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THE RACQUET CLUB OF VICTORIA LIMITED

v.

ASSESSMENT AREA OF SAANICH AND THE ISLANDS (01)
and
THE CORPORATION OF THE DISTRICT OF SAANICH

Supreme Court of British Columbia (320/79)

Before: MR. JUSTICE M.R. TAYLOR

Victoria, March 23, 1979

E.H. Alan Emery for the Appellant
R.B. Hutchison for the Respondents

Reasons for Judgment (Oral) April 11, 1979

The issue which arises on this case stated under the *Assessment Act*, S.B.C. 1974, ch. 6, is, or appears to be, whether the concept known as economic obsolescence is one which may in law be applied in valuation for assessment purposes of improvements owned and operated by a non-profit-making entity such as the Racquet Club of Victoria.

The question I am asked appears to amount to whether the Board, in approving a valuation for assessment purposes arrived at on the depreciated replacement cost approach, was precluded in law from taking into consideration the fact that the Racquet Club had experienced considerable financial difficulties, resulting apparently from the creation of other similar facilities, some of them municipally owned. The conclusion at which I have arrived is that if the Board was of the view that it was precluded from giving consideration to that fact, it committed an error of law.

I think I should, as have counsel, start at the beginning, by saying that section 24 of the *Assessment Act* requires the assessor to determine" actual value" of land and improvements. Section 24 (2) mentions various approaches which may be taken in valuing land and improvements at their "actual value". One of the approved methods is the method here used, that is to say, depreciated cost of replacement. But cost of replacement, like the other approaches listed, is relevant in arriving at actual value only insofar as it indicates the price which a prudent purchaser would in fact pay for the improvements. It is the price that a reasonable prudent purchaser would pay that establishes "actual value".

In the case of anon-profit-making club of this sort we are not, of course, dealing, as was the Court of Appeal in *Stock Exchange Building Corporation* v. *City of Vancouver* [1945] 2 W.W.R. 248 (B.C.C.A.), with something which an investor might buy for an investment. We cannot use the hypothetical investor as the potential purchaser in order to arrive at actual value. It seems proper to substitute instead the test of what a hypothetical prudent organization interested in using these premises for the purposes for which they are suited would pay. In so doing the assessor is entitled to assume that the property is available on the market, and that one of the potential purchasers is the present owner itself, although in so doing he must be cautious not to value it on its value to owner. The situation is a hypothetical one of necessity, because there is no actual market in which properties of this sort are in fact changing hands.

In valuing the property by the depreciated replacement approach, it is proper, and in my view necessary in law, to ask of oneself: Would a prudent purchaser be prepared to pay what these buildings would in fact cost to replace.

Normally the assessor can, perhaps, make that assumption. The buildings would not normally be built if that were not an economically-justifiable proposition. But there are special circumstances in which it may be apparent that a prudent purchaser would not pay what the buildings would cost to replace, because they are too big, they are mislocated, or their usefulness is no longer recognized by the public in the way that it was at the time they were built. In those circumstances, if the replacement approach is used, there must not only be allowance made for depreciation, to reflect the purchaser's view of the lowered value due to wearing -out of the premises, but also allowance made to reflect the view that a purchaser today would take of the reduced attractiveness of the improvements. For lack of a better expression, that may be called *economic obsolescence*.

The term may appear at first inappropriate to a non-profit-making operation. It must be treated as a term of assessment art because we have none other to use.

It would be proper, if the Board came to the conclusion that these premises had for such reasons lost some of their original attractiveness to a prudent purchaser today, (including a purchaser such as the owner itself) they should make an allowance for that fact, in addition to that made for the reduction in attractiveness resulting from the "wearing out" of the building which is called "depreciation".

I do not know whether the Board concluded that there was *in fact* reduction in the attractiveness of these improvements resulting from such changes as I have mentioned. The mere fact that the Racquet Club has suffered loss of income in recent years does not, of itself, establish that the premises have lost some attractiveness to a potential purchaser, but it is a factor that the Board obviously would consider in deciding whether they had. It might be that the club was not using the premises for their highest and best use, or not using them as efficiently as the normal hypothetical prudent purchaser would use them.

I would refer the matter back to the Board and answer the questions as follows:

1. Did the Board err when it decided not to grant an allowance for economic obsolescence? The answer is "yes", if the Board declined to grant the allowance as a matter of principle, believing that such an allowance *could not* in law be granted.

2. Did the Board err in the method used to establish actual value? The answer is "yes", if the Board proceeded as suggested in the answer to question 1.

The third question has not really been addressed, but I would answer it, subject to any submissions, in the negative: That the Board is under no obligation to apply previous decisions that it may have reached, but each year is to consider the assessment anew, and is not bound by any previous findings of fact, or previous rulings of principle, save those contained in the Act or laid down in the decisions of the Courts.

Counsel has asked whether or not, among the potential buyers, the assessor may consider the community, through its municipal government. I would add therefore that, of course, among the hypothetical potential purchasers every such a person is to be considered who in the opinion of the Board falls into that class - the sort of person who might buy it in a practical sense, not *might* in the sense has of having the legal capacity to buy but *might* in the sense that such a person is likely to purchase properties of this type, and public bodies could so qualify if the Board is of the view that they are in fact potential purchasers.

The appellant will have its costs.