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WELDWOOD OF CANADA LTD.

v.

ASSESSMENT APPEAL BOARD

Supreme Court of British Columbia (NO. A762121)

Before: MR. JUSTICE W.A. CRAIG

Vancouver, January 13, 1977

C.C.I. Merritt for the Appellant
D.J. Haslam for the Appellant
P. Klassen for the Respondent

Reasons for Judgment

The Assessment Appeal Board has stated a case under the provisions of Section 67(2) of the *Assessment Act*, Chapter 6, 1974, S.B.C., submitting the following questions for the opinion of the Court:

> "1. Did the Assessor err in law in determining the assessment of the 'industrial improvements' of the Appellant at its 'Flavelle Cedar Mill' in Port Moody for the calendar year 1976 in the manner set out in Paragraph 11 hereof?
>
> 2. Does an assessment of the said 'industrial improvements' in the manner described in Question 1 bring about in law an assessment in conformity with sub-section (c) of sub-section (6) of Section 24 of the *Assessment Act*, S.B.C. 1974, Chapter 6 as amended by the *Assessment Amendment Act* 1974, S.B.C. Chapter 105?
>
> 3. What is the meaning of each of the expressions 'basis' and 'value level' in sub-section (6) of Section 24 of the said Act?"

The facts as set out in the stated case are as follows:

> "1. By the Notice of Assessment of the B.C. Assessment Authority for the Coquitlam Assessment Area, the 'Improvements' upon the Appellant's lands comprised in the said Roll were assessed for the calendar year 1976 at the following amounts:

General	School & Hospital	Less Exempt
$1,161,117	$2,840,392	$68,979

2. For the year 1974 the respective assessments of the Appellant's Improvements were:

General	School & Hospital
$667,000	$949,000

3. Weld wood of Canada Limited appealed to the Court of Revision against the increased assessment of 'Improvements' on the ground that the same had been over-assessed for 1976, and had not been assessed in accordance with the provisions of Section 24(6) of the *Assessment Act*.

4. The appeal was dismissed by the Court of Revision on February 18, 1976.

5. Notice of Appeal to the Assessment Appeal Board from the decision of the Court of Revision was given on the 3rd of March, 1976.

6. The 'Improvements' in respect of which this appeal is brought are 'buildings, fixtures, machinery and structures' comprising the plant and machinery of 'Flavelle Cedar Mill' owned by the Appellant and as defined by Section 1 of the *Assessment Act*, Chapter 6, Statutes of British Columbia, 1974. The Flavelle Cedar Mill is used for the manufacture of cedar lumber products from cedar logs.

7. It was, until and including the assessment for the calendar year 1974, the practice in the City of Port Moody to assess 'industrial improvements' for the new calendar year on the current replacement value of the improvements in the last full year preceding the year in which the assessment was actually made. Thus, in December, 1973 for the calendar year 1974, the Assessor used the values as of 1972 as the 'base year' (as it is termed) for the 1974 assessed value. The current replacement value for each individual 'improvement' in each year since 1964 was determined by factoring up the 1964 replacement cost new of that 'improvement' as disclosed by the historical records of the Assessor for the City of Port Moody to obtain the replacement cost new in the 'base year'. This figure for replacement cost new of each improvement was then appropriately depreciated to arrive at 'current replacement value' of the improvement for the base year. This 'current replacement value' was taken to be the actual value of each improvement.

8. The assessed value of the improvements for the calendar year 1974 was arrived at by determining the 'current replacement value' or actual value for the year 1972 as set out in Paragraph 7 hereof. Then, in accordance with the requirements of the '*Assessment Equalization Act*' the Assessor reduced the 'current replacement value' or actual value by 50% in order to arrive at the assessed value of the improvements for the year 1974 as set out in Paragraph 2 hereof.

9. In assessing industrial improvements for the 1974 assessment year in the City of Port Moody and elsewhere in the Province of British Columbia the Assessor assessed such 'industrial improvements' at 50% of 1972 actual value, which was in accordance with the provisions of Section 37 of the *Assessment Equalization Act* and the By-Law of the City of Port Moody passed pursuant to Section 339 of the *Municipal Act*.

10. In September, 1975, the Assessor, not being satisfied of the fact that the 'improvements' under appeal were in fact assessed at 50% of 1972 actual value, caused Universal Appraisal Co. Ltd. to conduct an appraisal of the structures and machinery comprising the plant.

11. The new appraisal completed by 'Universal' provided current replacement value of each of the said structures and machinery as of September, 1975. 'Universal' arrived at the 'current replacement value' as of September, 1975, by determining the September, 1975 new replacement cost of each and then depreciating each of the structures and machinery to reflect all factors of depreciation relating to the structures and machinery.

The Assessor then:

(i) converted the aforesaid current replacement value to a December, 1974 level by applying certain factors and arrived at a current replacement value as at December, 1974;

(ii) factored such current replacement value as at December, 1974 to arrive at the current replacement value 1972.

The Assessor then took the current replacement value 1972 as so computed as being the 1972 actual value. He then assessed the 'improvements' at 50% of 1972 actual value, to arrive at the assessed value for 1976 as set out in Paragraph 1 hereof.

12. In the Port Moody area residential properties were, until 197 , assessed on the market value for properties of a similar type in a similar neighbourhood for the last full year preceding the year in which the assessment is made. Commercial properties were also primarily assessed on market value at the end of the last full calendar year although income from the commercial property was taken into account when the Assessor can obtain such figures.

13. The actual assessments of the Appellant's 'improvements' in the years 1972 - 1975 followed the 'practice' or 'method' outlined in Paragraph 7 hereof.

Thus the 'Improvements' were assessed:

	General	School & Hospital
1972	$631,882	$911,500
1973	$635,395	$965,365
1974	$667,000	$949,000
* 1975	$692,500	$950,500

*(after reduction by Court of Revision)
(Copies of Notice of assessment attached)

14. The 1976 Assessment appealed against was determined on the current replacement cost as of 1972 as so computed. In arriving at the current replacement cost, however, the Assessor did not use the 'historic' values used from 1972 - 1975, but rather used a current replacement cost as of September, 1975 determined from the appraisal done by Universal as set out in Paragraph 11, for as described by the Area Assessor, 'The basis of the 1976 assessment derives from the inventory and actual valuation of the plant' completed in September 1975 by Universal Appraisal Co. Ltd.

(See letter of the 17th December, 1975 to Appellant from the Area Assessor with enclosures.)

To this 'inventory and actual valuation' the Assessor has applied certain 'factors' to 'reduce' this 'inventory and actual valuation' to actual value for the '1972 base year'. The 1972 actual value as so computed was then reduced by 50% to determine assessed value.

15. The results of the valuation of the improvements as set out in Paragraph 13 hereof compared to the Assessment for 1975 is shown in the 'comparative statement' attached to the letter of the 17th of December, 1975.

The 'assessments' are *increased* as undernoted:

	General	School & Hospital
1976	$1,161,117	$2,840,392

1975	$ 692,500	$1,643,000
Difference (Increase)	$468,617	$1,197,392

16. In the instant case, there are items of 'new construction' in the years 1974 and 1975.

The Appellants based their appeal upon an 'incorrect application' by the Area Assessor of the provisions of sub-section 24(6) (c)."

The pertinent parts of s. 24 are as follows:

(1) Land and improvements shall be assessed at their actual value.

(2) In determining the actual value for the purposes of subsection (1), the assessor may given consideration to the present use, location, original cost, cost of replacement, revenue or rental value, the price that the land and improvements might be reasonably expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value, and the actual value of the land and the improvements so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of those values.

(6) Notwithstanding sub-section (1) or anything to the contrary in this Act,

(a) except as provided in paragraphs (b), (c) and (d) and sections 25 and 27, land and improvements shall be assessed at the same value and on the same basis at which the land and improvements were assessed for the calendar year 1974;

(b) where a change in the value of land and improvements occurs by reason of

(i) a change in the physical characteristics of the land or improvements, or both; or

(ii) new construction or new development thereto, thereon, or therein; or

(iii) a change in the zoning or reclassification of land and improvements

that is not included in the assessment roll for the calendar year 1974, the land and improvements shall be assessed at the same value and on the same basis as if those changes in value had occurred and had been taken into account in the preparation of the assessment roll for the calendar year 1974;

(c) subject to paragraph (b), improvements used for industrial purposes shall be assessed at the same value level and on the same basis at which improvements used for industrial purposes were assessed for the calendar year 1974; and. . ."

As Mr. Merritt relied, also, on s. 24(10) I, perhaps, should refer to this sub-section at the present time:

"(10)Notwithstanding sub-section (1) or anything to the contrary in this Act, for the purposes of sub-section (6), the assessed values of tree-farm land under section 27 shall be determined at the same value level and unit-pricing periods used in the preparation of the assessment roll for the calendar year 1974."

Basically, this appeal involves the interpretation of s. 24(6) (c) and, specifically, the meaning of "value level" and "same basis" as used in that paragraph.

Counsel for the appellant contends that whatever the expression "value level" means, it does not mean 50% of the actual value, as submitted by the respondent, and that "basis" in the phrase "same basis" must be defined in accordance with the ordinary dictionary definition which is "foundation", and that, in the circumstances of this case, the foundation is "historical". The appellant submits that the assessment is not based on "value level" nor on the "same basis" as required by s. 24(6) (c).

The hearing of this appeal ended late in the afternoon of January 13th. By Statute, I must give my decision before Friday the 21st of January. From Monday, January 17th, I will be involved in a two to three week trial on Vancouver Island which appears to have many complications. Because of the time limit, I must give this case priority over other cases, notwithstanding the fact these other cases may have priority in time or importance. Judges have constantly inveighed against the provisions of this Act which require a decision within 30 days of the filing of the stated case because, often, the issues of fact and law are very complex and require time for study and reflection. This case is a prime example of that concern. I am rendering a decision in accordance with the requirements of the Statute, but I am not satisfied that I have had ample time to reflect, properly, on the issues which this case poses.

The contention of the appellant is that the effect of s. 24(6) (c) is "to freeze" assessed values of improvements used for industrial purposes at "the same value level and on the same basis at which improvements used for industrial purposes were assessed for the calendar year 1974..." In support of this submission, he relies on the decision of the Court of Appeal in *Village Rentals Limited* v. *The Assessor for the Corporation of the District of Surrey* (Unreported. May 25, 1976 . Vancouver Registry No. CA 760009). The Court held that the ". . . purpose of the *Assessment Amendment Act*, stated in broad terms, was to freeze assessed values for subsequent years at those for the calendar year 1974".

Perhaps, I should point out that the fundamental premise of the respondent is that, in accordance with s. 24(1), the "improvements shall be assessed at their actual value" and that in interpreting s. 24(6) one must have regard to this fundamental principle.

In the *Village Rentals Limited case*, *supra*, McFarlane, J.A. in giving the judgment of the Court said:

> "The purpose of the *Assessment Amendment Act*, stated in broad terms, was to freeze assessed values for subsequent years at those for the calendar year 1974."

The Court held that the "freeze" principle applied sofar as 24(6) (a) was concerned. The appellant says the same principle applies to 24(6) (c). The respondent says that it does not apply to 24(6) (c), or if it does apply, its application is limited.

Obviously, the Legislature intended a distinction was to be made between the "land and improvements" referred to in s. 24(6) (a) and "improvements used for industrial purposes" referred to in s. 24(6) (c), otherwise, there would have been no point in enacting the two paragraphs. S.24(6) (a) refers to "the same value and on the same basis" whereas s. 24(6) (c) refers to "the same value level and on the same basis". The argument of the appellant involves, mainly, an interpretation of the word "basis" as used in s. 24(6) (a) and (c) and an interpretation of the word "value" in s. 24(6) (a) as contrasted with the phrase "value level" in s. 24(6) (c).

The appellant submits that the word "basis" means "foundation" and that in this context "basis" means "historical" basis - that is, the method of assessment outlined in paragraph 7 of the stated case.

Briefly, the contention of the appellant is that the assessor must use the historical method for ascertaining value of improvements used for industrial purposes with regard to all such improvements which the assessor took into consideration when compiling the 1974 assessment

roll and that paragraph (c) also creates a "freeze". On the other hand, the contention of the respondent is: (1) that the assessor's function is to establish the actual value of such improvements on the basis of their 1974 valuation; (2) that paragraph (c) does not create a "freeze"; and (3) that the assessor was justified in having the property appraised and assessing for 1976 on that basis.

The Legislature enacted the *Assessment Act* in June 1974 and repealed the *Assessment Equalization Act*. The Act was effective as of July 2nd, 1974. Section 37(3) of the *Assessment Equalization Act* provided that the assessed value of land and improvements for taxation purposes under the *Public Schools Act* was to be 50% of the actual value.

S.24(1) of the *Assessment Act*, on the other hand, stipulated that the assessed value was to be the actual value of the land and improvements.

In November 1974, the Legislature passed the *Assessment Amendment Act* which amended s. 24 by adding sub-section (6). The effect of s. 24(6) (a), at least, Was to "freeze" assessed values at the 1974 level. Another effect was to require the assessor to assess the value of the lands and improvements at 50% of the actual value because that is how the assessor made his assessment when compiling the 1974 assessment roll.

Paragraphs (b) and (c) are said to be exceptions to (a). The nature and extent of the exception is not as clear, perhaps, as it might be.

Mr. Klassen argues that paragraph (c) does not create a general "freeze" as does paragraph (a), otherwise there would have been no purpose in enacting (c). Moreover, he points out that paragraph (c) is an exception to paragraph (a). He submits that, pursuant to s. 24(1), the assessor must ascertain the "actual value" of the improvements used for industrial purposes subject to the requirement that he assesses them at the "same value level and on the same basis at which improvements used for industrial purposes were assessed for the calendar year 1974..." He submits that the phrase "value level" simply means the value after reducing the actual value by 50%. Mr. Wyatt, the assessor, says that this is the only meaning which he can attach to this particular phrase.

Frankly, I suspect that this is probably the view of most, if not all, of the provincial assessors. It is, therefore, worthy of careful consideration because of their expertise in dealing with the Act. Yet, I have difficulty in giving the phrase this interpretation because even though there is a general "freeze" with regard to residential property and commercial property under paragraph 6 (a) the assessor, normally, would use the 50% method in determining the assessed value of these properties.

In the *Village Rentals* case, *supra*, McFarlane, J.A. said that the following words in s.(6) should be emphasized, namely, "notwithstanding sub-section (1) or anything to the contrary in this Act. . ." The effect of these words is to stipulate that notwithstanding the actual value of the lands and improvements (other than improvements used for industrial purposes) the assessed values will remain at 50% of the actual value based on the 1974 assessment. Normally, the value of lands and improvements which are referred to in paragraph (a) are ascertained by determining the market value or revenue value. When we talk of "improvements" in connection with a residential or commercial property, we think of the total structure as an "improvement". We do not think of the various parts which comprise the structure in terms of "improvements" although technically they are. Generally, however, improvements which are used for industrial purposes are considered and assessed individually. The assessor determines the values of such improvements by the replacement cost method.

(a) and (c) refer to the "basis" upon which the assessor makes his assessment. In my opinion the word "basis" in this context means the particular method which the assessor uses in making an assessment and the criteria which he uses. With regard to the pre-1974 assessment of

improvements used for industrial purposes, the assessor used the "historical" method outlined in paragraph 7 of the stated case.

Paragraph (c) is said to be "subject to paragraph (b)". One possible interpretation of that phrase is that the assessment of improvements used for industrial purposes would be made a the "same value" and on the "same basis" as if the improvements had been taken into account in the preparation of the 1974 assessment roll. Yet, if this is the correct interpretation of the phrase, paragraph (c) would appear to be superfluous. In order to give meaning to paragraph (c), therefore, I think that the phrase means, simply, that in assessing property to which improvements for industrial purposes have been made after the preparation of the 1974 assessment roll, the assessor shall assess the improvements as if ". . . those changes in value have occurred and had been taken into account in a preparation of the assessment roll for the calendar year 1974".

What then is the meaning of "value level"? I am not inclined to accept the view that it means, simply, 50% of the actual value. Under paragraph (a) the assessor must assess a particular piece of property as he assessed it for 1974. On the other hand, the wording of paragraph (c) suggests that the improvements may be in a class which is common to the type of industry generally and that, therefore, there is a common value which can be assigned to a particular improvement which is used for industrial purposes and which will be applicable to all the owners of that improvement - for example, buildings, machinery and equipment. I think that an assessor may, therefore, when assessing improvements used for industrial purposes after 1974, adjust an earlier assessment to the extent that the improvements were not assessed at the same value level as other improvements of a similar nature in the industry were assessed for 1974.

In his testimony Mr. Wyatt indicated that, in his opinion, the information in the "historical documents" relating to the subject plant was insufficient to make an accurate assessment based on actual value for 1976; therefore he employed the services of an appraisal company. I inferred, also, from reading his testimony that another reason for the appraisal was the belief that all the improvements used for industrial purposes had not been considered in previous years. If that inference is correct, and if there are improvements in the 1976 appraisal which were not included in previous assessments, the assessor could not, on the authority of the *Village Rentals* case, *supra*, now take these into consideration.

Theoretically, the method of arriving at the 1972 replacement value by making the replacement costs new prior to 1972 and "factoring up" or by taking the 1975 replacement cost and "factoring down" should produce the same result. In this case, it did not.

My present view of the effect of s. 24(6) (c) is that the assessor must use the historical method in assessing those improvements which were in use before the compilation of the 1974 assessment roll, coupled with the "factoring down" method for those improvements which were subsequent to that time and that in making the assessment he may alter the previous assessment to ensure that the new assessment is on the same "value level... at which improvements used for industrial purposes were assessed for the calendar year 1974".

That being so, my answer to the three questions are as follows: 1. - yes; 2. - no; and 3. - as set out in my judgment.