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PLATEAU MILLS LIMITED

v.

ASSESSOR OF AREA 26 - PRINCE GEORGE

Supreme Court of British Columbia (A810322) Vancouver Registry

Before: MR. JUSTICE H.P. LEGG (in chambers)

Vancouver, February 16, 1981

B.J. Wallace for the Appellant
J. Greenwood for the Respondent

Reasons for Judgment

February 19, 1981

On the hearing of this appeal by way of a stated case by the Assessment Appeal Board, counsel for the respondent took the preliminary objection that the question chiefly relied upon by the appellant which is stated for the opinion of the Court was not a question of law.

At the conclusion of the submissions on the preliminary objection I upheld the preliminary objection but stated that I would pronounce reasons for the conclusions which I had reached.

The pertinent facts stated by the case are that the appellant carries on the business of a saw mill at Engen, British Columbia. The property under appeal comprises 146 acres more or less of which 36 acres is cultivated as grazing land, 14 acres is uncleared and 96 acres has been cleared, graded, levelled and filled for use as millsite and a log storage yard.

The appellant appealed to the Court of Revision on the question of the valuation of the land and particularly of the developed millsite and log storage area. The Court of Revision reduced the actual value of the land as assessed by the respondent from \$2,953,200.00 to \$2,329,200.00.

The Assessment Appeal Board further reduced the actual value of the land to \$1,280,200.00.

The facts set out in paragraphs 4 and 5 of the stated case are as follows:

"4. In determining the actual value the Board found that there had been agreement that the cost of the site preparation for the millsite was \$18,000 per acre. The Board further found that the actual development costs of the intensive log storage area were \$60,000. per acre. The Board determined that the value of the intensive log storage area and of the millsite was equal to the cost of the site preparation of the millsite of \$18,000 per acre."

"5. Expert evidence was heard by the Board as to the price that comparable millsite land had sold for when offered for sale on the open market and that evidence was criticized by the respondent. The Board did not refer in its decision to the evidence or the criticism of it, but rather determined that the "actual value" of the land pursuant to section 26 of the *Assessment Act*, was equal to the cost of site preparation of the millsite."

Counsel for the appellant abandoned question 1 in the stated case and, quite properly, did not press for an opinion of the Court on question 4.

Further, with regard to questions 2 and 3 he submitted that a further question should be added to the stated case which stated more precisely than did questions 2 and 3 the appellant's chief complaint with regard to the judgment reached by the Board. Counsel for the respondent did not oppose an amendment by adding a further question. I accordingly accepted a further question as question number 5 worded as follows:

"5. Did the Board proceed on an incorrect principle in its determination of the actual value of the land?"

My reasons for concluding that that question is not a question of law in the context of the stated case are as follows.

It is apparent from the reasons for judgment of the Board that the appellant's position was that the Board should accept an appraisal from Mr. Lane, that the 96 acre portion of the millsite should be valued on a market value approach, at \$2,000.00 per acre.

The respondent's position was that the assessed value of \$2,329,200.00 reached by the Court of Revision should be accepted. This valuation was computed by applying different values per acre to various acreages of the millsite area. One such value per acre was the agreed cost of the site preparation of the millsite of \$18,000.00 per acre. Another value per acre was \$60,000.00.

The Board did not accept the appellant's market valuation approach. But neither did it accept fully the respondent's computation of using the cost of raw land plus the cost of preparation of various portions of the site. Some of these costs were as high as \$60,000.00 per acre. Instead it found that the agreed cost of \$18,000.00 per acre was the actual value which should be applied to all of the acreage of the millsite.

The Board stated at p. 4 of its reasons as follows:

"The Board has carefully considered all the evidence as presented. The Board does not agree with the respondent that the accepted method of valuation for industrial land is the cost of raw land plus the cost to prepare the site. The cost to cure, at times, can be considerably more than the value of adjoining sites. An example would be a ravine that would require piling and land fill to give it the same bearing qualities of similar sites. It is admitted that the site chosen was not to the best advantage of Plateau Mills because of the convergence of water from other areas. The marketability of a sawmill is contingent on the availability of the log supply and the productivity of the mill. The area for log storage is one segment of the mill operation and, in the opinion of the Board, the costs expended were primarily to bring the access and load bearing ability of the land to the same standard of the millsite or any other log storage area not encumbered with the problems of this site.

It is the opinion of the Board that the actual value for the log storage site preparation should be the same as the millsite at \$18,000.00 per acre: 25 acres at \$18,000.00 equals \$450,000.00."

The Board accordingly reduced the actual value reached by the Court of Revision of \$2,329,200.00 to \$1,280,200.00.

Counsel for the appellant submits that the Board fell into error in principle in equating the cost of \$18,000.00 per acre to the actual value of the millsite. He says there was no evidence on which the Board could reach such a conclusion.

He submits that this is the incorrect principle which it followed in its determination of actual value.

I am unable to accept that submission.

Section 26(2) of the *Assessment Act* R.S.B.C. (1979) chapter 21 provides that an assessor, in determining actual value, may give consideration to 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 Board is entitled to take the same approach. It was thus entitled in determining actual value to give consideration to the agreed cost of the site of preparation for the millsite of \$18,000.00 per acre as an indication of the actual value of the whole of the millsite if it considered on all of the evidence that this value was the best indication of actual value. When the question posed is examined in the context of the case stated by the Board it is seen to be a question of whether the Board was entitled to use the method which it did in reaching its computation of actual value. Whether or not the method used by the Board was correct is not a question of law but rather a question of fact. (See *Canadian Collieries Resources Ltd. v. Comox Assessment District* (Supreme Court of British Columbia No. X542/62 Vancouver, September 26, 1962), Case No. 31 British Columbia Stated Cases p. 140 at 143 per Aikins, J. (as he then was) and *MacMillan Bloedel v. Assessment Districts of Alberni, Cowichan, Comox, Prince Rupert, Gulf Islands, Lillooet, Nanaimo and Vancouver*, British Columbia Stated Cases Case No. 53 p. 273 at p. 274 per Seaton, J. (as he then was).)

For the foregoing reasons the preliminary objection taken to question 5 must be upheld.

Counsel for the appellant advised me that the questions had been drawn without the advantage of the transcript of the Board's proceedings. I can readily appreciate that difficulty. Although counsel for the appellant did not support questions 2 and 3 vigorously, he did not abandon them. I shall deal with them briefly.

These read as follows:

"2. Did the Assessment Appeal Board err in law in determining the "actual value" of land on Roll No. 56-585-00493.730 without referring in its decision to the evidence of the price that the land might be reasonably expected to bring if offered for sale in the open market by a solvent owner?

3. Did the Assessment Appeal Board err in law in determining the "actual value" of the land on Roll No. 56-585-00493.730 by reference in its decision only to the cost of the site preparation of the millsite?"

The failure of the Board to refer in its decision to the evidence of the price that the land might be reasonably expected to bring in the open market (the error complained of in question 2) was not an error of law in the context of this stated case.

The omission by the Board to make any reference to such evidence does not mean that the Board did not consider this evidence. Plainly, the reasons of the Board refer to Mr. Lane's appraisal which was before the Board as an exhibit. This exhibit contains some of the evidence of price. I cannot say that because the Board did not expressly deal in its reasons for judgment with the evidence of price as part of the evidence of value, that the Board did not take this into consideration. (On this point I refer to *Vorsteher v. Kamloops District*, British Columbia Stated Cases No. 72 p. 359 per Verchere, J., May 18, 1971.) Question 2 must be answered in the negative to the extent that it is a question of law.

My consideration of the answer to question 3 is similar.

The Board referred in its reasons to the costs of preparation of not only the millsite but also the intensive log storage area and the balance of the log storage area as well as the millsite. The Board's decision that the actual value for the log storage preparation should be the same as the millsite at \$18,000.00 per acre does not mean that the Board confined its consideration to the cost of site preparation of the millsite.

Moreover questions 2 and 3, as well as question 5, appear to raise questions of the correctness of the method of the Board's computation. In the context of this case these are questions of fact. This Court has no jurisdiction to answer a question of fact.

Even if I view question 3 as a question of law, I must answer it in the negative. I am unable to say that because the Board referred in its decision only to the cost of the site preparation of the millsite in reaching its determination of the actual value that it did not take into consideration all evidence of actual value presented to it. Indeed the reasons for judgment of the Board expressly state otherwise.

In summary therefore my opinion is that question 5 does not in the context of the stated case raise a question of law. To the extent that questions 2 and 3 are relied upon by the appellant and are questions of law they must be answered in the negative.