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ASSESSMENT COMMISSIONER

v.

JAMES R. HOUSTON

Supreme Court of British Columbia (C790795)

Before: MR. JUSTICE D. FULTON

Vancouver, April 25, 1979

P.W. Klassen for the Appellant
B.I. Cohen for the Respondent

Reasons for Judgment June 6, 1979

This appeal is by way of case stated by the Assessment Appeal Board ("the Board") pursuant to the provisions of sec. 67 of the *Assessment Act*, S.B.C. 1974, ch. 6 as amended. The respondent Mr. Houston had appealed the assessment made by the assessor of Area No. 12, Coquitlam Assessment District, in respect of the property affected. The Court of Revision upheld the assessor. An appeal was taken to the Board, which reduced the total assessment to $2,700,000, and left the apportionment of this total as between the individual strata lots concerned, to the assessor. The Assessment Commissioner now appeals the Board's decision.

The case stated submits the following eight questions as questions of law for the opinion of the Court:

> (a) Did the Assessment Appeal Board err in law in primarily basing its finding of "actual value" of the property for the year 1978 on the price the property sold for, as a strata lot complex, some months after the assessment roll closed for the year 1978?
>
> (b) Did the Assessment Appeal Board err in law in altering the "actual value" and therefore the assessed value, of the property for the year 1978, when such alteration of actual value is based primarily on the sale referred to in paragraph (a), even though the assessed value thus determined might not bear a fair and just relation to the assessment of other like properties in the municipality?
>
> (c) Did the Assessment Appeal Board err in law in holding that the sale price referred to in paragraph (a) was the best test of "actual value" within the meaning of the term "actual value" in section 24 (1) of the *Assessment Act*?
>
> (d) Did the Assessment Appeal Board err in law in valuing the strata lot complex as one property rather than valuing each of the 150 strata lots, being 150 "parcels" of land, which make up the strata complex?
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> (e) Did the Assessment Appeal Board err in law in accepting the sale referred to in paragraph (a), being a sale of the entire strata lot complex, as being the best evidence of actual value of each of the 150 strata lots which make up the strata complex?

(f) In determining the actual value and therefore the assessed value of the strata lots in the manner in which it did, did the Assessment Appeal Board err in law in that it determined the actual value of the subject strata lots on the basis of value to the owner?

(g) Did the Assessment Appeal Board err in law in failing to accept the evidence of the market value of similar individual strata lots as being the best evidence of the value of the individual strata lots of Strata Plan N.W. 185, the subject matter of the appeal?

(h) Did the Assessment Appeal Board err in law in failing to determine and find the "actual value" and therefore the assessed value of each of the 150 strata lots as is required by the *Assessment Act* and section 33 of the *Strata Titles Act*.

The facts forming the background against which the questions and answers must be considered are stated clearly and concisely in the "Amended Stated Case" and are as follows (omitting only certain portions not necessary in this context):

1. The respondent, James R. Houston, was the owner of 5.25 acres zoned RM-2 in College Park, Port Moody, improved with a 150 suite frame garden apartment construction in 1970. The property is known municipally as 200-02-04 Westhill Place, Port Moody, British Columbia, and is legally described as Strata Lots 1-150 of District Lot 268, Group 1, New Westminster District, Strata Plan N.W. 185, together with unit entitlement in the common property of the strata plan, which land and improvements are hereinafter referred to as the "property".

2. For the year 1978, the assessor determined the actual value of the lots of the subject property. . . and arrived at a total actual value for the 150 strata lots of $4,719,000.00. An individual assessment notice showing the actual and assessed value of each individual lot was issued. . . .

3. The respondent appealed the assessor's determination of actual value and assessed value to the Court of Revision which appeal was denied, and the assessor's determination of actual and assessed values was sustained.

4. The respondent then appealed from the decision of the Court of Revision to the Assessment Appeal Board which appeal was heard at the City of Port Moody on the 23rd and 30th days of November, 1978.

5. The Assessment Appeal Board allowed the appeal of the respondent and reduced the actual value of the property to $2,700,000.00 for the reasons set out in their decision . . .

6. The property was first built as an apartment building. In order to finance the construction of the apartment building, the respondent obtained a low interest mortgage under the then provisions of section 16 of the *National Housing Act*. As the result of obtaining such mortgage, the respondent entered into an agreement with the Central Mortgage and Housing Corporation, which agreement was an exhibit before the Board, . . .

7. The respondent entered into a form of mortgage, in favour of the Central Mortgage and Housing Corporation, which mortgage was an exhibit before the Board, . . .

8. The property was stratified under the *Strata Titles Act*, chapter 46, S.B.C., 1966, in December of 1973. None of the strata titles have been sold as individual properties and up to the hearing of the appeal the property was being rented as apartments to tenants. No strata council has been elected for the strata corporation nor has a prospectus been issued as is required by the *Real Estate Act,* chapter 230, R.S.B.C. 1960.

9. In 1970 the City of Port Moody approved the construction of an apartment complex on the lands of the subject project and did in fact amend its zoning by-law accordingly, a copy of such zoning by-law, which was placed in evidence before the Board is annexed hereto and marked as "E". In 1973 the City of Port Moody approved the strata plan for the subject property, subject to the respondent entering into an agreement with the City of Port Moody. . . which agreement was put in evidence before the Board.

10. The assessor arrived at the actual value of each individual strata lot by the market approach. To determine the value of each strata lot he obtained the sale price of strata lots in five complexes. Such sales being completed for the years 1976 and 1977. Having compiled this sales data he then determined a market price for each individual strata lot in the subject property.

11. The respondent presented evidence valuing the property both on the income approach and on the market approach. The respondent's appraiser arrived at a value of $2,440,000.00 on the income approach as a rental project. The respondent's appraiser arrived at a value of $2,700,000.00 on the market approach.

12. In determining the value of the property on the market approach the respondent arrived at an initial market value similar to, though less than, that arrived at by the assessor. However, in arriving at the value of $2,700,000.00 the respondent's appraiser deducted from the initial market value of each individual unit the following marketing costs:

(a) deferred maintenance;

(b) capital improvements;

(c) rental loss;

(d) advertising;

(e) municipal taxes during construction;

(f) interim financing;

(g) sales commissions;

(h) development profit.

. . . The appraisal was in evidence before the Board. The respondent's appraiser used many of the comparable properties used by the assessor.

13. On October 3rd, 1978, the respondent, by bona fide sale, sold the property as an apartment, subject to the agreement and mortgage referred to in paragraphs 6 and 7 respectively, for $2,700,000.00. The Board concluded that the evidence of an arm's length sale had "an over-powering influence upon the Board" and the Board concluded from the evidence that the actual value of the property was $2,700,000.00. The sale was not a sale of individual strata lots, but rather was a sale of all 150 strata lots.

14. After the Board found the actual value of the strata plan, being the entire complex, it left the apportionment of the overall value to each individual strata lot to the assessor.

15. The assessor testified as to the actual and assessed value of the strata lots in the strata title complexes which he had used as comparables, which actual and assessed

values were put in evidence at the hearing,. . . Four of the properties, namely comparables 2 to 5 are located in the City of Port Moody.

16. The properties referred to in paragraph 15 are stratified properties and are approximately comparable in their physical characteristics, but differ from the respondent's property in that the individual lots have been sold to individual owners and in fact the complexes are being operated by strata councils pursuant to the *Strata Titles Act*.

17. The decision of the Board has resulted in the individual strata lots of the subject property being assessed at substantially less than the individual strata lots of the comparable properties.

It is apparent from the foregoing facts that the Board in reaching its decision had before it, and considered, a number of factors including the evidence as to the value of "comparable" properties used by both the assessor and the respondent's appraiser. The Board in effect concluded that the best evidence and proper basis of value were not the values established for individual strata lots in complexes where such lots had been sold separately, but was rather the price at which the entirety of the lots and complex in question here had been sold as a unit on the open market, in an arm's length transaction. This sale, for $2,700,000, was made on October 3, 1978.

It would appear that a preliminary point requires determination: that is whether, quite apart from the matter of the methodology followed, the Board was in error in admitting and considering, in connection with value, evidence as to a transaction which took place three-quarters of a year after the assessment roll for the year in question had been completed. This point was not pursued in argument before me, but it is implicit in the wording of question (a) above.

I am of the view that the Board did not err in so doing. What is to be determined is "actual value". There is no question that an actual sale on the open market is an important indication of such value. The Board had evidence that there was no significant change in the market between December 31, 1977, when the roll was closed, and October 3, 1978 when the sale was made. The sale was of all the lots actually concerned, not of a "comparable" lot or lots. In these circumstances I hold that such evidence was properly admitted as a matter for consideration.

The remaining answers to the individual questions set out above will, I believe, emerge from a consideration of the following two general questions:

First, in disposing of the appeal before it was the Board empowered to deal with value on the basis of a determination of the actual value of the whole complex, leaving the values of individual lots to be apportioned accordingly (as it did), or is the Board bound to proceed directly with the valuation of each individual strata lot without regard to the total value of the complex as a whole?

Second, if the Board is so empowered, did it err in law in fixing the total actual value at $2,700,000, the price at which the whole complex was sold on the market?

As to the first of these questions, counsel for the appellant submits that the Board is not empowered in law to proceed as it did. He points first to what he says is the general scheme of the *Assessment Act* with regard to the presentation of assessment rolls as set out in sec. 3 (1) and (4). These, taken together, he says have the effect that the assessor, and so the Board, is bound to assess, and in the process to value, each individual parcel of land in the municipality. On this basis, he submits, sec. 33 of the *Strata Titles Act*, (S.B.C. 1974, ch. 89) makes it clear that lots in a strata plan must be both valued and assessed individually. That section reads:

> "33. For the purpose of assessment and taxation, each strata lot, together with the share of the owner thereof in the common property. . ., shall be deemed to be a separate parcel of land and improvements."

Accordingly, he submits, the assessor, and so the Board, must proceed directly to the assessment of individual strata lots on one strata plan, and not look to, or base his valuation on, a global approach or determination of the value of all the lots as a whole.

It appears, on first impression, that support for this proposition is found in *Daon Development Corporation* v. *Corporation of the District of West Vancouver* (1975) 1 W.W.R. 615, a judgment of Hutcheon, J. of this Court. At page 618 Hutcheon, J. says:

> "I agree with Mr. Shaw that the interpretation to be placed upon s. 17" (the present s. 33) "of the *Strata Titles Act* is a question of law." He said further (page 620):
>
> "In order to give a sensible meaning to the words 'each strata lot, together with the share of the owner thereof in the common property, shall be deemed to be a separate parcel of land', it is not necessary to single out the share of the owner as a tenant-in-common of the surface. The *Strata Titles Act* describes the owner as the person registered in the books of any Land Registry Office as owner in fee simple of a strata lot. By s. 3 (1) a strata lot may 'devolve or be transferred, leased, mortgaged, or otherwise dealt with in the same manner and form as any land the title to which is registered under the *Land Registry Act.'*
>
> In my opinion s. 17 means that for the purposes of assessment and taxation each strata lot shall be deemed to be a separate parcel of land of which the boundaries are defined by reference to the floor, walls and ceiling."

With that conclusion I respectfully agree, but in my view, with equal respect, it does not dispose of the issue before me.

In the first place, the issue in that case was not, as it is here, whether in arriving at a value per lot, the assessor-or the Board-may have regard to the overall value of the complex, and determine the value of each lot by dividing that total between the lots in proportion to their size-i.e. by apportioning that value between the lots as was directed to be done here. Rather the issue was as to "the allocation between land and improvements of the total amount of the assessments." (p. 617). As Hutcheon, J. said at page 620 (*supra*):

> "In order to give a sensible meaning to the words 'each strata lot, together with the share of the owner thereof in the common property, shall be deemed to be a separate parcel of land', it is not necessary to single out the share of the owner as a tenant-in-common of the surface."

All that he was saying there, and what he decided, in my respectful view, was that in attributing any increment in value resulting from stratification, that increment is not attributable to the land in the sense of the surface only, to be divided between the owners as tenants-in-common of that surface, but is attributable to the strata-to the lots-at all levels, which must *for that purpose* be considered to be separate parcels of land.

The significance in the difference in the issues-and thus in the result-as between that case and this is further emphasized by the fact that sec. 5 of the *Assessment Act* was apparently not raised before Hutcheon, J.-the section is not referred to in his judgment. That section reads:

> "5. Where a building or other improvement extends over more than one parcel of land, those parcels, if contiguous, may be treated by the assessor as one parcel and assessed accordingly."

For the purpose of the issues here, in my view, this section must be considered in turn in the light of the further provision of sec. 72 of the *Assessment Act*, as follows:

> "72. Where there is a conflict between this Act and any other Act, the provisions of this Act prevail over the other Acts."

From the plain meaning of those words it would appear that the *Assessment Act* directs that, notwithstanding sec. 33 of the *Strata Titles Act*, strata lots on one strata plan may be looked at and treated as a whole-as one property or parcel. There was, however, argument before me as to whether sec. 5 of the *Assessment Act* is capable of application to the lots in a strata plan, or whether it must be interpreted as applying only to a conventional subdivision. In my opinion this question, if more is required, is resolved finally by a consideration of the wording of certain basic provisions of the *Strata Titles Act* itself, read together in the light of the *Assessment Act* provisions.

Sec. 2 (1) of the *Strata Titles Act* provides:

> "2. (1) Land may be subdivided into strata lots by the deposit of a strata plan, . . "

Sec. 5 (1) provides:

> "5. (1) A strata plan shall
>
> (a) delineate the plane boundaries of the land included in the strata plan and the location of the building in relation thereto."

And by sec. 1. (1) it is provided that:

> "1. (1) 'Building' means a building, or group of buildings . . . shown in a strata plan;"

"Parcel" is not defined in the *Strata Titles Act*, but it is defined in the *Assessment Act* (sec. 1) as follows:

> "1. 'Parcel' means a lot, block, or other area in which real property is held or into which real property is subdivided, . . ."

Clearly, then, the strata lots on the strata plan in question here are parcels into which land is subdivided, they are contiguous and the apartment building delineated on the plan extends over all those contiguous parcels. Hence by sec. 5 of the *Assessment Act* they may be treated as one parcel for the purpose of assessment. It is true that it would not be appropriate to do so if the lots were in separate ownership, but here they were not: at the time in question although the whole property was subdivided into strata lots, the complex was still being operated as a low-rental apartment complex, with one owner.

On the basis, looking again at the plain meaning of the words of sec. 5 of the *Assessment Act*, it appears to me that the Assessor may if he finds it appropriate look at the entire complex for the purpose of setting the value in the process of his assessment. It is apparent that the assessor did not do that: but the fact is that in appropriate cases he may do it-the power is there. And since the *Assessment Act* overrides the *Strata Titles Act* in this regard, it cannot be said, in my view, that there is no power in the Board to do so, or any error in law if in an appropriate case the Board has regard initially to the value of the entire complex as a step in arriving at the value of each lot.

As to the second general question-if the Board is so empowered, did it err in finding that the total actual value was $2,700,000, the price at which the whole complex was sold on the market?-in my view this, and the individual questions the answers to which depend thereon, involve

questions of fact and not of law. The *Assessment Act*, by sec. 24 (1) makes it clear that for the purpose of assessment it is "the actual value of land and improvements" that shall be determined. Subsection (2) lists those things which may be taken into consideration in determining the actual value: they are

> "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, . . ."

The Supreme Court of Canada laid down the general rule that governs the approach here, in *Dreifus* v. *Royds* (1922) 64 S.C.R. 46. In that case the Chief Justice said at pp. 348-9:

> "I am of the opinion that in a question of this kind as to the 'actual value' of lands for purposes of assessment this court would not and should not interfere with the finding of fact as to such 'actual value' if there was any evidence to sustain that finding. The Board is constituted of men of experience on questions of this character. They have the great advantage of visiting and viewing the lands in question, and of seeing and hearing the witnesses who may be called upon to speak to its value. Unless, therefore, the Board misdirected themselves on the proper principles which should govern them in determining this 'actual value', or obviously reached their conclusions as to such value by adopting and following some wrong or improper principle, this court would not and should not interfere with their findings."

This passage was expressly applied by our Court of Appeal in *City of Vancouver* v. *The Corporation of The Township of Richmond* B.C. Stated Cases, Case 14, page 56, to which I will return later.

It is apparent from the material before me that there was in evidence before the Board the facts as to the present use-the use being made of the property at the relevant time. It was then being used as a subsidized low-rental apartment project; although stratified, no further steps had been taken to put the lots into separate ownership, and each lot continued to be rented as an apartment. No strata council had been created-all this was noted by the Board. There was also before the Board not merely some evidence as to the price which the lands and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, but the best possible evidence on that point-the price actually so brought on a sale within a period during which there had been no significant change in the market.

It is true that there are other factors relevant to be considered by the Board-the usual evidence as to values of comparable properties, for instance. And also by sec. 37 (b) together with sec. 62 (1) (e) of the *Assessment Act* the Board may determine whether or not the value at which an individual parcel is assessed bears a fair and just relation to the value at which comparable property in the municipality is assessed: the Board may then give consideration to this factor in determining the actual value for the purpose of assessment. There was also in evidence before the Board the restrictions on sale resulting from the initial establishment of the project-and its continued use-as a limited-dividend low rental apartment project.

Counsel for the appellant says in effect that the Board did not consider the evidence of value of the comparables put in evidence by the assessor; that they did not consider whether the method they followed would result in inequity as between the values at which these lots and comparable properties are assessed; and that they erred in taking account of restrictions on use which had the result that this property could not be sold at present as strata lots, but only as a rental apartment complex which, counsel says, has the result that the Board in effect used value to the owner and not actual value as the criterion; and finally, that the Board erred in holding in effect that evidence as to the one sale was conclusive as to actual value. In support counsel cited several cases, to some of which I will refer later.

I have carefully considered these contentions and the authorities, and have concluded that the matters complained of, even if the factual bases for the criticisms were correct, do not alter the fundamental situation, which is that the matters concerned, with one exception, are not matters of law or principle but are matters of fact. The exception is the contention that the Board held that the evidence of sale was conclusive as to value, and disregarded or failed to consider the other evidence. I will deal first with this contention, which I find not to be supported by the material before me.

The material establishes that the Board had before it at the hearing the material prepared by the assessor, as well as the report of the respondent's appraiser. Both sets of material included reference to values of "comparable" properties-actually each used several of the same properties. The facts summarized in the Board's decision show that the Board was fully apprised of the facts here, and of their implications, as it was of the facts that the complex was not being used or occupied as strata lots in individual ownership, and could not be used as other than a low-rental apartment project for some considerable time. It was also aware of the fact that, as is noted in the case stated, the "comparables" used by the assessor and the appraiser were in all cases strata lots occupied and used as such.

All these matters, including specifically the present use, are matters properly to be taken into consideration by the Board in determining actual value. The Board in its reasons for its decision record that they have "carefully considered and weighed all the evidence including legal arguments stated by counsel to have a bearing on the matter." It is true that they say also that "the arm's length sale has an overpowering influence upon the Board, which considers this transaction to be the best evidence of actual value." But this is no more than an indication that they have done what they are entitled to do-indeed required to do: that is, to weigh the evidence and proceed upon the basis of that which they consider to be the best evidence even though it may be in conflict with other evidence. As stated by our Court of Appeal in the *Vancouver* v. *Richmond* case, *supra*, at page 58:

> "The weight of evidence is a question of fact and is not a question of law (Phipson, 9th Ed., page 11), therefore it is not within the jurisdiction on Stated Case under s. 51 (1)."

(The reference is to sec. 51 (1) of the *Assessment Equalization Act*, reproduced with enlargements in sec. 67 (1) of the *Assessment Act*: the effect in the context referred to here is not altered.)

Council submits, however, that by taking the actual selling price as a rental apartment complex as the best evidence of actual value, the Board erroneously gave effect to the restrictions on other use imposed by the C.M.H.C. Agreement, and thus used value to the owner rather than actual value as the criterion. He relies on *Consolidated Shelter Corp. Ltd.* v. *Rural Municipality of Fort Garry* (1965) 49 D.L.R. (2d) 565. But it appears that there the municipality had in no way approved the restricted use, whereas here the municipality had cooperated by re-zoning to facilitate the initial low-rental apartment development, and at the time of the stratification had obtained an agreement from the respondent that required that there would be increased costs incurred before the strata lots could be sold as such. The municipality here thus in effect recognized the restriction. Further, the actual decision in the *Consolidated Shelter Corp.* case goes no further than holding that the assessment made there was not improper by reason only of failure to give effect to the restriction-in effect confirming the discretion of the assessor as to the factors to which effect is to be given. In our Act, as noted, "present use" is one of those factors, and if and so far as the Board gave effect to it-or in so far as it is reflected in the Board's view that the actual sale in the open market is the best criterion of actual value, this conclusion is still one of fact or weight, and not one to be reviewed as a matter of law.

Much stress was placed, in argument, on the fact that the result of the Board's finding is that the lots in question here will be assessed on the basis of values which are lower than the values of

other strata lots in Port Moody. In making its finding, it is submitted, the Board erred in failing to give effect to the evidence as to the value of comparable properties, and has fallen into further error in that it has produced a result which is not just and equitable in terms of assessment. The case of *City of Vancouver* v. *Robert J. Rowan*, B.C. Stated Cases, Case 32, page 146, is referred to here. In that case, Wootton, J. held that the Board erred in altering an assessment of land on the basis of the purchase price therefor actually paid by the owner in the open market, which alteration resulted in the assessment not bearing a fair and just relation to the assessment of other like properties.

However, a careful reading of that judgment, at pp. 147-8, establishes that Wootton, J. made two findings upon which his decision was based. The first was that there were like properties which had been put in evidence before the Board and that the Board did not consider this evidence at all in making its assessment. As he said (p. 147):

> "The comparison of other like properties with the specific property assessed was one for the Board to make before determining their re-assessment."

The second is that Wootton, J. found (p. 148) that the market price paid some years prior was taken by the Board as "conclusive evidence" of actual value-supporting the view stated above that he found that the Board had failed or refused to consider the evidence as to the value of other properties, even although they were, in that case, genuinely similar properties.

But in the case before me, there is no evidence that the Board failed or refused to consider the evidence given as to what were alleged to be "comparable properties". The material establishes that it did: in its decision, mention is made specifically of the evidence given for the assessor before the Board, as follows:

> "The respondent appraiser produced a brief marked Exhibit No. 5, wherein this property is compared, by the market data method, to individual strata units selling in Port Moody and Coquitlam. The appraiser attempted to demonstrate the similarity of subject to the comparables."
>
> (The assessor was respondent before the Board.)

As I have previously noted, the Board goes on to say that it has carefully considered and weighed all the evidence and arguments.

Can it be said, then, that the Board here erred in that it failed or neglected to consider the other evidence or in that it failed to have regard to the "just and equitable" principle in relation to assessment of like properties? Clearly, in my view, it cannot. Rather to me it is clear from all the foregoing, and from the facts, that the Board considered the evidence and came to the conclusion that there were no truly comparable properties, or that the properties referred to were not sufficiently similar that the evidence in relation thereto displaced the cogent evidence as to the actual sale price and the conclusion to be drawn there from as to actual value.

The Board had evidence, and had noted, that the complex here, although stratified, was not used or occupied as strata lots. It had evidence as to all that had to be done before they could be so used, or sold. It noted that the assessor had "attempted to demonstrate" the similarity between the lots in question and the "comparables" put in evidence. It obviously concluded that the attempt had failed, and that there were no comparable properties. There are facts to support this conclusion.

The question as to the position of the Board in reaching such a conclusion in such circumstances, and in making an assessment accordingly, was dealt with specifically by our Court of Appeal in *The City of Vancouver* v. *The Corporation of the Township of Richmond* case (*supra*). In that case there was evidence as to the value of a number of adjoining properties, but the Board in arriving at its conclusion relied upon the values of some only which it found to be truly

comparable. The Court of Appeal, in analyzing what it is that the Board must do in applying sec. 37 of the Act then in force (now sec. 24 of the *Assessment Act*) said as follows (p. 58):

> "There appears nothing in s. 37 which requires any or all of the adjoining lands to be considered. It is to be observed that s. 37 (1) in designating the items which may be considered, uses language that is permissive and not mandatory, and it is therefore open to the assessor or others concerned in fixing the value, to consider one or all of those designated items, but it is not obligatory to do so.. . . It is therefore discretionary as to whether adjoining lands be considered. Moreover, s. 37 (1) does not state what adjoining lands are comparable, so that their assessed value may be considered to be 'other circumstances affecting the value of the lands in question,' and hence *the question of what adjoining lands are comparable, not being ascertainable from the section, is not a matter of principle, but is in each instance primarily a question of fact*."
>
> (Emphasis added.)

The Court went on to quote and apply the passage from *Dreifus* v. *Royds* set out above.

I find, then, that the Board in making its finding as to value was exercising a discretion conferred upon it by the *Assessment Act* as to what evidence it would accept or reject, and as to the weight it would give to the evidence it did accept, and that its conclusion as to value, being a finding of fact based upon evidence, is not open to review. I am certainly not inclined to the view that the evidence as to an actual sale, in all the circumstances, is not the best evidence of value, and even if I were it is not open to me to substitute my opinion as to that fact for the opinion of the Board. Further, since there was evidence before the Board to support the view that the other strata lots referred to are not, in the circumstances, similar or like properties, there is no error in principle or law if in the result the assessment of these lots is different from the assessment of those.

It follows, then, that questions (c), (e), (f) and (g), as they involve the determination of questions of fact rather than law, are not properly before me by way of stated case. Questions (a) and (b) in my view involve at best questions of mixed fact and law: in so far as questions of law are involved, for the reasons which have been given the answer to each is "no".

Questions (d) and (h) seem on first impression to raise the same question, that is, did the Board err in dealing with valuation on the basis of the value of the whole complex rather than proceeding directly to value each lot? In so far as this question alone appears to be raised in question (d) the answer, as appears from the consideration of the first general question posed earlier in these reasons, is "no".

In so far as question (h) raises the same question, the answer is the same; in so far as the question raised is whether the Board should itself have proceeded from the finding of total value to the apportionment as between individual lots, instead of leaving that to the assessor, the answer is also "no". By sec. 62 (1) of the *Assessment Act* the Board is given all the powers of the Court of Revision; by sec. 37 (1) (c) the Court of Revision is given power to direct such amendments to be made in the assessment roll as may be necessary to give effect to its decision. In my view this is ample to empower the Board to direct the assessor to make the apportionment in detail as between the lots and alter the roll accordingly, and I can find nothing in the Act which requires that the Board carry out this detail itself. It is true that in its decision the words of the Board are that it "leaves the apportionment of value to the Assessor" but in my view, in the circumstances this amounts to a direction.

For greater certainty I should say that if I be wrong in my view that questions (c), (e), (f) and (g) involve questions of fact rather than law, so that an answer is required, I am of the opinion, on the basis of all the considerations appearing earlier in these reasons, that there was no error in law,

so that the answer to each of these questions would also be "no". All questions will in that case be answered in the negative.

Costs are awarded to the respondent.