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CORPORATION OF THE CITY OF NORTH VANCOUVER

v.

ASSESSMENT APPEAL BOARD
ATTORNEY GENERAL OF THE PROVINCE OF B.C.,
LYNN TERMINALS

British Columbia Court of Appeal

Before: MR. JUSTICE A.E. BRANCA, MR. JUSTICE C.W. TYSOE, MR. JUSTICE A.D. MCFARLANE

Vancouver, January 31, 1973

Mr. W.A. Esson, for the Appellants
Mr. H.P. Legg, for the Respondents

Reasons for Judgment of Mr. Justice McFarlane

I concur in the conclusion and the reasons of my brother Tysoe and would dismiss the appeals as directed by him.

Reasons for Judgment of Mr. Justice Branca

The appeal taken by the Corporation of the City of North Vancouver (hereinafter called "the Corporation") and John D. Jellis (hereinafter called "the Assessor") against a decision given by the Supreme Court of British Columbia on certiorari proceedings initiated against a decision of the Assessment Appeal Board (hereinafter called "the Board") and concerned assessments made under the *Assessment Equalization Act*, R.S.B.C. 1960 (hereinafter called "the Act") and amendments thereto, for the years 1970 and 1971. The lands involved were industrial lands owned by the National Harbours Board, which board leased the said property to Lynn Terminals Ltd.

The assessments so made were appealed against to the Board and were heard together in so far as both years were concerned and by agreement of all parties concerned in conjunction with assessments levied against similar properties which the National Harbours Board leased to Seaboard Shipping Company Ltd.; Neptune Terminals Ltd. and Vancouver Pile Driving and Contracting Company Ltd. The Board allowed Lynn's appeal and the appeal taken in respect of each company.

While there is a statutory right of appeal in the Act which is by way of stated case restricted to a point of law pursuant to the provisions of s. 51 of the Act, the time for such appeal had elapsed and the procedure invoked was by way of the prerogative writ of certiorari. In the Notice of Motion the appellant asked for an order that Lynn show cause why the decision of the Board reducing the assessments should not be removed into the Supreme Court and quashed by reason of the fact that the Board had exceeded its jurisdiction.

The Board returned as part of the record its decision. The material part of that decision for the purposes of this appeal reads as follows:

> Counsel for the Appellant argues that the assessed value is excessive and inequitable and that it has not been determined in accordance with the requirements of the *Municipal Act* and the *Assessment Equalization Act*.
>
> Trevor Taylor, a witness for the Appellant and a qualified appraiser, submitted a valuation report (Exhibit No. 12) wherein he states his reasons for adopting a current waterlot value of $9,530.00 per acre of 22 cents per sq. ft. on all waterlot areas which have useable depth of water and upland access. He derives this value from the capitalization of the N.H.B. lease rent of 1-3/4 cents per sq. ft. at 8%. The Respondent testified that he used a market rate of 54 cents per sq. ft. and some of the market data upon which he bases this rate appears on page 2 of Exhibit no. 14. The fact that there are only a few transactions (and those are not current) upon which the Respondent draws a conclusion is not surprising to the Board for it has heard at numerous hearings that there is a scarcity of uncomplicated transactions in this field. The Board has reviewed the evidence carefully and in the case of waterlot values has studied the evidence presented in connection with the other appeal heard jointly. The capitalization of lease rents, where the National Harbours Board is almost the exclusive lessor, does not necessarily reflect actual value. There are so many variables and ponderables that the resultant indicated values would be of little assistance to the Assessor who must first find actual value and then determine the assessment with some degree of uniformity, stability and equity. Consequently the Board has examined the waterlot valuation on the basis of the evidence of the witness for the Appellant (Taylor, Exhibit No. 12) who found the upland value to be in the range of $50,000 per acre and to quote this witness ". . . it seems an appropriate value to apply generally to all like waterfront property in the North Shore waterfront". The Board has applied a market-cost analysis starting with a market value range of $48,000.00 was a reasonable value for comparable lands elsewhere in the North Shore waterfront and within the same trading or market area, deducting the actual cost of creating such land (from the evidence of the Appellant's witness, John M. McDonald), leaving a residual value imputable to the land under water or tidal lands, unimproved in the range of $12,500.00 to $13,700.00 per acre. To provide a unit range for waterlot areas of varying quality for assessment purposes the Board prorates its findings on the basis of rates which were used consistently in assessing other North Shore waterlots and determines a range of 31 cents to 33 1/2 cents per sq. ft. In the case of Lynn Terminals Ltd. the 33 1/2 cents per sq. ft. rate will apply but will be subject to certain adjustments which are considered in the following paragraph. It is pertinent to say that the lands lying immediately to the east are situated in the neighbouring District of North Vancouver and are also used and occupied by Lynn Terminals Ltd. The Board heard a concurrent appeal on those lands and determined that the waterlot assessment should be premised on a basic 33 1/2 cents per sq. ft. rate.
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> The witness for the Appellant suggested that an area of 600,000 sq. ft. was unuseable because of the shallow depth and because of the unfavourable effect of the outflow from Lynn Creek. The Board accepts this evidence to the extent that the shallow water and the proximity of Lynn Creek reduce the waterlot value but the evidence is quite insufficient to support such severe reductions as recommended by Mr. Taylor. The Board finds that one half of the 1,187,000 sq. ft. waterlot enjoys full use and shall be valued at the 33% cents per sq. ft. rate, and that the other half, which has limited use according to the evidence, shall be valued at 50% of the 33 1/2 cents per sq. ft. rate. Having made the above actual value computations the Assessor will then apply the assessment-to-market factor of 35% (as per evidence) to arrive at the 1970 assessed value. The Assessor will then determine the actual value computations for 1971 on the same basis as for 1970 and apply the assessment-to-market factor of 40% (as per evidence) to arrive at a value which shall be the assessment for 1971 unless this assessment results in an increase in the assessed

> value in excess of that permitted under sub-section (1) of Section 37A of the *Assessment Equalization Act* in which case the Assessor shall set down in his assessment roll the assessed value of the land in accordance with the limitation imposed by Section 37A(1).

Thus it will be seen from an analysis of the finding as quoted that the Board reviewed certain evidence given by witnesses called for Lynn which it accepted and having done so found that it considered to be "an appropriate value to apply generally to all like waterfront property in the North Shore waterfront". The Board then pro rated its finding on the basis of rates used consistently in assessing other North Shore water lots. The Board then directed the Assessor to make the proper assessment of the lands and improvements computed in question in order to reflect a fair and just relationship of that value to the value of the lands and improvements in the Municipality.

was restricted to one of excess or lack of jurisdiction in the Board. There appears to be no question but that the Board is created by authority of the Act and that s. 30 of that Act defines its powers and jurisdiction and that an appeal lies to the Board.

Thus the Board had an initial jurisdiction to hear the appeal and when it entered upon the hearing it was acting within the statutory jurisdiction conferred upon it. That being so, then the extent of the supervisory jurisdiction of the Supreme Court was to examine the record to ascertain whether or not the Board, during the course of the hearing, had done or omitted to do something in the course of that enquiry of such a nature as to oust its jurisdiction and render its decision a nullity.

There are many matters which may cause a tribunal to lose its jurisdiction which it had had initially which had no application here. The excess jurisdiction which counsel for the appellant in this court submitted ousted the jurisdiction of the Board was that the Board acted without jurisdiction in purporting to direct the Assessor to determine assessed value by applying to actual value an "assessment-to-market" factor.

The real point on this appeal is set out in two paragraphs of the appellants' factum, which read as follows:

> The Board, in directing that assessments be fixed at 35% and 40% of actual value, did so on the basis that there was some evidence those were the approximate levels of assessments in relation to market value for the City as a whole and it therefore took it upon itself to apply those rates to the reduced values which it fixed for the properties in question.
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> In adopting that course the Board ignored S.37(3) and the express direction therein that assessed value shall be 50% of actual value. In not applying that direction, it contravened the statute. Having found actual value, it had no choice but to apply the provisions of S.37(3), i.e. fix assessed value at 50% of actual value.
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> The appellants respectfully adopt the words of Ruttan, J., referring to the same section, when he said:
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> > "This is the last calculation and the only one which may be done once the actual value has been arrived at."
> > *Crown Zellerbach* v. *Assessment Districts of Comox etc.* (1962) B.C. Stated Cases, Case 36 p. 151, 161.

The learned trial judge referred to the provisions of s. 46 of the Act and decided that the Board had jurisdiction and that in varying the assessment in question he was "unable to find that it could not lawfully do so or that it fell into error".

Thus it is necessary to enquire into the provisions of s. 37 (1), (2), (3) and (4) to ascertain the precise legal meaning of the section and determine what may be the powers of the Assessor and what, if any, limitations the section imposes and whether or not, when once the actual value is determined, the assessed value referred to in s.s.(3) must be arrived at by dividing the actual value in half.

The section 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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> (2) The assessed value of any parcel of land and improvements (including, in particular, new homes) shall be commensurable with that of comparable parcels of land and improvements in the same municipal corporation or rural area, the assessed value of later development bearing a fair and just relation to that of earlier development, notwithstanding any differences between the costs of comparable items.
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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 value of land and fifty per centum of the value of improvements, such values being determined under the foregoing provisions of this section and subject to any variation pursuant to section 8A. (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*.

It appears to me that the Assessor's functions are as follows:

> (a) To determine what is the actual value of the lands and improvements by a consideration of the various matters outlined in the subsection which he may consider in determining that value.
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> (b) It is then provided under s.s.(2) that the assessed value of land and improvements must be commensurable with all comparable other parcels of land in the municipality. In arriving at that assessed value the main object of the Act is fulfilled, in that the incidence of taxation of land and improvements is and becomes fair and equitable and that no one species of property is unequally or unlawfully assessed and no land owner shall be made or is liable for other than a just proportion of the taxation to be levied on lands and improvements.
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> (c) S.3 then provides that the assessed value of lands and improvements for the purposes of real property taxation under the *Public Schools Act* shall be in effect 50% of the value arrived at under s.ss. (1) and (2) but subject to any variation to be made by reasons of s. 8A and subject to the provisions of s. 37A.

(d) The Assessor must in completing the assessment rolls set out separately in the said rolls the assessed value of the lands and the assessed value of the improvements as calculated under s.s.(3).

It appears, therefore, that the determination of the actual value and the assessed value are of prime importance. The whole purpose of the Act is to ensure that lands and improvements in each municipal corporation or rural area are assessed upon a common basis of value and are fair and equitable in all areas of the province. Each parcel of land is to bear its just and commensurate load of taxation with other comparable parcels of land and improvements in the municipal area and the taxpayer in this manner is made to pay a just, fair and equitable proportion of the total taxation to be levied on lands and improvements.

When once the Assessor performs his duty under s. 37, then an owner or taxpayer may appear before a Court of Revision and contest the values appearing on the completed assessment roll.

The statute then provides for an appeal from a decision rendered by a Court of Revision by a person dissatisfied with that decision to the Board.

The Board has the power set forth in s. 46 of the Act which 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.

In my judgment, if in any appeal the Board forms the opinion that the assessed value does not bear a fair and just relation to the value at which other comparable lands and improvements are assessed in the Corporation, then statutorily it is empowered to vary the assessment enquired into.
The appellant's argument in a nutshell is that once the actual value is determined, then under s. 37 the Board must apply the 50% formula (s.s.(3)) and if it does otherwise, the Board exceeds its jurisdiction and certiorari lies to quash the resultant decision.

The problem in my mind is not that simple and the sections involved do not support that suggested construction.

Part IX of the Acts headed "Valuation" details first the "actual value of lands and improvements" (s. 37(1)). I now point out that "actual value" in s. 37 as it now appears are words which do not again appear in any part of the Act except in s.s.(e) of s. 37 which has no relevance to this appeal. It will also be noted that different values are or may be relevant depending on whether taxation is for the purposes of the *Public Schools Act* or the *Taxation Act* or the *Municipal Act* or the *Vancouver Charter*. A casual glance at each of the statutes in question discloses that "actual value" are words that appear in s. 331 of the *Municipal Act*, being C.255 of the R.S.B.C. 1960 and amendments thereto. The determining of actual value under the *Municipal Act* is not much different from the method by which that value is arrived at pursuant to the provisions of s. 37(1) of the Act. An analysis of s. 37 during the last 13 years shows how the expression "actual value" has disappeared from the section, except in the two instances I have mentioned.

S.s.(2) of s. 37 then speaks of a different value that is "the assessed value of any parcel of land and improvements". The interpretation clause of the Act defines an "assessment" as a "valuation of real property for taxation purposes".

The assessed value of lands, that is the value for taxation purposes, is not the actual value that is spoken of in the first subsection but is a value which must be commensurate with the value of comparable parcels of land and improvements in the same municipality, that is to say, a value that is commensurably fair in order that land and improvements are burdened only with a just and equitable proportion of taxation.

Again the actual value and the assessed value is different from the special value referred to in s.s.(3) of s. 37. The special value there referred to is an assessed value of the lands and improvements for the purposes of real property taxation under the *Public Schools Act*. That value is statutorily fixed at 50% of the value of the land and 50% of the value of the improvements (such values being determined pursuant to the provisions of s.ss. (1) and (2) but subject to the provisions of s. 8A and s. 37A.)

S.s.(4) directs that the Assessor must set out in separate columns of the assessment roll the assessed values of land and improvements arrived at under s.s.(3). The total of the two values is the value for real property taxation under the *Public Schools Act*.

To me it is obvious that the prime purpose of s. 46 is for the Board to review the assessment, which is not or need not be the actual value but is the valuation of real property for taxation purposes which is arrived at by applying the test of the commensurate value of comparable parcels of land and improvements in the municipality. Thus if an appeal board forms the opinion that the assessed value does not bear a fair and just relation to the value at which other lands in the municipality are assessed, the assessment may be varied by the Board. That is precisely what the Board did in this case. The Board was endeavouring to form an opinion of an assessed value which should have been made under s. 37(2) which had to have all of the earmarks of a fair and just relation to the value at which other lands and improvements were assessed in the municipality. The Board formed that opinion. Whether or not there was evidence to support that opinion is an immaterial consideration in proceedings by way of certiorari. I point out, however, that in the passages that I have quoted from the decision of the Board it is quite evident and conclusive that there was ample evidence accepted by the Board to support its findings and its conclusion.

No error of any kind, nature or description at law affecting the jurisdiction of the Board which would enable the court to quash the decision of the Board, was demonstrated. See *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147, and the passage of Lord Reid's judgment at p. 171 reading as follows:

> It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly.

The Board in the appeal was charged with the duty of varying the assessment value, that is, the value determined as required in s.s.(2) of s. 37 if that value was not fair and did not bear a just

relationship to the assessed value at which other lands and improvements were assessed. S. 46 of the Act referred to that assessed value of lands and improvements and that is the value which the Board on appeal may vary as aforesaid. That was the value which the Board did vary in this case. It varied no other value. Having done so the Board then gave the necessary directions to the Assessor.

It directed that once the Assessor had made the actual value computations which the Board found should be made upon the evidence it accepted, the Assessor should then apply to that assessment or value a market factor of 35% based on the evidence given before the Board to arrive at the assessed value for 1970, that is to say, the value referred to in s.s.(2) of s. 37.

I pause here to observe that the Board made no evaluation nor any finding under the provisions of s.s.(3) of s. 37 for the purposes of real property taxation under the *Public Schools Act* and the Board gave no direction for that purpose.

It simply found in accordance with the evidence the proper assessment value, which should have been found by virtue of s.s.(2) of s. 37, as it was statutorily charged to do. It had to "arrive at the 1970 assessed value" and "to arrive at a value which shall be the assessment for 1971" subject to the provisions of s. 37 A(1). S.8A it is conceded had no application.

An examination of the history of s. 37 as it was in 1960 and as it has been amended over the years to its present wording is of interest particularly to understand why in my judgment the Zellerbach case has no application to this section at the present time. The history is as follows:

(A) S.37 of the Act as it was in the *Revised Statutes of British Columbia 1960*, C.18 read 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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> (2) The Assessor shall also determine the base-year actual value of land and improvements, which shall be what the actual value of land and improvements determined under subsection (1) would have been in the base year. The Lieutenant-Governor in Council shall specify the base year to be used with respect to both land and improvements or the base year to be used with respect to land and the base year to be used with respect to improvements.
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> (3) The assessed values of land and improvements for the purposes of real-property taxation under the *Public Schools Act* are the amounts that bear to the base-year actual values as determined under subsection (2) by the Assessor the ratios or percentages as set by Order of the Lieutenant-Governor in Council, and the Lieutenant-Governor in Council may set the same ratios or different ratios, to be applicable to land and to improvements for the said purposes.
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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*.

(B) In the Statutes of British Columbia 1961, by C.3, s. 4, s.ss (2) and (3) above, were struck out and s.s.(3) was substituted as follows:

> (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.)

It will be noted that in s.s. (3) as substituted aforesaid, actual values were the values dealt with in s.s.(3) and the section as it was amended in 1961, is the section as it read when *Crown Zellerbach* v. *Assessment Districts of Comox etc.* (1963) 42 W.W.R. 449 was decided. See Wilson, J.A. at 473 (Appeal Report)

It will be noted, too, in reference to the 1961 amendment that the actual value referred to in s.s.(1) was the value adopted for the purposes of s.s.(3).

(C) In 1968, in the Statutes of that year, by C.5, s. 8A was enacted and s.s.(2) of s. 37 was added and s.s.(3) was amended by striking out the first sentence and substituting therefore the following:

> (2) The assessed value of any parcel of land and improvements (including, in particular, new homes) shall be commensurable with that of comparable parcels of land and improvements in the same municipal corporation or rural area, the assessed value of later development bearing a fair and just relation to that of earlier development, notwithstanding any differences between the costs of comparable items.
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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 value of land and fifty per centum of the value of improvements, such values being determined under the foregoing provisions of this section and subject to any variation pursuant to section 8A.

S.s. (3) therefore read as it first appears in my reasons.

It follows that in my judgment that the Board made no such error as it was submitted it did and that this appeal must be dismissed. Therefore, the appeals in relation to Seaboard Shipping Company Ltd., Neptune Terminals Ltd. and Vancouver Pile Driving and Contracting Company Ltd. are dismissed.

Reasons for Judgment of Mr. Justice Tysoe

We are concerned with four separate appeals by the City of North Vancouver and its assessor Mr. Jellis against the dismissal of their applications for a writ of certiorari directed to the respondents Messrs. Philps, Richards and Rockwell, the members of the Assessment Appeal Board for the Province of British Columbia, the Attorney General of British Columbia, Lynn Terminals Ltd., Vancouver Pile Driving & Contracting Co. Ltd., Seaboard Shipping Company Limited, and Neptune Terminals Ltd. The appellants had sought orders quashing the decisions of the Assessment Appeal Board dealing with assessments for taxation purposes for the years 1970 and 1971 on certain waterfront properties in the City of North Vancouver leased by the four respondent companies. The relevant facts and the issues arising therefrom are identical in each of the four appeals to this Court and those appeals were by agreement heard together. The assessments by the assessor Jellis were upheld by the Court of Revision and the four respondent companies then appealed to the Assessment Appeal Board, hereinafter referred to as "the Board", which allowed the appeals and varied the assessments. The Board purported to act

under the powers conferred upon it by section 46 of the *Assessment Equalization Act*, R.S.B.C. 1960, Ch. 18 and amending Acts. That section is 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
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> (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
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> (b) the assessed values of such land and improvements are in excess of the assessed value as properly determined under section 37.
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> (2) Where upon appeal the Board finds the assessed values of land and improvements in a municipal corporation or rural area to be in excess of assessed value as determined under section 37, it may order a reassessment by the Commissioner in the municipal corporation or rural area, or a portion thereof, and the reassessment, when approved by the Board, shall, subject to section 51, be binding on the municipal corporation or rural area."

In its decisions now attacked the Board set out a formula based on an "assessment to market factor" of 35 percent and 40 percent of actual value for computing the assessed value of the lands and then directed the assessor "to determine the assessed value in accordance with this decision and to amend the 1970 and 1971 Rolls accordingly".

The appellants submitted that the Board, by applying to actual value an "assessment to market factor" of 35 percent and 40 percent of actual value to determine assessed value of the lands without regard to the provisions of subsection (3) of section 37 of the *Assessment Equalization Act*, and without regard to the question whether the assessments were for school taxation purposes or for other taxation purposes, did not observe the law in exercising the power granted it under the said Act and thus acted without jurisdiction. I set out subsections (1), (2), (3) and (4) of the said section 37:

> "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.
>
> (2) The assessed value of any parcel of land and improvements (including, in particular, new homes) shall be commensurable with that of comparable parcels of land and improvements in the same municipal corporation or rural area, the assessed value of later development bearing a fair and just relation to that of earlier development, notwithstanding any differences between the costs of comparable items.
>
> (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 value of land and fifty per centum of the value of improvements, such values being determined under the foregoing provisions of this section and subject to any variation pursuant to section 8A.
> (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*."

The respondents submitted that the Board acted within the powers conferred on it by section 46 of the *Assessment Equalization Act* quoted *supra*, and in particular, that it adopted a procedure calculated to achieve equality of assessments in the municipality so that the assessed value of the properties of the respondents will "bear a fair and just relation to the value at which other land and improvements are assessed" in the municipal area. They further submitted that subsection (3) of section 37 is directed to the assessor and to his duties and not to the Board and the latter may, in the exercise of its powers under section 46, disregard it. It is said this is in accordance with the legislative scheme of the Act.

The arguments in this Court turned largely on the power of the Board to disregard the provisions of subsection (3) of section 37.

Section 37 is in the nature of a code or set of rules governing the manner in which the assessed value of land and improvements for real-property taxation purposes is to be determined by the assessor. He is the person who initially must make that determination. Subsection (3) is in plain terms a statutory direction that the assessed value of real-property for taxation for school purposes (under the *Public Schools Act*) shall be fifty per centum of the value of land and fifty per centum of the value of improvements, those values being determined under the provisions of subsections (1) and (2) and subject to any variation pursuant to section 8A. Its effect is to stipulate that, for school taxation purposes, assessed value of the respondents' land and improvements shall be fifty per centum of the value of such land and improvements - no more and no less. In the absence of any express power conferred upon the Board to vary that percentage, I find it impossible to say that the Board may disregard the provisions of subsection (3). No such power is contained in the statute nor is there any language in the statute from which such a power can be inferred or implied. Having said this, I must add that in my opinion the Board has not disregarded those provisions and has not directed the assessor to determine the assessed value of the lands or improvements of the respondents *for school taxation purposes* otherwise than in accordance with those provisions. With respect, I think the arguments presented to this Court missed the real point in the case. I have arrived at this conclusion on what I regard as the proper interpretation of the decisions of the Board.

In my view, all the Board was dealing with was the propriety of the assessments having regard to the provisions of subsections (1) and (2) of section 37. In doing this it was in no way concerned with subsection (3). It left the assessor free to comply with, and apply the statutory direction contained in subsection (3). In this connection the following circumstances are significant. It must be taken that the Board was aware of the statutory provisions requiring the assessor to set out separately in the real-property assessment roll the value of land, and the value of the improvements for other than school and hospital taxation purposes, and the value of land and the value of the improvements for school and hospital taxation purposes, and of the provisions of subsections (3) and (4) of section 37. Its decisions make no mention of assessed values for school taxation purposes and, as I read them, they are directed to the equitability of the assessments. None of the grounds on which the appellants sought a writ of certiorari, as set out in their notice of motion, had reference to the provisions of subsection (3) of section 37 or to assessments for school taxation purposes. The learned judge below said nothing in his reasons for judgment about those subjects.

Having arrived at the conclusion that the Board in its decisions and directions dealt only with the propriety of the assessments having regard to the provisions of subsections (1) and (2) of section 37 and that it left the assessor free to comply with and apply the statutory direction contained in subsection (3), it is my opinion that the Board did not exceed its jurisdiction. I would therefore dismiss the appeals but in the particular circumstances would not award any costs of the appeals to the appellants or the respondents.