of land is a suitable comparable as it is used for agriculture - cattle rearing and growing of mixed crops. We made an adjustment for time of sale (Jan. 2009 –July 2013) + 15%; adjustment for size as it is smaller than the subject and the rate per square foot comparison would differ so -15% and adjustment*

			for location as subject fronts along the main road +10%
Land Part of Alexandria, Ramble P.O., Hanover. Identified under Valuation No. 04004009043 [Ramble Comp.]	*March 29, 2013*	*$10,000,000.00*	*This parcel of land is a suitable comparable as it is used for agriculture – cattle rearing and growing of mixed crops but it has a concrete residence that we understand was constructed on the land for many years before July 2013. We therefore did not analyse this parcel as it is not vacant land.*
Land Part Highgate, Darliston, Westmoreland. Identified under Valuation Roll No. 07802015001 [Highgate Property]	*June 20, 2019*	*$25,400,000.00*	*This property transaction was in June 2019, which is not applicable to the date of this valuation. It therefore is an unsuitable comparable for a valuation date of July 2013.*

[45] Having come to the view that consultations and assistance obtained pursuant to section 4(3) of the RADA ought properly to be limited to support for capacity deficits at the RAD, which must be informed by the information or evidence which the RAD has before it, I can see no difficulty with the RAD relying on such technical assistance and opinions provided in the Breakenridge Valuation in respect of the Ramble Comp. and Highgate Property comparables.

[46] While regarding the Ramble Comp. as a suitable comparable, Breakenridge did not analyse the property on account that it was not vacant land. There was a

concrete residence upon the property which they understood was constructed long before July 2013, the time of valuation of the Ramble Property.

[47] The valuation of the Ramble Property was done on the unimproved basis. *"Unimproved land"* and *"unimproved value"* are defined at section 2 of the Act thus.

> *"unimproved land" means land on which no improvements this Act have been effected;*
>
> ***"unimproved value" means-***
>
> *(a) in relation to unimproved land the capital sum which the fee simple of the land together with any licence or other right or privilege (if any) for the time being affecting the land, might be expected to realize if offered for sale on such reasonable terms and conditions as a bona fide seller would require;*
>
> ***(b) in relation to improved land the capital sum which the fee simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a bona fide seller would require, <u>assuming</u> that at the time as at which the value is required to be ascertained for the purposes of this Act the improvements as defined in this Act do not exist:***
>
> ***Provided that in determining the unimproved value of any land, the Commissioner may assume that-***
>
> ***(a) the land may be used, or continue to be used, for any purpose for which it was being used or could have been used at the time as at which the value is required to be ascertained for the purposes of this Act; and***
>
> ***(b) such improvements as may be required in order to enable the land to be so used or continue to be so used, will be made or continue to be made,***
>
> ***so, however, that nothing in this Act shall prevent the Commissioner, in determining the unimproved value of land, from taking into account any other purpose for which the land may be used if those improvements, if any, had not been made:***

> ***And provided further that the unimproved value shall in no case be less than the sum that will be obtained by deducting the value of the improvements from the improved value at the time as at which the value is required to be ascertained for the purpose of this Act; …***
>
> ***[Emphasis added]***

[48] As stated by Carberry J.A. in **Keith Burke v Commissioner of Valuations** (1987) 24 J.L.R. 368, 379,

> *It appears to me that sections (a) and (b) of the definition of "unimproved value" are meant to arrive at the same result, seeing that in the case of "improved land" the value is to be arrived at as if the improvements did not exist, and further the value of the improvements is to be deducted from the improved value in order to arrive at the unimproved value. "Value of the improvements is also defined, and is sharply distinguished from the cost of the improvements.*
>
> *The result then is that on either approach, whether it be valued as unimproved land, or as improved land, the valuation of the lot, or its "unimproved value" ought to be the same.*

[49] Earlier in **Hall** at page 403, Lewis JA had said this of the determination of the unimproved value of land.

> *It has long been recognised that an important factor to be taken into consideration in valuing land is the price at which land in the neighbourhood is being sold voluntarily, and it is usual, wherever possible, for evidence of such sales to be led. The sales must, however, be of lands which are comparable, that is, so similar in their situation, relative position, and other circumstances bearing on their value, as to make the sale of them evidence which would properly guide the Board in estimating the value of the land in question. Further, where the value which the Board has to determine is the unimproved value of the land, it must be shown that the prices paid are in respect of the unimproved value of the land sold, or, where that is not the case, the sales must be dissected to enable the court to arrive at the unimproved values of the lands sold.*
>
> ***The price of land with its existing improvements cannot be a guide***

> ***to the unimproved value of the land in question unless it is known to what extent the price has been affected by the existence of these improvements.*** *See Collins, Valuation of Property, Compensation and Land Tax, 3rd Edn, pp 59, 70 and the cases there cited; and* Tooheys Ltd v Valuer-General *([1925] AC 439, 25 SRNSW 75, 42 NSWWN 24).*
>
> ***[Emphasis added]***

[50] If the Breakenridge valuer was of the view that "improved property" could not be used in determining the unimproved value of land, the view would be incorrect having regard to the express provision in the **LVA** for the calculation of unimproved value where the comparable is improved land.

[51] If the valuer did not analyse the Ramble Comp. because no indication was given by the Respondent of the extent to which the price of the Ramble Comp. has been affected by the existence of the improvement upon it however, the valuer cannot be faulted. The valuer could hardly be expected to offer technical assistance in respect of appropriate adjustments when the Respondent did not dissect the sale and account for the effect of the existence of any improvements on the price of that sales comparable. The Ramble Comp. could not assist the court in those circumstances.

[52] In respect of the Copse Property, it was among the comparables which the Respondent indicated was used in valuing the Ramble Property. The RAD is empowered by rule 7 to collect all necessary information to facilitate the determination of an appeal before it, which includes but is not limited to new and additional information - being information not made available to the relevant Commissioner at the time of the relevant decision. Although withdrawn by the Respondent as a suitable comparable on the basis of location, Breakenridge expressly made and indicated adjustments for time of sale, size as well as location, consistent with the assistance contemplated by section 4(3) of the RADA. Consequently, the technical assistance and opinions provided by Breakenridge in respect of the Copse Property, which have not been impugned,

was appropriately provided to and considered by the RAD in determining the appeal.

[53] Having opined that two of the properties before the RAD were suitable comparables, the other comparables used by Breakenridge would not be information which was strictly necessary to facilitate the determination of the appeal. Nothing turns on their inclusion however in light of matters set out below.

Use of Breakenridge Valuation by the RAD

[54] The Appellant submitted that the RAD substituted the 2013 valuation by the Respondent with the Breakenridge Valuation. I find this submission to be without merit in light of the decision of the RAD to confirm the valuation of the Respondent on objection which is below the value ascribed to the property by Breakenridge.

[55] The Appellant also challenges the use of the Breakenridge Report on the following bases.

(a) The date of the valuation; and
(b) The utility and value of 99.62 acres of the Ramble Property.

I will address them in turn.

(a) The date of the valuation

[56] I find the Appellant's complaint in respect of the date of the valuation conducted by Breakenridge unmeritorious. The dictum of Rowe P in **Keith C. Burke v Commissioner of Valuations** (1987) 24 J.L.R. 368, 372 is instructive in this regard. Though said in the context of a valuation to effect the sale of land, I believe it is applicable to rating under the **LVA** generally. It is this.

> … ***It is a question of fact to be determined by the [relevant tribunal] whether neighbouring property is comparable or not to the property in question****. As was said by Douglas Brown on his treatise on Land Acquisition:*

> *"**For the sale of neighbouring land to be relevant, the valuer needs to establish that the lands of the claimant are virtually identical with the land of the neighbour and that the latter were sold in the open market at a date close to the date of acquisition. <u>The date of sale must be sufficiently close to the date of acquisition so that the market price could not have changed.</u>** The physical characteristics, amenities and the tenure need to be as closely alike as possible."* Land Acquisition by Douglas Brown Cap. 42 p. 201."
>
> ***[Emphasis added]***

[57] It is expressly stated in the Breakenridge Valuation that *"[a]s per instructions the effective date of the valuation is retroactive to July 1, 2013. Inspection of the Property was conducted on Thursday, May 28, 2020 and related market research and analyses were completed subsequently."* While inspection, market research and analysis were done in 2020, the comparables used by the valuers in arriving at a value of the Ramble Property were not in fact sold in 2020, but closer to the 1st July 2013 which is the material date for valuing the said property. I can see no difficulty in the valuers using relevant historical data in 2020 in order to provide technical assistance sought by the RAD to determine the appeal which was then before it.

(b) The utility and value of 99.62 acres

[58] In determining the appeal, the RAD accepted the opinion of the valuer in the Breakenridge Valuation that 99.62 acres of the Ramble Property was hilly terrain which was nevertheless suited for some agricultural activity, which utility it considered in determining the value of the Ramble Property. In the opinion of the Respondent, that portion of the property was mountainous, non-arable land, unsuitable for agriculture. The RAD therefore had divergent opinions of two valuers as to the use to which parts of the property could be put. The view taken by the Breakenridge valuer would result in an increase in the valuation and the view of the Respondent leaves the value arrived at on objection, unchanged.

[59] It is contended by the Appellant that the RAD fell into error when it ignored the acknowledgement of the Respondent in respect of the use to which the 99.62 acres of the Ramble Property could be put. On that premise, the Appellant further submitted that the RAD erred in rejecting the value of **Ninety-Nine Thousand dollars ($99,000.00)** ascribed to that area of land by the Respondent, on objection. Having confirmed the Respondent's valuation of the property on objection, which takes into account the figure of **Ninety-Nine Thousand dollars ($99,000.00)** for the non-arable acreage, nothing turns on the tribunal's preference of the opinion as to utility which the Breakenridge valuer held and communicated to the RAD.

[60] If something were to turn on the preference however, the following dictum of Watkins J in **Singer & Friedlander v John D Wood & Co** [1977] 2 EGLR 84, which was cited with approval by Laing J (as he then was) in **Andrea Ball v Victoria Mutual Building Society** [2017] JMSC Civ. 17 paragraph [11] in respect of the conduct test, is recommended.

> *"The valuation of land by trained, competent and careful professional men is a task which rarely, if ever, admits of precise conclusion. Often beyond certain well-founded facts so many imponderables confront the valuer that he is obliged to proceed on the basis of assumptions. Therefore he cannot be faulted for achieving a result which does not admit of some degree of error. Thus, two able and experienced men, each confronted with the same task, might come to different conclusions without anyone being justified in saying that either of them has lacked competence and reasonable care, still less integrity, in doing his work. The permissible margin of error is said by Mr Dean, and agreed by Mr Ross, to be generally 10 per cent either side of a figure which can be said to be the right figure, i.e. so I am informed, not a figure which later, with hindsight, proves to be right, but which at the time of valuation is the figure which a competent, careful and experienced valuer arrives at after making all the necessary inquiries and paying proper regard to the then state of the market. In exceptional circumstances the permissible margin, they say, could be extended to*

about 15 per cent, or a little more, either way. Any valuation falling outside what I shall call the "bracket" brings into question the competence of the valuer and the sort of care he gave to the task of valuation."

[61] In light of the foregoing, absent any evidence that the valuation of the Respondent on objection, fell outside of a permissible margin of error or bracket which would bring into question the competence of the Respondent valuer, there could be no proper basis for the RAD and indeed this court to reject the valuation by the Respondent on objection. As it transpired however, the RAD did not and this will not.

[62] In the premises of all the foregoing I can find no basis for disturbing the decision of the RAD in confirming the valuation of the Ramble Property as assessed by the Respondent on objection, at **Forty-Seven Million Dollars ($47,000,000.00)**. Accordingly, the appeal is to be dismissed.

ORDERS

[63] In consideration of all the foregoing it is ordered as follows:

1. The appeal against the decision of the Respondent on objection is dismissed.

2. The decision of the Respondent in determining the unimproved value of the Ramble Property as at 1st July 2013 at **Forty-Seven Million Dollars ($47,000,000.00)** is confirmed.

3. Costs of this appeal to the Respondent to be taxed if not sooner agreed.

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Carole S. Barnaby

Puisne Judge