IN THE SUPREME COURT OF BELIZE, A.D. 2004

CIVIL APPEAL NO. 8 OF 2003

MINISTER OF NATURAL RESOURCES
and
ATTORNEY GENERAL **APPELLANTS**

AND

HOLIDAY LANDS LIMITED
and
WITTE & WITTE P.C. **RESPONDENTS**

—

BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

Mr. Derek Courtenay S.C. for appellants.
Mr. Michael Young S.C. for respondents.

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14, 15, 16 June and 15 October 2004.

MORRISON JA

Introduction

1. This is an appeal from the award of a Board of Assessment ("the Board") set up under section 12 of the Land Acquisition (Public Purposes) Act ("the Act") to determine the claim by Holiday Lands

Ltd. and Witte & Witte P.C. (“the respondents”) to compensation arising out of the compulsory acquisition in 1992 by the Government of Belize (“the appellants”) of some 552 acres of the respondents’ land (“the acquired land”). The acquired land is situate in the southern part of San Pedro, Ambergris Caye.

2. The award appealed from was made by the Board (Blackman J, Mr. Clinton Gardiner and Mr. Anthony Thurston) on 16 May 2003 and provided for compensation to the respondents of $4,476,000.00 for the taking of the acquired land, $824,000.00 for injurious affection to other land retained by the respondents, together with interest on these sums at 7% per annum from 1 August 1992 (the date on which the acquisition took effect) to the date of payment. The respondents were also awarded their “reasonable costs, including the costs associated with traveling to the locus”.

3. Dissatisfied with this award, the appellants appealed to this Court, in accordance with the provisions of section 24 of the Act, and the appeal was heard on 14, 15 and 16 June 2004. At the conclusion of the hearing on 16 June 2004, the appeal was allowed and the matter was remitted for the consideration of a new Board of Assessment. The Court promised to put its reasons in writing. These are my reasons for agreeing that the appeal should be allowed.

The background to this appeal

4. This was the second appeal from the award of a Board of Assessment in respect of the acquired land. On October 15, 2002 this Court allowed an appeal from the award of the first Board of Assessment ("the first Board") dated 27 February 2002, on grounds set out in the written judgment of Rowe P delivered on 27 March 2003 (Civil Appeal No. 4 of 2002, "the first appeal").

5. The first Board was confronted with a stark difference of opinion between the respondents' expert (Mr. Hallett Moody, a qualified and experienced valuer), who valued the acquired land at $14,500.00 per acre, and the appellants' expert (Mr. Armin Cansino, the Government's senior valuer), who valued the said land at $2000.00 per acre. In addition, the respondents claimed $1,155,195.00 for injurious affection, based on Mr. Moody's report, while Mr. Cansino, on the other hand, made no recommendation under this head of claim for compensation. The first Board rejected the approaches of both experts and in the end made an award based on the arithmetical mean between Mr. Moody's $14,500.00 per acre and Mr. Cansino's $2,000.00 per acre, that is, $8,250.00 per acre. This Court rejected this approach, Rowe P observing at paragraph 15 of the judgment that "The arithmetical mean between two opinions of valuators does not conform to the open market principle mandated by section 19(a) of the Land Acquisition Act".

6. The matter was accordingly remitted to the Board from whose award the instant appeal now comes. Before passing on to this appeal, however, it may be helpful to set out in full a passage from the judgment of Rowe P. in the first appeal, in which he sought to provide explicit guidance to Boards of Assessment confronted by a similar problem:

> *"12. It is clear from this statement of the law that an expert land valuer should have his evidence tested by the tribunal of fact in the same way as any other expert witness and where the tribunal is unable to accept an opinion of the valuer due to a flaw in his reasoning or for other substantial cause, the tribunal is entitled to reject the particular opinion. In this case, the Board acknowledged the great gulf that existed between the valuations given by the experts for the claimant and the Government, but did not go on to say what portions of the opinions of each of the experts it accepted so as to form the basis of its award.*
>
> *13. Our attention was drawn to the decision of* ***Goold and Rootsey v. Commonwealth of Australia et. Ors. [1993]*** *Australian Law Reports 135. There the trial judge had a number of sales of property some of which were not in the immediate vicinity of the property that was compulsorily acquired. From the evidence provided by the valuers, the trial judge carried out a comparative exercise to determine which if any of those properties bore a sufficient relationship to the subject land. He gave his reasons for refusing to treat some properties as comparable. When the judge had narrowed the comparative exercise to one property on the low side put forward by the claimant and another, the highest put forward by the Government, he then considered the advantages which the subject land had over the low price and all the disadvantages that it suffered in relation to the property on the high side. He gave percentage discounts or additions as appeared appropriate and by that method he arrived at a market value for the property. (See paragraphs 62-67 of the*

judgment). We commend the approach of Wilcox, J. in ***Goold and Rootsey****, (supra) in cases such as this where the valuers might have to range far afield to find sales for the consideration of the Board.*

14. *The Board declined to take into consideration the sale to Government in 1993 of a parcel of land of 135 acres in Ambergris Caye and relied on a passage from Real Estate Valuation in Litigation, 2nd Edition at p. 222 which states that:*

> *"In a perfect world appraisers would always find an abundance of comparable market data and there would never be a need to even consider using a sale to the government as a comparable (because)…(w)hen a government purchase occurs, the buyer and seller are not "typically motivated" and the property sold was not typically exposed in the open market".*

In our view, there is no rule of general application that sales to government can never be considered for purposes of comparison when a Board is called upon to make assessments and awards pursuant to the Land Acquisition Act. As the learned author of ***Real Estate Valuation in Litigation****, from which the above quotation is taken has said,*

> *"But because of the unique needs of some governmental agencies, there is sometimes an inadequacy of private market data with which to develop a reliable indication of market value. Indeed without resorting to sales to the government as comparables, it would be impossible to develop an indication of market value by the sales comparison approach at all".*

We bear in mind that Belize is a very small society and that a Board in making an assessment, can take into consideration all the probabilities and then make adjustments based on such evidence as expert witnesses may proffer as to how government sales might differ, if at all, from other sales, properly called open market sales. A Board, in our view, can take into consideration government sale(s) where the land is in vicinity which bears relevance to the property compulsorily acquired".

The proceedings before the Board

7. When the matter came on for hearing before the Board on 1 April 2003, the parties agreed that the transcript of the evidence and the exhibits tendered before the first Board should form part of the record for the consideration of the Board. At paragraph 5 of the award the Board observed as follows:

> *"This material…along with the additional testimony given by Mr. Hallett Moody the expert valuer retained by the Claimant, and Mr. Armin Cansino the then Senior Valuer in the Ministry of Natural Resources on behalf of the Government of Belize and the observations made by [this Board] after a visit to the locus in quo on 4th April 2003 provided the basis for the determination of the appropriate award in this matter".*

8. Perhaps hardly surprisingly, the Board was again faced with what it described as "very divergent values and methodologies by Mr. Cansino and Mr. Moody". Taking Mr. Moody's approach first, it was noted that he arrived at his valuation of the acquired land on the residual or developmental approach basis, that is an approach which assumed the development of the land by way of sub-division for residential lots and represents the "highest and best use of the land" (paragraph 8 of the award). On this basis, the respondents' claim for the value of the acquired land was $9,236,400.00. Mr. Cansino, on the other hand, adhered to his earlier view, based on a comparable sales approach, that is, a study of sales of comparable

land, that the total value of the acquired land was no more than $1,105,000.00.

9. The Board obviously interpreted the strictures of this Court in the first appeal as requiring a finding as to the validity, in the particular circumstances, and accordingly the applicability to the claim before it, of one or the other of the two approaches. At the end of the day, the Board accepted Mr. Moody's opinion that the residual or developmental approach was to be preferred and therefore approached the quantum of compensation on the basis of his figures. Those figures, however, were subjected by the Board to a process of adjustment which it justified and explained as follows (paragraphs 24 and 25 of the award):

> *"24. Despite our conclusion that Mr. Moody's valuation is to be preferred, we are of the view that in a number of instances we have been unable to agree with his calculations or the variables that he took into account. In addition, we considered that insufficient attention was given to the extent of the mangrove wetlands which were clearly apparent when we flew to the locus in quo. Accordingly, we have considered it appropriate to make adjustments to the data contained in the Tables and Appendices to the Moody Report to arrive at the conclusion which is fair and reasonable in all the circumstances.*
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> *25. We feel justified in taking this approach having regard to the judgment of the Belize Court of Appeal in remitting this matter back to a new Board. At paragraph 13 of the judgment, their Lordships said:*
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> > *"Our attention was drawn to the decision of* ***Goold and Rootsey v. Commonwealth of Australia et Ors. [1993] Australian Law***

> ***Reports 135***. *There the trial judge had a number of sales of property some of which were not in the immediate vicinity of the property that was compulsorily acquired. From the evidence provided by the valuers, the trial judge carried out a comparative exercise to determine which if any of those properties bore a sufficient relationship to the subject land. He gave his reasons for refusing to treat some properties as comparable. When the judge had narrowed the comparative exercise to one property on the low side put forward by the claimant and another, the highest put forward by the Government, he then considered the advantages which the subject land had over the low price and all the disadvantages that it suffered in relation to the property on the high side. He gave percentage discounts or additions as appeared appropriate and by that method he arrived at a market value for the property. (See paragraphs 62 – 67 of the judgment). We commend the approach of Wilcox, J. in* ***Goold and Rootsey****, (supra) in cases such as this where the valuers might have to range far afield to find sales for the consideration of the Board".*

10. It is pertinent to observe at this stage that the reliance of the Board on the dictum of Rowe P in the first appeal in justification of the adjustment exercise that it undertook was, with respect, misconceived: it seems to me that Rowe P was obviously directing his mind (and the Board's attention) to cases in which sales data were relied on to support a comparable sales approach to valuation, an approach which, by preferring Mr. Moody's valuation over that of Mr. Cansino's, the Board had expressly eschewed. Be that as it may, the Board, having concluded that the quantum of compensation should be computed on the residual or

developmental approach, and having made its own adjustments to Mr. Moody's figures (the rationale for which adjustment, I am bound to say, remained unclear to me at the end of the day), recommended the award of $4,476,000.00. Awards of injurious affection and interest, together with an order for costs, were also made as set out in paragraph 2 of this judgment.

The appeal

11. The appellants filed in all ten grounds of appeal. Before going to the grounds, it should be recorded that this Court was told by Mr. Courtenay S.C. when the appeal was called on that the appellants had paid $1,105,000.00 to the respondents on 13 May 2004. This payment is in fact the amount recommended by Mr. Cansino and was obviously very properly made, bearing in mind that the respondents had by the date of this payment been out of their property without compensation for nearly twelve years and that, even on the appellants' case, that amount represented the very minimum to which they were entitled as a result.

12. I hope that I do no injustice to Mr. Courtenay S.C.'s careful submissions by saying that the real issue in the appeal was whether it was open to the Board, as a matter of law, to adopt the residual or developmental approach in all the circumstances of this case. Mr. Courtenay S.C.'s submission was that it was not, as employing that approach involved making assumptions with regard

to the highest/best use of the acquired land, taking into account its potentialities, in this case for sub-division approval. He referred us to section 19(b) of the Act and pointed to the fact, which is not in controversy, that sub-division approval in the instant case has neither been granted nor applied for, although it is common ground that the acquired land is in fact subject to the provisions of the Land Utilization Act, sections 3(2), 7(1) and 14 of which make it clear that sub-division of lands falling within the Act is impermissible without the requisite approvals. In all the circumstances, Mr. Courtenay S.C. contended, this made the residual or developmental approach inappropriate in this case. The comparable sales approach was, he concluded, the appropriate one, and if the Board had approached the matter in the way in which Mr. Cansino had recommended, especially having regard to the information available about the sale to the Government of Belize of a property somewhat comparable in size to the acquired land ("the Elliott sale") in 1993, it might have reached a different conclusion with regard the fair value of the acquired land.

13. In support of these submissions, Mr. Courtenay S.C., in addition to his reliance on the statutory provisions, very helpfully directed the Court to a number of authorities, though it may be necessary for the purposes of this judgment to refer only to a few of them. The starting point was, of course, the Act itself, section 19 of which sets out rules for the assessment of compensation of compulsorily

acquired land. Sub-paragraphs (a) and (b) of that section are particularly relevant:

> "19. Subject to this Act, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land –
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> (a) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, in its condition at the time of acquisition, if sold in the open market by a willing seller, might have been expected to have realised at the date of the second publication in the Gazette of the declaration under section 3:
>
> Provided that this rule shall not affect the assessment of compensation for any damage sustained by the person interested by reason of severance, or by reason of the acquisition injuriously affecting his other property or his earnings, or for disturbance, or any other matter not directly based on the value of the land;
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> (b) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers not already granted, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department".

14. Mr. Courtenay S.C. submitted that section 19(b) is essentially in two parts, prohibiting the taking into account in arriving at the value of compulsorily acquired lands of the special suitability or adaptability of such land for any purpose (i) "if that purpose is a purpose to which the land could only be applied in pursuance of statutory powers not already granted", or (ii) or "for which there is

no market apart from the special needs of a particular purchaser or the requirements of any government department". **Maxwell Mote v Pyramid Isle Ltd. [1992] Belize Law Reports 289**, was a case falling within the second limb of section 19(b), while, so the submission went, the instant case fell within the first limb.

15. Mr. Courtenay S.C. also relied very heavily on the decision of the Judicial Committee of the Privy Council in **Maori Trustee v Ministry of Works [1958] 3 All ER 336**, a case involving the compulsory acquisition of land and the assessment of compensation. The question for decision in that case was whether the lands involved were to be valued on the assumption that they were available for sale in sub-divided lots or on the basis of the sale of the entire holding as a whole. Under the applicable statutory provisions it appeared that the land, which at the point at which compensation came to be assessed had not been sub-divided and could not be sub-divided without the consent of the relevant Minister to the proposed sub-division, which would involve the preparation of plans showing the sub-divided lots, roads, fences, accesses, drainage or other facilities and the like. It was held that compensation for the land fell to be assessed on the basis of the sale of the land as a whole, unless at the specified date it could be shown that ministerial consent to the sub-division had been obtained and that the sub-division parts were sufficiently apparent upon survey of the ground to have enabled their immediate sale.

Delivering the advice of the Board, Lord Keith of Avonholm stated as follows:

> *"The question whether, but for the notice to take and the subsequent taking by proclamation, the Minister would have approved of the proposed scheme clearly involves problems for the compensation tribunal on which their Lordships can only speculate and are unable to enter. It may be that all that can be affirmed is that, at the date of the taking, the land was ripe for building development to a greater or less extent under some scheme or another which would be likely to obtain ministerial approval. In short, the compensation court would have to consider the likelihood of the proposed scheme being approved by the Minister, or, if not, some alternative scheme, very much as they might have to estimate the probability of some restrictions on sale, temporary or otherwise, being removed, as pointed out by Lord Dunedin in Corrie v MacDermott ([1014] AC 1056 at p 1064). This all leads up to the third consideration mentioned that there were, at the date of taking, no subdivisions in fact. The task of the compensation court, as their Lordships see it, is to estimate how far the land was ripe at the date of the taking for subdivisional development and how soon, looking at the need of obtaining any necessary consents, the land would in fact, but for the taking, have been fully developed and to value it accordingly".*

16. Lord Keith cited with approval the statement of Gresson J in the Court of Appeal of New Zealand, that in assessing the value of the land, "There must be excluded from the court's contemplation retention by the claimant and an assessment of what in his hands it would yield if sub-divided, because that course is not open to him" ([1957] NZLR 289).

17. Finally, Mr. Courtenay S.C. cited **Windward Properties Ltd. v Government of St. Vincent and the Grenadines (1996) 47 WIR 188**, another decision of the Judicial Committee, in particular for the

proposition that “in order to arrive at the price likely to be obtained on a notional sale …a valuer normally undertakes a study of sales of comparable land” (page 192).

18. Thus, Mr. Courtenay S.C. concluded, the residual approach was entirely inappropriate in the instant case in the light of section 19(b) of the Act, the authorities, the fact that sub-division approval had neither been granted nor applied for and the fact that planning approval could not in fact be assumed, bearing in mind that by a resolution passed in 1986 the Central and Planning Authority had declared San Pedro “a planning area” (see paragraph 22 of the award). There was also some evidence that the acquired land is affected by the Forests (Protection of Mangroves) Regulations and that its development would accordingly require a permit under those regulations.

19. In answer to these submissions, Mr. Young S.C. for the respondents, while allowing that there may be “some difficulties” with the Board’s acceptance of Mr. Moody’s residual or developmental approach, nevertheless maintained that the appellants had suffered no prejudice in the result, since the Board’s “final value indication” in the Schedule to the Award had indicated a value of $5,851,200.00 for the acquired land using the sales comparison approach. Thus, he contended, the award of the Board ought not to be disturbed.

The proper approach to valuation in this case

20. For my part, I think that the Board clearly fell into error in adopting the residual or developmental approach, for the reasons put forward by Mr. Courtenay S.C. and referred to earlier in this judgment. In my view, the position is clearly stated in the following dictum of Dixon CJ in the High Court of Australia (cited with approval in the **Maori Trustee** case) in **Turner v Minister of Public Instruction (1956) 95 CLR 245, 269**, in circumstances not dissimilar to those existing in the instant case:

> *"In the case of the land in question no steps had been taken for subdivision. It was necessary to survey it, to prepare plans for subdivision, to obtain the consent of the local authority, to make streets or roads and then to place it upon the market. As the land stood it was incapable of sale in subdivision and it was necessary to make improvements or alterations in its physical condition before the subdivisional prices could be obtained. In those circumstances it could not be sold in subdivision at the time of resumption. It was not therefore possible to ascribe to the owner possession of the present value of its subdivisional potentialities on the footing that all you should do is to estimate what he would gain if the subdivided the land at a future date and reduced the result to its then present value. This means too that the conclusion is clearly right which the learned judge of the Supreme Court expressed in the passage already quoted from their judgment, viz.: '… the only sale that could be considered is a sale of the land as it was at the date of the resumption, that is unsubdivided, but having the clear potentiality that it was fit for subdivision'."*

21. In the instant case, the appropriate approach was clearly the comparable sales approach, in preference to the residual or developmental approach, in that the acquired land was plainly not "ripe at the date of the taking for sub-divisional development". I do

not therefore think that it is sensible to speculate, as Mr. Young S.C. invited us to do, as to what the Board would have found had it directed its mind to the comparable sales approach as the primary approach, bearing in mind some of the things that Mr. Cansino had had to say on, for example, the weight to be given to the sale of a parcel of land located some three miles from the acquired lands in 1993, the only remotely comparable sale in terms of size that had been unearthed in the entire exercise (the Elliott sale), as well as Rowe P's observations in the first appeal on the relevance of sales to Government.

Injurious affection

22. The appellants also appealed from the Board's award of $824,000.00 for injurious affection to the respondents' other land (pursuant to section 19(a) of the Act). Mr. Moody had on behalf of the respondents assessed the quantum under this head at $1,155,192.00, while Mr. Cansino did not assess any compensation as due in this regard. However, Mr. Cansino did concede in his evidence before the Board that there would be injurious affection to the respondents' other property as a result of the compulsory acquisition of the 552 acres, though it was his view that "a study" would have to be done to determine the extent. In the light of the fact that by this Court's decision the entire matter has been remitted to the Board for its reconsideration, I make no comment on this

aspect of the matter, save to observe that - subject to the overriding issue of the proper valuation method - there was no basis shown to us upon which this Court could be asked to take a different approach from that taken by the Board.

Interest

23. Section 22(1) of the Act empowers the Board to add interest to the compensation assessed in favour of the landowner and provides that the Board "shall be guided by the rate paid by commercial banks in Belize on fixed deposits at the date of acquisition". In the instant case, the Board awarded interest at 7% per annum based on material placed before it by the respondents, from August 1, 1992. Before us, Mr. Courtenay S.C. did not seek to challenge the rate (properly so, in my view, as 7% was in fact at the lower end of the range that the respondents appeared to establish), but argued, in the end somewhat faintly, it must be said, that the interest ought to run from some date later than August 1, 1992. Again, as the entire matter has now been remitted back to another Board for reconsideration, it might not be appropriate to make a final pronouncement on this, save to observe that, the respondents having been deprived of their land as of August 1, 1992, (and the appellants having presumably enjoyed the use of it), it is difficult to conceive of a circumstance that might nevertheless disentitle them to interest from that date.

The principle of equivalence

24. Finally, the appellant cited **Horn v Sunderland Corporation [1941] 1 All ER 480** in support of the submission that in all cases of compulsory acquisition the principle of equivalence must be upheld. And it is, of course, well established that this should be so: as Sir Wilfred Greene MR observed in the **Horn** case (at page 485), "the statutory compensation cannot and must not exceed the owner's total loss for, if it does…it will transgress the principle of equivalence which is at the root of statutory compensation, which lays it down that the owner shall be paid neither less nor more than his loss". My only comment on this, again given the ultimate disposition of the matter, is that it was not demonstrated in this Court how, if at all, the Board departed from this principle in the instant case. It seems to me, in particular, that a purely arithmetical comparison between what the respondents originally paid for all the lands they owned in the area and the compensation awarded them by the Board for the acquired land is quite meaningless in the absence of any evidence of the movement of land values in the area over the relevant period.

Conclusion

25. It is for all of the above reasons that I joined in the order pronounced by the learned President at the conclusion of the hearing of the appeal on 16 June 2004 in the following terms:

> "The decision of the Court is that the appeal is allowed and the award is set aside and the matter is being returned to the consideration of a new Board. We should point out, however, that we are aware that Mr. Justice Blackman is no longer within the jurisdiction but there can be no objection to the other two persons who sat along with Mr. Justice Blackman. There is no objection to them sitting for considering the matter. We intend to put our reasons for decision into writing. We consider it appropriate at this stage to issue the following guidance for the benefit of the new board. One is that the appropriate method of valuation in this case is the comparative method and not the Residual Valuation Method and secondly, the Board should be governed by what this Court said in paragraphs 13 and 14 of the earlier judgment, that being Civil Appeal No. 4 of 2002. You would see there counsel again that the argument was made the Board said that deals with the method which we recommended then, the approach of Mr. Justice Wilcox in Goold v Rootsey, paragraphs 13 and 14 and paragraph 14 dealt with the fact that the earlier Board had declined to take into consideration the Government sale of the 135 acres at Ambergris Caye and the Court had something to say there that there is no rule of general application which says the government can never be considered. We are saying the Board should be governed by those two paragraphs in considering this award".

26. Mr. Courtenay S.C. declined, quite properly in my view, to make an application for the costs that would ordinarily follow the event, so that there was no order as to costs.

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MORRISON JA

MOTTLEY P

27. On 16 May 2003 the Board of Assessment ("the Board") which was established under the Land Acquisition (Public Purposes) Act Cap. 150 (L.A.A.) awarded the respondents the sum of $5,300,000.00. Of this sum $4,476,000.00 was awarded as compensation for the land acquired while $824,000.00 was in respect of the respondents' claim for compensation for injurious affection. In addition, the Board awarded the respondents interest on the sum of $5,300,000.00 at the rate of 7% from 1 August 1992 until date of payment. As of 31 July, the interest amounted to $4,081,000.00. The appellants have appealed against this award.

28. Holiday Lands Limited ("Holiday") is a company incorporated and registered in Belize and was the owner of a number of parcels of land at Ambergris Caye. Witte & Witte P.C. ("Witte") is a professional corporation registered in the United States and was also the owner of land at Ambergris Caye.

29. In 1992, the Government of Belize ("the Government") acquired 5.65 acres from Witte and 546.35 acres being part of land contained in parcel 1842 which consisted of 815 acres from Holiday. Together the respondents owned 918.95 acres contained in parcels 1839, 1840, 1841 and 1842 which were purchased by them in 1982 from the Estate of Eugene Tyler Allen for $430,000.00.

30. When making an assessment the Board is required to follow the guidelines set out in section 19 of the L.A.A.:

> "19. Subject to this Act, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land;
>
> (a) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, in its condition at the time of acquisition, if sold in the open market by a willing seller might have been expected to have realized at the date of the second publication in the Gazette of the declaration under section 3.
>
> Provided that this rule shall not affect the assessment of compensation for any damage sustained by the person interest by reason of severance, or by reason of the acquisition injuriously affecting his other property or his earnings, or for disturbance, or any other matter not directly based on the value of the land;
>
> (b) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers not already granted, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department;
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> (c) where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to public health, the amount of that increased shall not be take into account;
>
> (d) where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Board if satisfied that reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable costs of equivalent reinstatement;

(e) no allowance shall be made on account of:

(i) the acquisition being compulsory or the degree of urgency or necessity which has led to the acquisition;

(ii) any disinclination of the person interest to part with the land acquired;

(iii) any damage sustained by the person interested which, if caused by a private person, would not render such person liable to an action;

(iv) any damage, not being in the nature of deprivation of or interference with an easement, servitude or legal right, which, after the time of awarding compensation, it likely to be caused by or in consequence of the use to which the land acquired will be put.

Provided that nothing herein shall prejudice any claim under this Act for damage subsequently sustained in consequence of the use to which the land acquired is put:

(v) any increase to the value of the land acquired likely to accrue from the use to which the land acquired will be put;

(vi) any outlay or improvement of such land which has been made, commenced or effected within twelve months before the publication of the declaration under section 3, with the intention of enhancing the compensation to be awarded therefore in the event of such land being acquired for public purpose".

31. The appellant alleged that the Board erred in law in applying the residual approach for assessing compensation as that approach should only have been used if the respondents had been granted subdivision approval which approval has not in fact been granted.

32. In dealing with the residual approach method of valuation which was the method adopted by Mr. Hallett Moody, the expert valuer who was retained by the respondents, the Board stated:

> *13. As noted at 8 above, Mr. Moody assessed that the highest and best use of the land would be a residential subdivision development. Whether or not this approach can or cannot be used is a matter of law. S. 19(b) of the Act states as follows:*
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> > *"The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers and already granted, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department".*
>
> *14. GOB's position is that the subdivision method cannot be used because:*
>
> > *(a) Any subdivision would require prior approval from the Land Utilization Authority (The "LUA") under the Land Utilization Act and no such approval had been granted or even applied for;*
> >
> > *(b) The acquired property has substantial areas of Mangrove and such areas cannot be cleared without obtaining a permit or permits under the Forests (Protection of Mangroves) Regulations 1989; and*
> >
> > *(c) San Pedro has been declared a Planning Area. Mr. Moody in his evidence acknowledged that subdivision required approval by the LUA but it was his view that that would not prevent the valuer from considering use of the land for a subdivision because one has to take into account the likelihood that the approval would be given and in his opinion it was likely that approval would have been granted.*

33. It was submitted that section 19(b) of the L.A.A. is to be construed in such a manner as to preclude the residual development approach by way of subdivision unless a subdivision approval had been obtained. This provisions states:

> "19(b) the special suitability or adaptability shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory power not already granted, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department".

34. An extract from the Belize Gazette dated 22 February 1986 was produced. This contained a notice that the Central Housing and Planning Authority had, pursuant to the provision of section 41 of the Housing & Town Planning Act, Cap. 148, passed a resolution declaring San Pedro a planning area with respect to the land specified in the notice being part of the island known as Ambergris Caye.

35. The provisions of the Land Utilization Act, Cap. 188 are also relevant. They provide a regime for persons wishing to subdivide land for sale.

(i) Section 3(2) provides -

> "No person may subdivide any land to which this Act applies except in accordance with the provisions hereinafter contained."

(ii) Section 4 enacts -

> "Any person wishing to subdivide any land to which this Act applies shall submit an application to the Land Subdivision and Utilization Authority set up under section 9 of this Act."

(iii) Section 8(3) states -

> "No instrument which creates or transfers, or purports to create or transfer, an interest in land (including common law conveyances), arising from or involving any subdivision of land wherever situate in Belize, shall be lodged or received for registration unless it is accompanied by a certificate from the Commissioner of Lands and Surveys verifying that the final approval for the said subdivision has been granted by the Minister or that such approval is not required." and

(iv) Section 14 provides –

> "The applicant shall not sell, lease, give or in any other manner alienate any part of the land which is to be subdivided until he has received the final approval of the Minister thereto."

These provisions specifically prohibit a person who has applied for permission to subdivide land from disposing of any part of the land without the prior approval.

36. The Board in making its award adopted the residual or development approach as preferred by Mr. Moody. In so doing, the Court accepted a valuation based on the development of the land by way of subdivision for residential lots as representing the highest and best use of the land.

37. In coming to this conclusion, the Board relied on **Maxwell Mote vs Ministry of Natural Resources et al** (Belize Civil Appeal No. 7 of 1988). In that case, the first ground of appeal was that the Board of

Assessment erred in interpreting section 19(b) of the L.A.A. The Board relied on the statement in the judgment where the Court of Appeal said:

> *"Mr. Flowers correctly pointed out that there was no evidence that the lands or only part thereof were subject to any statutory provision or any restrictive covenant precluding the claimant from using the lands for an purpose other than an airstrip and he argued that its potential use (subject to any statutory provision relating thereto) should be taken into consideration in assessing compensation".*
>
> *"It seems to me to be beyond question that the lands in question had special suitability or adaptability for the purpose of constructing an airstrip and other related facilities. Under s. 19(b) this fact must not be taken into account in assessing compensation. However, s. 19(b) does not by its terms preclude the Board from taking into consideration any more beneficial purpose to which the lands might be applied and where such use depends on the grant of subdivision approval, the possibility of obtaining such approval may be taken into consideration in assessing the compensation".*

38. The Board also relied on the portion of the judgment of Lord Romer in Judicial Committee of the Privy Council in **Sri Vyricherla Narayana Gajapatiraju Bahadur v Revenue Division Officer, Vizagapatan (1939) 2 ALL R 317** at page 321. However, in so doing, the Board ignored the caution of the Court of Appeal in **Maxwell Mote v Ministry of Natural Resources et al** (Belize Civil Appeal No. 7 of 1988) where this Court, while it accepted that the judgment gave "valuable guidance as to the general approach to be taken in assessing compensation in matters of this kind under comparable legislation", nonetheless warned that

> *"It is true that the judgment in that case, is to be read in the light of the subsequent English Legislation and Belize Legislation, that the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose to which the land could be applied only in pursuance of statutory powers not already granted, or for which there is no market apart from special needs of a particular purchase or the requirements of any Government department".*

39. In addition, it does not appear that the Board had any regard to the conclusion of the court in respect of the third ground of appeal in the **Mote's case** which alleged "that the Board was wrong in not arriving at a value on the subdivision. The court said at p. 17 of the judgment:

> *"…the provision of the Land Utilization Act, 1981, would come into operation and, accordingly, the special suitability, or adaptability of the land for subdivision into lots for residential purpose cannot be taken into account as that purpose is one to which the land could be applied only in pursuance of statutory powers under the 1981 Act not already granted".*

40. As stated above, section 19(b) "does not by its terms preclude the Board from taking into consideration any more beneficial purpose to which the land might be used where such use depends on the grant of subdivision approval, the possibility of obtaining such approval may be taken into consideration in assessing compensation". It is therefore the possibility of obtaining the approval which is to be taken into consideration as opposed to assuming that the land has been subdivided.

In Mote's case, the court at p. 12 expressed the view that:

> *"Had there been evidence that the lands were not subjected to the requirements of the subdivision permission or, that it being so subject, there was a possibility of such permission being granted, compensation would have to be assessed taking into account the potential of the lands for sale in the open market on the basis of being subdivided".*

41. Before leaving this issue useful guidance is to be found in **Maori Trustee v Ministry of Works [1958] 3 All E.R. 336**. In this case land which had been acquired had been subject to certain restrictions. The consent of the Minister of Maori Affairs in New Zealand had to be given for the sale of land by the Maori Trustees. The plan for development could not be carried out without the consent of the Minister. Further, no subdivision plan had been made in respect of the land. The Privy Council held that it was erroneous in law to award compensation on the basis or the possibilities that the land would have been subdivided. Lord Keith of Avonholm cited with approval the judgment of Dixon CJ in **Turner v Minister of Public Instruction (1959), 95 CLR5 245** where he said at p. 269:

> *"In the case of the land in question no steps had been taken for the subdivision. It was necessary to survey it, to prepare plans for subdivision, to obtain the consent of the local authority, to make street or roads and then to place it on the market. As the land stood it was incapable of sale in subdivision and it was necessary to make improvements or alterations in its physical condition before the subdivision price could be obtained. In those circumstances it could not be sold in subdivision at the time of resumption. It was not possible to ascribe to the owner possession of the present value of its*

> *subdivisional potentialities on the footing that all you should do is to estimate what he would gain if he subdivided the land at some future date and reduced the result to its then value. This meant too that the conclusion is clearly right which the learned judges of the Supreme Court expressed in the passage already quoted from their judgment, viz. '…the only sale that could be considered is a sale of the land as it was at the date of resumption, that is, undivided but having a clear potential that it was fit for subdivision'. "*

42. The Board made reference to the evidence of Mr. Witte that when the respondents purchased the property "the previous owner has already conceived a development plan" which the respondent intended to follow. The plan which was tendered in evidence was never submitted to the Land Utilization Authority for its approval. It should be remembered that the respondents were the owners of the land for approximately ten years.

43. It is therefore necessary to examine what was the nature of the evidence concerning the possibility of development approval. On two occasions, when asked about what the planning authority would do in relation to other matters not including the grant of permission to subdivide Mr. Moody said that he could not speak for the authority. It would seem that a large portion of the land acquired was covered by mangrove. The effect of this is that the provision of the Forests (Protection of Mangroves) Regulation would apply to the land. Regulation 3 provides:

> "unless specifically exempted under these regulations, no person shall alter, allow or cause to be altered any mangrove in jurisdictional waters without first obtaining a

permit from the Department. This prohibition applies both to privately owned lands and private lands".

44. As stated earlier, by notice in the Belize Gazette dated February 22, 1986, San Pedro was declared a planning area. Section 55(1) of the Housing and Town Planning Act, Cap. 182 proceeds:

> "From and after the date of the first publication in the Gazette of a resolution by the Central Authority to prepare or adapt a scheme, it shall be the duty of the local authority of the area to which the resolution relates, to submit all applications and proposals for development within that area to the central Authority for its permission or production as the case may be".

This means that no development could take place in San Pedro without the permission of the Central Authority. No evidence has been led about the policy of the Central Authority in so far as applications on Ambergris Caye are concerned and what policies guide their considerations.

45. Counsel for the appellants submitted that the function of the Board was to assess the amount of compensation due to the owner of the land which was acquired. The Board was required to follow the guideline set out in section 19 of the L.A.A. and to make an assessment based on the evidence produced before it. In performing this function, the Board was required to act in a judicial manner. He contended that in making the award the Board failed to properly exercise its function.

46. In placing greater reliance on the valuation and evidence of Mr. Moody the Board was clearly in error. In adopting the residual method approach, the Board was required to consider the sale of the land as it was at the date of acquisition as undivided land with the potential that it was fit for subdivision. This was not done by the Board. The basis of its award is set out in part B Development Approach of the Schedule attached to its award. For the reasons set out above I am of this opinion that this was not the correct approach.

47. Both valuers submitted a valuation based on the comparative method or market data approach and the residual method or development approach. Mr. Cansino submitted a valuation based on the comparative method or market data approach of $1,104,000.00. Using the residual method or development approach, his valuation was $1,100,000.00. Mr. Moody using the comparative method or market data approach arrived at a valuation of $8,040,000.00, while using the residual method or development approach his valuation was $10,626,000.00.

48. Complaint is made by the appellant that the Board failed properly to consider the comparable sales approach. It concluded that "…greater reliance should be placed on the valuation and evidence of Mr. Hallett Moody to that of Mr. Armin Cansino". The Board accepted the residual or development approach. The appellants

contend, that, before the Board could determine the divergence of views of valuers who gave expert evidence as a question of fact, it ought first to have decided which method of valuation was more applicable to the circumstances of this case.

49. Counsel for the appellants submitted that the comparable sales method has been regarded by the Privy Council as a method which furnishes a 'healthy criterion' for determining the market value of acquired land. See **Atmaram Bhagwani Ghadgay v Collector of Nagpur** AIR (1929) PC 92. That method he suggested allows the parties to produce evidence of sales relating to the acquired land or lands in the vicinity of the acquired land and the court/tribunal to make a determination based on that evidence as to the market value of the acquired land. It has been stated in decided cases and treaties that the prices paid for comparable property in the neighbourhood are the usual evidence as to the market value. He referred to the following authority in support of his submission: **Halsbury's Laws, 4th Edition, Volume 8, paragraph 301**; **Vyricherla Narayana Gajapatiraju v The Revenue Divisional Officer, Vizagapatam** [1939] A.C. 302 at 313; 2 All E.R. 317; **Inder Singh v Union of India** (1993) 3 SCC 240, 244; **Cripps, Compulsory Acquisition of Land**, 11th Edition, paragraph 4-031; **V.G. Ramachandran's Law of Land Acquisition and Compensation**, 8th Edition, pages 701 – 703.

50. Counsel also relied on **Re Little** (1957) 9 D.L.R. (2d) 296; (1957) OWN 301 (Can), in which it was held that in fixing compensation for expropriated land, evidence of sales of nearby and comparable land made at or about the time of expropriation, *or even thereafter*, is relevant and admissible. In **Melwood Units etc. v Commissioner of Main Roads** (1959) 1 All ER 161 at 162, the Privy Council stated that in assessing values for the purpose of compulsory acquisition, a tribunal is not required to close its mind to transactions subsequent to the date of acquisition which might be relevant or of assistance.

51. In **Windward Properties v Government of St. Vincent and the Grenadines** (1996) 47 WIR 189, the Privy Council had this to say (at page 193):

> *"What the statute requires is that compensation be assessed on the basis of a notional sale at the prescribed date, following an adequate testing of the market. The expressions 'open market' and 'willing seller' indicate the two factors, not always readily separable, that are necessary before it can be said that the market has been adequately tested. The concepts underlying the two expressions have been explained by the court on many occasions; see for example Inland Revenue Commissioners v Clay [1914] 3 KB 466, Maori Trustee v Ministry of Works [1959] AC 1 and, most recently, Gray v Inland Revenue Commissioners; [1944] STR 360.*
>
> *In order to arrive at the price likely to be obtained under a notional sale under these conditions, a valuer normally undertakes a study of sales of comparable land. The validity of any such comparison depends on the selected sales also having taken place under the same market conditions".*

52. The Board found that Mr. Cansino, in his comparative sales approach, had relied solely on the sale of land to Government (the Elliott sale) when other data was available on parcels ranging in sizes from three acres to about eighty acres. In rejecting his evidence, the Board concluded that his approach was superficial and without analysis. Having rejected this evidence, the Board resorted to the residual method approach.

53. In my opinion, the Board was wrong to reject Mr. Cansino's evidence. The Board ought to have reminded itself of what this Court said in **Holiday Lands Limited, Witte & Witte P.C. v The Attorney General** and **Ministry of Natural Resources v Holiday Lands Limited, Witte & Witte P.C.**, Civil Appeal Nos. 4 and 17 of 2002 of the Court of Appeal of Belize. Rowe P said:

> *"13. Our attention was drawn to the decision of* ***Goold and Rootsey v. Commonwealth of Australia et. Ors. [1993]*** *Australian Law Reports 135. There the trial judge had a number of sales of property some of which were not in the immediate vicinity of the property that was compulsorily acquired. From the evidence provided by the valuers, the trial judge carried out a comparative exercise to determine which if any of those properties bore a sufficient relationship to the subject land. He gave his reasons for refusing to treat some properties as comparable. When the judge had narrowed the comparative exercise to one property on the low side put forward by the claimant and another, the highest put forward by the Government, he then considered the advantages which the subject land had over the low price and all the disadvantages that it suffered in relation to the property on the high side. He gave percentage discounts or additions as appeared appropriate and by that method he arrived at a*

market value for the property. (See paragraphs 62-67 of the judgment). We commend the approach of Wilcox, J. in ***Goold and Rootsey****, (supra) in cases such as this where the valuers might have to range far afield to find sales for the consideration of the Board.*

14. *The Board declined to take into consideration the sale to Government in 1993 of a parcel of land of 135 acres in Ambergris Caye and relied on a passage from Real Estate Valuation in Litigation, 2nd Edition at p. 222 which states that:*

> *"In a perfect world appraisers would always find an abundance of comparable market data and there would never be a need to even consider using a sale to the government as a comparable (because)…(w)hen a government purchase occurs, the buyer and seller are not "typically motivated" and the property sold was not typically exposed in the open market".*

In our view, there is no rule of general application that sales to government can never be considered for purposes of comparison when a Board is called upon to make assessments and awards pursuant to the Land Acquisition Act. As the learned author of ***Real Estate Valuation in Litigation****, from which the above quotation is taken has said,*

> *"But because of the unique needs of some governmental agencies, there is sometimes an inadequacy of private market data with which to develop a reliable indication of market value. Indeed without resorting to sales to the government as comparables, it would be impossible to develop an indication of market value by the sales comparison approach at all".*

We bear in mind that Belize is a very small society and that a Board in making an assessment, can take into consideration all the probabilities and then make adjustments based on such evidence as expert witnesses may proffer as to how government sales might differ, if at all, from other sales, properly called open market sales. A Board, in our view, can take into

consideration government sale(s) where the land is in a vicinity which bears relevance to the property compulsorily acquired".

54. It was for these reasons that I agreed that the appeal should be allowed and the matter remitted to a new Board.

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MOTTLEY P

CAREY JA

55. The respondents owned lands in San Pedro Town, Ambergris Caye, a significant portion of which was compulsorily acquired under the Land Acquisition (Public Purposes) Act, Chapter 184 of the Laws of Belize, the effective date being 1 August 1992. After two Boards of Assessment and two appeals by the Minister from their decision the matter remains unresolved. On each occasion of the appeal, this Court has found that the Board had erred. With respect to the first occasion, the Court speaking through the then President, gave guidance to the Board in an endeavour to assist in the evaluation process, and it is a matter of regret that this

guidance was ignored or perhaps not appreciated, thus provoking the present appeal – the second.

56. We promised at the conclusion of counsel's submissions and after remitting the matter for re-hearing, that we would once again attempt to provide guidance in the hope not only that there will at last be an end to this litigation but also that the claimants can be reimbursed. Howsoever that might be it is right to note that the appellants commendably made an interim payment of $1,105,000.00 to the respondents shortly before the hearing of this second appeal.

THE HEARING BEFORE THE BOARD OF ASSESSMENT

57. At this hearing before a reconstituted Board, the transcript of evidence of the first hearing was admitted in evidence and the expert witness for each side was recalled, as the Chairman pointed out, for clarification of their evidence.

58. On behalf of the respondents the claimants before the Board, Mr. Hallett Moody, a very experienced real estate appraiser gave evidence, while, for the appellants, it was Mr. Armin Cansino, the Commissioner of Lands and Survey. The Board was very much impressed with the evidence of the former but not so much with Mr. Cansino's and accordingly preferred the evidence of the former. But although the Board largely accepted the opinion and views of

Mr. Moody in arriving at its ultimate award, it applied its own percentages for adjustment purposes. It was not easy to understand how the particular percentages were arrived at because no reasons were vouchsafed. In its award the Board said:

> *"…Despite our conclusion that Mr. Moody's valuation is to be preferred, we are of the view that in a number of instances we have been unable to agree with his calculations or the variables that he took into account. In addition, we considered that insufficient attention was given to the extent of the mangrove wetlands which were clearly apparent when we flew to the locus in quo. Accordingly, we have considered it appropriate to make adjustments to the data contained in the Tables and the Appendices to the Moody Reports to arrive at the conclusion which is fair and reasonable in all the circumstances".*

In the result, the Board concluded that the quantum of compensation should be computed on the developmental approach and awarded the sum of $4,476,000.00.

59. The issue which is raised on this appeal concerns the methodology of evaluation to be applied to the 552.65 acres of land compulsorily acquired from the respondents.

60. Generally speaking, there seem to be two principal methods of valuing property, the residual or developmental method and the comparative sales method. Whatever method is relied on, the object of the exercise is to arrive at the market value of the land in question that is to say what amount a willing seller might be expected to realize if the land were sold in the open market at the

date of the second publication in the Gazette of the declaration by the Minister. See section 19(a) of the Land Acquisition (Public Purposes) Act Cap. 184, Laws of Belize. The Constitutional imperative that reasonable compensation is to be paid in circumstances of compulsory acquisition is also an underlying consideration. At first blush, it might well appear that section 19(b) of the Act could affect the market value. It provides as follows:-

> "…The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers not already granted, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department…"

This court in ***Maxwell Mote v. Minister of Natural Resources & Pyramid Island Ltd.*** *(C.A. 7/88) unreported 2 June 1989* dealt with this provision. The court said:

> *"…However, s.19(b) does not by its terms preclude the Board from taking into consideration any more beneficial purpose to which the lands might be applied and where such use depends on the grant of subdivision approval, the possibility of obtaining such approval may be taken into consideration in assessing the compensation…"*
>
> *Had there been evidence that the lands were not subject to the requirement of subdivision permission or, that it being so subject, there was a possibility of such permission being granted, compensation would have to be assessed taking into account the potential of the lands for sale in the open market on the basis of their being subdivided".*

This recognized the principle that land must be valued having regard to its potentialities. All land in Belize is, as I understand it, subject to subdivision approval by the Land Utilization Act so that the land in question would be within its ambit. There was evidence, however, that the land acquired was, by a draft Development Plan zoned as a "non-development area". Mr. Moody stated that it was used as a reference by the Town Board. The topography of the land is a factor to be considered in the valuation process. It was described by Mr. Moody who walked the land and Mr. Cansino who had an aerial view, and did not disagree as:

> *"…generally flat and presently for the most part subject to inundation when the rain falls or from high tides… a small area in the north-eastern section and near the roadway is relatively high. Also on the north-western boundary the coast is relatively high, firm and of sandy soil. To make the land ready for building generally, it would have to be filled particularly by dredging".*

Mr. Cansino reported that "the land is comprised of mangrove swamps and pockets of open water".

61. It is not easy to see how this property was **specially** (emphasis supplied) suitable or adaptable for subdivision purposes, which was the basis of assessment put forward by Mr. Moody and accepted by the Board. The report given by Mr. Moody stated that:– "...to make the land ready for building generally, it would have to be filled particularly by dredging…" and the estimated cost was put at $17,160,888.00.

62. In relation to the first ground of appeal, which was in these terms –

> "The Board erred in applying the residual approach for assessing compensation, as that approach could only have been used if there had granted subdivision approval which had not been given to the claimants – Mr. Courtenay, S.C. submitted that it was not open to the Board to employ the residual approach which involved making an assumption about the highest and best use available for the lands taking account its potentialities and in the particular case, its potentiality for subdivision as a residential unit. Section 19(b) of the Land Acquisition (Public Purposes) Act as he pointed out, correctly, does not allow the special suitability or adaptability of the land for any purpose if that is a purpose to which the land could be applied only in pursuance of statutory powers which have not already been granted. It was accepted that no subdivision approval had been obtained in respect of these land and indeed, no such application had been made".

63. There was also evidence before the Board that there is in existence a draft Development Plan for Ambergris Caye which has so far not been passed into law and under which, the land in question has been zoned as a "non-development area". The Board itself was cognizant of the fact that the acquired property has substantial

areas of mangrove and that such areas cannot be cleared without the grant of a permit under the Frosts (Protection of Mangroves) Regulations 1989. The Board however was persuaded by the submissions of counsel for the respondent that in spite of these hurdles, the necessary approvals would be granted. I am inclined to agree with Mr. Courtenay S.C. that the approach adopted by the Board is tantamount to treating the uncertainties relating to these statutory approvals mentioned as if they were "planning assumptions" recognized in the United Kingdom by section 16 of the Planning and Compensation Act. This provision allows planning permission to be assumed for proposed development. It seems unnecessary to add that no such provision is contained in any Belizean legislation.

64. In reliance on this residual or developmental approach, the Board arrived at a value of compensation set at $4,476,000.00 which is less than the assessed figure utilizing the comparative sales method of $5,851,200.00. The appellants did not demur to the comparative sales method which they thought was more apt in the circumstances. They challenged the assessed figure. The respondents, for their part adopted the approach that even if the Board was wrong to rely on the residual approach, it did no wrong to the appellants who were in no way prejudiced. Having said that he conceded that there was some difficulty in supporting the Board's praying in aid, the residual approach in the instant case.

65. In the light of Mr. Young's concession, it is quite pointless to examine his submissions in an endeavour to uphold the valuation based on the residual approach. I am in entire agreement with the submissions of Mr. Courtenay, S.C. and hold that the Board fell into error when it based its assessments on the residual approach. That being so, the award must be set aside.

66. I would add that when the matter is heard by the Board, it is constrained to use the comparable sales approach.

67. This court in the earlier appeal gave some guidance which plainly was ignored. I think we should commend paragraph 13 of the judgment delivered by Rowe, P, with which the other members of the court agreed. The Board should have in mind particularly the approach of Wilcox J in ***Goold & Rootsey v. Commonwealth of Australia & Orrs. [1993] ALR 135*** which should be followed.

68. Seeing that the court is of opinion that the matter should be re-assessed by another Board, I do not think I should express a concluded opinion as to injurious affection. I am content with the order remitting the matter for a rehearing.

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CAREY JA