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TIDEWATER DEVELOPMENT LIMITED

v.

CITY OF PORT MOODY

Supreme Court of British Columbia (C665/62)

Before: MR. JUSTICE H.W. MCINNES

Vancouver, October 30, 1962

T.P. Fee for the Appellant
Paul B. Paine, Q.C. for the Respondent

Case Stated by Assessment Appeal Board

1. The property, the subject of this appeal, comprises two parcels of vacant land owned by Tidewater Development Limited, being the West Half of the East Half and the East Half of the West Half of District Lot 190, Group 1, New Westminster District, and described in Exhibit 1 filed herein. Part 3 at page 21, as being uncleared and unimproved and although zoned industrially, having no trackage. The waterfrontage presently adds little value to the land (Board 1961 decision). Both parcels lie side by side between Murray Street and the waterfront, the larger parcel adjoining Canadian Western Pipe acreage of like nature with the smaller parcel adjoining like property owned by the appellant.

2. The assessment was placed on the lands under appeal pursuant to section 330 of the *Municipal Act* by the Assessor in accordance with methods he considered proper. The method he used for assessing both parcels under appeal is known as "market approach," and he relied solely upon a single sale from which he derived the current market values and "actual value" for the purpose of the assessment.

The assessment on the lands under appeal amounts to \$57,000 reflecting actual market value of \$114,000.

3. The appellant's evidence is largely contained in a brief filed as Exhibit 1 herein, and prepared by a qualified land appraiser who testified that the actual market value of the larger parcel of land is \$40,344 and the smaller parcel of land being \$16,668. The appellant's appraiser stated that there have been no sales of similar unimproved lands within the City of Port Moody since 1957, and he treated the single sale used by the Assessor as a 1957 sale consummated in 1961 pursuant to agreement. In addition, in his opinion, the single sale had little relationship to actual market values because of the high purchase price paid and because it was in the nature of a "forced purchase"; that is, the purchaser had to complete the transaction pursuant to a development scheme while the vendor was not required to sell. As there were no recent sales within the City of Port Moody, the appellant's appraiser looked elsewhere in the same School District No. 43,

and employed the comparative market approach to sales to arrive at his considered opinion of actual market value for the lands under appeal.

4. The Board sustained the assessment without giving reasons. The Board's decision is filed herewith.

5. The oral and documentary evidence is filed herewith.

6. Tidewater Development Limited, being affected by the decision of the Board, has requested the Board to submit a case for the opinion of this Honourable Court.

Wherefore the following questions are humbly submitted:

"1. Was the Board right in law in sustaining the assessment having regard for section 46 (1) of the *Assessment Equalization Act*?

"2. Was the Board within the provisions of section 46 of the *Assessment Equalization Act* in sustaining an assessment based on a single sale alleged to establish 'actual value'?"

Reasons for Judgment

This matter comes before me by way of a case stated by the Assessment Appeal Board on the application of Tidewater Development Limited. The Board in question has upheld the assessment fixed by the Court of Revision for the City of Port Moody concerning the assessment of land of the applicant situated within the City of Port Moody, Province of British Columbia.

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

"1. Was the Board right in law in sustaining the assessment having regard for section 46 (1) of the *Assessment Equalization Act*?

"2. Was the Board within the provisions of section 46 of the *Assessment Equalization Act* in sustaining an assessment based on a single sale alleged to establish 'actual value'?"

Section 46, subsection (1), of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960, as amended by chapter 3, section 6, of the Statutes of British Columbia, 1961, reads as follows:

46. (1) The amount of the assessment of real property appealed against may be varied by the Board where, in the opinion of the Board, either

(a) the value at which an individual parcel under consideration is assessed does not bear 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; or

(b) the assessed values of such land and improvements are in excess of the assessed value as properly determined under section 37.

This section has been judicially interpreted by Wilson, J.A., in the case of *Re Assessment Equalization Act: re Appeals of Shell Oil Company of Canada Limited and Standard Oil Company of British Columbia* (1962) 38 W.W.R. (N.S.), page 695. I have perused the evidence which was adduced before the Assessment Appeal Board. and as a result I find there was evidence before the Board which would justify sustaining the assessment. The members of the Board have given no reasons for upholding the assessment, but I must assume that they did so in the light of the evidence adduced before them. It is not for me to interfere with any finding of that Board when there was evidence to support those findings. In the result, the appellant has not brought itself within the provisions of section 46 (1) of the *Assessment Equalization Act* (*supra*). Accordingly,

the answer to the first question propounded in the case stated must be answered in the affirmative; having thus answered Question 1, it becomes unnecessary to answer Question 2.

The application is dismissed.