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WESTERN INDOOR TENNIS LTD.

v.

ASSESSOR OF AREA 11 - RICMOND/DELTA

Supreme Court of British Columbia (A810358) Vancouver Registry

Before CHIEF JUSTICE A. McEACHERN (in chambers)

Vancouver, April 6, 1981

John R. Lakes for the Appellant
J.K. Greenwood for the Respondent

Reasons for Judgment April 24, 1981

The Appellant is the owner of a commercial indoor and outdoor tennis facility in Richmond, British Columbia. These facilities include a clubhouse, a large indoor tennis building, outdoor tennis courts, a bubble, a swimming pool, patio and paved parking lot.

The appellant appeals against its 1980 assessment in the total sum of $1,157,350.00 comprising-

Land	$ 430,100.00
Improvements	530,300.00
Machinery & Equipment	141,950.00
Total:	$1,157,350.00

These values were determined originally by the Assessor as follows:

> (a) Land: 5.06 acres at $85,000.00 per acre. This land is zoned Private Recreational. There were no sales of comparable properties, and there are very few similarly zoned parcels. As a result, the assessor derived value by reference to vacant residential acreage. The four properties used in this comparison, all zoned residential, ranged from 2.10 acres at $94,285.00 per acre to 9.437 acres at $80,988.00 per acre. The two sales thought by the assessor to be most comparable considering economic, geographical and servicing characteristics had per acre values of $96,000.00 and $100,500.00 per acre respectively.
>
> (b) Improvements: $585,300.00 is replacement cost less depreciation, with an allowance for "the limited use features of the improvements".
>
> (c) Machinery and Equipment: $141,950.00 is replacement cost less depreciation.

The appellant's main argument is that an income approach to valuation should have been used in the absence of any sales of comparable property. He also argues that an assessment sales ratio should have been applied. To get that argument, however, the appellant must dispose of the decision of the Assessment Appeal Board. With his usual tenacity, counsel for the appellant makes a frontal attack on the decision of the Assessment Appeal Board, (hereinafter called "the Board"). He argues that it is an error in principle to determine land values by comparison with

vacant residential properties and then value improvements conventionally. He summarizes argument by urging that this approach "produces an absurdity because the land is valued on the basis that it is vacant, while the buildings and equipment are valued on the basis that the land is not vacant".

In support of this argument counsel cites *The Corporation of the City of Toronto* v. *Ontario Jockey Club*, [1934] S.C.R. 223 (S.C.C.); *C.P.R.* v. *City of Montreal* (1979), 21 N.R. 541 (S.C.C.); *Re Tyandaga Golf and Country Club and Town of Burlington*, [1970] 2 O.R. 612 (Ont.C.A.); *Arbutus Club* v. *Assessor of Vancouver* (unreported, A800302, September 9th, 1980, B.C.S.C. Bouck, J.).

Counsel for the respondent argues in reply that there has been no error in principle as the Assessor and the Board are entitled to select the method of assessment as long as it is not arbitrary. He argues that when there are no comparable sales, it is permissible to ascertain value by reference to differently zoned lands, and also to ascertain the value of improvements by some other permissible method. He cites *Provincial Assessors of Comox et al* v. *Crown Zellerbach Canada Limited et al* (1963), 42 W.W.R. 449 (B.C.C.A.) per Davey, J.A., at page 455 where the learned Judge said:

> "The statutory duty of the assessor is to find the 'actual value' of the taxable property, but sec. 37 permits him to use several different methods and to consider many different elements in finding actual value. I do not think that the use of any specifically mentioned method of finding actual value, or the inclusion or exclusion of any enumerated element, provided there is evidence to support the reasoning, can be said to raise a question of law appealable to the courts on a stated case, for those matters lie in the judgment of the assessor and the assessment equalization board: *Reg.* v. *Penticton Sawmills Ltd.* (1954) 11 W.W.R. (N.S.) 351, at 353, 356."

While I respectfully agree with the foregoing. it must be read together with what Meredith, J., said in *Swan Valley Foods Ltd. et al* v. *Assessment Appeal Board* reported in part at (1979) 13 B.C.L.R. 304.

> "The question of whether the selection of any given method of assessment is wrong in principle is a matter of law, not fact."

Unfortunately, the above quotation does not appear in the B.C.L.R. report, but it is in His Lordship's full written Reasons.

Practically the same question as the one I have to decide was considered recently by Bouck, J., in the *Arbutus Club* case. The facts of the *Arbutus Club* case are described by Bouck, J., as follows:

> "As found by the Board, the appellant is a society operating a sports and social club here in the City of Vancouver. Located in the Dunbar area, it is more or less surrounded by single family homes. However, the club's land is not zoned residential but recreational. Because the market for entities of this nature is almost non-existent, no useful information was available on sales of similar property in other locations. Therefore, the assessor found the land area of 6.64 acres had a value of $1,496,800.00 based upon its highest and best use as a parcel available for subdivision into single residential lots. He then determined the improvements had a depreciated actual value of $2,595,800.00. These opinions were accepted by the Board. The appellant says the Board erred principle when it did so."

Bouck, J. quotes from the Judgment of the Supreme Court of Canada in the *City of Toronto* case, supra, at page 227 as follows:

> " . . . The Board, therefore, having arrived at its valuation of these lands on the basis of a subdivision, which involved the destruction of all the buildings before the land could be used and disposed of in lots as a subdivision, the buildings added nothing to that potential value of the property beyond their value for the purpose of being wrecked and removed. . . .
>
> It is manifestly improper to value the land for the purpose of a subdivision which would involve the destruction of the buildings, and then value the buildings on the basis of their being used for the purposes of a race track. If the buildings were to be valued on that basis the land would have to be valued on that basis also."

Bouck, J. found the Board committed an error in law in valuing the improvements on a different basis from the land and he remitted the matter back to the Board.

I believe I should follow Bouck, J., unless it can be said that the ". . . substantial allowance for the limited use feature of the improvements" mentioned by the Board overcomes what appears to be an error in principle. I consider that, on this kind of Appeal, I am entitled to look at the reasons of the Board and also the evidence because the reasons of the Board are made part of the Stated Case, and because section 74 (5) of the *Assessment Act*, R.S.B.C. 1979, ch. 21 require the Secretary of the Assessment Appeal Board promptly to file the case together with ". . . a certified copy of the evidence dealing with the question of law taken during the Appeal". If that is not so then it nevertheless appears to me that I am still able to look at the reasons of the Board on the grounds stated in my Judgment in *B.C. Forest Products Ltd.* v. *Foster and Ruff* (1980) 2 W.W.R. 289 at p. 294, that is to see if the reasons disclose an error in principle.

The reasons of the Board, in my respectful view, do not overcome the error in principle described above because an allowance, even a substantial allowance for limited use, does not meet the point. The improvements can hardly have any value except salvage value if the land is valued as vacant land. If the substantial allowance reduces the improvements to a salvage value then the Board should say so. Furthermore, the evidence, including the appraisal of Mr. David Lee which was adopted by the Board shows that he valued the improvements conventionally, and arrived at the precise valuation adopted by the Board, i.e. $585,300.00.

In any event, no such allowance, substantial or otherwise, was made for machinery and equipment.

As a result the Appeal must be allowed and the assessment remitted back to the Board pursuant to section 74 (6) of the *Assessment Act*.

I also wish to add a few comments for the assistance of the Board.

1. The decision of the Board appears to be in direct conflict with the decision of Bouck, J. in the *Arbutus Club* case. In my respectful view the Board should have followed the judgment of Bouck, J., or explained why it was departing from binding authority.

2. Nothing in these Reasons should be construed as a finding that the Board erred in failing to employ an income approach. I have reached no such conclusion, and it will be for the Board to consider whether, in all the circumstances, the income approach is the correct one or not.

3. Similarly, I make no finding for or against the use of an assessment sales ratio. That is also a matter for the Board.

4. I do not consider the Board's reference to the allocation of $430,100.00 to land in the appellant's appraisal to bind the appellant to that figure. That appraisal concluded that the proper value of the subject property was $637,500.00. It allocated $430,100.00 of that figure to land, but I do not take that to mean that the appraiser was approving that valuation for land except as a

component in a total appraisal of $637,500.00. In any event, a reading of the appraisal makes it apparent that no attempt was made to fix land value at $430,100.00. The appraiser makes it abundantly clear that, in his view, the income approach was the only proper approach at which to arrive at a fair market value of the subject property.

In view of the foregoing it is only necessary that I answer Question No. 1 in the affirmative. I do not propose to attempt to answer the other questions except to the extent that they are already answered in these Reasons. My affirmative answer to Question 1 requires the Appeal to be allowed. The other questions would only have to be answered if Question 1 had been answered in the negative.

The appellant is entitled to costs of the Appeal.