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S.L. WHITEHOUSE

v.

THE CORPORATION OF THE DISTRICT OF BURNABY

Supreme Court of British Columbia (No. 727/62)

Before: MR. JUSTICE F. CRAIG MUNROE

New Westminster, October 18, 1962

D.A. Hogarth for the Appellant
W.L. Stirling for the Respondent

Case Stated by Assessment Appeal Board

Pursuant to the provisions of section 51 of the *Assessment Equalization Act*, being chapter 18 of the *Revised Statutes of British Columbia, 1960*, and amending Acts, application has been duly made by the above-named appellant for a case to be stated to this Honourable Court by the Assessment Appeal Board to determine the following questions of law arising out of the following facts heard by the Assessment Appeal Board upon the appeal of the appellant pursuant to the *Municipal Act* and the said *Assessment Equalization Act*:

1. The appellant, S. L. Whitehouse, is the registered owner of certain lands and premises situate in the Municipality of Burnaby and known and described as Lot 33, District Lot 28 North, Plan 632, New Westminster District. These lands and premises are situate on Edmonds Street and have a frontage of 72 feet thereon and extend in depth to 19th Avenue, a distance of 308 feet. The lot is rectangular in shape, flat topography, and receives normal municipal services.
2. The lot is zoned to a depth of 132 feet off Edmonds Street for commercial purposes and for its remaining depth to 19th Avenue for residential purposes. The only access to the lot from the rear is off 19th Avenue.
3. The improvements on the lot front on Edmonds Street and consist of a hollow concrete-block building of substandard construction and workmanship with visible physical depreciation. The walls and ceilings are of plaster board. The building is divided into two parts, each of which has a toilet and wash basin. There is one hot-water heater provided by the owner for the whole of the building and one which is non-assessable provided by a tenant.
4. One part of the building is used as a pool-hall (this is the larger part) and the other houses a sign-writing establishment.
5. The original assessment placed upon the lands was \$8,065. This was reduced by the Court of Revision to \$7,825, and this figure was sustained by the Board. The original assessment placed upon the building was \$8,230. This was sustained by the Court of Revision but lowered by the Board to \$7,400.

6. Evidence was given on behalf of the appellant by Ivor L. Parry, an accredited appraiser of lands, who concluded that the value of the lands and improvements, if marketed at the time of assessment, would be \$20,000 to \$21,000 if calculated by one method and \$14,400 if calculated by another.

7. Mr. Parry came to his conclusions as follows:

(a) He found that similar lots to the lot in question had been sold, and he deducted from these sale prices the value of the improvements thereon as determined by the assessment department. He then compared the resultant with the lot in question, and further concluded that with an extra allowance of \$1,000, more or less, for depth the value of the land should not exceed the sum of \$11,000.

(b) He thereupon considered the value of the improvement at its replacement cost less depreciation to date. Upon determining from a contractor that the square-foot construction cost was approximately \$4 per square foot and adding in the purchase price of extras, he then deducted depreciation and concluded that the value of the improvement was \$10,280.

(c) He then added to this value the land value that he had previously determined and concluded that the whole of \$20,280 might properly reflect the value determined by this method.

(d) In order to check his prior computation, he then proceeded to determine the value by capitalization of the revenue from the rentals of the building received by the owner. This process projected a value of \$14,400 as the highest price that would be paid by an investor if the property were on the market.

(e) He contended finally that the assessed value should not reflect a market price over \$21,000 and submitted that he felt a good market price would be the sum of \$14,400.

8. The Assessors determined the value of the land, and after downward modification of same by the Court of Revision and this Board such was finalized at the sum of \$32,110.

9. In determination of these values, one Assessor determined the value of land, and one working independently of the first, the value of the improvements.

10. The Assessor who valued the land, Mr. Morry, rated the front part of the subject property-that is that on Edmonds Street-as commercial property to a depth of 132 feet and the remainder thereof as residential property.

11. Mr. Morry determined his rates by comparing lot sales in commercial and residential areas of comparable property, and applying the foot front rate with a depth factor to the commercial portion of the property he arrived at a value of \$5,515. By applying a foot front rate to the residential portion of the property he arrived at a figure of \$2,311. These figures total \$7,825, a figure which was determined before the Court of Revision as the Assessor had originally inserted \$8,065. The final figure of \$7,825 indicated a market value of \$15,650 for the land alone.

12. It was common ground that should any subdivision of the land have taken place, then no access to the rear of either portion of the properties would be permissible, and access to the rear of the commercial premises was now being enjoyed over that which had been considered residential and fronted on 19th Avenue.

13. Mr. May assessed the improvements. He determined the replacement cost by the use of the Provincial Government manual. He stated that this cost would be \$5.60 a square foot but could go as low, according to his own opinion, as \$4 and maybe less. Using the \$5.60 figure and applying same to the square footage, after allowances for depreciation. Mr. May determined the value of the improvement to be \$20,260 less depreciation of 17½ per cent, which netted \$16,460. This reflected an assessed value of \$8,230. This was reduced by the Board for the reasons hereinafter mention to \$7,400.

14. To complete the actual value of lands and improvements, the value determined by Mr. May was added to the value determined by Mr. Morry, and the whole indicated the previously mentioned amount of \$32,110.

15. The Board found:

With respect to the land, a great deal of sales evidence was submitted by both parties. The appellant, through his agent, who has had extensive experience in the valuation of real property, submitted a larger number of sales, as evidence to support his contention that the land was not worth more than \$10,000 on the market.

However, despite the multiplicity of sales submitted, it is noted that most related to lots of much less depth than that under appeal. When carefully analysed and with full regard to the value of the rear portion as reflected in sales, the Board finds that the appellant's valuation is substantially correct for a lot of that size to standard depth. Some value, however, must be attributed to the rear portion. Having regard to this, the Board is of the opinion that the assessment on the land is correct, and the appeal in this respect is dismissed.

With respect to the improvements, other considerations apply. The building is used for a billiard hall, and a small portion is used by a sign painter. The revenues are extremely small when related to the assessment of the improvements. The property is located in an area on Edmonds Street which does not command substantial commercial values. Commercial development along Edmonds, while spotty, is concentrated at the intersection with Douglas Road and in the area near Kingsway. From the knowledge which the Board has of this area, it is quite apparent that a substantial amount of economic obsolescence has affected the area of Edmonds Street close to Sixth Street. Some regard must be had for the existing rentals. In view of all the circumstances the Board directs that the improvement assessment be reduced to \$7,400.

The Assessor will amend his assessment roll accordingly, and in view of the divided result there will be no order as to costs.

16. The appellant has asked for a stated case proposing the following questions of law:

"1. Whether the said Board failed to determine 'actual value' in confirming the assessment of the said land at \$7,825.

"2. Whether the said Board failed to determine 'actual value' in reducing the assessment of the said improvements from \$8,230 to \$7,400.

"3. Whether the said Board failed to determine the 'actual value of land and improvements' in arriving at its decision, and whether its decision is erroneous because of such failure.

"4. Whether the said Board in arriving at its decision failed to give proper weight to market value as related to 'actual value.'

"5. Whether the said Board erred in accepting the evidence of one appraiser on behalf of the said Corporation of the District of Burnaby in respect to land value and another appraiser for the said Corporation in respect to improvements value without requiring evidence of the 'actual value' of the said lands and improvements as a whole.

"6. Whether the said Board in arriving at its decision in respect to the said land assessment failed to apply the principle of 'foot frontage with a depth factor' and instead applied a front footage formula in respect to both the front and rear lines of the said lot.

"7. Whether in arriving at its decision the said Board erroneously applied two different uses, or alternatively two different zonings-that is to say, 'commercial' and 'residential'-to the said lot."

Reasons for Judgment

This is an appeal by way of a case stated by the Assessment Appeal Board brought by the appellant taxpayer pursuant to section 51 of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960.

The judgment of the Board of Appeal reads as follows:

With respect to the land, a great deal of sales evidence was submitted by both parties. The appellant, through his agent, who has had extensive experience in the valuation of real property, submitted a larger number of sales, as evidence to support his contention that the land was not worth more than \$10,000 on the market.

However, despite the multiplicity of sales submitted, it is noted that most related to lots of much less depth than that under appeal. When carefully analysed and with full regard to the value of the rear portion as reflected in sales, the Board finds that the appellant's valuation is substantially correct for a lot of that size to standard depth. Some value, however, must be attributed to the rear portion. Having regard to this, the Board is of the opinion that the assessment on the land is correct, and the appeal in this respect is dismissed.

With respect to the improvements, other considerations apply. The building is used for a billiard hall, and a small portion is used by a sign painter. The revenues are extremely small when related to the assessment of the improvements. The property is located in an area on Edmonds Street which does not command substantial commercial values. Commercial development along Edmonds, while spotty, is concentrated at the intersection with Douglas Road and in the area near Kingsway. From the knowledge which the Board has of this area, it is quite apparent that a substantial amount of economic obsolescence has affected the area of Edmonds Street close to Sixth Street. Some regard must be had for the existing rentals. In view of all the circumstances the Board directs that the improvement assessment be reduced to \$7,400.

The Assessor will amend his assessment roll accordingly, and in view of the divided result there will be no order as to costs.

The questions proposed for the opinion of the Court were as follows:

"1. Whether the said Board failed to determine 'actual value' in confirming the assessment of the said land at \$7,825.

"2. Whether the said Board failed to determine 'actual value' in reducing the assessment of the said improvements from \$8,230 to \$7,400.

"3. Whether the said Board failed to determine the 'actual value of land and improvements' in arriving at its decision, and whether its decision is erroneous because of such failure.

"4. Whether the said Board in arriving at its decision failed to give proper weight to market value as related to actual value.'

"5. Whether the said Board erred in accepting the evidence of one appraiser on behalf of the said Corporation of the District of Burnaby in respect to land value and another appraiser for the said Corporation in respect to improvements value without requiring evidence of the 'actual value' of the said lands and improvements as a whole.

"6. Whether the said Board in arriving at its decision in respect to the said land assessment failed to apply the principle of 'foot frontage with a depth factor' and instead applied a front footage formula in respect to both the front and rear lines of the said lot.

"7. Whether in arriving at its decision the said Board erroneously applied two different uses, or alternatively two different zonings-that is to say, 'commercial' and 'residential'-to the said lot."

Upon the hearing before me, counsel for the appellant stated that the above questions could be effectively summarized into the following two questions:

"1. Did the Board give proper effect to the meaning of section 37 when it concluded that the 'actual value of the land and improvements' meant the sum of the value of the land and the value of the improvements, each being separately determined from the other without regard to whether or not the whole property could be marketed by a willing vendor to a prudent purchaser for the total amount?

"2. Did the Board depart from proper principles of determining 'actual value' set out in section 37 when it accepted the evidence of Mr. Morry (a municipal appraiser who appraised the land) to the effect that the front part of the land could sustain a value based on a commercial purpose and the rear based on residential use, in the absence of evidence of the effect on values of each part that such duality of purpose would impose?"

On their face, none of the above questions appear to raise a question of law, but counsel for the appellant submits that the Board proceeded on a wrong or improper basis because the assessment on "actual value of the land and improvements" was based upon the evidence of one appraiser in the employ of the Assessor who determined and testified as to the value of the land only, and another who determined and testified as to the value of the improvements only, the resulting sum being the "actual value" assessed by the Assessor and sustained (with some reduction in the assessment on improvements) by the Board. The contention of the appellant is that an error in law thereby occurred. It may be observed in passing that the same technique was used by the appraiser who testified on behalf of the appellant. Counsel for the appellant submits that while that may be so, his appraiser considered and testified as to the market value of the lands and premises, which, he says, the appraisers who testified before the Board on behalf of the Assessor did not do. In short, it is alleged that the latter appraisers and the Board did not direct their minds to "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," which is one of the important permissive considerations referred to in section 37 of the Act. I am unable to agree with that

submission. In the absence of evidence to the contrary, I cannot assume that the Assessor disregarded any of the matters referred to in section 37 when he executed the statutory declaration referred to in section 39 of the Act, or that the Board failed to give consideration to all relevant factors. There was evidence before the Board, which it apparently accepted, that market values were considered by the Assessor and his appraisers. For instance, Mr. Morry (who valued the land) testified before the Board that in arriving at his valuation he considered "current sales of similar or nearly similar parcels" nearby, and that "since the assessments (on the subject property) are somewhat lower than 50 per cent of any of the prices paid for sites in this area" the basic unit front foot values used "are extremely fair, are in actual fact below the indicated market value by comparison and when related to other land assessments."

It is clear from the authorities that this Court should not interfere with the findings of fact as to "actual value" if there is any evidence to sustain the finding so made by the Board of Appeal, and also that this Court cannot do so unless the Board has proceeded on a wrong or improper principle or there has been a manifest injustice or an improper exercise of the Board's discretionary power (see *Vancouver v. Township of Richmond* (1959, 17 D.L.R. (2d) 548; *Re Royalite Oil Company Limited* (1957) 23 W.W.R. (N.S.) 328).

In my opinion no question of law is raised in the stated case and no error in law is disclosed by the record, and this Court is therefore without jurisdiction to answer the questions raised. If I am wrong in so holding, I would feel compelled in any event to answer the seven questions asked in the negative because there is evidence to sustain the decision of the Board.

As to the two questions propounded at the hearing before me, the questions and the premises on which they are based are not supported either by the evidence of the findings of the Board, and not having been stated by the Board, I decline to answer them.

The costs of this appeal will be paid by the unsuccessful appellant.