

The following version is for informational purposes only

**GOLDEN ACRES LTD.
PARK MOBILE HOME SALES LTD.
BILLABONG MOTOR HOME & TOURIST PARK (1974) LTD.
SHADY CAMPS LTD. and
WESTGATE DEVELOPMENTS LTD.**

v.

ASSESSOR OF AREA 19 - KELOWNA

Supreme Court of British Columbia (A831177), Vancouver Registry

Before: MADAM JUSTICE P.M. PROUDFOOT (in chambers)]

Vancouver, June 6, 1983

L.R. Crosby appearing in Person
J.K. Greenwood for the Respondent

Reasons for Judgment

June 30, 1983

This matter comes to me by way of a stated case pursuant to s. 74 of the *Assessment Act*, 1979, R.S.B.C., c. 2 1. The facts are set out in the stated case.

1. The properties under appeal are trailer parks on Indian Reserve land in the Kelowna area. That while there were a number of parks involved the case of Golden Acres Ltd. would be presented and the decision given would be applicable to all other cases because the issue was the same in all.
2. Golden Acres Ltd. is leased from the Crown on a long term basis. There is only 3 years remaining in the current term.
3. The Assessor determined "actual value" at \$390,900.00, that valuation was sustained by the Court of Revision.
4. There were no additions to or deletions from the subject property in 1981 or 1982. In 1981 the "actual value" was determined at \$93,500.00. In all years prior to 1982 the Assessor used the cost approach method for valuation and valuations were made as if the land were held in fee simple. In 1981 the Assessor conducted a revaluation of mobile home parks in the Kelowna area and for 1982 assessment roll. He used not only the cost approach to value but also an income approach derived from the market which was also based on fee simple ownership. The Board found that the subject properties had been valued by the respondent Assessor in accordance with the requirements of s. 26 and s. 34 of the *Assessment Act*.
5. The Board was not presented with sufficient evidence to establish the existence of any other factors which have applied to the valuation of the appellants' property would

diminish the actual value irrespective of the fact that the property is held in leasehold and the Board also concluded it was obliged to determine the value of a leasehold interest in Crown lands based on the actual value of the lands and improvements as if such lands were owned in fee simple by the occupier rather than merely being leased in accordance with the principle stated in the case of the *Assessment Commissioner v. John Wayne Ryan*, S.C.B.C. (367/79).

6. The Board found that the property had been valued in accordance with the requirements of the *Assessment Act* and that the property had been assessed at actual value and therefore dismissed the appeal in its decision dated September 29th, 1982. They held that they were obliged to follow the case of Ryan which they concluded determined that the assessment of a leasehold interest in Crown lands must be based on the actual value of the lands and improvements as if such lands were owned in fee simple by the occupier rather than merely being leased. The Board heard evidence that the property had been valued by means of the cost approach and a market or income approach; on a gross income multiplier basis and on a sale price per bay.

Mr. Crosby presented a number of arguments which he stated indicated there was no direct evidence of value. The first argument related to the income approach being that the income figures used were incorrect in that some were estimated. Second, the Board did not consider other circumstances such as evidence of the value of goodwill and the expenses. Further, he argues that in the cost approach the wrong formula was used. He also argued that the comparables used by the Assessor to arrive at the actual value were in fact not comparables. They were not in the area of the subject property and were in effect freehold properties and not leasehold. In any event there were other circumstances to take into consideration which was not done by the Board he argues. The applicant argued that the Ryan case does not mean that the Board cannot consider other circumstances.

At the hearing the applicant, Mr. Crosby, did not present evidence of any other circumstances. Section 26 (1), (2) and (3) of the *Assessment Act* reads as follows:

26. (1) The assessor shall determine the actual value of land and improvements.

(2) In determining the actual value under subsection (1), the assessor 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, and the actual value of the land and the improvements so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of those values.

(3) Without limiting the application of subsections (1) and (2), where an industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going concern.

Section 34 (1) and (2) of the *Assessment Act* reads as follows:

34. (1) Land, the fee of which is in the Crown, or in some person on behalf of the Crown, that is held or occupied otherwise than by, or on behalf of, the Crown, is, with the improvements on it, liable to assessment in accordance with this section.

(2) The land referred to in subsection (1) with the improvements on it shall be entered in the assessment roll in the name of the holder or occupier, whose interest shall be valued at the actual value of the land and improvements determined under section 26.

In determining actual value the methods of assessment used by the Assessor were both the cost approach and the income approach. The appellant argues the Assessor used the wrong figures and the wrong comparables. The appellant produced no evidence of other factors which might alter the two approaches of the Assessor.

The mobile home park was valued as a commercial undertaking. The Board accepted the evidence as presented by the Assessor. They made findings of fact on evidence presented. There was no error made in law and no reason for this Court to interfere.

The stated case asks the Court to answer two questions:

A. Did the Board err when it took into account all interests in the leasehold land, and valued such lands and improvements as if they were owned in fee simple by the occupier to determine the actual value of the said lands and improvements?

B. Did the Board err in its interpretation of Section 26 of the *Assessment Act* by approving the use of the "market approach" which compares the gross income of the subject property to the gross incomes of fee simple properties which have been sold, as well as the gross incomes of leasehold properties, which have been sold to determine the value for the subject property?

A. Answer - No

B. Answer – No

There is no doubt that I have some sympathy for the appellants in this matter, however, my function is to decide whether an error was made in the application of a principle of law. Had some evidence been presented by the appellant, the matter might have had a different outcome, but that is not for me to speculate about.

The application is dismissed.