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**WESTERN INDOOR TENNIS CENTRES LIMITED**

**v.**

**ASSESSMENT AREA OF RICHMOND/DELTA (11)**

Supreme Court of British Columbia (A790381)

Before: MR. JUSTICE F.C. MUNROE

Vancouver, March 12, 1979

John R. Lakes for the Appellant  
Peter Klassen for the Respondent

**CASE STATED BY ASSESSMENT APPEAL BOARD**

THIS CASE STATED by the Assessment Appeal Board at the request of the appellant. The appeal was heard in Richmond, British Columbia on the 17th day of October 1978 in the presence of John R. Lakes, Esq., counsel for the appellant, and Messrs. J. Baker and D. Lee for the respondent assessor.

The facts are as follows:

1. The appellant owns land and improvements situate in Richmond, British Columbia and described in assessment roll R-085-866-902. It consists of a commercial tennis club located at 4991 No. 5 Road in Richmond, B.C. The property consists of a 5.06 acre parcel of land on which there is a permanent metal clad structure housing five indoor tennis courts; a two-storey clubhouse building; six outdoor tennis courts and two outdoor practice courts; and also five outdoor tennis courts used for part of the year as outdoor courts and covered by a plastic air-supported cover hereinafter referred to as the "bubble" for part of the year; as well as parking and access to the several tennis courts described above.
2. The appellant's land is assessed partly as residential and partly as business and other. Neither the classification nor the value of the properties classified as residential are in issue in this appeal. The classification and value of the clubhouse and the permanent building are not in issue in this appeal. The classification of the land on which the permanent building is situate is in issue in this appeal to the extent that the classification applies to the tennis courts.
3. The "bubble" which is assessed as machinery is a membrane which has no movable parts and which is supported by air and is completely removable when the appellant wishes to use the five outdoor tennis courts as outdoor courts. The membrane is anchored to the foundation which is part of the outdoor tennis courts at times covered by the bubble and is then inflated by air pressure from a pump which maintains the bubble at all times that it is in use. When the appellant wishes to convert those tennis courts to outdoor tennis courts, the air supply is turned off and the entire structure deflates and is taken up and removed and stored on the property for the whole of the time that these courts are used as outdoor courts. It is the membrane and all parts thereof that are in issue in this appeal.

4. In the decision of the Assessment Appeal Board, which is attached as part of this case, the Board determined that although the "bubble" is not machinery, it is nonetheless to be assessed as an improvement.

5. The appellant requires that the case be stated and signed to this Honourable Court on the following questions of law:

(1) Did the Assessment Appeal Board err in law in finding that the classification of tennis courts as residential under class 1 (d) applies only to outdoor tennis courts?

(2) Did the Assessment Appeal Board err in law in finding that the "bubble" is assessable as an improvement?

(3) Did the Assessment Appeal Board err in law in finding that the land on which the tennis courts and the building are situate must all be classified as Class 6 "Business and Other"?

Pursuant to section 67 of the *Assessment Act* aforesaid the Assessment Appeal Board submits this Stated Case and humbly requests the opinion of this Honourable Court on the said questions of law.

### Reasons for Judgment

March 12, 1979

At the conclusion of the hearing held on March 12, 1979 I indicated that the appellant's appeal was dismissed. These are my reasons for judgment.

Having read the case stated by the Assessment Appeal Board and the reasons given by it on December 6, 1978, I adopt those reasons as my own and answer questions 1, 2 and 3 in the negative and dismiss the appeal for the reasons stated by the Assessment Appeal Board.

### ASSESSMENT APPEAL BOARD

Before Acting Chairman: G.D. FRAMPTON, A.A.C.I., S.R.P.A., Member: D.W. MEAKIN, A.A.C.I., R.I. (B.C.)

Richmond, October 17, 1978

This appeal concerns the classification of land, improvements and machinery and equipment. The appellant stated that there is no appeal on actual value.

The property is a commercial tennis club located at 4991 No. 5 Road, Richmond, B.C. The property consists of a 5.06 acre parcel of land on which the following areas and improvements are described:

A. A permanent metal clad structure housing five indoor tennis courts with parking and access driveway.

B. A two-storey clubhouse building attached to "A" above, with access driveway.

C. Five outdoor tennis courts utilized for four months of each year as outdoor courts and utilized for eight months each year as indoor courts. These courts are covered by a plastic air supported cover hereinafter referred to as the "bubble" during the eight months

use as indoor courts. Also in this area is a building for the equipment associated with the "bubble". Parking and access driveway.

D. Six outdoor tennis courts and two outdoor practice courts. Parking and access driveway.

Land in the preceding designated areas as classified by the assessor and as requested by the appellant are as follows:

	Assessor	Appellant
A.	Class 6	Class 1
B.	Class 6	Class 6
C.	Class 6	Class 1
D.	Class 1	Class 1

The classification appeal rests on the interpretation of B.C. Regulations 437/77 and 496/77 wherein Class 1 (d) "land used for a golf course, ski facility, ball park, tennis court, bowling green, or other similar outdoor recreational facility".

The respondent contends that the key words are "similar *outdoor facility*" (italics by Board), and refers only to area "D" as the only continuously used outdoor facility. The appellant solicitor, Mr. Lakes, interprets the section to mean that "tennis courts" in general are included due to the proposition that they are specifically defined.

The Board has considered the construction of section (d) of Class 1 and maintains that the wording should be read in its total context.

The total meaning of the section is completed with the wording "or other similar outdoor recreational purpose". The conjunction "or" clarifies the meaning in that "outdoor" and "recreational" are descriptive adjectives of the purpose for which the land is used.

Class 1 (d) is not specific as to the period of use and in the case of area "C", the Board finds that a seasonal outdoor recreational use is made of the land and that such a seasonal use is sufficient to qualify this area under Class 1 (d).

As to area "A", the land does not qualify due to the fact that the tennis courts are not outdoors in compliance with the foregoing reasoning and the land must therefore fall in Class 6.

Turning now to the "bubble", the appellant submits that this item is not assessable because it cannot be properly defined within the meaning of the word machinery. The "bubble" is a large inflatable cover that extends to a height of 35 feet, providing a covered playing area over the tennis courts for an eight-month period of each year. The "bubble" is attached and secured by means of wood wedges inserted into a permanent concrete perimeter wall, which is embedded in the land. The "bubble" is a necessary apparatus required in the operation of the tennis club facility. The appellant's solicitor presented a convincing argument that the "bubble" is not machinery. However, the classification of the "bubble" is "Class 4 - Machinery and *Equipment*" (italics by Board). The term equipment is all encompassing and adequately defines an apparatus such as the "bubble". The "bubble", then, is properly classified.

The assessability of the "bubble" is also a question in this hearing. The Board finds that the "bubble" is "affixed" to the land and comes within the definition of "improvements" in the *Assessment Act* as a similar thing "erected or placed in, on, under, or affixed to land".

The Board hereby sustains the assessment and classification of the "bubble" for the 1978 assessment roll.

The final point of submission was the classification of the permanent building and the five tennis courts therein. The appellant's solicitor argues that the tennis courts being the pavement and ground preparation of said courts should be classified as land. He also argues that the building is part of the tennis court and must be included as Class 1.

The Board finds that the tennis courts and the building housing them are improvements within the meaning of section 1 of the *Assessment Act*. As to classification, it is noted that these improvements do not fall within the Class 1 (d) definition as that section refers to "land" only and the improvements must then fall in Class 6 as they are now classified.

The Board hereby orders that the land be classified as follows for the 1978 assessment roll:

Class 1	\$182,160	(Sections C and D)
Class 6	<u>121,440</u>	(Sections A and B)
Total	\$303,600	

There shall be no order as to costs.