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ALKALI LAKE RANCH LTD.

v.

ASSESSMENT DISTRICTS OF QUESNEL FORKS AND LILLOOET

Supreme Court of British Columbia (X784/63)

Before: MR. JUSTICE ANGELO E. BRANCA

Vancouver, Oct. 30, 31 and Nov. 1, 1963

C.C. Locke and W.R.D. Underhill for the Appellant
A.E. Hobbs for the Respondent

Reasons for Judgment

This case stated by the Assessment Appeal Board and dated the 13th day of September, 1963, comes before this Court under the provisions of section 51, subsection (2), of the *Assessment Equalization Act*, being chapter 18, R.S.B.C. 1960, and amendments thereto, the pertinent parts of which read as follows:-

> 51. (1) At any stage of the proceedings, the Board may submit in the form of a stated case for the opinion of the Supreme Court a question of law arising in connection with the appeal, and shall reserve its decision until the opinion of the Court has been given, when it shall decide the appeal in accordance with the opinion.
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> (2) Any person affected by the decision of the Board on appeal, including a municipal corporation acting on the recommendation of the Assessor and on the resolution of its Council, including a Provincial Assessor acting with the consent of the Minister of Finance, and including the Commissioner, may, after he has served on all persons affected by the decision a written notice of his intention to require the Board to submit the case to the Supreme Court, by correspondence addressed to and received by the Board within twenty-one days of the receipt of the decision by such person, require the Board to submit the case for the opinion of the Supreme Court on a question of law only.

Alkali Lake Ranch Ltd., being dissatisfied with the decision of the Assessment Appeal Board, requested the said Board to submit a case for the opinion of this Honourable Court.

The questions so reserved for the opinion of the Court must involve a question of law alone.

The statement of facts contained in the said stated case reads as follows, namely:

> 1. Alkali Lake Ranch Ltd. operates a cattle-ranch at and near Alkali Lake, in the Province of British Columbia, and was one of many appellants (the "appellants"), all ranchers and all land-owners within School District No. 27, who appealed their 1963 real-property assessments, first to the Court of Revision and then to the Assessment Appeal Board.

2. The real property assessed, consisted of land and improvements owned by the appellants in fee (deeded land) and land held under lease from the Crown (leased land), and all land the subject of these proceedings was classified as "farm land."

3. The assessment of improvements is not in question for the purposes of this stated case.

4. Prior to 1963 the lands of the appellants were assessed according to a procedure which sought to value each parcel of land by relating the productivity of the land in terms of its ability to produce forage to the price of beef. The complete procedure is set out in a study headed "Grazing Land Valuation in Rural Areas of British Columbia," found at Tab 21 of Exhibit 35 filed by the Assessors at the hearing before the Board.

5. In 1963 all farm lands in School District No. 27 were reassessed. The basis of this reassessment was the Farm Land Value Schedule furnished the Assessors by the Office of the Surveyor of Taxes and set out in Tab 17 of Exhibit 35. The Farm Land Value Schedule resulted from an analysis made by a land appraiser of the office of the Surveyor of Taxes of sales recorded in the Land Registry Office of land classified as "farm land" and situate within School District No. 27. The analysis consisted in brief of the following:

(i) Determination of the sale price paid for deeded land which involved, where improvements or other assets were found to be included in the sale price, the allocation of a sale price to the deeded land comprised in the sale. Such price was described as the residual land value.

(ii) The apportionment of the residual land value between cultivated lands and unimproved lands in order to assign a price per acre to those two categories of land. An acre of cultivated land was taken to be worth eight times the value of an acre of unimproved land in most cases.

(iii) The prices per acre of cultivated and unimproved land, determined for a selected group of the sales, were listed in descending order on "median lists." The sales so included were those which in the opinion of the land appraiser, based on the evidence in his possession, were "indicators" of value for land of the type under analysis. The evidence before the land appraiser consisted of the Forms A.C. 3 furnished to the Assessors by the Assessment Commissioner, Land Registry declared values, the field data cards of the Assessors for the sale properties, and a record of personal interviews with some of the parties to the sales. The field data cards broke the parcels of land down into compartments according to land capability and use. Of the sales selected, some were sales of complete ranch units, others were sales of land for addition to existing ranch units, and others were sales of land classified as "farm land" but not used as part of an operating ranch.

(iv) The land appraiser then constructed the Farm Land Value Schedule for School District No. 27.

6. The Farm Land Value Schedule was for the use of the Assessors and their assistants in the 1963 reassessment. The theory and utility of the Land Value Schedule is that (subject to adjustments for location and amenities) a parcel of land of the same capability and use is declared to have the same value throughout the school district. The factors of location and amenities available to the land were dealt with by what were described as land value adjustments. The land value adjustments were set out in Tab 17 of Exhibit 35 and provided for a percentage upward or downward revision of the assessment for such items as the nature of the roads, the existence of power, distance from a school, and

other similar factors. The lands of the appellants and all farm lands in School District No. 27 were classified according to the categories of capability and use, set out in the Farm Land Value Schedule and valued by the team of Assessors conducting the reassessment in accordance with the procedure therein set out.

Both counsel for the appellant and for the Assessors dealt with section 37, subsection (6) (d), and submitted whether it was a code to be separately considered by the Assessor in assessing farm lands as therein described or, in the alternative, whether the said subsection should be read in conjunction with subsection (1) of section 37 in order to give full force and effect to both subsections and in order that the Assessor might arrive at a proper method for assessing the lands in question which admittedly are farm lands so classified by virtue of section 2 of the *Taxation Act*, being chapter 376, R.S.B.C. 1960, and amendments thereto, and being lands situate in a rural area. I find that both sections can and must be read together.

There was agreement amongst counsel that the Assessor is under a statutory duty to assess lands classified as farm lands in a rural area "at the value which the same have for such purposes without regard to their value for any other purpose or purposes." Section 37 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.
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> (3) The assessed value of land and improvements for the purposes of real-property taxation under the *Public Schools Act* shall be fifty per centum of the actual value of land and fifty per centum of the actual value of improvements as determined under subsection (1). (Taxation for school purposes in respect of land and improvements under the *Public Schools Act* is, in effect, on fifty per centum of the actual value of land and thirty-seven and one-half per centum of the actual value of improvements.)
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> (4) The Assessor shall set out separately in the columns of the assessment roll the assessed values of land and the assessed values of improvements as determined under subsection (3), and the total of these values is the assessed value of land and improvements for the purposes of real-property taxation under the *Public Schools Act*.
>
> (5) Subsection (4) does not apply to land and improvements situated in a municipal corporation the assessed value of which is fixed by special Statute of the Legislature.
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> (6) Notwithstanding the provisions of this section,
>
> (a) the assessed value of pipe-lines for the transportation of petroleum, petroleum products, or gas shall be determined under the *Taxation Act* or the *Municipal Act*;
>
> (b) the assessed value of tree-farm land in a rural area, exclusive of improvements thereon, shall be determined under the *Taxation Act*;
>
> (c) the assessed value of land and improvements of a telegraph, tramway, or railway company shall be determined in accordance with the *Municipal Act* or the *Vancouver Charter* in a municipal corporation and in accordance with the *Taxation Act* and *Public Schools Act* in a rural area;

(d) lands classified as "farm land" in a municipal corporation or rural area shall, while so classified, be assessed at the value which the same have for such purposes without regard to their value for any other purpose or purposes, but the assessed value of improvements on farm land shall be determined under subsection (3).

Both counsel quoted at length from the evidence led at the hearing before the Assessment Appeal Board and from Exhibit 35, which is known as the Farm Land Values, Analysis and Farm Land Value Schedule, School District No. 27 (Williams Lake), which is an area in the Lillooet and Quesnel Forks Assessment Districts, which will hereafter be referred to as "School District No. 27," and it would appear that the Assessment Appeal Board had before it evidence as follows: Tab 3 of Exhibit 35, a list of vacant and improved farm land sales used in a preliminary analysis, the said lands being situate in School District No. 27; 155 sales in the Lillooet Assessment District and 43 in the Quesnel Forks Assessment District are tabulated under such headings as sales number, folio number, year of sale, and legal description, the said sales being sales that took place during the years 1955 to 1961. Tab 4 listed a considerable number of samples of sales referred to in Tab 3 in derivation of unit market values in the said school district, and many reasons are assigned for the non-consideration of the tabulated sales, and in giving evidence Neil Drewry, who since 1955 has been the land appraiser, Provincial Real Property Taxation Branch, Department of Finance, testified as follows, at pages 125, 126, 127, and 128:-

Q.-Now, would you come to the list under Tab 4 and explain to the Board what this list is?

A.-This is a list of sales samples not used in derivation of unit market values, Lillooet and Quesnel Forks Assessment District. These sales not necessarily being valid sales of types of property they represent, in fact, these waterfront sales and other sales were used in other studies to discover values of other types of land; they were not used in farm land values.

Q.-What I am going to suggest here, Mr. Drewry, is this, that you give the Board a few typical examples of why these were rejected. We have indicated the reason they were not used, but just give them a few typical examples of why they were not used?

THE BOARD: Before you do that, I notice that the sales go back as far as 1955.

WITNESS: Yes.

THE BOARD: What is the reason for that?

WITNESS: Well, the Assessor was very industrious in that district, and dug out all the sales he had in his files. I wouldn't say they were given equal weight by any means.

THE BOARD: They weren't taken and used to give a value for current purposes.

A.-They may have been used to follow as guides where information was scarce but generally we used the sales between 1958 and 1962, and they are in here because they were sales collected for the preliminary study. The first one was eliminated because it had 1,300 feet of waterfront on Hathaway Lake. The second one was also waterfront on Wilson Lake bought by an absentee purchaser. People coming in from other places and from other countries seem to pay very inflated prices at times for holdings which, although they may be legitimate, seem to distort them beyond any usefulness for determining pure farm land values. I might say that the tendency in culling these sales is to cull out the ones with extreme higher prices.

THE BOARD: In other words, you found there are some extra amenities attaching to the high-priced sales?

A.-Yes.

MR. HOBBS: Mr. Drewry, in connection with that, you have just said - I would just like to refer to this subsection (6) (d) of the *Assessment Equalization Act*, because I believe that this is the principle you are referring to. That reads. . . [*reads subsection (6) (d)*]. Now, I take it, am I correct, that what you are trying to get rid of here are factors other than factors related to farm purposes, is that correct?

MR. DREWRY: Yes, leaving us with sales indicative of farm land values.

MR. HOBBS: At least part of what you are doing is that?

A.-If you go down the page half-way I think I will have covered the representative reasons for discarding these sales from the analysis. Sale No. 6 again is only 16 acres, and I considered that is not representative in terms of size for farms in this area. No. 9, waterfrontage on Crystal Lake and Crescent Lake again. Sale No. 11 is a guest ranch on Webb Lake. As I said, some of these sales were used in this analysis for the purposes of other assessments. Sales 18 and 19-these properties include motels. Sale No. 22-no accurate inventory of improvements as of sale date. That means there has been a marked change since the date of sale, which makes it difficult to estimate the value of the land from the residual approach. No. 27 is the sale of land which includes the transfer of grazing leases. This was purchased by absentee purchasers, and it wasn't possible to get at the circumstances of the sale. Here I will read two more, because there are different reasons coming up. In one, the improvements make up such a large portion of the value that it is difficult to estimate the value of the land residual. In other words, a small proportion of error in the value of large improvements would give you a big error in the residual. Sale No. 34--timber was an important consideration in this sale.

MR. HOBBS: Now, that in general are given as the various reasons why there were rejections?

MR. DREWRY: Representative reasons, yes. I might add one further point. At the end of the sale particulars in the Lillooet portion, from about 130 on, this is a list of residential lots which were not used for farm purposes.

Q.-I see. These are just simply to indicate they were not purchased for farm purposes?

A.-And here again we used these in preparing a study on rural residential sites.

Q.-You used them for another purpose?

A.-Yes.

And again in Volume 3 under cross-examination, as follows, at pages 359 and 360:-

MR. LOCKE: Perhaps not, that's right. Down here on the right you have listed-and you very fairly outlined them in your evidence-all the reasons-the various reasons which led you to discard these sales. So the first thing that's necessary, when you get your sample in, is to look at it and exercise your factor of judgment and decide what, in your view, would have a distorting effect on that which you are trying to get at.

A.-Yes.

Q.-Now, I've gone through this and we find 11 categories of reasons-and I would just like to go over them for a minute and see if you agree with them. Reasonably quickly, they are as follows: First, if there's lake frontage involved; secondly, if it's too small a parcel;

third, if it's involved with a guest ranch; fourth, that it's involved with a motel or tourist cabin; five, that there are grazing leases involved in some way; six, that there is a proportionately high value of improvements; seven, that there is timber involved; eight, that it's a home-site; nine, that there's personal property, machinery and equipment involved; ten, that there is a possibility of subdivision; eleven, that it's not purchased for farm use; twelfth, that there are absentee owners. There are others, but those are twelve. I'm sorry if I've gone too fast. I didn't mean to. But do any of those sound like-we've taken them all from your list practically and from your evidence. Would you agree that those are factors? Please take all the time you want, I don't want to pressure you. We went over them and just arrived at them this way.

MR. DREWRY: In general, these are good reasons for discarding sales, from analysis, to arrive at farm values. But some of them might just be relatively valid. In one case they might be more valid than in another, the proportion of the improvements and so on. The grazing leases, I don't believe is a reason why any sale was excluded. It's because other circumstances couldn't be verified.

MR. LOCKE: Well, I would like to suggest that another category would be where these transactions take place, obviously. for what I'll call tax purposes, and of course the sterling example of this is the American purchaser who escaped or did escape succession duty upon his Canadian land. Do you recognize that as a factor.

A.-I don't know of any personally.

Q.-I'll put it to you. Would you recognize that as a distinguishing factor if that were so?

A.-I don't think wholly but it could be a factor-a factor that might be taken into account in the use of the sale.

Tab 5 records under such headings as sale number, folio number, year of sale, and legal description, all sales samples used in derivation of unit market values in said school district.

Each sale referred to in Tab 5 is further analysed having regard to some of the factors to which the Assessor must give consideration in the earlier part of section 37, subsection (1). The details mentioned in the sale number pages are as follows: Folio number, legal description, zone, year of sale, declared value, residual land value, acreage, class of soil such as cultivated or unimproved acreage, class of soil, value ratio, value of cultivated acreage and value of unimproved acreage, and under each sale, remarks are made which give additional information to the Assessor when this tab goes to him.

Several samples of sales numbers were discussed by counsel at the hearing, and they are as follows:-

Sale number 39. In this sale sheet, information is given under the headings referred to in the last paragraph and values are assigned for cultivated and unimproved acreage. The declared value of this land is given as $6,700, the residual land value $4,000, and under a heading of comments there appears the following comment, namely: "Sale price of $6,700 considered too high-also a declared value of $16,000 in 1960; foreclosed in 1962,"

Sales slip number 40 again gives the same information, and under comments appears the following: "Small value of improvements and small area of cultivation indicates a value near $10 per acre for semi-open grazing on fair to poor grade land of capability classes III to V in below average location."

Sales slip number 41 gives the same information, and under comments appears the following: "The sale price of $27,500 includes cattle and equipment, owner estimates land and buildings at $17,000, most of the unimproved is semi-open grazing on non-arable land."

Sales slip number 43, after giving the information hereinbefore mentioned, notes as follows: "See sale 37, new clearing and uncertainty about land residual from sale makes this a doubtful indicator. Old inventory shows 26 acres cultivated, 11 acres meadow grazing, 70 acres upper good grazing, and 51 acres of timber excellent grazing." Then turning to the reference sales number 37, the following comments are noted (in part): "With an adjusted residual land value of $12,000 the values per acre indicated would be $8.20 per acre for unimproved lands, $16.40 per acre for open grazing, and $74 per acre for cultivated land. It is not known exactly the acreage of cultivation at the time of sale. Folio 1306, resold to Ferris in 1959" (the Ferris reference indicates the sale referred to in sale number 37).

The lands so retained in Tab 5 are so considered and then further listed in Tab 8 under headings such as sales number, value in dollars per cultivated and unimproved acreage. Under each heading the highest land value is set out at the top of the table and the least one at the bottom, then the median figure is arrived at for both cultivated and uncultivated lands; in the Quesnel District the median value is given at $61 for cultivated lands and a figure between $7.65 and $8 per acre for uncultivated lands.

Tab 9 also arranges the land values in a descending order and gives the value of cultivated and unimproved lands in each sale per acre. In the Lillooet Assessment District for cultivated acreage the median figure is set between $56 and $61 per acre, for unimproved land between $8.63 and $8.70.

Tabs 11, 12, 13, 14, 15, and 16 note samples of particulars of several ranches, and the particulars noted are under the headings of lot description, folio number, irrigated, cultivated, meadow and open grazing, unimproved, timber grazing, acreage, year of sale, sale price, value of buildings, value of stock and equipment and residual land.

The foregoing information is compiled by employees in the department in Victoria. Employees of the department at Victoria, it was agreed by counsel, have visited the area in question and made additional checks, including visits to various ranches including visual observations and conversations with the owners. All of the information so obtained is not disclosed, but some of the notations on the tabs just considered appear to be the result of such visits. The foregoing information is then considered in arriving at the interim values set forth in Tab 17, which is headed "Williams Lake School District No. 27 Farm Land Valuation" and is dated at the Surveyor of Taxes' office in Victoria in April of 1962.

Some years ago a rather meticulous study of the inventory of location and use of all farm lands in the said area was made and highly particularized information gathered in relation to each ranch in the area; the study was then brought up to date in the last year or two in the case of each ranch prior to the fixation of the actual value of the farm lands for assessment purposes.

Tab 17 divides the soil into one of six classifications; each of these six classifications is then further analysed and particularized under the following headings, namely: Land class, soil type, phase (level, undulating, depressional, well or imperfectly or poorly drained, sloping, rolling, steep, stony, gravelly, rough mountainous, barren waste land), value of cultivated land, rough cleared upper grass land, middle grass land, lower grass land, and timber grazing.

Significantly enough, the median value so arrived at corresponds reasonably to the median value herein before referred to in discussing Tabs 8 and 9.

Thereafter, certain procedural instructions are given to the Assessors under Tab 17, which the Assessor must follow in his field investigation before deciding upon each assessment.

The Assessor makes further adjustments in so far as each parcel of land is concerned, having regard to paved, gravel, dirt roads, and availability of schools, both high and elementary, within 3 to 5 miles from the location of the land; availability of electricity; and adjustment for waterfrontage and for irrigation. The Assessors then considered a number of declared values of ranches disclosed by recent sales in relationship to the 1963 assessed values, and here the name of the owner is given, the declared value of the land, the year of sale, and the confirmed 1963 assessed value of both lands and improvements, and then the tax ratio is noted, and it would appear that only in three cases does the ratio exceed 50 per cent. Tab 19 gives the assessment to sale ratios of 22 ranch sales which took place between the years 1958 and 1963, arrayed in descending order, and the median is 39 per cent.

Tab 20 then compares the median assessment sales ratio of farm lands in British Columbia by assessment districts, and Williams Lake School District No. 27 shows a value of 43 per cent of the 1963 assessments to the declared values.

The foregoing facts are reviewed from the evidence before the Board as it was referred to by counsel, and because a consideration thereof is essential in arriving at a decision as to whether there was no evidence before the Board that the Assessor had acted properly and within the purview of section 37, subsections (1) and (6) (d), or whether his assessment was in violation of the principles set forth in the said section.

Counsel referred the Court to the case of *Vancouver* v. *Township of Richmond* (1958) 17 D.L.R. (2nd) at page 548, where these sections under review on this hearing were considered. The judgment of the Court, consisting of the learned Chief Justice, Coady, J.A., and Sheppard, J.A., was given by Sheppard, J.A., and I quote from his judgment as follows, at pages 550 and 551:

> The construction of that section is a matter of law, *Camden, Marquis Q.* v. *Inland Revenue Com'rs* (1914) 1 K.B. 641 per Cozens-Hardy M.R. at p.p. 647-8, and it would follow that those matters which are determined by giving proper effect to the words in the section, such as the basis of assessment, which is to be "at their actual value," or the items which may be considered in determining that value, are likewise matters of law. On the other hand, although the section permits consideration being given to certain items specifically mentioned and "any other circumstances affecting the value," those "other circumstances affecting the value" are not designated by the statute and therefore not to be learned by the construction of the statute nor can the Court know judicially as by taking judicial notice, what those circumstances may be. Therefore the question, "What are those circumstances?" cannot be a matter of law but must be a question of fact to be determined by the assessor and others concerned in reviewing the assessment on the facts.

And again at the bottom of page 551 he states as follows:

> There appears nothing in s. 37 which requires any or all of the adjoining lands to be considered. It is to be observed that s. 37 (1), in designating the items which may be considered, uses language that is permissive and not mandatory, and it is therefore open to the assessor or others concerned in fixing the value, to consider one or all of those designated items, but it is not obligatory to do so. That was stated in *R.* v. *Penticton Sawmills Ltd.* (1954) 11 W.W.R. (N.S.) 351, where Chief Justice Sloan in construing an equivalent section said at p. 353: "It seems to me that sec. 30, in its present form, clothes the assessor with a very wide and flexible discretion as to the methods he may pursue in his determination of 'actual value.'" It is therefore discretionary as to whether adjoining lands be considered. Moreover s. 37 (1) does not state what adjoining lands are comparable so that their assessed value may be considered to be "other circumstances affecting the value of the lands in question" and hence the question of what adjoining lands are comparable not being ascertainable from the section is not a matter of principle but is in each instance primarily a question of fact.

> It therefore follows that in the circumstances of this case the "actual value" is a question of fact and not one of law to be determined from the statute. That conclusion is supported by authority. In *Dreifus* v. *Royds* (1923) 2 D.L.R. 656, 64 S.C.R. 346, the Chief Justice in construing a comparable section said at p. 658 D.L.R., pp. 348-9 S.C.R.: "I am of the opinion that in a question of this kind as to the 'actual value' of lands for the purposes of assessment, this Court would not and should not interfere with the finding of fact as to such 'actual value' if there was any evidence to sustain that finding. The Board is constituted of men of experience on questions of this character. They have the great advantage of visiting and viewing the lands in question and of seeing and hearing the witness who may be called to speak to its value. Unless, therefore, the Board misdirected themselves on the proper principles which should govern them in determining this 'actual value,' or obviously reached their conclusions as to such value by adopting and following some wrong or improper principle, this Court would not and should not interfere with their findings."

In the said case the assessment arrived at was in fact arrived at by the comparative sales method.

Mr. Locke, on behalf of the appellant, has submitted that the Assessor erred in principle in arriving at the actual value of the farm lands in question, and that in sustaining the method so used the Assessment Appeal Board erred in its conclusions for the following reasons:-

> (1) That the farm lands were not valued as such within the meaning of the latter part of section 37 (1) as the income approach method was mandatory in arriving at the value of each individual piece of land including those of the appellant if the same were to be valued as the property of a going concern.
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> (2) That there was no evidence before the Board to show that the income approach method was used by the Assessor, and that as that approach was mandatory under the latter part of section 37 (1), the Board should have found in fact and at law that the Assessor erred in principle and that the assessment arrived at was therefore not according to law, and (or) alternatively that there was no evidence to show that the Assessor had directed his mind to each one of the factors set out in the earlier part of section 37, subsection (1), including the item of revenue, and that, therefore, the assessment arrived at was wrong as a matter of law.
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> (3) That there was no evidence before the Board that the samples of sales retained and considered by the Assessors in Exhibit 35 reflect the actual value of farm land at the value which the said farm lands have for such purposes without regard to their value for any other purpose and valued as a property of a going concern.
>
> (4) That evidence of such sales as were considered by the Assessor was without consideration to the income approach and at law was an inadmissible way of calculating the actual value of such farm lands as the property of a going concern.

In the case at Bar, the Assessment Appeal Board had evidence before it that the Assessor had given consideration in determining the actual value of the farm lands, as such, to such factors as the present use of the land, its location, 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. These were all permissive, not mandatory considerations, and it was open to the Assessor in fixing the value to consider one or all of the designated items in the earlier part of section 37 (1) in the very wide and flexible discretion available to him as to the pursuable methods in determining the actual value of the lands.

The Assessor obviously also considered matters within the phrase "other circumstances affecting the lands in question." The evidence also disclosed that the preliminary materials leading up to

the information contained in Tab 17 were used as guides by the Assessor, and that the information therein contained, including price, was not of mere arbitrary figures with no relation to reality. The actual value was arrived at after prolonged and careful study and consideration of all or some of the factors set out in section 37 (1), and so the Assessor was within the powers conferred upon him when he used Exhibit 35 as a guide or sound basis from which to commence the required appraisal in coming to a determination as to the actual value of the said farm lands. See *Regina* v. *Penticton Sawmills Ltd.* (1954) 11 W.W.R. (N.S.) 351, Sloan, C.J.B.C., at page 356, and Lett, Chief Justice of the Supreme Court (now C.J.B.C.), and in *Re the Assessment Appeal Board* v. *Canadian Collieries Resources Ltd.* (unreported but decided on October 12, 1961).

There was, therefore, evidence before the Board as to the actual value of the said farm lands properly arrived at under the pertinent sections of the Act, and in that event the Court should not interfere with the finding of fact made by the Assessment Appeal Board. See *Dreifus* v. *Royds* (1923) 2 D.L.R. 656 (*supra*).

Several cases were referred to by counsel as to valuation of lands as the property of a going concern and dealing with section 37 (1) of the Act under review. The first was a decision of Wilson, J. (now Chief Justice of this Court), given on the 5th day of August, 1957, in the case of *Canadian Pacific Railway Company and The Assessor, City of Port Coquitlam*, in which lands only (not improvements) were involved. The lands had varying uses and were not farm lands. The learned Justice there stated as follows:-

> The Assessment Appeal Board has, as is stated in para. 6 of the stated case, valued the lands having regard to the assessments of adjoining lands with deductions to allow for restriction of use, plottage and enhancement. I do not see how any successful attack can be made on this method of valuation, which seems to me to be that largely followed in *C.N.R.* v. *Vancouver*. In saying this I have in mind *Dreifus* v. *Royds,* 61 S.C.R. 326, where it was held that under an Ontario Statute an assessment based solely on the values of surrounding lands was in error in not finding "actual value." But the Board's findings are not based solely on the assessment of adjacent properties; they also give regard to the use, in this case the restrictions on use, of the land. If the railway had, instead of a restricted title, some unusual beneficial interest, such as the ownership of valuable mineral rights, which the owners of adjacent lands did not have, then the Board must assess that additional value. So where, as here, the railway company has a lesser interest, the Board must take it into account. Granted a practical topographical identity of the lands, the method adopted by the Board seems to me not only a proper, but the only possible method of valuing the lands.

The next case was an appeal taken by the City of Vancouver against the Municipality of Richmond and was heard by Mr. Justice Brown. The decision was given on the 22nd day of August, 1958, and had relation to lands alone which were owned by the City of Vancouver at the airport and described as being industrial, landing, approach, agricultural, and restricted industrial areas.

In that case it was submitted before the Board and before the learned Judge that the revenue factor mentioned in section 37 (1) of the *Assessment Equalization Act* and section 328 (1) of the *Municipal Act* should have been considered by the Assessor. The Board rejected this submission, and Brown, J., stated as follows:-

> I should hesitate to disagree with the learned Chairman in principle if both lands and improvements were involved, although I was very impressed with the submission on behalf of Richmond that going concern meant an entity from a physical rather than an accountancy standpoint. But as I have indicated, I cannot convince myself that as applied to land alone it involves taking specific income into account where the land, owing to an abnormal use, produces much more or much less than its neighboring parcels.

> Consequently I should not cut its assessment by any percentage because it does not under present circumstances produce a return. It hardly seems reasonable that a neighboring municipality or a private person, for that matter, should be able to depress the value for assessment purposes of hundreds of acres in Richmond by making an uneconomic use of the land.

The last case referred to was the Canadian Collieries Resources Ltd. and Port Moody; Lett, then Chief Justice (now C.J.B.C.), had to deal with the valuation of lands owned by the company and which consisted of a right-of-way, railway yards, maintenance and storage area, station grounds, residential and reserve lands. The question to be determined was whether the Appeal Board was right in law in accepting sales evidence as a sound base for the valuation of the company's lands, notwithstanding the fact that none of the sales considered was of land which was the property of a going concern. The learned Chief Justice in giving judgment stated as follows:-

> While it would appear from the material before me that the sales comparisons referred to above made a sound base from which "to commence the required appraisal," this cannot be presumed to be all that the Board took into consideration in arriving at its decision. Having exercised its right to inspect the property and, as it states in its findings, having given "due consideration to the sales evidence" the Board then went on to make its directions.
>
> I do not think it would be proper for this Court to assume that the acceptance of the evidence of the sales comparisons constituted the sole or entire basis for its findings, nor that the acceptance of the sales evidence formed or constituted anything more than "a sound base" from which to commence to perform its obligations and exercise the powers granted to it by the Act.
>
> I can find nothing in the Act to prevent the Board from adopting any "sound base" as a "base from which to commence" its duties. So long as it uses it only as a "starting point," and proceeds to exercise its powers in accordance with the provisions of the Act, including the provision for inspection by the Board, I cannot see how it can be said to have acted without jurisdiction, or beyond its jurisdiction.

In each of the last three cases which were unreported, the learned Judges involved indicated uncertainty as to the meaning of the term "going concern" as used in section 37 (1), which had not been theretofore judicially defined, and further indicated uncertainty as to how the section was to be interpreted if applicable to land alone as the property of a going concern. In none of the said three cases was the method of assessing and fixing the actual value of farm lands discussed or considered.

In the decision of the Court of Appeal taken from the judgment of Brown, J., in *Vancouver* v. *Township of Richmond* (*supra*), the factor of revenue was not discussed at all in each of the said three cases the actual value of the lands in question was arrived at by using the sales comparison approach either as a guide or as a sound base from which to commence the required appraisal with consideration to further modifying factors.

I am therefore impelled to the view that in arriving at the actual value of the farm lands belonging to the appellant company, the Board had before it evidence that the Assessor assessed the said farm lands at the value which the same had for such purposes without regard to their value for any other purpose or purposes upon a proper basis and within his statutory jurisdiction, and that while the income approach method might be an alternate or other method which the Assessor might have considered in whole or in part, he did not, in arriving at his assessment as to actual value, misdirect himself on the proper principles to be applied within the meaning of the Act and did not adopt and follow some wrong or improper principle of law, and that having so arrived at the actual value, the Board was justified in accepting his conclusion. See *Vancouver* v. *Township of Richmond* (1958) 17 D.L.R. (2nd), page 548, and *Dreifus* v. *Royds* (1923) 2 D.L.R. 656.

The questions stated by the Board and the answers to them are as follows:-

Q.-"1. In complying with the provisions of the Statute with regard to the valuation of 'farm land,' was not the Assessor and (or) the Board obliged to consider the value of the land as the property of a going concern with regard only to its value for farm purposes?"

A.-Yes.

Q.-"2. Did the Assessor and (or) the Board in this case comply with the provisions of the Statute?"

A.-Yes.

Q.-"3. In complying with the provisions of the Statute in regard to valuation, was not the Assessor and the Board obliged to consider the income of the particular parcel of farm land concerned?"

A.-No.

Q.-"4. Is not the income approach to valuation a proper method of valuation according to the Statute?"

A.-Yes, but not mandatory.

Q.-"5. Is not the income approach to valuation made mandatory by the Statute in this case?"

A.-No.

Q.-"6. Did the Board err in law in failing to adopt the' income approach' as the basis of the assessment of land classified as 'farm land'?"

A.-No.

Q.-"7. Did the Assessor present any legally admissible evidence at all?"

A.-Yes.

Q.-"8. Did the Board err in law in finding that the Assessors were correct in their determination of the assessment of each parcel of land classified as farm land using mass appraisal procedures and the Farm Land Value Schedule as varied by the land value adjustments?"

A.-No.

Q.-"9. Did the Board err in law in holding that the onus of proof lay upon the appellants under the circumstances?"

A.-Not material in view of the foregoing answers.

Q.-"10. Did the Board err in law in its application of the onus of proof?"

A-Not material in view of the foregoing answers.

Q.-"11. Did the Board err in law holding that the income approach as adopted by the appellants inevitably reflects the value of management?"

A.-No.

Q.-" 12. Did the Board consider whether the value of each individual parcel assessed bore a fair and just relationship to the value at which other land was assessed in the area?"

A.-Yes.