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CITY OF VANCOUVER

v.

THE CORPORATION OF THE TOWNSHIP OF RICHMOND

Supreme Court of British Columbia (X585/58)

Before: MR. JUSTICE T.W. BROWN

Vancouver, July 22, 24, 1958

B.E. Emerson for the City of Vancouver
W.T. Lane for the Corporation of the Township of Richmond

Reasons for Judgment

The City of Vancouver and the Township of Richmond both appeal by way of stated case from the decision of the Assessment Appeal Board as to assessments on land in Richmond owned or occupied by the City of Vancouver as its International Airport.

Improvements were not in issue. The Assessment Appeal Board (apart from correcting one admitted error) upheld the original assessment as confirmed by the Court of Revision, except as to land in the landing and restricted industrial areas. The Assessor had valued this land at $700 an acre, and the Court of Revision confirmed this.

I quote from the majority judgment of the Assessment Appeal Board, paragraphs 3, 4, 5, and 6:-

> In making his valuation the Assessor combined the sales analysis and comparative assessment approaches. From this data, he determined the various land uses within the airport area as being industrial area, landing area, approach area, agricultural area, and restricted industrial area. He then determined the respective per acre values of these areas as set out in Exhibit 10. In our opinion, the Assessor used the only feasible approach as there are no other comparable airport properties and no assistance can be obtained by using the income approach to a subsidized public utility.
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> The Board is satisfied that the figure of $1,900 per acre was determined by the Assessor on a sound analysis of sales data and was properly applied to the industrial area of the airport. The figure of $150 per acre was applied to the approach and agricultural areas, and with this we agree. However, the Assessor used the amount of $700 per acre for the landing and restricted industrial areas. It appears that he arrived at this figure by a consideration of the assessments of similar adjacent lands. In doing so he took into account a number of rather small parcels which had, because of their size, relatively high assessments. When these were eliminated, we find that the proper figure should be $600 per acre.
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> The Assessor admitted an arithmetical error in respect of Appeal No. 48 on Exhibit 17. The figure of $68,320 should be $24,700. The Board therefore directs that this difference

> of $43,620 should be deducted and that the total acreage of the landing and restricted industrial areas be reduced by the amount of $100 per acre.
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> It was argued by counsel for the appellant that the revenue factor referred to in section 328 (1) of the *Municipal Act* and section 37 of the *Assessment Equalization Act*, which are identical, should have been considered by the Assessor. The Board is of the opinion that the land should be valued on the basis applied by the Assessor without regard to this factor. No reduction should be made by reason only that, being a publicly owned and subsidized utility, it is not a profitable operation. The latter portion of these sections which direct the Board to value the lands under appeal as part of a going concern does not mean in the opinion of the Board that the foregoing facts necessitate any reduction. There is judicial support for the proposition that this language was placed in the section for the purpose of preventing the assessment of the "scrap iron" principle. The Board has in mind the decision of Mr. Justice Wilson in *Canadian Pacific Railway* v. *City of Port Coquitlam*, 1957.

I have had the advantage of considerable enlightenment as to the history of, and the reason for, the "going concern" expression from the thoughtful and impressive submissions of learned counsel for Richmond, but the term has not, so far as I know, been judicially defined, and I am left almost in the same position as Wilson, J., who said in the *Canadian Pacific Railway Company* v. *The Assessor, City of Port Coquitlam*, No. 511/57 (Vancouver Registry) :-

> Dealing with the latter words of s. 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.

Whatever "going concern" may mean as to *land and improvements taken together*, I am unable to extract a meaning from it as applied to land alone which would have the effect of putting an enterprise assessment on such land; that would result in something almost in the nature of an income tax, not based on the inherent value of the land but on the use to which it happened to be put.

The majority have deducted $100 an acre from the lands in question on the ground that the base used by the Assessor for comparison was unbalanced by the inclusion of some small properties with higher acreage values. But as I read the stated case of July 4th, the Assessor used the sales and cost approach to arrive at his figure of $700 an acre, and then checked his results by computing the average of the assessments of all parcels physically adjoining the area. He had already established values by methods which I gather were acceptable to the Board; it would appear to me that this final and prudent step, to be usefully accurate, would have to include all adjacent properties. With great respect to the Board, I cannot find any more justification for omitting small properties of relatively higher value than there would have been for leaving out some of the larger properties with lower acreage values.

I respectfully agree with the Board that the land residual method should not have been used. It would obviously lead to absurd results, as in the case of an undertaking such as the airport, which shows a return of just over 1 per cent per annum on the total investment in improvements, the application of this method would leave the real estate with no value.

The learned Chairman, while agreeing basically with the majority, thought that the valuation sections of the two Acts (which are in effect identical) required that the going concern value of the *airport*, which he found to be a public utility, should be examined. After considering the revenue

factor, in that a negligible return was received on the millions of dollars invested, he would have reduced the assessment by a further 10 per cent.

I should hesitate to disagree with the learned Chairman in principle if both lands and improvements were involved, although I was very impressed with the submission on behalf of Richmond that going concern meant an entity from a physical rather than an accountancy standpoint. But, as I have indicated, I cannot convince myself that as applied to land alone it involves taking a specific income into account where the land, owing to an abnormal use, produces much more or much less than its neighbouring parcels. Consequently I should not cut its assessment by any percentage because it does not, under present circumstances, produce a return. It hardly seems reasonable that a neighbouring municipality or a private person, for that matter, should be able to depress the value for assessment purposes of hundreds of acres in Richmond by making an uneconomic use of the land.

One further matter arises specifically from the case of July 4th, and I find it involved in the case of July 3rd as well. Section 46 (1) of the *Assessment Equalization Act* is as follows:

> 46. (l) The amount of the assessment of real property appealed against may be varied by the Board, unless:-
>
> (a) The value of the individual parcel under consideration bears a fair and just relation to the value at which other land and improvements are assessed in the municipal corporation or rural area in which it is situate; and
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> (b) The assessed values of such land and improvements are not in excess of actual value as determined under section 37.

That may be shortly put by this paraphrase: the Board can vary the amount of the assessment only if the subject-matter is not fairly assessed vis-a-vis other properties and if the assessed values are in excess of actual value. From what I have already stated, it will appear that in my view neither clause (a) nor clause (b) pertains in this case.

I refer once more to the judgment of Wilson, J., in the Coquitlam case. The Assessment Appeal Board had 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 the total assessment to $160,511.

At page 5 of the typed reasons for judgment this paragraph appears:-

> I think first that all the considerations set out in s. 37 of the *Assessment Equalization Act* down to the word "value" in line 7 are covered by the shorter definition in s. 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.

There were three questions as to the correctness of the Board's decision, and Mr. Justice Wilson answered all three affirmatively, finding that its judgment was correct. The evidence here satisfies me that the Assessor proceeded on the same basis as that on which the Board was there upheld. The questions are answered as follows:-

Case of July 3rd

> (a) "Do the provisions of section 37, subsection (1), of the *Assessment Equalization Act,* 1953, and section 328, subsection (1), of the *Municipal Act*, 1957, chapter 42, require the Assessor for the Municipality of Richmond and the Assessment Appeal Board, or either of them, to assess the value of the land comprising the Vancouver International Airport as the property of a going concern?" Answer: No.
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> (b) Not applicable.

Case of July 4th

> "1. Is the decision of the Assessment Appeal Board, with respect to the assessment of the landing and restricted industrial areas of the Vancouver International Airport, correct in principle and consistent with the law concerning valuation of land?" Answer: No.
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> "2. In particular, but without limiting the generality of the foregoing question,
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> "(a) was there any evidence before the Board to support the reduction, from $700 per acre to $600 per acre, made in the evaluation of the landing and restricted industrial areas?" Answer: Not sufficient to bring the case within section 46 (1).

"(b) having regard to section 46, subsection (1), of the Assessment Equalization Act, 1953, as amended, was there any evidence before the Board to enable it to exercise its jurisdiction to vary the amount of the said evaluation?" Answer: No.

The assessment of the Court of Revision will be restored, subject only to deduction of the agreed arithmetical error of $43,620.

It was mentioned incidentally in argument that the level of land assessment was 57-58 per cent of the 1955 value. No objection to this artificiality was taken by either party. I mention this to explain the apparent inconsistency between my decision here and that in the *Pearce* v. *New Westminster* case (555/58, New Westminster Registry), which was heard the following week. Oral judgment was given herein before the Pearce case was heard.

Costs to the Township of Richmond.