GRAND FORKS CURLING CLUB

v.

ASSESSOR OF AREA 18 - TRAIL

Supreme Court of British Columbia (A833551) Vancouver Registry

Before: MR. JUSTICE M.R. TAYLOR

February 13, 1984

R. Mellett for the Appellant
P. Klassen for the Respondent

Reasons for Judgment (Oral) April 5, 1984

The Court: (Oral) This is an appeal by way of case stated brought by the Grand Forks Curling Club against a decision of the Assessment Appeal Board restoring the original assessment on improvements at its curling club premises which had been reduced by the Court of Revision.

The premises were apparently constructed by the club in 1978 and have since been operated by the club, but only for six months of the year. The parties agree that it is impossible to value the improvements on the "market" approach because comparable premises are not bought and sold in fact. The assessor has chosen instead to value the improvements on the basis of their cost with appropriate adjustment for depreciation and for subsequent change in the cost of construction. In so doing the assessor has made no allowance for obsolescence.

At the hearing before the Court of Revision of the appeal of the Curling Club the court reduced the original assessment of $529,250 to $255,500, apparently acceding to submissions made on behalf of the club relating to the limited use made of the facilities resulting from their special character and from the fact that they are in operation only for half of the year. In allowing the appeal from that decision of the Court of Revision the Assessment Appeal Board accepted the assessor's approach and restored the original assessment.

The Curling Club appeals by way of case stated asserting that the board erred in law in two respects.

1. The board ought to have held that the assessor must, in appraising these premises on the "cost" approach, make allowance for "economic obsolescence".

2. The board ought to have given consideration to valuation on the "income" approach in arriving at the proper assessed value.

The key passages in the Reasons for Decision of the board to which the parties refer (at pages 4 and 5) are those in which the board says that the club built the building "with full knowledge" of its limited usefulness and in effect and that the "cost" approach was the only reasonable one to

apply. With respect to the claim for an allowance for "economic obsolescence" the board says, in the stated case itself, that it was the assessor's opinion that none existed.

The position taken on behalf of the assessor on the appeal by case stated is that the questions raised are not questions of law but questions of fact, as to which there is no appeal to this court. The questions are these:

> 1. Did the Board err when it decided not to grant an allowance for "economic obsolescence"?
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> 2. Did the Board err in the method used to establish actual value?
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> 3. Did the Board err by not following the decision of the Supreme Court of British Columbia action number 32/79 of the Victoria Registry between the *Racquet Club* v. *Assessor Area of Saanich and the Islands Corporation in District of Saanich*?

I am of the view that these questions, considered in the light of the case stated and the reasons of the board, raise no question of law which could be answered favourably to the appellant.

With respect to Question 1, it seems to me that the board's decision not to grant an allowance for "economic obsolescence" is based on its acceptance of the evidence of the assessor. That evidence was to the effect that, since the Curling Club had purchased the land and built the premises with full knowledge of the limitation on their usefulness, he did not accept that the premises had been affected by obsolescence. I take the finding of the board to mean that it accepted the contention that other reasonable prudent purchasers, of such a sort such as the appellant itself, would be prepared - with the adjustments made for depreciation and cost changes - to pay the same price today. That seems to me to be a reasonable finding of fact which cannot be disturbed on an appeal by way of case stated.

As to Question 2, it is apparent that the method used by the assessor and the board to establish actual value, the "cost" approach, is one of those permitted by section 26 (2) of the *Assessment Act* and is not shown to be manifestly unreasonable to rely solely on that approach in relation to premises of this sort.

With respect to Question 3, the decision in the *Racquet Club of Victoria* case could not, in my view, assist the appellant in these proceedings.

In that case the question was whether it was permissible in law to make an allowance for "economic obsolescence" in an assessment on the cost approach of premises used by a non-profit recreational organization. The issue here is, not whether it is permissible in law to make such an allowance, but whether such an allowance ought to be made in this case. That seems to me to be a question of fact on which the board accepted the evidence of the assessor.

It follows that all three questions must be answered in the negative, and the appeal must be dismissed.