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## ASSESSMENT COMMISSIONER

v.

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

Supreme Court of British Columbia (0032/80)

Before: MR. JUSTICE J.C. BOUCK

Victoria, January 28, 1980

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

#### Reasons for Judgment

February 15, 1980

Under consideration in this judgment is the proper method of ascertaining actual value as it applies to separate portions of the same property. The premises in question are located in the Fairview Slopes district at Vancouver. On the main floor there is office space designated "commercial", while the basement, second and third floors are used for residential purposes.

In its Reasons of 29 October, 1979, the Assessment Appeal Board described the approach it preferred. First of all it determined the whole of the premises had an actual value of \$107,100.00. It then found that the residential portion occupied 76% of the area, and the commercial portion the remaining 24%. Consequently, it ordered the Assessor to apply 76% of the actual value of the whole to Class 1 -Residential (15% tax rate) and 24% to Class 6-Business and Other Purposes (25% tax rate), B.C. Reg. 470/78.

Being dissatisfied with this decision, the appellant asked the Board to state a case for the opinion of the Court. Apparently there is so little involved in the way of money that the respondent did not feel it worth its while to employ counsel. However, Mr. Hutchison in his usual fair way, asked the Board to give a more detailed explanation for its conclusion so that the other point of view might be more fully understood. This was done by one of the Board Members and it has been of assistance to me.

To decide the point in contention, it is necessary to examine s. 3 of Regulation 470/78 passed in accordance with the *Assessment Act* S.B.C. 1974, c. 6 and amendments thereto. It reads:

"(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."

This regulation is not happily worded. What it seems to mean is:

(a) Where a property *includes* more than one of the classes herein defined . . .

rather than

(b) Where a property is *included* in more than one of the classes herein defined . . .

Where the Board parts company with the appellant is in the method of reaching the percentage of actual value for each class. This must first of all be "fixed" for the class, and then it must be valued. When the regulation speaks of assessing "the total value of the property in each class" I take it to mean that the percentage first obtained must be converted into a dollar figure.

At the hearing before the Board the Assessor submitted the most appropriate method was the income approach. He argued the relative values were equal or 50/50 because the residential portion would yield a rental income of \$300.00 per month, and the main floor office space would attract a similar amount. Therefore 50% (or \$53,550.00) should be assessed residential and 50% (\$53,550.00) should be assessed commercial.

In contrast the Board used the area formula, and not the income formula, getting 76% residential (\$81,396.00) and 24% commercial (\$25,704.00). Apparently the position of the Assessor and the Commissioner is not completely understood, because the Board is concerned that if it uses the income method there is a danger the Assessor will somehow or other fix the combined actual value of the two classes at a sum greater than \$107,100.00.

Counsel for the appellant agrees this would not be correct. He concedes the total value of various types of property is not always equal to the sum of its parts. Quite frequently it is less. Mr. Hutchison also agreed that on occasion fixing the percentage of a class by area may be the more proper way than fixing it by the income method; each has its own strengths and weaknesses, neither should be rejected out of hand. Simply put, if 24% of the area of a property yields 50% of its income then perhaps the actual value of the class represented by that area should be 50% of the total actual value of all the lands and premises and not 24%.

Because s. 24 (2) allows the assessor to determine actual value by giving consideration "to the present use, location, original cost, cost of replacement, *revenue or rental value . . .*" it seems to me the rental income method cannot be ignored. In some cases it may give the best result while in others the area approach may be more reasonable.

Because of this, the matter is remitted back to the Board so that it may hear further evidence and argument. At that time it will be for the Board to determine whether the income formula or the area formula is the most appropriate.