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ASSESSMENT COMMISSIONER

v.

KINGSVIEW PROPERTIES LIMITED

Supreme Court of British Columbia (449/79) Victoria Registry

Before: MR. JUSTICE W.J. TRAINOR

Vancouver, May 10, 1979

R.B. Hutchison for the Appellant
P.J. Macaulay for the Respondent

Reasons for Judgment May 31, 1979

The Assessment Appeal Board states this case, asking the opinion of the Court as to whether the Board erred in law in its method of assessment and in delegating to the assessor the responsibility to determine values. The case is stated pursuant to s. 67 of the *Assessment Act* which provides:

> "67. (1) At any stage of the proceedings before it, the board, on its own initiative or at the request of one or more of the persons affected by the appeal, may submit, in the form of a stated case for the opinion of the Supreme Court, a question of law arising in the appeal, and shall suspend the proceedings and reserve its decision until the opinion of the final court of appeal has been given and then the board shall decide the appeal in accordance with the opinion."

Further subsections of s. 67 provide that the stating of the case, its hearing, and the giving of the opinion, must be completed within prescribed time limits. It is apparent these have not been met as the Board's reasons were dated 18th December, 1978 and although the stated case was dated the 15th February, 1979, and filed in the Victoria Registry on the 20th February, 1979, it was not set down or brought on for hearing before me until 10th May, 1979. Following submissions that day, leave was granted to file copies of authorities on which counsel relied; those have been received and considered. I was advised by counsel that orders-in-council were made pursuant to s. 73 (1) (c), *Assessment Act* extending the time within which the various steps had to be carried out or completed.

In 1972 the respondent Kingsview Properties Ltd. acquired 505 acres in the District of North Cowichan which was zoned for lots of a minimum of 5 acres in size. Kingsview's purpose was to subdivide the acreage into lots which would be suitable for construction of residential premises. To this end a land use contract was entered between Kingsview and the Corporation of the District of North Cowichan on 12th February, 1974. Under the contract a 59-lot subdivision was developed in 1977 but by 31st December 1977 the development had failed to reach substantial completion and no building permits could be issued for any of the lots although the planned subdivision was registered in the Land Registry Office at Victoria.

Kingsview prepared prospective price lists for the 59 lots and distributed them to realtors and builders in the Cowichan area. The list was prepared on the assurances and in anticipation of

receiving approval from the District of North Cowichan for the issuance of building and occupancy permits to registered owners of the lots.

The Board found as a fact that the lots had been valued in excess of actual value. It directed the assessor to reassess the subject 59 lots on the following basis:

> "The total acreage of the 59 lots is to be valued as raw acreage and to this valuation is to be added the development costs incurred by the Appellant in developing the 59 lots. The resulting value is then to be apportioned to the 59 lots under appeal."
>
> "The Board further directs the Respondent to reassess the remaining raw acreages under appeal in accordance with the provisions of Section 24 of the *Assessment Act*. The board further recommends that the Respondent apply the comparative approach in his re-evaluation, using sales of raw acreage of comparable size."

The questions of law submitted for the opinion of this Court are:

> "(a) Did the Assessment Appeal Board err in law in failing to find the actual value of each of the individual 59 lots under appeal?
>
> (b) Did the Assessment Appeal Board err in law in delegating to the assessor a duty to determine values after giving the assessor the formula to use?"

I am satisfied that the answer to both questions is "yes".

The *Assessment Act* specifically requires an assessor to determine the actual value of each separate parcel of land:

> "24. (1) The assessor shall determine the actual value of land and improvements." Here the assessor was obliged (s. 3 (3)) to make reference to the records of the Land Registry Office in which the subdivision plan for the 59 lots had been filed in carrying out his obligation under s. 3 (1) to:
>
> ". . . not later than the 31st day of December in each year, complete a new assessment roll in which he shall set down each property liable to assessment within the municipality or rural area and give to every person named in the assessment roll a notice of assessment."

The matters to be considered by an assessor are set out in:

> "24. (2) In determining the actual value for the purposes of subsection (1), the assessor may give 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."

The necessity for assessors to adhere to the statutory provisions governing the manner in which they carry out their tasks was emphasized by McIntyre, J.A. (as he then was) in *Pacific Logging Company Limited* v. *The Assessor for the Province of British Columbia* B.C. Assessment Authority Stated Cases, Case 99, Victoria, October 23, 1974, where he said at p. 525:

> "The authorities are clear that an assessment must be made in conformance with the statute which provides for it. The respondent cited various authorities for this proposition including *Re Starr Manufacturing Company* (1926) 1 D.L.R. 212, In *Re Soda Lake*

Assessment and Malhus (1923) W.W.R. 19, but the most significant authority is *Montreal* v. *Sun Life Assurance Company of Canada* (1952) 2 D.L.R. 81."

He also referred to the judgment of Drake, J. in *In Re The Assessment Act and The Nelson & Fort Sheppard Railway Company* (1904), 10 B.C.R. 519. Wootton, J., whose judgment was under appeal, also referred to that judgment of Drake, J. at p. 519 quoting as follows:

> ". . . property is to be assessed at the actual value in money and each description of property is to be valued by itself at such sum as the assessor believes the same to be fairly worth in money at the time of assessment; and that is the value at which the property would generally be taken in payment of a just debt from a solvent debtor."

Proper valuation requires a determination of the value of each lot based on its particular attributes. This cannot be achieved by the method directed by the Board of dividing the total of raw acreage value and development cost by the number of lots. In any event, the costs incurred by Kingsview relate to the development of the whole 505 acres and there does not appear to be any evidence of what costs might be assigned to the lots. Even if this could be shown by evidence, it would not be a proper basis to determine values since cost is only one of the factors. In *Sun Life Assurance Company of Canada* v. *City of Montreal*, (1950) S.C.R. 20, Chief Justice Rinfret said at p. 224:

> "The rule was laid down by Lord Parmoor in *Great Western and Metropolitan Railway Companies* v. *Kensington Assessment Committee* (1916) 1 A.C. 23 at 54, that in such a case 'the hereditament should be valued as it stands and as used and occupied when the assessment is made.' In the yearly valuation of a property for purposes of municipal assessment there is no room for hypothesis as regards the future of the property. The assessor should not look at past, or subsequent or potential values. His valuation must be based on conditions as he finds them at the date of the assessment."

The appeal taken from the Court of Revision to the Assessment Appeal Board by Kingsview was that the land assessments were excessive. The responsibility of the Board is set out in the Act as follows:

> "62. (1) In an appeal under this Act the board has and may exercise with reference to the subject matter of the appeal, all the powers of the Court of Revision, and without restricting the generality of the foregoing, the board may determine, and make an order accordingly,
>
> (a) whether or not the land or improvements, or both, have been valued at too high or too low an amount,
>
> (b) whether or not land or improvements, or both, have been properly classified,"
>
> (2) Where, upon the appeal, the board finds that the assessed value of land and improvements in a municipality or rural area is in excess of assessed value as determined under section 24, it may order a reassessment by the commissioner in the municipality or rural area, or a portion thereof, and the reassessment, upon approval by the board, shall, subject to section 68, be binding on the municipality or rural area, as the case may be."

The responsibility of the board was to determine the value of each lot. This responsibility was not met by designing a formula, however accurate, which was handed back to the assessor. As the section provides, the Board has all the powers of a Court of Revision and s. 53 gives it broad powers to make inquiries concerning matters pending before it. Although a reassessment can be ordered under s. 62 (2), it must be approved by the Board before it is effective. So whatever procedure is adopted by the Board to gather the information needed to determine actual value of

each lot, the ultimate responsibility rests on it to make a specific determination for each lot. That responsibility cannot be delegated.

I repeat that the answer to both questions is "yes". Costs may be spoken to.