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ASSESSMENT COMMISSIONER

v.

CREATIVE COMMUNITY DEVELOPMENTS (T. HEYERDAHL & ASSOCIATES LTD.)

Supreme Court of British Columbia (0032/80)

Before: MR. JUSTICE J. G. RUTTAN

Victoria, June 12, 1980

R.B. Hutchison for the Appellant
No-one appearing for the Respondent

Reasons for Judgment

June 23, 1980

This is an amendment of the stated case originally brought before my brother Bouck on January 28, 1980, and remitted by him to the Assessment Appeal Board for further evidence and argument. As his Lordship then said, under consideration is the proper method of ascertaining actual value as it applies to separate portions of the same property. His Lordship's order directed the Board "to determine whether the income formula or the area formula is the most appropriate" in apportioning the actual value of the property in each class under s. 3 of B.C. Regulations 470/78, 487/78, and 501/78 (herein referred to as the 'Regulations').

S. 3 reads as follows:

3. Where a property is included in more than one of the classes herein defined the assessor shall assess the portion of the actual value of the property in each class at the percentage of actual value fixed for that class.

The present case is one where the premises are divisible in two portions, one defined under Regulation (1) as "Class 1-Residential (15%)" and the other as "Class 6-Business and Other (25%)". The significance of the percentages set out in the brackets is found by reference to sub-sections (6) and (7) of s. 24 of the *Assessment Act* which read as follows:

(6) Subject to subsection (17), land and improvements shall be assessed at the percentage of actual value fixed by the Lieutenant-Governor in Council under subsection (7).

(7) The Lieutenant-Governor in Council shall, on or before October 21 in each year, fix the percentage of actual value at which each class of property shall be assessed for the succeeding year, and in doing so, the Lieutenant-Governor in Council may fix the same percentage or different percentages of actual value for each class of property defined by him.

Thus to arrive at the monetary assessment for taxation purposes, the Assessor makes two calculations: first the actual value, which he determines pursuant to the factors and principles set forth in s. 24 (1) and (2) of the *Assessment Act*, and secondly the percentage multiplication using the Class percentages pursuant to sub-sections (6) and (7) of s. 24. When there are two or more

classes involved in the same property, two or more percentage calculations must be made. To find how the premises are to be apportioned between the classes, we look for direction to Regulation 3 (supra).

As it appears section 3 is not too clearly worded, and specifically does not indicate a formula for apportioning the overall value between the classes. So the board seeks the opinion of the court on this question in its amended stated case:

Where a property is included in more than one of the classes designated in s. (1) of the Regulations, how is the actual value of the property apportioned between such classes under s. (3) of the Regulations?

For the purpose of this application I take it that the following issues are not in dispute:

1. The gross actual value of the property in question is \$112,900.00, as determined under s. 24 of the *Assessment Act* on the basis of cost less physical depreciation.
2. The premises represent a gross under-development. The market value of the property therefore is not determined on an income basis of valuation.
3. The two upper floors and basement of the premises, representing approximately 76% of the total area, are used for residential purposes, and the main floor, representing approximately 24% of the total area, is used for commercial purposes.
4. The estimated rental income derived from the area used for residential purposes was substantially equal to the rental income derived from the area used for commercial purposes. As a result approximately 50% of the income is derived from 76% of the area of the subject improvements, and approximately 50% of the income is derived from 24% of such area.

Mr. Hutchison, appearing on behalf of the Assessment Commissioner, submitted that Regulation 3 should be interpreted as directing the Assessor to re-appraise the whole property, not so as to vary the gross value, but to assign a different and possibly greater portion of value where the economic value of one portion could be shown to be equal or greater than the other. Thus here the income from the commercial portion at \$300.00 a month, was the same as that from the residential portion, though the residential area was three times that of the commercial area. He submitted the two portions should be valued equally on a rental income basis, for the purposes of Regulation 3 and sub-sections (6) and (7) of s. 24.

But the assessment carried out by the Assessor in Regulation 3 is confined to the second step I refer to above, and is not an assessment or re-assessment under s. 24 (2). He already has arrived at the overall actual value, and is now directed to work out the percentage multiplication as directed by sub-sections (6) and (7), using the actual value already set on the roll. What other factors does he have? He has the definition of residential land as including "land and improvements or both, used for residential purposes (Class 1 definition). However that has been found in this case to include 76% of the use area of the property. The balance falls under the commercial area.

To accept Mr. Hutchison's definition of "assessment" under Regulation 3, would be to allow re-appraisal on a proportionate basis as opposed to the existing overall value, using different factors where suitable. Here by an income or rental value, the assessor would be taking into account factors he did not consider in the original valuation, because as he agreed, the property was not being utilized to its full economic value or rental potential.

Mr. Hutchison did not quarrel with the original actual value, but he admitted that the act of revaluation of parcels might result in an increased overall figure.

I agree with Mr. Hutchison that the measurement formula may be difficult to apply in every case and that there might be double usage of the same area. Nonetheless the assessor is not given statutory authority to go ahead as Mr. Hutchison says he should be allowed to do, and determine

what underlying value of the property should be assigned to each Class, and whether it should be done by measurement or not necessarily so. He should be allowed to break the land down to its fair apportionment by uses.

Whether or not such a broad discretion and flexibility vested in the assessor would result in a more realistic appraisal and spreading of the tax burden, the powers are not provided for by the existing statutes, in my opinion.

I agree with the Board's conclusion that the actual value can only be apportioned between the classes on the basis of the areas of property in each class. Reaching that conclusion, the Board arrived at certain reasons which I accept as follows:

(a) section (3) speaks of "*the* actual value of the property" meaning, it would seem, the actual value of the legal parcel of property on the Roll (land and improvements) determined under sections (1) and (2) of section 24;

(b) the apportionment of "*the* actual value" must, therefore, result in portions of actual value which together equal "the actual value" so determined, otherwise, the assessment would not be based on the actual value of the entire property determined under the *Assessment Act*;

(c) subsections (6) and (7) of section 24 merely authorize the Lieutenant-Governor in Council to define the classes of property and fix percentages of actual value at which each class of property will be assessed, and do not authorize any further tampering with actual values;

(d) it follows, in the opinion of the Board that the division of "*the* actual value" in each class must not be made by a method which involves the application of valuation techniques to a portion only of a parcel of property on the Assessment Roll.

Until the statute and its Regulations are changed to provide a different method of apportioning actual values, I accept the procedure employed by the Board as submitted in this stated case.