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WESTERN PEAT MOSS LTD.

v.

ASSESSOR OF AREA 11 - RICHMOND-DELTA

Supreme Court of British Columbia (A810474) Vancouver Registry

Before: MR. JUSTICE A.A. MACKOFF (in chambers)

Vancouver, April 15, 1981

Charles S. Hopkins for the appellant
Julian K. Greenwood for the respondent

Reasons for Judgment May 11, 1981

This appeal from a decision of the Assessment Appeal Board is brought by way of stated case pursuant to the provisions of s. 74 (2) of the *Assessment Act* 1979, R.S. c. 21.

By Orders in Council 2635/79 and 2760/79, regulations were made to the *Assessment Act* whereby land was placed into various assessment classes. Each class of property defined in the regulations has fixed the percentage of actual value at which it was to be assessed in 1980. The percentage so fixed varies from class to class.

The subject matter of this stated case concerns 5,195.7 acres of land lying in the Municipality of Delta which was found by the Assessment Appeal Board (hereinafter called the Board) to be farmed out of peat moss or non-harvestable for peat moss. The Board confirmed the decision of the Court of Revision that the land in question fell into Assessment Class 6, "Business and Other". This is a catch-all class and if a property fits nowhere else then it falls into this category. Under this class the land was to be assessed at 25% of its actual value. The Appellant had argued before the Board that the land in question should be classified as Class 1 (c), "Residential". Under this class the land would be assessed at 14.5% of its actual value.

The questions submitted in the stated case are:

1. Did the Board err in law in holding that the 5,195.7 acres fell within the classification of Class 6, Business and Other, pursuant to Orders in Council 2635/79 and 2760/79?

2. Did the Board err in law in not holding that the 5,195.7 acres should be classified as Class 1, Residential, pursuant to Orders in Council 2635/79 and 2760/79?

Class 1 reads as follows:

"Class 1 (14.5%)-Residential shall include

(c) land having no present use and which is not specifically zoned or held for business, commercial, forestry or industrial purposes."

On its interpretation of the wording in Class 1 (c) the Board held that since the land was zoned by Municipal By-law 2750 as Extractive Industrial, it was "specifically zoned-for industrial purposes" and therefore it did not fall into Class 1 (c) even though it found that the land has no present use and that it was not held for business, commercial, forestry or industrial purposes.

There are three parts to the definition in Class 1 (c). The first part is the mandatory requirement that the land have no present use. The second part is the requirement that it is not zoned for the purposes set out. The third part is the requirement that it is not held for the purposes set out. The first part is followed by the word "and", a co-ordinate conjunction, which requires that in addition to the first part there must be something else. That may be either the second part or the third part of the definition. This is so because of the use of the word "or" between the words "zoned" and "held". The word "or" is a co-ordinate that creates an alternative between the second and third part. That being so, in my view, the section should be read in this way: land having no present use and which is not specifically zoned for or land having no present use and which is not specifically held for-. Therefore for the land to fall within the definition of Class 1 (c) it is not necessary, as the Board held it to be, that all three conditions must be met. It is sufficient if the first and second or alternatively the first and third conditions exist. If it was intended that the definition of Class 1 (c) have the meaning given it by the Board, then the word "neither" instead of "not" and the word "nor" instead of "or" would have been used in the definition.

The assessment of the land herein is for purposes of taxation and therefore the wording of the definition under consideration must be clear and unambiguous. Where, as here, the language is not unambiguous, the construction to be adopted is that which is most favourable to the subject: *O'Brien* v. *Cogswell* 17 S.C.R. 420 at 424.

The appeal is allowed and the answer to each question is in the affirmative.