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CANADIAN PACIFIC RAILWAY COMPANY

v.

THE CORPORATION OF THE CITY OF PORT COQUITLAM

Supreme Court of British Columbia (511/57)

Before: MR. JUSTICE J.O. WILSON

Vancouver, June 27 and 28, 1957

F.H. Britton for the Appellant
John R. Lakes for the Respondent

Case Stated by Assessment Appeal Board

1. The land which is the subject of this appeal consists of right-of-way, railway yards, maintenance and storage areas, station grounds and wye, residential area, and reserve lands owned by Canadian Pacific Railway Company within the City of Port Coquitlam, a total of 447.73 acres, which was assessed for the 1957 assessment roll at $265,200. The assessment of improvements on the land is not in question.

2. The company appealed to the Court of Revision, which reduced the assessment to $241,467. The company then appealed to this Board.

3. The Assessor made the assessment by comparing the lands under appeal with other industrial lands in the same school district as shown on the exhibit entitled "Recapitulation of Industrial Land Assessments School District No. 43." The Assessor divided the company's lands into seven categories according to use as shown by exhibits. Also shown are the rate per acre and assessed value of each part of the said lands, used in computing the assessment.

4. The company compared the assessment on its lands with adjacent lands in support of its contention that the assessment was still excessive on the grounds that it was inequitable and did not allow for restricted use of its land.

5. Following the hearing the Board obtained additional information concerning adjacent assessments as shown on a statement and plan submitted herewith.

6. The Board held that the proper assessed value of the lands must be reached having regard to the assessment of lands immediately adjacent and applied percentage deductions to adjoining assessments to allow for restriction of use and enhancement of value of adjoining land and plottage of the land in question, and thereby reduced toe total assessment to $160,511, as described in its decision.

Wherefore the following questions are humbly submitted for the opinion of this Honourable Court:

> "1. Is the decision of the Board correct in principle and consistent with the law concerning valuation of land?

"2. Does the decision of the Assessment Appeal Board give proper consideration to the actual use of the lands as required by the assessment laws of British Columbia?

"3. Was the Assessment Appeal Board correct when it made allowances (or failed to make allowances, as the case may be) for restriction of title, restriction of use, enhancement of value of adjoining land, and plottage of the land in question?"

Reasons for Judgment

His Lordship cited the Statement of Case in full and pointed out that the nub of the case is set out in paragraphs 3 and 6. He then stated the governing decision is *Canadian National Railway Company et al.* v. *Vancouver City* (1950) 2 W.W.R. He cites first from the judgment of O'Halloran, J.A., at page 345;-

> In the light of the foregoing, it may properly be said that the lands here, restricted to railway terminal use, derive their value from two major sources: One, an external value from providing the terminal facilities for a large transcontinental railway, which value is integrated in or arises from the successful operation of that railway system; and, the other, a local value derived solely from their advantageous situation in a large commercial seaport city, with a substantial manufacturing potential. The first also confers a special value upon industrial and commercial lands in the city, while the second automatically also confers value upon the railway terminal lands as it does upon the industrial and commercial lands.
>
> It seems, with respect, that it is the second source of value to which dominant consideration ought to be given in assessing these railway terminal lands. But the problem is how to do it in a way that will adequately reflect this value without giving disproportionate weight to the influence of the first source upon city values in general and upon sales of industrial sites in particular which happen to be in close and advantageous proximity to these lands restricted as they are to railway terminal use.

Now these considerations to some degree apply here. The contiguity of the yards at Port Coquitlam to Metropolitan Vancouver affects their value. These yards are part of "the terminal facilities for a large transcontinental railway." Also, while their situation is far less advantageous than that of the lands considered in *C.N.R.* v. *Vancouver*, it is, by reason of proximity to Vancouver and to the sea, more advantageous than that of lands used for terminals in, say, North Bend.

But O'Halloran, J.A., goes on to say that "it is the second source of value to which dominant consideration ought to be given in assessing these railway terminal lands." And in his subsequent fixing of values on that basis it appears to me that the guiding consideration was the value of adjacent properties, with subsequent adequate allowances for restrictions on title, use, plottage, and enhancement due solely to the proximity of the railway. He also said that evidence of the value of other railway terminal lands was admissible, but not of great weight unless a near identity of circumstances could be shown.

The Assessor based his valuation on comparisons with other industrial sites in the same school district, none of them adjacent to the terminal and some of them as much as 5 or 6 miles away. Many of these sites were situated on tidewater, an advantage which does not appertain to the lands in question here. The Assessor, by comparison, fixed values on the lands in question here, with reductions for restricted title, use, and plottage.

The restrictions are formidable. It is clear that all lands here involved not already in use for terminal purposes must be held for expansion of terminal facilities. In addition, there are statutory restrictions which, while not, perhaps, quite so absolute as argued by counsel for the company,

are nevertheless such as to reduce very materially the value of the lands as compared with that of ordinary freehold lands of like situation.

The Assessment Appeal Board has, as is stated in paragraph 6 of the stated case, valued the lands having regard to the assessments of adjoining lands with deductions to allow for restrictions of use, plottage, and enhancement. I do not see how any successful attack can be made on this method of valuation, which seems to me to be that largely followed in *C.N.R.* v. *Vancouver*. In saying this, I have in mind *Dreifus* v. *Royds* 61 S.C.R. 326, where it was held that under an Ontario Statute an assessment based solely on the values of surrounding lands was in error in not finding "actual value." But the Board's findings are not based solely on the assessment of adjacent properties: they also give regard to the use, in this case the restrictions on use, of the land. If the railway had, instead of a restricted title, some unusual beneficial interest, such as the ownership of valuable mineral rights, which the owners of adjacent lands did not have, then the Board must assess that additional value. So where, as here, the railway company has a lesser interest, the Board must take it into account. Granted a practical topographical identity of the lands, the method adopted by the Board seems to me not only a proper, but the only possible method of valuing the lands.

To return to the Assessor's method of valuation, I think it might, on the basis of what was said by O'Halloran, J.A., in *C.N.R.* v. *Vancouver* at page 351, be proper if an identity of circumstances was established. Mr. Justice O'Halloran approved, at page 351, the consideration of the values of railway lands in other parts of Vancouver in order to fix the value of the C.N.R. lands. But even there, where the comparison was with other railway terminal lands, he doubted the value of the evidence unless it was proved that the same circumstances applied. In this case the Assessor did not consider the value of other railway lands, but did consider that of other industrial sites. His theory, if I follow it, is that a railway is an industry, that all its lands must be considered as industrial, and that they must be valued on that basis. Following that, he says that the only correct standard of comparison is with other industrial lands, not necessarily contiguous.

I do not think this is correct, or that it follows the reasoning in *C.N.R.* v. *Vancouver*. With all respect, I would regard the value of a fully developed industrial site on navigable waters at Fraser Mills or loco as a quite unreliable guide to the values of inland areas at Port Coquitlam, and this quite apart from the factors of restriction of use and title, enhancement, and plottage.

C.N.R. v. *Vancouver* was based on this valuation formula from section 39 of the *Vancouver Incorporation Act, 1921*: "Estimated at its actual cash value as it would be appraised in payment of a just debt from a solvent debtor."

The formula under which the Board operated is contained in section 238 (1) of the *Municipal Act*, chapter 232, R.S.B.C. 1948, and section 37 (1) of the *Assessment Equalization Act*, which counsel tells me are identical. I cite section 37 (1) of the *Assessment Equalization Act*. [*Section 37 (1) cited*.]

The question is whether this latter lengthy provision makes the judgment on *C.N.R.* v. *Vancouver*, based on section 39 of the *Vancouver Incorporation Act*, inapplicable.

I think, first, that all the considerations set out in section 37 of the *Assessment Equalization Act* down to the word" value" in line 7 are covered by the shorter definition in section 39 of the *Vancouver Incorporation Act*. The words "present use," in my opinion, only operate here to justify, if that were necessary, the reductions made for restriction of use. To put on them the meaning which I understand Mr. Lakes advocates is, in effect, to tax improvements twice. Given two identically advantageous factory-sites, is the person who builds a factory on his site to pay, in addition to the tax on his improvements, a larger land tax? I cannot conceive that the Legislature had any such intention. If it had, of course the provision could cut two ways. A man who owned a valuable industrial site might plant it in potatoes and argue that his land taxes must be far lower than those on adjoining developed property. "Present use" here must mean present proper and

practicable use, so that the speculator shall not escape proper taxation nor the developer be penalized.

Dealing with the later words of section 37 (1) of the *Assessment Equalization Act*, it seems to me that the Board has dealt with these lands as the "property of a going concern," a railway company. I must say that I am not very certain of what the words mean; perhaps they are there to guard against any reduction in value being made in respect of lands belonging to an insolvent or unsuccessful concern solely on the ground of its inability to earn a profit. At any rate there is nothing here to suggest that the Board has considered the railway as anything other than a going concern.

I answer affirmatively all three questions asked in the stated case.