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GERT VORSTEHER

v.

KAMLOOPS ASSESSMENT DISTRICT

Supreme Court of British Columbia

Before: MR. JUSTICE D.R. VERCHERE

Vancouver, May 18, 1971

B. Smith for the Respondent
M.J. Catliff for the Assessment Appeal Board

Reasons for Judgment

This is a case stated by the Assessment Appeal Board in respect of its confirmation of the assessment by the Assessor of the assessment on two parcels of land belonging to the appellant, namely Lot 1, Plan 918, and Lot 4, Plan 918. The first question is this:

> "Was there any evidence before the Board to support its finding that Lot 4 had all the physical characteristics necessary for substantial development?"

In my view, the answer to that question must be yes.

Clearly, in my opinion, there was evidence of access, that is physical access to Lot 4, in that the westerly portion of Jenson Road permits access and in that the contiguous parcel owned by the appellant, Lot 1, also permits access. In view of the existence of that evidence of access, I cannot say that there was no evidence to support the Board's finding that Lot 4 had all the physical characteristics necessary for substantial development, which term was expressly understood by the appellant and counsel for the Assessor and by counsel for the Board to mean and include, subdivision.

I cannot say that the Board could have determined that the access of which it had evidence was inadequate to permit subdivision and, therefore, to permit what it referred to in its own terminology, and I quote, "substantial development."

Question 2 reads as follows:

> "Was there any evidence before the Board to support its finding that there was flank age access in the case of Lot 4 at the end of Gordonel Road'?"

It was stated by counsel for the Board that clearly by the word "Gordonel" the Board meant "Jenson." Consequently the answer to question 2 must be "no," and in my view the case should be remitted for correction if in fact the Board agrees that correction is required, and there will be an order accordingly.

Question 3 reads as follows:

> "Did the Board err in law in rejecting (by implication) the appellant's claim to an allowance for the pipe-line encumbrances to Lots 1 and 4?"

It was contended by the appellant that the Board erred in, firstly, not adjudicating on the question of the existence of the pipe-line, and admittedly the Board did not in its reasons for judgment deal expressly with the element of the existence in or under the lands of the pipe-line. Clearly, however, there was evidence before the Board of the existence of the pipe-fine. I need refer to nothing else, I think, than the plans that were produced here, and in particular that one that was marked Exhibit 7 on the hearing before the Board. There was then, as I said, evidence before the Board clearly of the existence in or under the lands of the pipe-line, and I cannot say that because the Board did not expressly deal in its reasons for judgment with the existence of the pipe-line as an element of value or as an element detracting from value, that it nevertheless did not take it into consideration.

I was referred to the reference in the transcript, at pages 42 and 43, to the evidence of the Assessor where he said, and this apparently was the unchallenged evidence before the Board, that the existence of the pipe-line was an element of value, albeit a trivial one. Therefore I cannot say, as the appellant contended, that there was an error in law on the part of the Board in that they curtailed his evidence by assuring him that the unchallenged existence of the pipe-line would be accepted. Clearly the unchallenged existence of the pipe-line was accepted. Neither do I think that there was any error in law on the part of the Board, or that it could be criticized for failing to require the production of field cards to support the evidence of value of other similar properties, or at any rate, other property, that the appellant had led before it.

The appellant contended that there was bias and discrimination in that it endorsed rival allowances and did not adjudicate on the existence of the pipe-line in respect of his property, although it apparently had taken the existence of that pipe-line into account in connection with these other properties.

As I have already said, I cannot find any basis here for the allegation of bias and discrimination on the part of the Board. It had before it evidence of the existence of the pipe-line, it had before it evidence of the value of other properties, in or through or under which the same pipe-line lay, as I understand the situation, and it does not seem to me to be a tenable proposition that because the Board had, as it did in its reasons, accept the values that had been placed on those other properties, that it thereby failed to adjudicate on the question of an allowance for the existence of the pipe-line under the appellant's property. I think the answer to question 3, therefore, as I think I have already said, must be "no."

The order then will be that the case go back to the Board for correction in respect of question 2, if the Board agrees that correction is in fact required, that is that there was an error in its reasons.