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SURREY-WHITE ROCK ASSESSMENT AREA

v.

NORCO DEVELOPMENTS LTD. et al

Supreme Court of British Columbia (NO. 1088/76)

Before: MR. JUSTICE H.C. MCKAY

Victoria, November 1, 1976

R.B. Hutchison for the Appellant
D.D. McLellan for the Respondent

Reasons for Judgment

This is an appeal by the Assessor for the Surrey-White Rock Assessment Area, pursuant to section 67(1) of the *Assessment Act*, S.B.C. 1974, chap. 6, from a decision of the Assessment Appeal Board dated September 20, 1976. The appeal was filed on October 8, 1976, and I am under the pressure of section 67(5) which requires that within one month from that date I must hear and determine the appeal and cause my opinion thereon to be remitted to the Board.

The agreed statement of facts is as follows:

"1. The Respondents, are bodies corporate, incorporated under the laws of the Province of British Columbia, are the registered owners of certain lands and premises situate in the Surrey-White Rock Assessment Area and more particularly known and described as:

Lots 120, 121, 122, 123, 124, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 174, 175, 176, 177, 180, 181 of the N.E. ¼, Section 27, Township 2, Plan 49378,

which lands are hereinafter referred to as the ('assessed property').

2. The assessed values priced on the 'assessed property' by the Assessor were as follows:

| | | | |
|---------|---------|---------|---------|
| Lot 120 | \$5,510 | Lot 121 | \$4,110 |
| Lot 122 | \$4,110 | Lot 123 | \$4,110 |
| Lot 124 | \$4,160 | Lot 126 | \$3,960 |
| Lot 127 | \$3,960 | Lot 128 | \$4,230 |
| Lot 129 | \$4,160 | Lot 130 | \$4,160 |
| Lot 131 | \$4,160 | Lot 132 | \$4,160 |
| Lot 133 | \$4,160 | Lot 134 | \$4,160 |

| | | | |
|---------|---------|---------|---------|
| Lot 135 | \$4,160 | Lot 136 | \$4,160 |
| Lot 137 | \$4,160 | Lot 138 | \$4,160 |
| Lot 139 | \$4,160 | Lot 140 | \$4,160 |
| Lot 141 | \$4,160 | Lot 142 | \$4,160 |
| Lot 143 | \$4,160 | Lot 144 | \$4,160 |
| Lot 145 | \$4,160 | Lot 146 | \$4,160 |
| Lot 147 | \$4,230 | Lot 174 | \$4,180 |
| Lot 175 | \$4,180 | Lot 176 | \$4,150 |
| Lot 177 | \$4,230 | Lot 180 | \$4,360 |
| Lot 181 | \$4,230 | | |

3. The Respondents appealed the assessments to the Court of Revision, which confirm the assessments as made by the Assessor. The Respondents then appealed to the Assessment Appeal Board on the ground that the assessments were inequitable.

4. The 'assessed property' together with other lots, the assessed values of which were not appealed resulted from a subdivision of:

Lot 3, N.½ of 7, N.E. ¼ Section 27, Township 2, Plan 11288;

Lot 4, portion of Lot 5, N. ½ of Lot 7, N.E. ¼ Section 27, Township 2, Sketch Plan No. 12266;

S.½ of Block 7, N.E. ¼ Section 27, Township 2, Plan 4218;

Parcel E Block 5, N.E. ¼ Section 27, Township 2, Plan 21180 except parcel E as shown in Plan 48563.

5. The registered owners of the property made application to the Municipality of Surrey for subdivision of the property as described in Paragraph 4 hereof on the 16th day of April, 1974 and the plan of survey was approved for subdivision at the Municipality of Surrey on December 15th, 1975. The plan of subdivision resulting in part in the assessed property was registered in the New Westminster Land Registry Office as of December the 16th, 1975, under Plan 49378, pursuant to Section 51 (1) of the *Land Registry Act*. The application made on the 16th day of December, 1975 was accepted on January 2nd, 1976 and formal title issued on January 7th, 1976.

6. The 'assessed property' for the most part, with the exception of Lots 120, 121, 122, 123, 126, and 127 was as of the 31st of December, 1975, land without any improvements constructed thereon. Concrete foundations had been poured on Lots 120, 121, 122, 123, 126 and 127.

7. The Assessor assessed the property as subdivided lots and values each lot at its 'actual value' as a subdivided lot.

8. The value of the subdivided lots are greater than the value of the lots prior to subdivision described in paragraph 4 thereof."

Those facts are not quite correct. The assessor originally assessed the lands in their unsubdivided state. He later became aware of the subdivision and, pursuant to section 10(1) of the Act, he brought the matter to the Court of Revision for correction. It was at that stage that the Roll and the assessments were changed to reflect the creation of the subdivision.

The grounds of appeal are as follows:

1. The Assessment Appeal Board erred in law in finding that, because the subdivision was not registered until December 16th, 1975, that the Assessor erred in placing the subdivision on the 1976 Assessment Roll.
2. The Assessment Appeal Board erred in law in holding that the 'assessed property' could not be assessed as subdivided lots because the subdivision of such lots was not registered until December 16th, 1975.
3. The Assessment Appeal Board erred in law when it found that Section 3(3) of the *Assessment Act*, S.B.C. 1974, C. 6, restricted the Assessor to assessing lands as they are described in the records of the Land Registry Office as of the 30th day of November.
4. The Assessment Appeal Board erred in law in failing to find that the Assessor was able to assess lands as he found them in the records of the Land Registry Office at any time up to and including the 31st day of December, 1975.
5. The Assessment Appeal Board erred in law in ordering the Assessor to strike the 'assessed property' from the assessment roll 'and replace the legal description to that as set out on the 1975 Roll'.
6. The Assessment Appeal Board erred in law in ordering the Assessor to value the property as of November 30th rather than as of December 31st.
7. The Assessment Appeal Board erred in law in ordering the Assessor to re-assess the 'assessed property' and to submit such revised assessment to the Assessment Appeal Board for approval.
8. The Assessment Appeal Board exceeded its jurisdiction when it ordered the Assessor to re-assess the 'assessed property' and to submit such revised assessment to the Assessment Appeal Board for approval.
9. The Assessment Appeal Board not having first found that the assessed value of the 'assessed property' was in excess of actual value as determined under Section 24 erred in law when it ordered the Assessor to re-assess the 'assessed property' pursuant to Section 62(2) of the *Assessment Act*, S.B.C., 1974, C.6.
10. The Assessment Appeal Board erred in law in finding that the 'assessed property' was to be assessed as unsubdivided property and in accordance with the legal description set out in the 1975 assessment roll.
11. The Assessment Appeal Board erred in law in holding that in re-assessing the property in accordance with the Board's order pursuant to Section 62(2) of the *Assessment Act*, the Assessor was restricted to taking into account those changes contemplated by Section 24(6)(b)(i) of the *Assessment Act* and that he could not take into account those changes contemplated by Section 24(6)(b)(ii) of the *Assessment Act*."

The written decision of the Board contains a review of the evidence and then the following decision and order:

"After due consideration of the facts set out in the hearing and after perusal of Section 3 (1) and 3 (3) of the *Assessment Act*, the Board is of the opinion that the Assessor erred in placing the subdivision on the 1976 Roll, as the subdivision was not registered until 16th December 1975.

It is therefore the order of the Board that the Assessor strike these lots from the Roll and replace the legal description to that as set out on the 1975 Roll.

The Assessor may value the land in accordance with Section 24 (6) (b) (l) of the *Assessment Act* including those improvements in place as at 31st December 1975.

The Assessor is directed to re-assess the subject lands in accordance with the above order and submit the revised assessment to the Board for approval."

The main point at issue is as to the effect of section 3(1) and (3) of the *Assessment Act*. Section 3 reads:

"3. (1) The assessor shall, not later than the thirty-first day of December in each year, complete a new assessment roll and give to every person named in the assessment roll a notice of assessment.

(2) The assessment roll and notice of assessment shall be in such form and contain such information as may be specified by regulations made under the *Assessment Authority of British Columbia Act*.

(3) For the purposes of subsection (1), the assessor shall make reference to the records of the Land Registry Office as those records stood on the thirtieth day of November in the year referred to in subsection (1).

(4) In the case of a parcel of land for which no Land Registry Office description is available, the assessor shall use the best description available to him.

(5) The assessor shall exercise reasonable care in obtaining and setting down the address of an owner, and shall more particularly adopt the following alternatives in the order named:

(a) The address known to the assessor:

(b) The address as it appears in the application for registration or otherwise in the Land Registry Office.

(6) In the event that the address of the owner is not known to the assessor or is not recorded in the Land Registry Office, the assessor, in the case of a city, town, or village municipality, shall set down the address of the owner as the main post office, and, in the case of a district municipality or rural area, shall set down the address of an owner as the post office situated nearest the land in question."

As will be noted from the agreed facts, the subdivision plan was filed in the appropriate Land Registry Office on December 16, 1975, and the application was accepted on January 2, 1976. By section 51(1) of the *Land Registry Act* the plan is deemed to have been registered as at the date the application was received, i.e., December 16, 1975. The position of the respondent is that the assessor could not include the subdivision on the 1976 Assessment Roll because it had not been registered in the Land Registry Office as of November 30th. Counsel for the appellant takes the position that the Assessment Roll is for the full calendar year and that the assessor can take cognizance of changes reflected in the Land Registry records during the month of December. Counsel for the appellant says that the thrust of section 3(3) is that reference is to be made to the Land Registry records for the purpose of getting out the notices required under section 3(1). He says that section 3 (1) has no reference to the assessing of land and improvements. I cannot agree. Section 3(1) requires the assessor to complete a new assessment roll and it is implicit in that duty that he assess the various properties. It is in that light that section 3(3) must be considered. It seems clear to me that, although the assessment is for the particular calendar year for which the roll is prepared, the legislature has, for obvious practical reasons, arbitrarily fixed November 30th as a cut-off date. Changes reflected in the Land Registry records during the month of December will be picked up on the following assessment roll. It follows, in my view, that

the assessor is required to assess land and improvements as at November 30th, subject to whatever corrective powers he may have under section 12, which provides for supplementary rolls. It is conceded that a supplementary roll was not prepared in this case.

I am therefore in agreement with the Board on that aspect of its reasons. I disagree however with the Board in that part of the order which reads:

"The Assessor may value the land in accordance with Section 24 (6) (b) (l) of the *Assessment Act* including those improvements in place as at 31st December 1975." As I have already stated, the assessment is to be as at November 30, 1975.

The matter is therefore remitted to the Board for appropriate action under section 68 of the Act.

There will be no order as to costs.