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HOME COAL COMPANY LIMITED

v.

THE CORPORATION OF DELTA

Supreme Court of British Columbia (No. X480/60)

Before: MR. JUSTICE ARTHUR E. LORD

Vancouver, June 24, 1960

C.N. Nylander for the Appellant
L.A. King for the Respondent

Case Stated by Assessment Appeal Board

1. The land which is the subject of this appeal consists of 47 urban-size lots situated in the residential area of North Delta. The lots were all vacant and assessed for 1960 on a basis of $12 per front foot for sewered lots. There were two other parcels consisting of small acreage upon which the Board made a decision, but those two parcels are not the subject of this appeal.

2. The company appealed to the Court of Revision, which confirmed the assessment. From the decision the company appealed to the Board.

3. The company's grounds of appeal were that it had provided sewer service and paved roads to service the lots under appeal in the subdivision and the municipality's access road was in poor condition. The evidence established that the municipality had made no firm commitment to pave the access road, although it appeared that some verbal promise of consideration may have been given by some official.

4. The Assessor made the assessment by applying an average market value on land for the years 1954 to 1958, inclusive, within the municipality and established his assessment on all lands in the municipality at 60 per cent of that value (save and except farm lands). The Assessor submitted a detailed assessment-sales ratio analysis both for the entire municipality and also the North Delta area as evidence, which disclosed that the assessment-sales ratio median for residential vacant land in the North Delta area, in which the land under appeal is situated, was 58.5 per cent on 373 sales. The evidence to establish that the assessment on land in the North Delta area was fair and equitable on comparing one piece of land therein with another was not contradicted by the company.

5. The Assessment Appeal Board did not accept the company's grounds of appeal, but stated that the assessment-sales ratio analysis submitted by the Assessor revealed the 1959 assessment ratio to sales in 1955 for all vacant land within the municipality was 95.6 per cent, and that the assessment-sales ratio median for residential vacant land in the North Delta area was 78.5 per cent, based on 39 sales of the said 373 sales, and that a recalculation based on the median ratio indicated that the proper assessed value for 1960 should be $10 per front foot for sewered lots and $8 per front foot for unsewered lots. The Board then directed the Assessor to

amend his assessment roll to reflect the adjustments required to the assessment of the 47 urban lots that are the subject of this appeal. The Board's decision is filed herewith.

6. The Corporation of Delta, being a person affected by the decision of the Board, within the meaning of the *Assessment Equalization Act*, acting upon the recommendation of the Assessor duly appointed for The Corporation of Delta, and upon resolution of its Municipal Council, required the Board to state a case for the opinion of this Honourable Court pursuant to section 51, subsection (2), of the said Act. A certified copy of the resolution is filed herewith.

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

> "1. Was the Board right in reducing the amount of the assessment of the lands under appeal where it bore a fair and just relation to the value at which other lands were assessed in the municipality, but where, although the assessed values of such lands were not in excess of actual value under section 37 (1) of the *Assessment Equalization Act*, they were in excess of the assessed values required by virtue of section 37 (3) of the said Act and the *Assessment Validation Act, 1960*?
>
> "2. Was the Board right in basing its decision on grounds brought out in the evidence, but not advanced by the appellant?
>
> "3. Does the Board's decision constitute a valid determination of the appeal as required by the *Assessment Equalization Act* and amendments thereto and the *Assessment Validation Act*?"

For convenience a copy of Order in Council No. 541/59 is filed herewith.

Reasons for Judgment

This is a submission by way of stated case as submitted by the Assessment Appeal Board pursuant to section 51 (2) of the *Assessment Equalization Act, 1953*.

The land involved consists of 47 vacant urban-size lots in North Delta, and were assessed for 1960 on a basis of $12 per front foot for sewered lots. The assessment was confirmed by the Court of Revision, but on appeal to the Board the assessment was reduced to $10 per front foot for sewered lots and $8 per front foot for unsewered lots, and directed the Assessor to amend the assessment roll accordingly.

The recital of facts in the stated case states the company's grounds of appeal were that it had provided sewer service and paved roads to service the lots and the municipality's access roads were in poor condition.

The stated case requires the consideration of section 46 (1) and section 37 (1), (2), and (3) of the said Act, which read as follows:

> 46. (1) The amount of the assessment of real property appealed against may be varied by the Board, unless;
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> (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.

> 37. (1) The Assessor shall determine the actual value of land and improvements. 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 that such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value; and 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 improvements so used shall be valued as the property of a going concern.
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> (2) The Assessor shall also determine the base-year actual value of land and improvements, which shall be what the actual value of land and improvements determined under subsection (1) would have been in the base year. The Lieutenant Governor in Council shall specify the base year to be used with respect to both land and improvements or the base year to be used with respect to land and the base year to be used with respect to improvements.
>
> (3) The assessed values of land and improvements for the purposes of real property taxation under the *Public Schools Act* are the amounts that bear to the base-year actual values as determined under subsection (2) by the Assessor the ratios or percentages as set by Order of the Lieutenant-Governor in Council, and the Lieutenant-Governor in Council may set the same ratios or different ratios, to be applicable to land and to improvements for the said purposes.

The latter section is as amended in 1959.

Pursuant to section 37 (2), the Lieutenant-Governor in Council set the base year to be used with respect to land to be 1955, and pursuant to section 37 (3) provided that "the assessed value of land shall bear to the base-year actual value of land the ratio of 60 to 100, or 60 per centum . . ."

It is clear from the transcript and the stated facts that the Assessor made the assessment by applying an average market value on land for the years 1954 to 1958 and no change was made for the 1960 assessment in accordance with section 37 and the Order in Council above referred to, requiring 1955 to be taken as the base year.

It is contended that the Board has exceeded its jurisdiction in that its decision goes beyond what it is empowered to do under section 46 (1), because the evidence showed that the assessment of the lands in question bore a fair and just relation to the value at which other lands were assessed in the municipality and also that the assessed values were not in excess of actual value as determined under section 37 (1).

This contention is reflected in Question 1 as submitted:-

> "1. Was the Board right in reducing the amount of the assessment of the lands under appeal where it bore a fair and just relation to the value at which other lands were assessed in the municipality but where, although assessed values of such lands were not in excess of actual value under section 37 (1) of the *Assessment Equalization Act*, they were in excess of the assessed values required by virtue of section 37 (3) of the said Act and the *Assessment Validation Act, 1960*?"

The whole of section 37 must be considered. That brings into consideration the Order in Council setting the base year which the Assessor was required to take into consideration but failed to do, although there were 39 sales of vacant residential lands in North Delta during that year, which showed a sales ratio median of 78.5 per cent, considerably more than 60 per cent. The Board may vary the assessment, unless the assessed value is not in excess of actual value as determined under section 37. The assessed values here are in excess of the limitations provided

under section 37 and also of the *Assessment Validation Act, 1960*. Question 1 is therefore answered in the affirmative.

Questions 2 and 3 are also answered in the affirmative. They read as follows:

> "2. Was the Board right in basing its decision on grounds brought out in the evidence but not advanced by the appellant?
>
> "3. Does the Board's decision constitute a valid determination of the appeal as required by the *Assessment Equalization Act* and amendments thereto and the *Assessment Validation Act*?"

If the evidence shows that the Assessor had arrived at an assessment by ignoring a statutory requirement, the Board, in my opinion, would be bound to take action with respect thereto.

The exhibits may be returned to the appellant. Costs to the respondent.

At the opening of the hearing the appellant made application to amend the stated case as submitted by the Board. I feel that the questions submitted are in proper form to cover the matters argued, and in any event the Court has no power to grant such an amendment. The Court may, if it thinks fit, cause a case to be sent back to the Board for amendment (section 51 (6) of the Act), but that was not the application made herein, and I do not feel it was necessary to send it back.