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**SHELL OIL COMPANY OF CANADA, LIMITED
and
STANDARD OIL COMPANY OF BRITISH COLUMBIA LIMITED**

v.

THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER

Supreme Court of British Columbia (X604/61)

Before: MR. JUSTICE F.CRAIG MUNROE

Vancouver, October 5, 1961

J.S. Maguire for Shell Oil Company of Canada, Limited.
H.P. Legg for Standard Oil Company of British Columbia Limited.
A.B. Nash for the Respondent District of North Vancouver.

Case Stated by Assessment Appeal Board

1. The parcels of land which are the subject of this appeal and which were the subject of the appeal aforementioned to the Assessment Appeal Board are service station sites which are occupied by the appellant companies within the District of North Vancouver.

2. The appellant, Shell Oil Company of Canada, Limited, leases three parcels of land located at the following addresses and bearing the following legal descriptions and registered owners:-

(1) 2815 Mountain Highway, District Lot 2022, Block 46/48, Lots 35 to 37, Plan 1340, Lynn Valley Investments Ltd.

(2) 1705 Marine Drive, District Lot 825, West Part of 10/11 A, Plan 8220, J. F. Downs and P. J. Walton, executors.

(3) 1190 Marine Drive, District Lot 552, Block 35/49, Lots 1 to 3, Plan 7949, Sun Life Assurance Company of Canada Limited.

3. The appellant, Standard Oil Company of British Columbia Limited, is the registered owner of three parcels of land located at the following addresses and bearing the following legal descriptions:-

(4) 1490 Main Street, Lot D and Lots 22 and 23, Block 25, District Lot 204, Group One, New Westminster District, Plan 1340.

(5) 2920 Lonsdale Avenue, Lot 19, Block 3, District Lot 801, Group One, Plan 10627.

(6) 2979 Mountain Highway, Lot 2 and 3, except north 100 feet (Explanatory Plan 3032), Block 58, District Lot 2022, Group One, New Westminster District, Plan 1177.

4. The assessments for land in respect of the above-mentioned parcels for the years 1960 and 1961 were as follows:-

A. Properties Used by the Appellant, Shell Oil Company of Canada, Limited

Location	1960 Assessment	1961 Assessment
(1) 2815 Mountain Highway	\$2,510	\$8,875
(2) 1705 Marine Drive	4,600	6,475
(3) 1190 Marine Drive	27,655	29,740

B. Properties Owned by the Appellant, Standard Oil Company of British Columbia Limited

Location	1960 Assessment	1961 Assessment
(4) 1490 Main Street	\$8,010	\$11,315
(5) 2920 Lonsdale Avenue	2,350	9,070
(6) 2979 Mountain Highway	2,395	9,880

5. The appeal in respect of the 1961 assessments of each of the aforementioned parcels of land was taken to the Court of Revision, which confirmed the assessments on February 22, 1961. From that decision of the Court of Revision the appellants appealed to the Assessment Appeal Board.

6. The appellant, Shell Oil Company of Canada, Limited, appealed to the Assessment Appeal Board on the following grounds:-

- (1) That the properties were assessed at a rate that was in excess of actual value.
- (2) That the properties were assessed at a value that did not bear a fair and just relation to the value at which other lands are assessed within the district.

7. The appellant, Standard Oil Company of British Columbia Limited, appealed to the Assessment Appeal Board on the following among other grounds:-

- (1) The assessments are unfair and incorrect.
- (2) The said lands have not been assessed at their actual value.
- (3) The said assessments are excessive.

8. At the hearing before the Assessment Appeal Board, evidence was adduced on behalf of the appellant, Shell Oil Company of Canada, Limited, establishing that the assessments of the service-station lands under appeal by the said appellant, all located in a district zoned for local commercial use, were assessed at a higher value than other commercial lands in the same district (and with the same zoning).

9. At the hearing the appellant, Standard Oil Company of British Columbia Limited, adduced evidence through an independent real-estate appraiser that the lands owned by the said appellant were assessed at a higher value than other commercial lands adjoining

or near to the lands of the said appellant (all such adjoining or near to lands being situated in a local commercial district).

10. Each appellant adopted the evidence adduced by the other appellant.

11. Evidence was adduced on behalf of the Assessor at the said hearing before the Assessment Appeal Board that the assessments in respect of the properties under appeal had been calculated by making an analysis of certain service station land sales, and applying a unit value calculated from such sales to the lands in respect of which the assessments are appealed.

12. The majority of the Assessment Appeal Board found as follows:-

(1) That various service-station sites had been purchased over the past years at prices which in the opinion of the Assessor were substantially above the going value of similar lands.

(2) That in the opinion of the Assessor the service-station sites commanded premium prices and should be assessed accordingly.

(3) That the Assessor assessed service-station sites on a special basis which upon the evidence bore no relation to the assessed values on commercial lands in the vicinity of these sites.

(4) That one of the reasons of the Assessor for such valuation on a special basis was that while the lands were zoned for commercial purposes, such commercial zoning was insufficient for the purposes of erecting service-stations and that special permits required for service-station sites from the Municipal Council gave the lands special value.

(5) The majority of the Assessment Appeal Board found that the lands under appeal had acquired a special value by the issuance of the special permits hereinbefore mentioned, which run with the land.

13. The reasons of the majority of the Assessment Appeal Board are attached hereto. One member of the Assessment Appeal Board dissented from the majority; his reasons for judgment are attached hereto.

14. The appellant companies being affected by the decision of the Assessment Appeal Board required the Board to submit a case for the opinion of this Honourable Court on the basis of establishing the correctness in law of the assessments hereinbefore referred to.

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

"1. Was the Board correct in deciding that the special value accruing to the lands under appeal (by virtue of the special permits granted in respect thereof) was not value to the owner?

"2. Is the (principle or) basis upon which the assessments under appeal were determined correct in law in view of the finding of the Board that the Assessor had assessed the service-station sites' on a special basis which upon the evidence bears no relation to. the assessed values on commercial lands in the vicinity of these sites'?

Reasons for Judgment

This is an appeal by way of stated case from a decision of the Assessment Appeal Board, wherein the Board dismissed the appeal of the appellant oil companies and sustained the decision of the Court of Revision in upholding the 1961 assessment upon the lands of the appellants. The lands in question are either owned or leased by the appellants and are used by them as service-station sites within the District of North Vancouver.

The appellants allege that the assessments are too high and do not bear a fair and just relation to the value on which similar or neighbouring commercial property within the district is assessed, and that the assessment is based upon a wrong principle of law in that it represents the "value to the owner" concept rather than the "actual value" concept, which is the proper standard to be applied for assessment purposes.

The duty of the Assessor in assessing land is that prescribed by section 37 (1) of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960, which reads as follows:

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.

Section 330 of the *Municipal Act*, chapter 255, R.S.B.C. 1960, is to like effect Section 46 (1) of the *Assessment Equalization Act* enacts as follows:-

46. (1) 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

(b) the assessed values of such land and improvements are not in excess of actual value as determined under section 37.

Section 356 (4) of the *Municipal Act* is to like effect.

The lands in question, like similar neighbouring commercial lands, are zoned for commercial purposes but are different there from in one important respect namely, that the appellants' lands, unlike neighbouring commercial lands, have special permits obtained from the Municipal Council which run with the land and which enable appellants' lands to be used as service-station sites. Such permits are issued in limited numbers, and while they authorize use of the lands for service-station sites, they do not preclude their use for other commercial purposes.

It is clear from the evidence before the Board that such lands, with such rights, command higher prices in the market than similar or neighbouring commercial property not having such special permit, and it was upon that basis that a higher assessment was imposed. The appellants contend that, nevertheless, their lands ought not to be assessed any higher than the less valuable similar neighbouring commercial property and that to do so is to assess on a "value to the owner" basis. The submission made before me on behalf of the appellants may be summarized in this way. While not disputing that the permit gives special value to the lands in question, the appellants say that that is a value only to a particular owner or class of owners, to

wit, oil companies who may desire to operate a service-station thereon, and such value is not assessable. But there is, I think, nothing in the evidence to support that submission or to controvert the evidence to the effect that the appellants and other oil companies, for reasons perhaps best known to them, have voluntarily in recent years been paying premium prices to obtain the ownership or a lease of lands from anyone who owned suitable lands having such permit. The Assessor testified before the Board, and the evidence supports his submission, that he had "made no attempt to make any estimate of value to the owner." To make such a valuation he would necessarily have had to consider many factors other than the price paid for the lands to determine the present value to the particular owner thereof. See *Woods Manufacturing Co. Ltd. v. The King* (1951) S.C.R. 504.

It is clear from the authorities that "value to the owner," so well established as the appropriate standard of determining compensation payable to owners of property being expropriated, is not a proper basis upon which to assess lands for taxation purposes. See *Re Crown Zellerbach (Canada) Ltd.* (1959) 16 D.L.R. (2d) 144; *Montreal Island Power Co. v. Town of Laval Des Rapides* (1935) S.C.R. 304; *Canadian National Railway Co. v. City of Vancouver* (1950) 2 W.W.R. 337. But is the assessment imposed upon the appellants' lands herein the application of a "value of the owner" concept in the sense that the higher value is attributable to a subjective, utility, or necessity value rather than an objective value? I think not. This is not a case where an Assessor has valued a particular parcel of land at a value higher than the value placed upon the lands of others because the owner of the particular land paid or would be willing to pay a higher price rather than fail to obtain it or be dispossessed therefrom because it has a special value to him by reason of his ownership or use of the adjoining property, or some other such special circumstance. Rather, this is a case of higher assessment being imposed because the appellants' lands have a greater value, not alone to the appellants, but to any owner thereof, by reason of the fact that appellants' lands, unlike most commercial lands in the District of North Vancouver, and unlike the similar neighbouring commercial property, have attached to them a permit which authorizes their use as service-station sites, and willing purchasers are available to buy them for use as such. In short, the appellants' lands are to that extent dissimilar and are assessed higher than similar neighbouring commercial property because they are capable of and have been bought and sold in the open market during recent years at higher prices than such similar neighbouring commercial property and ought, therefore, to be assessed accordingly. See *Grampian Realties Co. v. Montreal East* (1932) 1 D.L.R. 705. It is no part of the task of the Assessor to consider why lands with such special permit fetch a higher price in the market. It is sufficient that it is so. It may be noted, in passing, that if the Assessor had failed to assess appellants' lands at a higher value than similar neighbouring commercial property not having such special right, then, in view of the differing market values, his assessment of the latter properties would not "bear a fair and just relation to the value" of the appellants' lands.

In my view the Assessor did not err in the application of any principle of law in making his assessments herein.

The questions submitted for the opinion of the Court are as follows:-

- "1. Was the Board right in refusing to reduce the assessments herein on the grounds that special value attributed to the lands by the Assessor was not, as claimed by the appellants, value to the owner?
- "2. Is the basis upon which the assessments under appeal were determined correct in law in view of the findings of the Board that the Assessor had assessed the service-station sites' on a special basis which upon the evidence bears no relation to the assessed values on commercial lands in the vicinity of these sites'?

The answer to both questions is in the affirmative.