CITY OF VANCOUVER

V.

VINE LODGE LIMITED and BALSAM LODGE LIMITED
and
CITY OF VANCOUVER

v.

SEAVIEW CONSTRUCTION LIMITED

Supreme Court of British Columbia (Nos. X681/64 and X682/64)

Before: MR. JUSTICE J.G. RUTTAN

Vancouver, Sept. 10, 1964

R.K. Baker, Q.C. for the Appellant
R.P. Anderson for the Respondent

Cases Stated by Assessment Appeal Board

A. VINE LODGE LIMITED AND BALSAM LODGE LIMITED

1. The improvements concerned in this appeal consist of an apartment block situate on the lands and premises situate, lying, and being at 5960 Balsam Street, in the City of Vancouver, in the Province of British Columbia, and more particularly known and described as Lots 33 to 36, Subdivision 4, Block 16, District Lot 526, Group 1, New Westminster District, Plan 4539.

2. The amount assessed for the said improvements by the Assessor for the City of Vancouver was $99,800.

3. The amount of the assessment of the said improvements was reduced by the Court of Revision to $85,000.

4. On appeal to the Assessment Appeal Board taken by the City of Vancouver, the City of Vancouver contended that in determining market value by means of the "income approach" (which approach was accepted by the Board as being the proper method for determining the market value of the improvements) Mr. E. T. Russell, the appraiser who testified on behalf of the respondent owner, used "an adjusted rental schedule based on his opinion of what the rents should be and not on what they actually are." The City of Vancouver contended that in so doing he proceeded on a wrong basis.

The City of Vancouver further contended that Mr. Russell was wrong in preparing an estimated expense statement which increased the expenses from the actual expenses supplied by the owner, and, in particular, the City of Vancouver contended that the expenses for maintenance, repairs, decorating, and painting should not have been increased by Mr. Russell. The City of Vancouver contended that the proper method of valuation was "to use the actual gross potential

income and the average operating cost" (of other apartments) "and not the adjusted figures" (used by Mr. Russell) "in determining the actual value by the income approach."

5. The respondent owner contended:

(a) That the actual income obtained during the year 1963 should not be utilized because a prudent purchaser would have to take into account any reduction in income which could reasonably be expected in the foreseeable future. Mr. Russell, on behalf of the respondent owner, testified that the gross income of the apartment in question would be reduced in the foreseeable future because of competition from high-rise apartments erected and being erected in the area adjacent to the improvements in question. In particular, Mr. Russell testified as follows:-

> Most of the newer buildings, particularly the high-rise apartments, have come on the market and vacancy rates have climbed steeply. Several more high-rise apartments are under construction and the vacancy percentage will continue to climb, as a result of which the frame buildings will suffer income losses.

This evidence was not contradicted in any particular by any witness testifying on behalf of the City of Vancouver.

(b) The respondent owner also contended, with respect to the expenses, that the actual expenses should be increased because of the fact that a prudent purchaser would have to take into account future painting, decorating, maintenance and repairs, and other expenses which would not be incurred during the first year or two in the operation of a new apartment.

6. The Assessment Appeal Board allowed the appeal of the City of Vancouver and restored the original assessment set forth in paragraph 2 herein.

7. In restoring the said assessment, the Assessment Appeal Board used only actual income and expense records in determining the value of the improvements by the "income approach" and refused to take into account any foreseeable future reduction in income and any foreseeable increase in expenses.

8. The owner has required this Board to state a case for the opinion of this Honourable Court, pursuant to the provisions of the *Assessment Equalization Act*.

Wherefore the following question is hereby submitted to this Honourable Court for opinion: "Was the Assessment Appeal Board correct in holding that in determining market value by the 'income approach' that only actual income and expenses should be utilized and that estimated reduction in future income and estimated increase in future expenses should not be utilized in determining market value?"

B. SEA VIEW CONSTRUCTION LIMITED

1. The improvements concerned in this appeal consist of an apartment block situate on the lands and premises situate, lying, and being at 2148 West 38th Avenue, in the City of Vancouver, in the Province of British Columbia, and more particularly known and described as Lots 9 to 13, West Half of Lot 14, East Half of Lot 15, and North Half of Lot 8, Block 17, District Lot 526, Group 1, New Westminster District, Plan 3128.

2. The amount assessed for the said improvements by the Assessor for the City of Vancouver was $177,300.

3. The amount of the assessment of the said improvements was reduced by the Court of Revision to $155,000.

4. On appeal to the Assessment Appeal Board taken by the City of Vancouver, the City of Vancouver contended that in determining market value by means of the "income approach" (which approach was accepted by the Board as being the proper method for determining the market value of the improvements) Mr. E.T. Russell, the appraiser who testified on behalf of the respondent owner, used "an adjusted rental schedule based on his opinion of what the rents should be and not on what they actually are." The City of Vancouver contended that in so doing he proceeded on a wrong basis.

The City of Vancouver further contended that Mr. Russell was wrong in preparing an estimated expense statement which increased the expenses from the actual expenses supplied by the owner, and, in particular, the City of Vancouver contended that the expenses for maintenance, repairs, decorating, and painting should not have been increased by Mr. Russell. The City of Vancouver contended that the proper method of valuation was "to use the actual gross potential income and the average operating cost" (of other apartments) "and not the adjusted figures" (used by Mr. Russell) "in determining the actual value by the income approach."

5. The respondent owner contended:

(a) That the actual income obtained during the year 1963 should not be utilized because a prudent purchaser would have to take into account any reduction in income which could reasonably be expected in the foreseeable future. Mr. Russell, on behalf of the respondent owner, testified that the gross income of the apartment in question would be reduced in the foreseeable future because of competition from high-rise apartments erected and being erected in the area adjacent to the improvements in question. In particular, Mr. Russell testified as follows:

> Most of the newer buildings, particularly the high-rise apartments, have come on the market and vacancy rates have climbed steeply. Several more high-rise apartments are under construction and the vacancy percentage will continue to climb, as a result of which the frame buildings will suffer income losses.

This evidence was not contradicted in any particular by any witness testifying on behalf of the City of Vancouver.

(b) The respondent owner also contended, with respect to the expenses, that the actual expenses should be increased because of the fact that a prudent purchaser would have to take into account future painting, decorating, maintenance and repairs, and other expenses which would not be incurred during the first year or two in the operation of a new apartment.

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Wherefore the following question is hereby submitted to this Honourable Court for opinion: "Was the Assessment Appeal Board correct in holding that in determining market value by the 'income

approach' that only actual income and expenses should be utilized and that estimated reduction in future income and estimated increase in future expenses should not be utilized in determining market value?"

Reasons for Judgment

In a case stated by the Assessment Appeal Board, the following question was submitted:

> "Was the Assessment Appeal Board correct in holding that in determining market value by the 'income approach' that only actual income and expenses should be utilized and that estimated reduction in future income and estimated increase in future expenses should not be utilized in determining market value?"

The properties in question are two newly constructed apartment blocks, and both parties have agreed that the proper way of appraisal to arrive at the actual value was to employ what is known as the "income approach" method.

The disagreement arises over the choice of factors to be employed. The appraiser took the present gross potential income less known vacancies, and less normal costs, to which was applied a certain capitalization rate, to arrive at the assessment in each case. The owner employed Mr. E.T. Russell, a professional appraiser, who adjusted the income to his opinion, not of what the rentals were today, but what they would amount to in the next and succeeding years. Similarly, he raised the cost figures to account for future expenses which would develop in the operation of the apartment blocks after the first one or two years of operation. Counsel for the owner submitted that in using the "income method" the actual income obtained during the current year should not be utilized because a prudent purchaser would have to take into account any reductions in income which could reasonably be expected in the foreseeable future. This argument is based on the assumption that to obtain actual value by using the income method, one must use the concept of the "prudent purchaser." But no authority was cited to me, nor could I find any, to support the proposition that in every such calculation of actual value the hypothetical prudent purchaser must be considered, or that where actual cost and income figures are available, they must be discarded or weighted by the addition of future estimates. Indeed, the authorities go all the other way where the property in question is being appraised for municipal taxation purposes as opposed to valuations arrived at for expropriation purposes. Thus in *Sun Life Assurance Co. of Canada* v. *Montreal* (1950) 2 D.L.R. 785 at pages 788 and 789, S.C.R. 220 at page 224 (affirmed (1952) 2 D.L.R. 81), Rinfret, C.J.C., stated:

> I need not insist on the point that a municipal valuation for assessment purposes is not to be made in accordance with the rules laid down with regard to the valuation of a property for expropriation purposes. One main ground why such a course should not be followed is that the expropriation of a property means the permanent divesting of the owner and should legitimately, therefore, take into account the present value and all the prospective possibilities of the property, while the municipal valuation is, generally speaking, only made for one year, or, in the case of the City of Montreal, for three years, with certain provisions for modification if certain events happen, such as alteration, improvement, fire, etc. The rule was laid down by Lord Parmoor in *Gt. Western & Metropolitan R.C.* v. *Kensington Assessment Committee* (1916) 1 A.C. 23 at p. 54, that in such case "the hereditament should be valued as it stands and as used and occupied when the assessment is made." In the yearly valuation of a property for purposes of municipal assessment there is not room for hypothesis as regards the future of the property. The assessor should not look at past, or subsequent, or potential values. His valuation must be based on conditions as he finds them at the date of the assessment.

Because the appraiser selects different elements to assist him in his calculations from those which the owner thinks should be used, he is not thereby acting outside his jurisdiction. His statutory powers have recently been restated by Mr. Justice Davey in *Provincial Assessors of*

Comox, Cowichan, and Nanaimo v, *Crown Zellerbach Canada Limited and Crown Zellerbach Building Materials Limited* (1963) 42 W.W.R. (N.S.) 449 at pages 455 and 456, in these words:

> The statutory duty of the assessor is to find the "actual value" of the taxable property, but sec. 37 permits him to use several different methods and to consider many different elements in finding actual value. I do not think that the use of any specifically mentioned method of finding actual value, or the inclusion or exclusion of any enumerated element, provided there is evidence to support the reasoning, can be said to raise a question of law appealable to the courts on a stated case, for those matters lie in the judgment of the assessor and the assessment equalization board: *Reg.* v. *Penticton Sawmills Ltd.* (1954) 11 W.W.R. (N.S.) 351, at 353,356.

My answer to the question as stated, therefore must be "yes."