



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: Land valuation in the ACT)

Members:

MR R MULCAHY (The Chair)
DR D FOSKEY (The Deputy Chair)
MS K MacDONALD

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 5 APRIL 2006

Secretary to the committee:
Ms A Cullen (Ph: 6205 0136)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry that have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

The committee met at 2.00 pm.

ANDREW RUDNICKI was called.

THE CHAIR: This hearing relates to the inquiry into land valuation in the ACT. I welcome Mr Rudnicki. I read this statement for your benefit. You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

Thank you for your submission. As is the custom with these hearings, if you would like to give us a bit of an outline of your thoughts now, you will certainly be most welcome. We will then be pleased to ask you some questions based on your submission and comments.

Mr Rudnicki: Thank you for that introduction. I understand those responsibilities. I am happy to accept them. I begin with my opening statement. I thank you for the opportunity to make comments about our experience with ACT government agencies following the land for crown lease purpose clause variation for our property located at 84 Giles Street, Kingston.

In terms of what took place: firstly, the ACT planning authority did not make a decision on our development application, despite an application charge being paid for a service that was not received. We were forced to go down an expensive merits review process. On 13 December, the ACT Administrative Appeals Tribunal made a decision against the ACT planning authority in accordance with the ACT territory plan. From this decision, it was made certain that the ACT planning authority delegates have no legal power to insist on accompanying noise management assessments and associated layout plans from us in the development application process.

The crown lease variation took effect on 18 February 2005. The ACT Revenue Office made an unlawful decision on 25 October to redetermine unimproved values retrospectively in the years 2002, 2003, 2004 and 2005 from the rates aspect. It authorises the commissioner to redetermine the land value from the time the change of circumstance has taken place; that is, in essence, 18 February 2005. After some disputes over the issues and a meeting that took place on 8 February 2006, the Commissioner for Revenue accepted our objection but at this time has not made a decision on the objection.

The effect of the decision has an immediate impact of increasing our rates and land taxes for our property. Ordinarily, it should take at least three years before it would be factored into the average unimproved value of the property. The unlawful decision means that the effect is immediate and increased our rates and land taxes unnecessarily. As such, I consider that to be manifestly unreasonable.

I do not want to pre-empt the commissioner's appeal decision in the pipeline at the moment, although I trust he will take the opportunity to allow our objection and reject the primary decision as it is completely at odds with the Rates Act. This outcome will

avoid any further litigation costs and will not burden the ACT's current budgetary problems any further.

THE CHAIR: Thanks for that outline. I want to be clear here. Your request to the ACT Commissioner for Revenue for review has not been concluded?

Mr Rudnicki: That is correct.

THE CHAIR: Have you been given any reasons, informal or official, or have officers of the Revenue Office given you any such reasons for not considering your objection to the unreasonable notice of determination of unimproved land value?

Mr Rudnicki: Basically, what occurred with the officers was that I had a meeting with them on 8 February 2006 at which the Commissioner for Revenue suggested that I contact the appeals person, Mr Robert Lewis, to discuss our objection. We had some issues in relation to the way the objection was cast. In view of those comments and to enable the appeal to move forward, I decided to change the words, even though the commissioner did not really address the issue of why he made the decision.

At that meeting, a decision maker called Gina Mudie from the office joined us. Basically, I outlined the issues that we had with the office. She basically agreed with our objection. However, she communicated that her manager disagreed with that interpretation, even though the legislation is very clear that a determination can only be made when a change of circumstance takes place.

At that meeting, Robert Lewis indicated that, if the Commissioner for Revenue disallowed our objection, reasons may not be given to us. I was a bit concerned about that, considering that the ACT agency should be an accountable organisation and should explain why they decide to disallow an objection and give reasons for that. That is the communication that took place with the ACT revenue office.

THE CHAIR: That is the only meeting that you had?

Mr Rudnicki: That is right.

THE CHAIR: That is still outstanding?

Mr Rudnicki: That is correct.

THE CHAIR: You do not know what the outcome will be?

Mr Rudnicki: That is correct.

THE CHAIR: In relation to ACTPLA's failure to make a decision on the DA within the prescribed time frame of six months, the AAT found, I understand, that ACTPLA's request for costly technical reports was unnecessary.

Mr Rudnicki: That is correct.

THE CHAIR: Have you had informal discussions with officers from ACTPLA about

what may be learnt from this experience?

Mr Rudnicki: Since the decision was made, we really have not had any communications with the ACTPLA office.

THE CHAIR: There was no feedback?

Mr Rudnicki: Basically, they do not really want to go into internal communications, as far as we are aware.

THE CHAIR: Did your experience lead you to the view that it was the legislation that is unreasonably restrictive or confusing, or do you think there is a culture within ACTPLA that led to the problems that you experienced?

Mr Rudnicki: From our experience, it seemed very obvious that the delegates in the ACT planning authority really did not have a good understanding of the legislative requirements.

THE CHAIR: It is a matter of poor knowledge, you would say, amongst personnel in ACTPLA and their not being confident or competent in their dealings with these matters?

Mr Rudnicki: That is correct. I suppose the legislation is rather difficult, but that is certainly our experience.

THE CHAIR: Have you had experience in dealing with both NCA and ACTPLA?

Mr Rudnicki: In the past?

THE CHAIR: Yes.

Mr Rudnicki: In previous development applications, yes, we have.

THE CHAIR: Have you got any observations on improvements?

Mr Rudnicki: This was the first time we made a development application of this nature. If you compare what took place before with now, you could not really compare it, due to the different nature of the development application.

THE CHAIR: Turning to the valuation issue, which is the primary point of this inquiry, do you have a particular view about the criteria and methods used for determining the value of improved and unimproved land in the ACT? Have you formed a broad opinion of the quality of that work?

Mr Rudnicki: We really did not dispute the value of the determinations that were made. We were just objecting to how the land values were applied.

THE CHAIR: The retrospectivity issue was central to your objection?

Mr Rudnicki: That is correct.

THE CHAIR: We are certainly looking at how the reviews and appeals are handled, as part of our inquiry. Your evidence would suggest that you are not all that impressed by the way in which the appeal process has been handled.

Mr Rudnicki: No, unfortunately, from the beginning of the whole process. We received a letter which indicated that the commissioner had no power to consider our objection, which I thought was quite strange. In accordance with the original decision, the application charge for lodging our objection was \$20. In their first correspondence, they basically sent back our objection and said that they did not have power to consider it, which I did not agree with at that time.

I sent some further correspondence to the commissioner at that particular point in time, putting my view forward about the situation. Subsequently, on 18 January, a further letter was received that basically went through the legal positions of the ACT Revenue Office and for me to recast my objection and pay the additional application charge. That was not put in the original decision.

THE CHAIR: Your experience would suggest that, if people raised an objection, the first resort seems to be a response that is likely to deter them. It was only because you were determined to pursue the matter in more detail that you are now getting some serious attention to the grievances you have.

Mr Rudnicki: That is correct.

THE CHAIR: That is, obviously, unreasonable and unsatisfactory?

Mr Rudnicki: There is a duty of care on the ACT Revenue Office to go through and outline their issues rather than just send it back saying that they do not want to consider it.

THE CHAIR: We will certainly take account of that. One of the other issues that we have had raised generally in this inquiry is the information that is available to landholders who want to object. Have you struggled with available data that you have been able to access to determine how they reached their views?

Mr Rudnicki: I basically put in a request originally, when the decision was made, to find out why the ACT Revenue Office made the decision that it did. Basically, that was not particularly forthcoming. Even when we had the meeting on 8 February 2006, they really did not give more reasons why the decision was made and summarise that. At the end of the day, it was very difficult to get information from the ACT Revenue Office to justify their position.

THE CHAIR: It makes it harder for people who want to object.

Mr Rudnicki: That is right, to address the issues that they think are relevant.

THE CHAIR: That covers the main issues I wanted to canvass.

DR FOSKEY: When did the change of use that you applied for commence?

Mr Rudnicki: Basically, we started the process in January 2004.

DR FOSKEY: Have you, as yet, adapted the building for which the application was made to the new function? This is not clear. It was an old bank?

Mr Rudnicki: That is right.

DR FOSKEY: Which place are we talking about now?

Mr Rudnicki: The Commonwealth Bank of Australia occupied the whole building. To give you a bit of background: the reason why we went through the change of use process was that the crown lease at that time only allowed banking premises on that particular site. As the bank relinquished some of its area back to the landlord, being us, we needed to expand the uses for that building. Technically, we really did not change the building, in essence. We broadened the crown lease purpose clause to enable multiple uses to attract further tenants to that building. In terms of changing the structure of the building, that certainly did not take place.

DR FOSKEY: The retrospectivity cannot in any way be justified because it was all part of the bank's operation until 18 February 2005?

Mr Rudnicki: That is right.

DR FOSKEY: This is purely an administrative mistake? That is how you would look at it if you were told that this had occurred? I am somewhat gobsmacked.

Mr Rudnicki: Yes, and we rejected that decision totally. The delegate basically said that, if we did not like that approach, we would be forced to take it up with the AAT; in other words, go through another six months delay process.

THE CHAIR: How was that aspect resolved?

Mr Rudnicki: Basically, we did not pursue it to the ACT Administrative Appeals Tribunal. We just accepted it on face value. At that particular point in time, we had a prospective tenant that was very keen to go in there. We were forced to accept that. If you went down the path of going through the AAT about that particular process, the crown lease variation would not have been varied at that point in time.

THE CHAIR: It was a commercial imperative.

Mr Rudnicki: Yes, and we were forced to accept that decision. The disappointing thing is that, each time you deal with the ACT government these days, they do not seem to really look at the legislation particularly carefully. When a decision is made, they force you to go down a merits review process which, for the average resident in Canberra, is not an outcome which would be good for government.

DR FOSKEY: Could that be something to do with maintenance of records or the fact that there is no continuing corporate knowledge retained so that you are always having to deal with a separate person who then has to do all the background again and probably

does not have the time? For whatever reason, each person has to be educated and you might hit the wrong one?

Mr Rudnicki: It could be that.

DR FOSKEY: I am checking with you whether that was your experience or whether you found that you always got treated courteously and people were able to access your records promptly and catch up with your issues quickly.

Mr Rudnicki: Our experience was that it was very difficult each time we dealt with the relevant people at that time. It was very difficult to get answers out of them. The assurances that were provided and what occurred were two different things normally. To improve the process, a training program to inform the delegates on their roles and their powers would probably be a useful exercise, to ensure effective and efficient decisions and that matters are dealt with quickly and in accordance with the relevant legislation.

DR FOSKEY: Do you have an idea when you will get a decision?

Mr Rudnicki: I asked the question at the time. They basically were very reluctant to give an answer as to when the objection process would be finished. I put a question to them as to the likely time frame. They basically said it would be put in with all the other objections. We really do not know when that process is going to be completed.

THE CHAIR: What date did you lodge that first objection?

Mr Rudnicki: The first objection was lodged on 15 November 2005. It took quite some time to resolve all the issues with the Commissioner for Revenue. In February 2006, pretty much early in 2006, we basically lodged the recast objection.

THE CHAIR: What is the amount of tax that is disputed?

Mr Rudnicki: We are looking at about \$700 a year. The impact next year will be quite significant, I suppose.

THE CHAIR: Thank you for your attendance. We will take your views into account as we proceed through the valuation inquiry.

The committee adjourned at 2.25 pm.