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DESAUTELS, ROSAIRE HORACE

v.

THE CORPORATION OF THE DISTRICT OF COQUITLAM

Supreme Court of British Columbia (No. 921A/59)

Before: MR. JUSTICE D.R. VERCHERE

Date and Place of Hearing: Sept. 24,25, 1959, Vancouver, BC

T.W. Fisher for the Appellant
D.A. Hogarth for the Respondent

Reasons for Judgment

This is a submission in the form of a stated case by the Assessment Appeal Board brought pursuant to the provisions of section 51 of the *Assessment Equalization Act, 1953*, as amended, for an opinion on two questions of law arising in connection with an appeal to the Assessment Appeal Board. The case stated to this Court by the Board reads as follows: -

> This case stated by the Assessment Appeal Board aforesaid humbly sheweth that the above-mentioned appeal was heard at Maillardville, in the Province of British Columbia, on the 23rd day of April, 1959, in the presence of Mr. J.G. Gates, of counsel for the appellant, and Mr. D.A. Hogarth, of counsel for the respondent.
>
> The facts are as follows:-
>
> (1) The land which is the subject of this appeal is occupied by the appellant for residential purposes only, within the Corporation of the District of Coquitlam, and was assessed for the 1959 Assessment Roll at $1,525.
>
> (2) The lands in question were purchased in or about the month of February, 1952, by The Director, The Veterans' Land Act, for the purposes of *The Veterans' Land Act, 1942*, being chapter 33 of the Statutes of Canada, 1942-43, and amending Acts.
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> (3) Since the date of such acquisition the lands have continuously been and still remain registered in the name of The Director, The Veterans' Land Act.
>
> (4) That the appellant is the occupier of the said lands pursuant to an unregistered agreement in writing, dated the 7th day of June, 1952, under the authority of and subject to the provisions of *The Veterans' Land Act, 1942*. A copy of the said agreement made between the said Director and the appellant herein is annexed hereto and sets out the terms and conditions upon which the appellant agreed to purchase the said lands from The Director, The Veterans' Land Act.

(5) That the said lands were zoned by the Corporation of the District of Coquitlam as "small holdings" at the time of their acquisition by The Director and the occupation thereof by the appellant, and the use thereof was restricted to those uses permitted to "small holdings" in the zoning by-law then in force in the said district. The appellant has since the date of his occupation used the lands for residential purposes only.

(6) By Zoning By-Law No. 860, duly passed by the respondent municipality the 8th day of September, 1958, the lands under appeal were rezoned for "residential low density" uses, as defined by the said by-law.

(7) That apart from any effect different zoning regulations may have on the assessed value of the land under appeal, it would have been assessed on an acreage basis as opposed to a front foot basis had the land been zoned as a "small holding" as defined in the zoning by-law in effect at the date of acquisition by The Director, and occupation by the appellant.

(8) That in determining the actual value of the lands under appeal the Assessor did not give consideration to the terms and conditions of the existing agreement between the appellant and The Director, The Veterans' Land Act, and assessed the land on a front foot basis in the same manner as other surrounding and comparable lands held in fee and having considered the said lands zoned for residential low density purposes.

Wherefore the following question is submitted by the Board for the opinion of this Honourable Court:-

"1. Was the Assessor right in assessing the lands under appeal without regard to the terms and conditions of the agreement between the appellant and The Director, The Veterans' Land Act, and upon the basis that the appellant owned the lands in fee, free from such agreement?"

The Board submits the following question at the request of the appellant:-

2. Was the Assessor right in assessing the land as if it were zoned 'for residential low density' purposes, as defined by the By-law No. 860, or should he have assessed the land as zoned for small holdings or, alternatively, free from any zoning restrictions whatsoever?"

It will be noted from paragraph (4) of the stated case that the appellant is the occupier of the lands under assessment pursuant to an unregistered agreement in writing made June 7, 1952, with The Director, The Veterans' Land Act (therein and hereinafter called the "Director"). It appears desirable therefore that reference be made to certain sections of the Veterans' Land Act, R.S.C. 1952, chapter 280 namely:-

(a) In the preamble it is stated that:-

Whereas many men now serving in the Active Forces of Canada have recorded their desire to settle on land or engage in farming when hostilities cease, and it is desirable that suitably qualified veterans be encouraged to seek rehabilitation in the agricultural industry … and it is the purpose of the Dominion Government to provide a measure of financial assistance to veterans on their performance of prescribed settlement conditions in order to promote their engaging in agricultural

pursuits either as a full-time occupation or as a part-time occupation coupled with other employment.

(b) Section 5(1) refers to the powers and status of the Director:-

> 5. (1) For the purposes of acquiring, holding, conveying, and transferring and of agreeing to convey, acquire or transfer any of the property that his is by this Act authorized to acquire, hold, convey, transfer, agree to convey or agree to transfer, but for such purposes only, the Director is a corporation sole and he and his successors have perpetual succession, and as such is the agent of Her Majesty in right of Canada.

(c) Section 5(7) refers to the status for taxation of lands held by the Director:-

> 5. (7) Any land vested in the Director in respect of which an assessment has been duly made by a taxing authority is hereby declared, for the purpose of recourse to the land itself for realization of taxes based upon such assessment and for such purpose only, to be held by the said Director as such corporation sole and not as an agent of Her Majesty in Right of Canada.

(d) Sections 9 and 10 indicate how the cost of the land to the Director and the sale price of the land to the veteran are to be determined. I do not think it necessary that these sections be set out in full.

(e) The restrictions on the sale by the veteran of lands held or occupied by him under this Act are contained in sections 10 and 11, of which I will recite only section 10, subsection (4), as follows:-

> 10. (4) In the case of any contract made between the Director and a veteran under subsections (1) and (3), save upon payment in full to the Director of the total outstanding cost to the Director of the land, improvements, livestock and farm equipment together with interest at the said rate on the said outstanding cost and all other charges owing by the veteran in respect thereof, no sale, assignment, or other disposition of the subject-matter of a contract between a veteran and the Director shall be made by the veteran, nor shall a conveyance or transfer be given by the Director to a veteran during a period of ten years following the date of the relative contract and thereafter only if the veteran has complied with the terms of his agreement for the said ten-year period.

(f) Section 12 indicates the status of the veteran holding land under this Act:-

> 12. Every veteran holding or occupying land sold by the Director shall until the Director grants or conveys the land to him be deemed a tenant at will.

In the preamble to the agreement between the Director and the appellant it is provided that the cost price to the Director of the land had been calculated at $6,000 and that the sale price to the veteran is $4,600, payable on terms as therein provided. The agreement also contains the following clauses:-

> 3. The Veteran agrees with the Director that, save upon payment in full of the outstanding cost to the Director of the said land, together with interest at the said rate of three and one-half per centum (3½%) per annum on the said outstanding cost to the Director and all other charges owing by the Veteran in respect thereof, no sale, assignment or other

disposition of the subject matter of this Agreement shall be made by the Veteran, nor shall any conveyance or transfer be given by the Director to the Veteran, during a period of ten (10) years following the date of this Agreement and thereafter only if the Veteran has complied with the terms of this Agreement for the said ten-year period.

5. The Veteran further agrees with the Director that he will not lease the said land or any portion thereof save with the approval of the Director, and that the Director, his officers, agents and employees may at any and all times enter upon the said land, or any part thereof, to view the state of cultivation and to inspect the farming operations.

6. The Veteran agrees that he will in a good and husbandmanlike manner, in each and every farming season during the continuance of this Agreement, break, cultivate, seed and crop the said land or such portion thereof as may from time to time be expedient in good farming operations of the said land, and that instructions as to cultural practices or management given by the duly authorized representative of the Director shall be observed.

13. The Veteran hereby agrees that until the Director grants or conveys the said land to him, he shall occupy the said land as a Tenant at Will.

The lands in question are situate within the corporate limits of The Corporation of the District of Coquitlam, and since the agreement was made with the appellant have been used for residential purposes. The challenged assessment was made by the Corporation's Assessor, pursuant to the *Municipal Act*, Statutes of British Columbia, 1957, chapter 42, as amended by 1958, chapter 72. The relevant sections thereof are as follows:-

328. (1) Land and improvements shall be assessed at their actual value. In determining the actual value, the Assessor may give consideration to present use, location, original cost, cost of replacement, revenue or rental value, and the price which such land and improvements might be reasonably expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value, and the actual value of the land and the improvements so determined shall be set down separately in the columns of the assessment roll and the assessment shall be the sum of such value. Without limiting the application of the foregoing considerations, where any industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvement so used shall be valued as the property of a going concern.

333. (1) Lands the fee of which is in the Crown, or in some person or organization on behalf of the Crown, but which are held or occupied otherwise than by or on behalf of the Crown are, with the improvements thereon, liable to assessment and taxation in accordance with this section, but this section does not apply to make liable to taxation lands or improvements which would otherwise be exempt from taxation under clauses *(h)* to *(l)*, inclusive, of subsection (1) of section 325, or under a by-law adopted under section 326, or a highway occupied by a company mentioned in Part XIV.

(2) The lands referred to in subsection (1) with the improvements thereon shall be entered in the assessment roll in the name of the holder or occupier thereof, whose interest shall be assessed at the actual value of the lands and improvements.

(3) Except as provided by or under the "Veterans' Land Act," the taxes imposed on the lands and improvements referred to in subsection (1) are, subject to subsection (4), a liability only of the holder or occupier thereof, recoverable in the manner set out in this Act, but the said lands and improvements are not liable to tax sale, nor are such taxes a lien or charge on such lands and improvements.

(4) Lands which have been sold, granted, or conveyed by the Crown in right of the Province, and in respect of which the Crown grant has not been registered, are, together with the improvements thereon, liable to tax sale, and the taxes imposed thereon are a lien and charge on such lands and improvements, and all the provisions of this Act as to assessment, taxation, recovery of taxes, and tax sale apply, mutatis mutandis.

(5) This section applies, mutatis mutandis, to improvements owned by, leased to, held, or occupied by some person other than the Crown, situate on lands the fee of which is in the Crown, or in some person or organization on behalf of the Crown.

Since the second question propounded raises the question of zoning, I think it desirable to set out here certain relevant provisions of the *Municipal Act* relating thereto. These are as follows:-

699. (1) The Council may by by-law (hereinafter referred to as a "zoning by-law"):-

(a) Divide the whole or a portion of the area of the municipality into zones, and define each zone either by plan or description:

(b) Regulate the use of land, buildings, and structures, including the surface of water, within such zones, and the regulations may be different for different zones and for different uses within a zone:

(c) Regulate the size, shape, and siting of buildings and structures within such zones, and the regulations may be different for different zones and with respect to different uses within a zone.

702. (2) A lawful use of premises existing at the time of the adoption of a zoning by-law, although such use does not conform to the provisions of the by-law, may be continued; but if such non-conforming use is discontinued for a period of thirty days, any future use of those premises shall, subject to the provisions of this section, be in conformity with the provisions of the zoning by-law.

As regards Question 1, the appellant takes the position that his status under his agreement with the Director is as a tenant-at-will only, that this status and the restrictions contained in that agreement should be looked at by the Assessor in determining the assessed value of the land, and that the Assessor should, because of the terms of the agreement and of the *Veterans' Land Act* (some of which are recited above), assess the land in question in the light of those restrictions and not as though it were owned in fee by the appellant. The respondent takes the position, however, that the appellant has an interest in the land in question, the exact nature of which it is not necessary to define, and that that interest must, by reason of section 333 (2) of the *Municipal Act*, be assessed at the actual value of such land and the improvements thereon, without consideration being given to the contractual relationship between the appellant and the Director.

The Board had previously considered this point, or at any rate one that appears exactly analogous to it, in the matter of *McRae and the City of Nanaimo*, which was an appeal heard April 16, 1957. In that case the Board held (with one of its three members dissenting) that if a person owning freehold subject to statutory restrictions in title is to be assessed in consequence on a lower basis, that a purchaser under an agreement subject to special statutory restrictions on his right to deal with the land would be entitled to the same consideration, and in the result applied a restriction to the land assessment of 20 per cent, diminishing from year to year during the period the restrictions continued in effect. The Board reached this conclusion on the authority of *C.N.R.* v. *City of Vancouver* (1950) 2 W.W.R. 337, and on a consideration of section 241 of the *Municipal Act*, chapter 232, R.S.B.C. 1948 (which has since been repealed, and now appears in a new form as section 333 of the present *Municipal Act*, but it should be noted that in both of these sections

there appears the identical words that land such as that with which we are concerned here shall be entered in the assessment roll in the name of the holder or occupier thereof, "whose interest shall be assessed at the actual value of the lands and improvements"), and indicated in their view that were it not for the decision in *C.N.R.* v. *Vancouver (supra)* it might have been considered that these words meant that lands so held should be assessed on the basis of actual value as if held in fee regardless of the statutory or other restrictions. It therefore becomes necessary, I think, to consider whether or not the Court of Appeal in the case cited above has ruled, either expressly or by implication, on the situation before me in the instant matter.

It does not appear to me that the lands, the assessment of which formed the subject-matter of *C.N.R.* v. *Vancouver (supra)*, were subject, as suggested by the Board, to any statutory restrictions, but that they were, however, subject to two compulsory restrictions on use - namely, by agreement with the City of Vancouver and by the actual need of railway requirements - and of those two restrictions it seems to me that the Court of Appeal laid by far the greater emphasis on the second one - i.e., actual need - and the resultant situation if the land were put to any other use than that to which it was being put.

With respect, it seems, then, that the situation there is very different from that in the instant case where the appellant is restricted from selling during the period of 10 years following the date of his agreement, unless he pays to the Director the cost to the Director of the land, which amounts to $1,400 more than would otherwise be payable. That this, in the appellant's mind, is a restriction there can be little doubt, but it is highly questionable whether or not it can be considered to be a restriction which would affect the "actual value" of the land, as that term has been interpreted. It goes without saying that it would not affect any subsequent purchaser, because such purchaser (unless he were a veteran qualified to receive the benefit of the Act) could not be party to or bound by the agreement, and it seems to me that the restriction imposed on the veteran by his agreement and by the *Veterans' Land Act* is in fact no restriction at all if he does not mind losing the financial advantage he could obtain by virtue of his service and the provisions of the Act. It would therefore seem to follow that the financial advantage which the appellant can gain is made available to him to hold him to the land, pursuant to the expressed intent of the preamble to the Act, and it cannot, in my opinion, be considered that an opportunity for financial gain by remaining on the land for a stated period can constitute such a restriction as to affect adversely the value of the land.

The Assessor is required to assess land and improvements at their actual value, and various attempts have been made to offer a method by which this can be measured under various circumstances. Section 328 of the *Municipal Act* recites various factors to which the Assessor may give consideration in determining the actual value, and the term has been judicially considered. In *Stock Exchange Building* v. *City of Vancouver* (1945) 2 W.W.R. 248, O'Halloran, J., said, at page 249:-

> Actual cash value clearly contemplates the value represented by the price obtainable in a sale by a willing vendor to a willing purchaser, both alive to commercial realities, for cash and not upon extended or unsecured terms. See *Grampian Realties Co.* v. *Montreal East* (1932) 1 D.L.R. 705 (S.C.C.). To my mind it relates to bona fide investment as distinct from speculation. So described and understood, "actual cash value" in section 39 reflects nothing more or less than "actual cash value," "fair market value" or "actual value," the latter term being employed in the general *Municipal Act*, R.S.B.C. 1936, chapter 199, section 223(1).

In *Sun Life* v. *City of Montreal* (1950) S.C.R. 220, it was held "that the actual value which the assessor must find pursuant to the City charter is the exchangeable value or what the building will command in terms of money in the open market, tested by what a prudent purchaser would be willing to give for it."

Although under section 328 of the *Municipal Act* the Assessor may take into consideration any circumstances affecting the value of the lands, it has been held that the peculiar value of certain lands to the owner should not be taken into account; see *C.N.R.* v. *City of Vancouver (supra)* at page 342, where O'Halloran, J., said, "To introduce the peculiar value to the owner as a factor in assessment value is to invoke what Lord Halsbury called the 'blackmail argument.'" It seems to me, as counsel for the Corporation suggests, that if the appellant cannot be more heavily assessed because of the peculiar value to him of this land which he is to get at less than cost to the Director by virtue of his agreement with the Director, he should not be allowed to assert that the value of the land is lessened to him because he must not sell it for 10 years to make this gain. It should be borne in mind that the Assessor is required to assess the *land* and not the *owner*, and it would therefore seem to me that the Assessor should take into account only those restrictions which would bind and affect a prudent purchaser. This opinion is, I think, within the meaning of the finding of the Court of Appeal in *C.N.R.* v. *City of Vancouver*, where the lands in question were restricted in their use to railway terminal purposes only.

In his able argument, counsel for the appellant contended that the status of the appellant by Statute and by agreement as a tenant-at-will is not such a status as to constitute him a "solvent owner" within the meaning of section 328 of the *Municipal Act*, and he pointed to the restrictions on use and disposition of the land contained in his agreement with the Director, of the existence of which the Assessor knows because the Director is the registered owner of the land, while the appellant appears on the roll by virtue of section 333 of the *Municipal Act*. With this contention I cannot agree, because section 333, subsection (2), expressly directs that the interest of the holder or occupier of lands, the fee of which is in the Crown but which are held or occupied otherwise than by or on behalf of the Crown, shall be assessed at the actual value of the land and improvements. That the appellant is the occupier of the lands and that he holds the lands under an agreement with the registered owner and that he has an "interest" in the lands is patent from paragraph (4) of the stated case. The fact that he has an interest in the lands then brings him, in my opinion, within the scope of section 333, and it is not necessary that the extent or the exact nature of the interest be ascertained. This being the case, the Assessor must then proceed to assess the appellant's interest at the actual value of the lands and premises pursuant to section 333, subsection (2), and in so doing he would, in my opinion, be not merely entitled but required to look at section 328 for the help and guidance therein contained.

Counsel for the appellant also submitted that reference to the agreement and to the *Veterans' Land Act* would establish that the field of purchasers available to the appellant is limited if he should wish to sell his land. With this contention I cannot agree, because it is apparent from paragraph 3 of the agreement that the restriction on sale is dependent only on payment in full of the outstanding cost to the Director of the land, and with sale, of course, the other restrictions in the agreement vanish, not being covenants running with the land. This land has an ascertainable liquid value which, in the words of O'Halloran, J., in *C.N.R.* v. *City of Vancouver (supra)* at page 342, "cannot be said to exist in the case of lands restricted to a use that places them in a special class by themselves, entirely removed from competitive sale and interchange." It is, I think, not different in principle from a case where a father promises to give his son the farm if he will stay on it for a certain period of time, or other instances of similar contractual restrictions, and in view of the further words of O'Halloran, J., in the same report at page 341, when, in referring to a legitimate assessment value, he said, "the latter depends on an objective standard that can be applied with fairly reasonable uniformity to all classes of owners alike." I cannot concur in the submission that the appellant's contractual obligation, not running with the land should be regarded by the Assessor in arriving at his assessment.

My answer to Question 1 is in the affirmative.

In connection with the second question, the effect of rezoning of lands by the municipality arises. The stated case makes it clear that at the time the Director purchased the land in question it was zoned in the category of "small holdings," that since acquiring the land the appellant used it for

residential purposes only, and that in September, 1958, the land was rezoned in the category of "residential low density" as defined in the by-law, and in the result then assessed on a front foot basis instead of an acreage basis. The appellant, despite the terms of his contractual obligation with the Director, has since the date of his occupation used the land for residential purposes only, so the privilege, if such it be, of non-conforming use permitted by section 702, subsection (2), of the *Municipal Act* does not extend to the appellant or to this land.

The appellant's counsel contended that the land is required to remain in the "small holdings" category (which permits farming and associated activities, with some restrictions), because of the terms of his agreement with the Director; and, further, because it having been assessed as a small holding when the Director acquired it, an estoppel on any change in assessment thereby arose; and, further, because the appellant is denied the right to use the land as permitted under his agreement; and, further, because such rezoning might reduce the land's value; and for other reasons which seem to me extensions of those already recited. Counsel for the municipality, and I think correctly, summarized the appellant's position into the proposition that because this land had been zoned by the municipality for use as "small holdings" at the time of its acquisition by the Director and the sale to the appellant, then despite the lawful change in the by-law which would normally affect the use to which the land could be put, it should have been assessed by the Assessor on the basis that it could be used only as a "small holding," and thereupon pointed out that the rezoning by-law by itself does not prevent the appellant from using the land according to the terms of the written agreement. With this I have to agree since section 702, subsection (2), permits the continuance of non-conforming use, and if the appellant had used his land for farming pursuant to the agreement rather than for residential purposes only, such use would be allowed despite the change in category occasioned by the by-law. Further, the by-law was apparently lawfully passed, and it does not seem to me that this is the place and time to impugn it.

The foregoing seems, however, to avoid rather than approach the question as it is framed, which has inherent in it the propriety or otherwise of the Assessor assessing the land with knowledge of the rezoned status of the land and in the circumstances which he found existing. It should be borne in mind that it is not the appellant nor the Director who is being assessed; it is the value of the interest of the appellant in the land which is being assessed, and the Assessor is required by section 333, subsection (2), to assess that interest at "at actual value of the land and improvements which the appellant occupies or holds." That being the case, the Assessor can and should attempt to determine this actual value as fairly and properly as he can, bearing in mind the factors which are recited in section 328 of the *Municipal Act*, and the various judicial explanations of the meaning of "actual value" of which he has knowledge. He has discretionary powers, and provided they are properly exercised and he has not proceeded on some wrong principle or there is a manifest injustice, his valuations should not be disturbed. In the *Sun Life Case (supra)*, Taschereau, J., said at page 246:-

> In coming to this conclusion I have kept in mind that it is not the function of a Court of Appeal to disturb the valuations made by assessors, but in certain cases it is its duty to do so, particularly when the assessors have proceeded on a wrong principle, and when there is a manifest injustice.

It seems to me that the existence of a zoning by-law in his municipality is one of the factors an Assessor would have to consider in making an assessment of land, and that he would have to assess lands that are zoned so as to fall into the same category in which they fall in order to achieve the "fairly reasonable uniformity" to which O'Halloran, J., referred *(supra)*. By that I mean that he would have to bear in mind that certain parcels are subject to certain restrictions in their use by reason of the application of the zoning by-law. It seems to me of no real consequence that the Assessor, having considered the status of a certain parcel of land under the zoning by-law, should then, in determining the actual value of that land, use one procedural approach instead of another - i.e., assess on a front foot basis rather than an acreage basis - although the result generally, according to the Assessor's evidence before the Board, would be that a lot within the

residential area and assessed on a front foot basis would be assessed at a larger amount than a similar-sized lot within a small holdings area and assessed on an acreage basis. It is not suggested, as far as I am aware, that in adopting this procedure the Assessor proceeded on a wrong principle or with manifest injustice.

In my view the appellant's property, being situate in a particular zone and zoned accordingly, must be assessed in accordance with the status it thus acquires, and I think, too, that if the proposition of "fairly reasonable uniformity," referred to by O'Halloran, J. *(supra)*, is accepted, then land within a certain zone or area should be assessed by the application of the same objective standard which is applied to neighbouring lands, even if not so zoned. By this I mean that if the appellant's land, although situate in a residential zone, was, by reason of its previous non-conforming use, classified for zoning purposes as a small holding, and farming and animal-raising consequently permitted, then it should be assessed by application of the same objective standard as that which was applied to its neighbour, unless, of course, it was restricted to a use that placed it in a special class by itself, entirely removed from competitive sale and interchange. See the words of O'Halloran, J., in *C.N.R.* v. *Vancouver (supra)*. It therefore must follow that regardless of the validity or invalidity of the zoning by-law vis-à-vis the Director, because of the Crown's immunity, the creation of an estoppel, or otherwise, the Assessor should have assessed the appellant's lands as though zoned for "residential low density" purposes, since that category is, in fact, the category to which the land is entitled, and is the category of those lands which are its neighbours.

Appellant's counsel pointed out that, under the terms of the agreement with the Director, the appellant could be required to farm the land or otherwise fulfil the requirements of the agreement, which could conceivably then be a use contrary to the zoning by-law. This is, of course, all entirely conjectural, but in any event it would not make any difference other than a change in name, since, in my view, the lands should be assessed so as to achieve a fairly reasonable uniformity with the assessment of other like lands in the vicinity. Counsel further argued that the appellant cannot now, because of the effect of the zoning by-law, assign or transfer his land to another veteran who could obtain the benefits of the *Veterans' Land Act* since the use contemplated by the Act is not permitted under the by-law. I have already indicated above my views of the effect of a contractual obligation on an assessment, and since the restriction on transfer referred to by counsel is determinable at any time under paragraph 3 of the agreement, I cannot find that the Assessor should have to consider this in seeking to estimate the actual value of the land.

My answer to the second question is therefore that the Assessor was right in assessing the land as if it were zoned for "residential low density" purposes, as defined by By-law 860, and not as if zoned for small holdings, or, alternatively, free from any zoning restrictions whatsoever.

Under section 51, subsection (4), of the *Assessment Equalization Act* the costs herein are at my discretion, and since it appears that several appeals are awaiting the result of these proceedings, I do not think this appellant should be required to pay costs. Neither, of course, should the municipality. There will therefore be no costs to any party of these proceedings.