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LOLA-JEAN AND CYRIL A. WARREN

v.

ASSESSOR OF AREA 19 - KELOWNA

Supreme Court of British Columbia (A830828) Vancouver Registry

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

Kelowna, June 15, 1983

J.Y. Gardner as agent for the Appellants
J.E.D. Savage for the Respondent

Reasons for Judgment July 5, 1983

This matter comes to me by way of stated case pursuant to s. 74 (2) of the *Assessment Act*. The facts are as follows:

1. The subject property consists of a four lane bowling alley constructed in 1978 and comprises land, buildings and machinery and equipment listed on Roll Number 19-23-318-10061.400 in the Kelowna Assessment district.

2. The property is located in the commercially zoned area of Peachland, British Columbia and the highest and best use of the property is its present use.

3. The assessments as confirmed by the 1982 Court of Revision are:

Land	$ 55,150
Buildings	87,950
Machinery and Equipment	42,400
Total	$185,500

4. No evidence was provided of any other sale of bowling alleys in the Peachland area.

5. The appellant alleged that there was insufficient evidence to enable the Assessor to determine that the property had increased in value since December, 1979.

6. The respondent Assessor based his land value on sales of improved land in the Peachland area in 1980, 1981 and 1982 by calculating the value of the improvements and determining the value on a residual basis.

7. The value of the buildings was determined by the respondent Assessor on a depreciated cost approach basis from the Marshall-Swift manual.

8. The machinery and equipment were valued by the respondent Assessor on a replacement cost less depreciation basis.

9. The Board concluded that the actual value assessment of the land and buildings should be confirmed and that the actual value of the machinery and equipment be reduced to $35,000.

10. The full text of the decision of the Board dated 8th day of December, 1982 is attached hereto as Schedule A. In addition, the Board attaches the appellant's requirement of the Board to state a case dated at Palm Desert, California dated 11th day of January, 1983 and signed by their agent, J.Y. Gardner, being schedule B.

The matter has been referred to the Supreme Court to have the following questions answered:

1. Whereas it is evident that the work load of both the respondent Assessor and that of the Appeal Board was excessive for the 1983 assessment year. Is it lawful that errors in evidence submitted may be overlooked by either the respondent Assessor or the respective Appeal Board to the detriment of an appellant taxpayer?

2. Whereas the respondent Assessor's approach to the actual land value is based upon five sales which have proven to be erroneously analyzed, did the Board have before it proper evidence upon which to conclude that the actual value of the land as established by the respondent Assessor be confirmed?

3. Whereas the respondent Assessor submitted no supported evidence to justify his opinion that it was not necessary to consider that part of Section 26 (2) which refers to, "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," did the Board have before it sufficient evidence to justify it in ignoring the appellant's Exhibit 7, the income and expense statements for the years 1979, 1980 and 1981, statements which in fact would be the most important indicator of market value to a potential purchaser?

The appellant makes a number of arguments: (1) that the Board did not consider the aspect of economic obsolescence, (2) that the evidence of sales contained a number of discrepancies rendering them useless or not comparables, (3) that the work load of the Board was so heavy that the board did not grant time to consider the appeal adequately and accordingly, overlooked some of the errors submitted and (5) and probably the most important of the appellant's argument, is that the Assessor did not consider s. 26 (2) of the *Assessment Act* which refers to "the price that the lands might be reasonably expected to bring if offered for sale in the open market by a solvent owner". In that regard the appellant argued that the Assessor did not decide actual value having ignored the income of the bowling alley that is not using the income approach.

The *Assessment Act*, ss. 26 (1) and (2) read 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.

Dealing with that argument first, s. 26 is discretionary and gives the Assessor the power to use a number of factors in arriving at the actual value. He is entitled to use one or more of the accepted

approaches. In the case at bar, he chose not to use the income approach and he gave a lengthy explanation why that approach was not used. (See p. 43 of the transcript, p. 5 of Exhibit 12). There was no error made by the Assessor in the approach he took, not using the income approach. The approach to value is adequately explained by the Assessor.

At pp. 42 and 43 of the transcript:

> Mr. Mulgrew: Mr. Chairman, on page 4-our approach to the value. Most commercial sales within Peachland in recent years involved a purchaser who intends to occupy all or part of the building. Few properties are bought by two investors that is normally the case in larger, more complex centres. During 1981, a study was made of the sales of commercial properties in downtown Peachland. It appears from the sales that have occurred that most purchasers are seeking location in which to carry out their business operation. Such a potential buyer could also take into account such considerations as the potential of a secondary source of income, the use of a marriage partner, or family members in the day-to-day operations of the business or possibly as a seasonal retirement occupation. These considerations will vary between purchasers. Such a purchase can be likened to a small motel or farm property with the income in most cases only sufficient to cover the overheads and provide the owner-occupier with a salary. It is considered that the subject bowling alley would most likely attract such a purchaser who would also operate the business. From the analysis that was carried out, it was discovered that the market value of the land, together with the depreciated replacement cost of the improvements was the most accurate means of determining market value and that it produced total values closest to the actual sale prices. All commercial land and buildings including the subject property were valued using the same method on the basis that it produces the best indication of market value.

Next, the appellant talks about the Board giving no consideration to the aspect of obsolescence. Indeed the Board considered this, the transcript shows the Assessor allowed a 10% reduction to cover this. At Exhibit 12, p. 4 and pp. 45 and 46 of the transcript the following was said:

> Mr. Mulgrew: Yes, it is. Okay, we have here normal depreciation at 6% and we've allowed an economic obsolescence of 10% . . .

The appellants argue there were discrepancies in the figures presented. Indeed that is so, however, I am satisfied first they were adequately explained at the hearing and secondly, they were not so grave as to have me conclude there was no evidence upon which the decision could be made. In fact, the Board after considering the evidence reduced the value in the machinery and equipment to reflect further depreciation. There was no error made by this Board. They accepted the approach as presented by the Assessor and no error in application of a principle of law was made.

Finally, one of the arguments advanced by Mr. Gardner referred to the work load of the Board being so heavy that they may have overlooked errors in evidence submitted. Firstly, there is no evidence before me of an excessive work load. However, even if such was the case, this Board listened, asked questions and received explanations. Their excessive work load, if they had one, did not deny the appellant a fair hearing.

The questions referred to earlier in the stated case are inappropriately stated and the Court does not propose to answer them in the usual manner.