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## CORPORATION OF THE DISTRICT OF BURNABY

v.

## NEW VISTA SOCIETY

Supreme Court of British Columbia (A853730) Vancouver Registry

Before: MR. JUSTICE W.T. OPPAL

Vancouver, January 23, 1986

Ronald R. Holmes for the Corporation of the District of Burnaby  
William T. Lane for New Vista Society

### Reasons for Judgment

March 4, 1986

The Corporation of the District of Burnaby appeals by way of stated case pursuant to s. 74 (2) of the *Assessment Act*, R.S.B.C. 1979, c. 21, from a decision of the Assessment Appeal Board of British Columbia dated September 30th, 1985.

The questions of law upon which the Board asks for a determination by the Court are:

1. Did the Board err in law in finding that Section 398 (i) of the *Municipal Act* requires a Municipal Council to exempt *some* ". . . area of the land surrounding the building . . . "?
2. Does the Assessment Appeal Board have the jurisdiction to review the exercise of a discretion of the Municipal Council under Section 398 (i) of the *Municipal Act*?
3. Can a Municipal Council be compelled to exercise a discretion under Section 398 (i) of the *Municipal Act*, and if so, who may compel them to do so?
4. If the Municipality can be compelled to exercise a discretion under Section 398 (i) of the *Municipal Act*, what factors must be taken into account by the Municipality in its exercise of this discretion?
5. Does the Assessment Appeal Board have the power pursuant to Section 69 (1) (c) of the *Assessment Act* or otherwise to allow an exemption pursuant to Section 398 (i) of the *Municipal Act* in respect of an area of land surrounding the building therein referred to, that has not been determined by the Council?

The material facts which are agreed upon are as follows:

1. The Corporation of the District of Burnaby is a District Municipality within the meaning of the *Municipal Act*, R.S.B.C. 1979, c. 290, as amended.
2. The New Home Vista Society is a corporation which owned and used exclusively without profit lands within the District of Burnaby to provide homes for elderly citizens with the assistance of aid granted by the Province after January 1, 1947, but not made after March 31, 1974.

3. The Council of the Corporation of the District of Burnaby, in purported exercise of its discretion under Section 398 (i) of the *Municipal Act*, by resolution in November, 1974, resolved that exemptions from taxes on elderly citizens projects be phased out so that full taxation within the Power of the Council would apply in the year 1979 and thereafter.

4. The appellant society appealed the determination of the Council to the Burnaby Court of Revision which by notice dated January 10, 1985, confirmed for the taxation year in issue, the Council's determination that no area of land surrounding the appellant's buildings be exempt from taxation.

5. The appellant society then appealed the decision of the Court of Revision to the Assessment Appeal Board of British Columbia which conducted a hearing on September 10, 1985, as to the entitlement of the appellant society to an exemption pursuant to Section 398 (i) of the *Municipal Act*.

In appearing before the Assessment Appeal Board, New Vista argued that the Council for the Municipality of Burnaby did not properly exercise its discretion entrusted to it under the Act because in making its determination it concerned itself only with matters relating to taxation or revenue. It was submitted that the question of land use itself was not considered by the Municipal Council. It was also argued that since Council had improperly exercised its discretion, the matter then fell within the jurisdiction of the Appeal Board to consider evidence and determine the amount of land surrounding each building which should be exempted pursuant to the provisions of s. 398 (i). New Vista urged the Appeal Board to substitute its own discretion for that of Council.

In allowing the appeal, the Board gave the following reasons:

It is the conclusion of the Board that the Municipal council did not properly exercise its discretion, and therefore, the Board further concludes that the exemption for surrounding land was improperly disallowed.

Although it is questionable whether the appellant's remedy should be sought before the Supreme Court, rather than before this Board, Mr. Lane expressed his concern that he wished to exhaust the appellant's remedies below the Supreme Court level. The Board notes Section 8 of the *Interpretation Act*, which states:

Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

In the exercise of fair play and natural justice the Board, therefore, concludes that if it has the power under the *Assessment Act* to determine whether an exemption has been properly allowed or disallowed, it must follow that the legislature intends the Board to have the power to correct the granting of an exemption improperly allowed and to grant an exemption improperly disallowed.

The Board is, therefore, prepared to make a determination with respect to an exemption for an area of the lands surrounding each of the buildings falling within Section 398 (i) of the *Municipal Act*. To make that determination the Board must hear evidence with respect to the application for an exemption, and the Board suggests that the appellant and respondent agree upon a further hearing date for that purpose.

Both counsel agree that questions 3 and 4 are not germane to the facts of the stated case, because the Assessment Appeal Board did not seek to compel the Municipal Council to exercise its discretion. Accordingly, in the circumstances of this case it will not be necessary to deal with questions 3 and 4.

1. Did the Board err in law, in finding that s. 398 (i) of the Municipal Act requires a Municipal Council to exempt some " . . . area of the land surrounding the building . . ." ?

Section 398 (i) of the *Municipal Act*, R.S.B.C. 1979, c. 290 reads as follows:

398. Unless otherwise provided in this Act. the following property is exempt from taxation to the extent indicated:

(i) a building and the land on which it stands constructed or reconstructed with the assistance of aid granted by the Province after January 1, 1947, and owned and used exclusively without profit by a corporation to provide homes for elderly citizens, and an area of the land surrounding the building determined by council; but this paragraph does not apply to a building or land where the grant by the Province was made after March 31, 1974;

Counsel on behalf of the Municipality submits that the onus in this matter is on Vista, because this is not a taxation matter but concerns an exemption. It is argued that there is no absolute right to exemption from taxation and that the Municipality has an absolute discretion to create exemptions. It is further argued that the exercise of the discretion in this case in not creating the exemption in favour of Vista was not contrary to law. The case of *Re Atlantic Institute of Education and City of Halifax* (1974), 51 D.L.R. (3d) 755, is cited in support of this position. The Nova Scotia Supreme Court, Appellate Division, dealt with a case wherein an institution of higher education acquired property and then requested a municipality to pass an ordinance exempting it from real property tax pursuant to the exemption provisions of the Municipal Charter. The Court held that since the municipal council had not been guilty of any act of discrimination, the application should be dismissed. The Court also held that there was no absolute right to exemption and that council should not be compelled to grant any exemption.

It is also argued that the role of an assessor is to reflect any exemption created by statute or otherwise.

It is argued that the Assessment Appeal Board, in reviewing and then exercising its own discretion, has usurped the function of the Municipal Council. It is argued that the function of the Board is to determine whether a particular function has been performed or not.

Section 398 (i) provides for three exemptions from taxation. They are as follows:

1. the building,
2. the land on which it sits, i.e. its footprint, and
3. an area of the land surrounding the building.

In order to give effect to the words "and an area of the land surrounding the building determined by council", it is necessary to adopt the rules concerning statutory construction. Counsel for Vista submits that the words should be given their ordinary meaning. In support of this conventional rule of statutory construction, counsel relies on the text *Construction of Statutes*, E.A. Driedger, (2d) pp. 2-3 and 15, where the author states that in construing written instruments, the grammatical and ordinary sense of the words is to be adhered to. It is also suggested that the use of the word "and" in the ordinary usage is a conjunction which, in its context, means "in addition". In my view, in addition to the rules concerning statutory construction, the purpose of s. 398 is significant. Counsel on behalf of Vista makes a convincing argument when he submits that this provision addresses the situation where a home for the elderly is located on a large lot only partially in use for the benefit of the building and its occupants. Because of the difficulties of drafting an exemption formula of general application for lands surrounding the building, the Legislature has delegated this determination of exemption to council. The purpose of s. 398 is not

to enable the municipality to impose taxes per se; it is to require the municipality to determine the extent of the exemption in a particular case. This determination is essentially a question of "how much" - it is not a question of "whether or not" there should be any exemption at all for surrounding land. I agree with this construction and interpretation of s. 398 (i). Moreover, the word "area" is defined in the Shorter Oxford English Dictionary, Vol. 1, as "a particular extent of (esp. the earth) surface". Obviously, the words "an area" refer to "some extent of land".

In reaching my decision on this issue, I have considered whether the provisions of the *Municipal Act* require a resolution or by-law passed by council in order for a permissive exemption to be granted. Section 399 (4) of the Act reads as follows: "A by-law or resolution approved under s. 398 of this section after August 31st in any year is not operative for taxation in the next calendar year". However, I do not think that a by-law or a resolution is necessary in exempting land surrounding the New Vista Society's buildings, because s. 398 (i) is not included in what appears to be a mandatory procedural requirement for a by-law for exemptions in s. 399 (2), which reads as follows:

(2) Where a portion only of a parcel of land is exempt under s. 398 (h), (j) and (k), the council shall by by-law determine the area so exempt and shall in the by-law describe the exempt land by metes and bounds and annex a plan showing the portion of land exempt and the portion taxable. The by-law shall be filed in the proper Land Title Office.

Furthermore, if s. 398 (i) requires council to determine an exemption of some area of land surrounding the building, the Municipal Council's failure to do so is not saved by the fact that it did not pass a by-law or a resolution.

Therefore, I conclude that the Assessment Appeal Board did not err in law in finding that s. 398 (i) of the *Municipal Act* requires a municipal council to exempt some ". . . area of the land surrounding the building".

2. Does the Assessment Appeal Board have the jurisdiction to review the exercise of a discretion of the Municipal Council under Section 398 (i) of the *Municipal Act*?

In this case, the Assessment Appeal Board has determined that an exemption which was sought by Vista was improperly disallowed under s. 398 (i). In order to determine whether the Board has the jurisdiction to review a discretionary determination, it is necessary to examine the provisions of s. 69 (1) of the *Assessment Act*, R.S.B.C. 1979, c. 21, which reads as follows:

69. (1) In an appeal under this Act the board has and may exercise with reference to the subject matter of the appeal, all the powers of the Court of Revision, and without restricting the generality of the foregoing, the board may determine, and make an order accordingly,

. . .

(c) whether or not an exemption has been properly allowed or disallowed;

The powers of the Court of Revision are wide in scope. Section 40 (1) of the Act sets out an appeal procedure. The relevant portions of that section read as follows:

40. (1) Where a person is of the opinion that an error or omission exists in the completed assessment roll in that

(a) the name of a person has been wrongfully inserted in, or omitted from, the assessment roll;

(b) land or improvements, or both land and improvements. within a municipality or rural area have been wrongfully entered on, or omitted from the assessment roll;

(c) land or improvements, or both land and improvements, have been valued at too high or too low an amount;

(d) land or improvements or both land and improvements have been improperly classified;

(e) an exemption has been improperly allowed or disallowed; or

(f) The commissioner has failed to approve an application for classification of land as a farm under section 28 (1), or has revoked a classification of land as a farm under the regulations, he may personally, or by a written notice signed by him, or by a solicitor, or by an agent authorized by him in writing to appear on his behalf, come before, or notify, the Court of Revision and make his complaint of the error or omission, and may in general terms state his ground of complaint, and the court shall deal with the complaint. and either confirm, or alter, the assessment.

[underlining mine]

In effect, the Assessment Appeal Board is an appellate body which has the function and authority to review and, in appropriate circumstances, correct the decisions of a Court of Revision.

The Municipality argues that the Board does not have jurisdiction to review the exercise of a discretion of an elected municipal council when that body was not represented before them. With respect, I do not think that this argument is relevant in light of the fact that the Board had before it the relevant evidence and the resolutions upon which Council acted, In the case of *The Assessment Commissioner, Province of British Columbia v. Kingsview Properties Ltd.* (1979), B.C.D. Civ. 389-02, the Court was asked for an opinion as to whether the Board erred in its method of assessment and in delegating to the Assessor the responsibility to determine values of land and improvements. An appeal had been taken from the Court of Revision to the Assessment Appeal Board on the grounds that the land assessments were excessive. At p. 7 of his reasons for judgment, Trainor, J. stated as follows:

The responsibility of the Board was to determine the value of each lot. This responsibility was not met by designing a formula, however accurate, which was handed back to the Assessor. As the section provides, the Board has all the powers of a Court of Revision and s. 53 [now s. 69] gives it broad powers to make inquiries concerning matters pending before it.

In my view, the Municipal Council failed to exercise its discretion within the terms of the statute by purporting to deny any exemption for surrounding lands at all. It may be said with some validity that in this case the Board was not reviewing the exercise of a discretion, because Council in fact did not exercise the discretion delegated to it under s. 398 (i) since it decided against allowing any exemption at all for the surrounding land.

Accordingly, the Assessment Appeal Board has the necessary jurisdiction to review the exercise of a discretion of Council under s. 398 (i) of the *Municipal Act*.

5. Does the Assessment Appeal Board have the power pursuant to Section 69 (1) (c) of the Assessment Act or otherwise to allow an exemption pursuant to Section 398 (i) of the Municipal Act in respect of an area of land surrounding the building therein referred to, that has not been determined by the Council?

Section 69 (1) (c) provides that in an appeal under the *Assessment Act*, the board may determine, and make an order accordingly, ". . . whether or not an exemption has been properly allowed or disallowed;". The section also states that "the board has and may exercise ... all the powers of the Court of Revision". The Court Revision and, of course, the Assessment Appeal Board, have broad powers to "alter and amend" assessments, including the allowance of exemptions. Section 40 (1) (e) and 44 (1) of the Act make this clear. Section 44 (1) reads as follows:

44. (1) The powers of a Court of Revision constituted under this Act are

(a) to meet at the dates, times, and places appointed, and to try all complaints delivered to the assessor under this Act;

(b) to investigate the assessment roll and the various assessments made in it, whether complained against or not, and subject to subsections (4) and (4.1), to adjudicate on the assessments and complaints so that the assessments shall be fair and equitable and fairly represent actual values within the municipality or rural area;

(c) to direct amendments to be made in the assessment roll necessary to give effect to its decisions:

[underlining mine]

In determining this issue, I also rely on s. 71 (1) of the Act which confers wide powers upon the Board. That section reads as follows:

71. (1) On an appeal, on any ground, from the decision of the Court of Revision in respect of the assessment of property, the board may reopen the whole question of the assessment on that property, so that omissions from, or errors in, the assessment roll may be corrected, and an accurate entry of assessment for that property and the person to whom it is assessed may be placed on the assessment roll by the board.

In this case, the Court of Revision erred when it confirmed Council's determination that no area of land surrounding the New Vista Society's building would be tax exempt. Section 71 (1) allows the Board to reopen the question of assessment, including the propriety of denying exemption, and to correct that error in assessment by granting an exemption. In conclusion, the Assessment Appeal Board has power pursuant to s. 69 (1) (c) of the *Assessment Act* or otherwise to allow an exemption pursuant to s. 398 (i) of the *Municipal Act* and pursuant to an area of land surrounding the building therein referred to which has not been determined by Council.

In summary, the answers to the questions upon which the Board asks the Court for opinions are:

Question 1. No.

Question 2. Yes.

Question 5. Yes.