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MAPLE RIDGE FARMS LTD.

v.

ASSESSOR OF AREA 15 – LANGLEY-MATSQUI-ABBOTSFORD

Supreme Court of British Columbia (A792764)

Before: CHIEF JUSTICE A. McEACHERN

Vancouver, March 31, 1980

Bruce I. Cohen for the Appellant
R.B. Hutchison for the Respondent

Reasons for Judgment April 3, 1980

This is a case stated by the Assessment Appeal Board. The facts, which are fully set out in the case, may be summarized as follows.

The appellant is a purchaser of land under a sub-right to purchase. Originally the land was described as Lot 4 of the Northwest ¼ of Section 25, Township 16, Plan 5656 NWD, comprising 47.91 acres. For many years the registered owner used the land as a farm. When he sold the land he retained the right to place grazing cattle upon the land and to remove such hay as may be growing there. Subsequently, after the death of the registered owner, another farmer was given rights to graze cattle on the lands and such rights continued up to the date of the hearing of the Assessment Appeal Board.

In 1976, after many years of farm classification for this land, the assessor changed the classification to residential. This was reversed by the Assessment Appeal Board. In 1978 the land was again classified residential and the Assessment Appeal Board again reversed the assessor. In 1979 the assessor tried again, and the Court of Revision confirmed this without reasons. The Assessment Appeal Board dismissed a further Appeal. Hence this Stated Case.

By 1979, however, a new factor had arisen. On September 11th, 1978, Lot 4 was subdivided as a result of a requirement of School Board No. 34 (Abbotsford) for a 10 acre school site. This requirement was satisfied by consent, not expropriation, and, in this process, the residue of Lot 4, now comprising 37.91 acres, became Lot 131 of the Northwest ¼ of Section 25, Township 16, Plan 55486 NWD.

The basis for the 1979 decision of the Assessment Appeal Board is clearly that the subdivision of Lot 4 required an application by the owner for farm classification because, as the Board said, Lot 131 did not come into existence until the subdivision was completed; and, further, that Lot 131 has never been classified as a farm.

The Board accordingly concluded that, as no new application had been made under Section 26 of the *Assessment Act*, S.B.C. 1974, Chapter 6, (amended), the Appeal against residential classification of Lot 131 should be dismissed.

With great respect, I have concluded that the Assessment Appeal Board fell into error in equating land to a legal description. Section 26 concerns itself with land, and there is no obligation on the

part of an owner to make an application for subdivided land in order to retain its existing farm classification. The provisions of Section 26 are permissive only, and it is my opinion that a subdivision or an expropriation does not cancel a previous classification of land.

In view of the foregoing it is necessary to consider what should be directed with respect to Lot 131.

Section 10 of the Regulations made pursuant to Section 26 (2) of the *Assessment Act*, which became effective June 20th, 1979, provides:

> "10. Subject to section 4, land classified as a farm on the 1977 assessment roll that does not qualify as a farm under these standards on November 30, 1977, will cease to be classified as a farm for the 1980 assessment roll unless it reaches these standards by November 30, 1979."

It is apparent that the land comprising Lot 131 was classified as a farm on the 1977 Assessment Roll, and such classification was altered for the 1979 assessment year because, as the Assessment Appeal Board states:

> ". . . The Assessor is taking the position that the new parcel created by the subdivision and designated Lot 131 was never classified as a farm on any previous Assessment Roll."

I have found this to be erroneous, and, in my view, the assessor erred in depriving this land of its farm classification. This land should therefore be returned to its former status on the Assessment Roll.

It also seems inappropriate to direct a further hearing for the 1979 assessment year. If the assessor thought the land did not qualify as a farm on some other ground he should not have attempted to rely upon the absence of an application for land already classified as a farm.

I therefore respectfully answer all the questions stated for the opinion of this Court in the affirmative.

The appellant is entitled to its costs of these proceedings.