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ASSESSMENT COMMISSIONER

v.

DANIEL AND ALICE PLECAS

Supreme Court of British Columbia (No. 47/80)

Before: MR. JUSTICE J.C. BOUCK

Victoria, January 30, 1980

Dorothy L. Robbins, for the Appellant
No one appearing for the Respondent

Reasons for Judgment February 15, 1980

Nature of Application

Pursuant to the *Assessment Act*, S.B.C. 1974, c. 6, a case has been stated by the Assessment Appeal Board for the opinion of this Court.

Although served with notice of the proceedings, the respondents did not elect to appear.

Facts

A number of the relevant facts are set out in the stated case and read as follows:

1. Mr. and Mrs. Plecas are the assessed owners of the subject land and improvements.

2. The activities carried out upon the subject lands are, *inter alia*, the raising of cattle for sale, the bringing in of cattle from outside the subject land for custom killing and the custom killing of cattle for local farmers upon request.

3. In addition to the foregoing activities, there is also carried out on the subject land the processing, wrapping and selling of beef by the side.

4. Upon the subject land is a concrete and frame building in which is contained an abattoir and cutting and wrapping room separated by a concrete wall. The cutting and wrapping room is approximately 500 square feet.

5. Inside the cutting and wrapping room is carried out the processing and wrapping of meat from cattle which have been custom killed. Also contained in the cutting and wrapping room are walk-in coolers in which processed and wrapped meat is stored. Beef by the side is sold to the public from this room.

6. The meat which is processed and wrapped in the operation originated either from cattle raised on the subject land or from cattle which were owned by other farmers and brought onto the land for custom killing.

7. Also located upon the subject land is a smoke house for the smoking of meat.

8. The respondents employ a meat-cutter, who is also a farmer, on a piece work basis. They also employ a female wrapper and their son in this operation.

9. There is no sales counter in the cutting and wrapping room.

10. The respondents hold only a slaughter house licence issued by the Department of Agriculture of the Province of British Columbia.

11. It is the classification of the cutting and wrapping room and the smokehouse which is the subject of this appeal.

12. The Court of Revision directed that the assessor classify the subject land and improvements as Business and Other.

13. The Board directed that the assessor classify the subject land and improvements as farm class.

Besides these conclusions, the Board gave reasons for its decision. According to these reasons, which were submitted as part of the case, the Board found it was possible for a person to apply to the respondents, purchase a portion of beef from them and have it cut and wrapped for home consumption. It decided the respondents were bona fide farmers who had operated a slaughterhouse on the property for 18 years. A distinction was made between the respondents whom it found to be meat-processors and others who might be called operators of a meat packaging plant. Since the slaughterhouse and smokehouse were used as an integral part of the farm operation and since the Board found the respondents were not operating a commercial butcher shop, the assessor was directed to classify the improvements as farm class.

Issue

Did the Board err in law when it concluded on these findings of fact that the cutting and wrapping room and the smokehouse should be defined as farm property rather than commercial?

Law

It is always an anxious concern when deciding a case after hearing only one side. However, Mrs. Robbins argued the matter very thoroughly. She even went out of her way to cite an American authority of 1917 from the Kansas City Court of Appeal, which she thought might be against her submission.

S. 26 (2) of the *Assessment Act* compels an assessor to classify as farmland that which is in accordance with the standards prescribed by regulation. Regulation 446/77 of 7 October, 1977 sets out the standards. It says land which ceases to produce primary agricultural products cannot be classified as farmland. Primary agricultural products are defined. The definition excludes manufactured derivatives from stock raising which are produced from the agricultural raw materials.

What the Commissioner now says is the cutting and wrapping room and the smokehouse area cannot be classified as farmland because they are used to manufacture derivatives from stock raising, namely meat.

Mulcahey, C.C.J., in Ontario was called upon to interpret the meaning of the word "manufacture" in *Re McGaghran* (1931) 40 O.W.N. 122. Mr. McGaghran was a vendor of dressed meat. He bought cattle, slaughtered it and prepared it for market. It was his practice to travel from town to town and sell the meat so produced. A local bylaw required a licence for persons who were hawkers and pedlars, but a governing statute exempted from the bylaw those who hawked and

peddled manufactured goods. It was the contention of Mr. McGaghran that he was selling meat which had been manufactured.

After referring to earlier case and dictionary authority, His Honour concluded that the killing, preparing and cutting up of cattle changed it into meat which was fit for sale and human consumption. Such a process fell under the natural meaning of the word "manufacture" because the product came from raw material which was given a new form through the use of labour(and machinery). Therefore, Mr. McGaghran was within the exception and so not required to have a licence as a hawker and pedlar.

The Board found a distinction between a person who processes meat and one who is a manufacturer. As a processor the respondent might be exempt since the regulations are silent with respect to the taxation of farm land used for "processing". Unfortunately for the respondents, the tax gatherers have adequately looked after the problem. To process, has been defined as meaning to prepare for market, manufacture or other commercial use by subjecting to some process, i.e. cattle by slaughtering them: *Federal Farms Ltd.* v. *M.N.R.* (1966) 20 D.T.C. 5068, affirmed S.C.C. (1967) D.T.C. 5311. Thus processing cattle into meat is the equivalent of manufacturing: see also Re Walsh (1961) O.W.N. 105.

Getting back to the American case which I first mentioned, I agree with counsel that it is not persuasive when read against the above Canadian authorities: see *City of Higbee* v. *Burgin* (1917) 201 S.W. 558.

It follows that land used for the manufacturing and processing of meat cannot be classified as farmland. The decision of the Court of Revision was correct in the first instance. For these reasons, the appeal must be allowed and the matter remitted back to the Board.