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ERNST GERZYMISCH

v.

ASSESSOR OF AREA 21 - NELSON

Supreme Court of British Columbia (81/971) Victoria Registry

Before: MR. JUSTICE J.G. RUTTAN

Victoria, June 22, 1981

Mrs. Catherine Scambler for the Appellant
John E.D. Savage for the Respondent

Reasons for Judgment July 14, 1981

This is an appeal by way of stated case from the decision of the Assessment Appeal Board dated the 18th day of June, 1980, concerning a parcel of land located in Nelson, British Columbia, and assessed under Roll No. 21-07-614-02109.000 and owned by Ernst Gerzymisch, the appellant herein.

The property is a 54.69 acre parcel of land with lake frontage on the west arm of Kootenay Lake, in the Province of British Columbia. The appellant's land is in the Agricultural Land Reserve, and prior to 1980 was classified as farm; however it was reclassified to residential for the 1980 roll by the assessor. The farm activities still carried on on the appellant's land included the growing of hay consumed by the appellant's horses, and some fruit trees and produce consumed by the appellant's family.

The appellant, being dissatisfied with the classification, appealed it to the Court of Revision. The Court of Revision upheld the assessor, and the appellant appealed this decision to the Assessment Appeal Board who, in turn, sustained the Court of Revision.

Two questions are submitted here for the opinion of the Court:

> 1. Did the Board err in law in holding that the inclusion of the appellant's land within the agricultural land reserve does not entail classification as a farm pursuant to section 26 (1) of the *Assessment Act* and the B.C. Regulation 288/79.
>
> 2. Did the Assessment Appeal Board err in law in classifying the land as residential notwithstanding that property included in the Agricultural Land Reserve cannot be subdivided.

These questions are really one and the same, does the inclusion of land within the Agricultural Land Reserve automatically include that land classed as farm land for all purposes and all statutes, especially s. 26 (1) of the *Assessment Act*?

The Board answered these questions in the negative.

In this connection, the terminology contained in B.C. Regulation 288/79, paragraph 2, is explicit in that produce must be sold to qualify for Farm classification. The respondent had no alternative but to change the classification to Residential.

I respectfully agree with the Board's decision, and refer to and follow my own previous decision (unreported, but handed down in Victoria on January 27 of this year) in the case of *Lydia M. Hill*, where I held that a horticultural display farm that did not produce any income from the sale of farm produce could not qualify for farm status.

There is no conflict here with the *Agricultural Land Commission Act*, since that statute functions in a different sphere. Under that Act, and specifically pursuant to B.C. Regulation 93/75 "B. Land Use", a substantial number of outright uses are allowed for land in an Agricultural Land Reserve that are not of necessity "farm uses". These include the harvesting of trees and the carrying out of all silvicultural practices, ecological reserves and public parks, bird reserves, fish farms, golf courses, etc., and a larger number still of "conditional uses".

There is no conflict between the statutes, and for the present purposes this land is properly classified as residential.

The answer to both questions must be No.