

AUSTRALIA / JUDGMENT

Wu v Valuer-General [2013] NSWLEC 56

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Land and Environment Court

New South Wales

Medium Neutral Citation: Wu v Valuer-General [2013] NSWLEC 56

Hearing dates: 26 April 2013

Decision date: 26 April 2013

Jurisdiction: Class 3

Before: Craig J

Decision: Notice of motion dismissed

Catchwords: PRACTICE AND PROCEDURE - appeal against land value determined by the respondent - motion for leave to adduce expert town planning evidence - evidence required to interpret statutory planning instruments - leave refused

Legislation Cited: Uniform Civil Procedure Rules 2005

Valuation of Land Act 1916

Category: Procedural and other rulings

Parties: Pei Long Wu (Applicant)

Valuer-General (Respondent)

Representation: Self-represented (Applicant)

Ms M R M Carpenter (Respondent)

Self represented (Applicant)

I V Knight, Crown Solicitor (Respondent)

File Number(s): 31210 - 31215 of 2012

30177 of 2013

EX TEMPORE Judgment

1.Mr Long Wu, who is the applicant in these proceedings, seeks, by notice of motion, a direction under Pt 31, r 31.19 of the Uniform Civil Procedure Rules 2005 (UCPR) allowing him to adduce expert town planning evidence on the hearing of his appeal. That application is opposed by the Valuer-General. The application can be dealt with succinctly.

2.Mr Wu brings his appeals to the Court pursuant to s 37(1) of the Valuation of Land Act 1916. His appeals relate to the Valuer-General's determination of land value at base dates from 2005 to 2011 for the property known as 2506 Bundaleer Street, Belrose. Development consents granted by either Warringah Council or, as Mr Wu submits, by the Minister, permitting the erection of a single dwelling house on the land are said to have been current at each of the base dates in question.

3.Notwithstanding the existence of those development consents, Mr Wu contends, as I understand his submission, that in 2009 an amendment was made to the relevant planning instruments such that the land in question did not have sufficient area in order to sustain the grant of development consent for a single dwelling. This fact, assuming it correctly reflects the legal limitation upon development of the land, will no doubt be relied upon by Mr Wu to argue for a lower land value. What relevance is to be placed by Mr Wu upon the position that pertained prior to 2009 was not made clear in his submission, although I apprehend that in those years the highest and best use of the land as a vacant lot will be as use for a single dwelling. That is only a tentative understanding of Mr Wu's submission and no doubt will be a matter addressed either by evidence or submission on the final hearing of the matter.

4.Ms Carpenter, who appears for the Valuer-General, acknowledges that the Valuer-General intends to contend for a land value based upon the highest and best use of the land as being for a single dwelling house for each of the base dates that are the subject of appeals to the Court. Unsurprisingly, that contention is founded upon the development consents said to have been granted for that use.

5.The basis upon which Mr Wu will contend for land value for the years 2009, 2010 and 2011 was not clearly articulated. I have assumed that although the existence of an operative development consent appears to have been acknowledged for those years, some lower order use will be the subject of submission based upon Mr Wu's understanding of the change in planning controls said to have been effected in 2009.

6.Mr Wu is a self-represented litigant. Although I endeavoured to gain an understanding from him as to the extent to which town planning evidence would be relevant to the determination of land value, such explanation as he was able to give did not persuade me that a direction allowing such evidence should be made.

7.Regrettably, Mr Wu had some difficulty in expressing himself in a way that enabled me fully to comprehend his argument. However, my understanding of his submission was an intention to rely upon a consultant planner retained by him for the purpose of explaining to the Court the provisions of the planning instruments or instrument upon which Mr Wu wishes to rely.

8.In that context, I did seek to explain to him that the interpretation of planning instruments was entirely a task for the Court and that a town planner would not be relied upon to give evidence as to the correct interpretation of a planning instrument. I also recommended to Mr Wu that if he was intending to represent himself at the final hearing of the appeal, he should ensure that all of the planning instruments upon which he seeks to rely are collected and made available to the Court at the hearing.

9.For these reasons, I do not intend to give a direction in accordance with Pt 31, r 31.19 of the UCPR. Accordingly, Mr Wu's motion seeking a direction under that rule will be dismissed.

10.When I announced that this would be my decision, Ms Carpenter handed to the Court a set of directions appropriate to be made in order to have this matter made ready for hearing. Mr Wu indicated that he had been provided with those directions in draft and that he agreed with them.

11.Accordingly, I make the following orders:

1. The applicant's notice of motion dated 19 April 2013 is dismissed.
2. By consent I make orders and give directions in accordance with the document entitled "Directions At Second Directions hearing" initialled by me and placed with the papers.
3. In accordance with Order 15 of the Directions I give leave to the parties to approach the Registrar forthwith to obtain a date for a hearing of 2 days to commence after 21 June 2013.

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