The following version is for informational purposes only

LORNE A. VANDEVOORD

v.

ASSESSOR OF AREA 4 - NANAIMO-COWICHAN

Supreme Court of British Columbia (A860434) Vancouver Registry

Before: MR. JUSTICE J. CUMMING (In Chambers)

Vancouver April 15, 1986

J.R. Lakes for the Appellant
J.K. Greenwood for the Respondent

Reasons for Judgment April 22, 1986

This matter comes forward by way of a case stated by the Assessment Appeal Board pursuant to Section 74 (2) of the *Assessment Act* at the requirement of the Assessor of Area #04, Nanaimo-Cowichan seeking the opinion of the Supreme Court on the following questions of law:

> 1. Did the Board err in law in ordering that the classification on the subject properties should be Residential, Class 1, under B. C. Regulation 438/81 as amended. in view of the fact that the properties are zoned Commercial C-2?
>
> 2. Did the Board err in law in basing its decision in part on its own knowledge of the property obtained outside the hearing?
>
> 3. Did the Board err in law in directing that the parcel under Folio 03-65-315-05357.000 be 'revalued for the 1985 Roll to reflect the Residential classification?'

The case stated sets out the following material facts:

> 1. The appeal concerns properties at Duncan, B.C. . . .
>
> 2. . . . both specifically zoned for commercial purposes, the zoning being 'Commercial C-2' . . . .
>
> 3. The only issue in the appeal was classification under the 'Prescribed Classes of Property Regulation' B.C. Reg. 438/81 as amended.
>
> 4. . . . the parcels are not currently being used for any activity, either residential or commercial.
>
> . . .
>
> 6. The Assessment Appeal Board based its decision of December 17, 1985, in part, on its own "intimate knowledge of this property, its location, and past history." This knowledge of the Board is not detailed in the decision.

7. The parcel under Folio 05357.000 was classified prior to the Board hearing as Class 6, Business and Other.

8. The parcel under Folio 05569.000 was classified prior to the hearing as Residential. The Board declined the request of the assessor to reclassify it to Class 6, Business and Other.

9. The Board further ordered that Folio 05357.000 be "revalued for the 1985 Roll to reflect the Residential classification."

. . .

11. The relevant regulation is B.C. Reg. 438/81, as amended and consolidated for the 1985 assessment year.

Mr. Lakes, counsel for the appellant taxpayer raised, as a preliminary objection, the contention that this Court is without jurisdiction to hear the stated case on the ground that the assessor had no authority to require the Assessment Appeal Board to state a case because, it is alleged, he did so without the consent of the commissioner appointed under the *Assessment Authority Act*.

The answer to this objection lies in the provisions of certain sections of the *Assessment Act* and of the *Assessment Authority Act*. They are:

Assessment Act

1. In this Act

"commissioner" means the assessment commissioner appointed under the *Assessment Authority Act*, and includes a person authorized in writing by him to act on his behalf for any of the purposes of this Act.

74. (2) A person affected by a decision of the board of appeal, including a municipal corporation on the resolution of its council, the Minister of Finance, the commissioner, or an assessor acting with the consent of the commissioner, may require the board to submit a case for the opinion of the Supreme Court on a question of law only by

(a) delivering to the board, within 21 days after his receipt of the decision, a written request to state a case; . . .

Assessment Authority Act. . .

10. (1) For the purposes of this Act, there shall be an official known as the assessment commissioner appointed by the authority.

11. (a) The assessment commissioner appointed under this Act shall

(a) perform the duties and exercise the powers conferred on him under this or any other Act;

(b) carry out policies consistent with this Act, the *Assessment Act* and any other Act or law respecting assessment; . . .

It is important, as well, to appreciate the sequence of events in order to assess the contentions of Mr. Lakes. They are as follows:

On November 21, 1985, Mr. J.T. Gwartney, the Assessment Commissioner appointed pursuant to the *Assessment Authority Act*, addressed a memorandum to Mr. N.M. Ives, Deputy Assessment Commissioner, headed: "Delegation of Authority". It read:

Delegation of Authority

You are hereby authorized to act as Assessment Commissioner while I am absent from the office as noted below:

DATES: November 28, 1985
December 3, 4, 5, 1985
December 10, 11, 12, 1985
December 18 to January 3, 1986

The decision of the Board was handed down on December 17, 1985, and a copy of it was received by the Assessor on December 20, 1985. On January 3, 1986, Mr. Gordon Hathway, Executive Assistant to the Assessment Commissioner, wrote to Mr. J.K. Greenwood of the firm of Crease & Co., solicitors for the British Columbia Assessment Authority, instructing them to require the Board to state a case on behalf of the Assessor. On January 7, 1986 Mr. Greenwood, as solicitor for the Assessor, gave notice to the Board requiring it to state a case for the opinion of the Supreme Court on the questions of law set out above. Mr. Hathway, in paragraphs 4 and 5 of his affidavit filed before me, deposed that:

4. On January 2 or 3, 1986, before writing the letter which is attached hereto as Exhibit "B", I discussed the facts of this case with Mr. Ives, the Deputy Assessment Commissioner, and recommended that counsel be instructed to appeal on behalf of the Assessor.

5. Mr. Ives agreed with my recommendation, and my letter dated January 3, 1986 was written accordingly.

In the face of the facts which I have outlined, Mr. Lakes submits that the Assessor, in requiring the Board to state a case, did so without the consent required by section 74 (2). He contends that the only Commissioner is Mr. Gwartney (the Commissioner appointed under s. 10 (1) of the *Assessment Authority Act*) and that he is without authority to appoint. He says that only the British Columbia Assessment Authority, being the "authority" referred to in the *Assessment Authority Act*, can do so. He says, further, that even if the Commissioner could lawfully delegate his power, that delegated power was exercisable only during the periods set out in his memorandum to his Deputy, Mr. Ives, and that as the requirement sent by Mr. Greenwood on behalf of the Assessor was dated January 7, 1986, the authority of Mr. Ives to consent to the Assessor's request had expired. For the reasons which follow, I do not agree.

To begin with, Mr. Lakes' contention flies in the face of the provisions of s. 23 (2) of the *Interpretation Act* which reads:

23. (2) Words in an enactment directing or empowering a public officer to do something, or otherwise applying to him by his name of office, include a person acting for him or appointed to act in the office and the deputy of the public officer.

This, coupled with the definition of "commissioner" in the *Assessment Act* clearly authorizes Mr. Ives to give the consent required by s. 74 (2).

Again, Mr. Gwartney's memorandum to Mr. Ives does not constitute or purport to constitute the appointment of Mr. Ives as Commissioner; it is an authorization in writing by the Commissioner to his Deputy to act on his behalf for any of the purposes of the Act. Mr. Lakes also contends that to be effective the authorization must specify which of the purposes of the *Assessment Act* the

authorization relates to. No authority is cited in support of this surprising contention, and it is without merit. In this context "any" means "one, some or all". Neither is there any merit in the contention that by reason of the fact that Mr. Greenwood's notice on behalf of the Assessor to the Assessment Appeal Board requiring it to state a case was dated January 7th the consent was no longer effective. It is apparent from Mr. Hathway's affidavit that consent had been given within time and, once given, it was not withdrawn. It did not expire at midnight on January 3rd. For these reasons, the preliminary objection to the jurisdiction of this Court to hear this stated case must be and is overruled.

I turn now to the merits of the case, and for convenience will repeat the questions posed.

Question 1:

> Did the Board err in law in ordering that the classification on the subject properties should be Residential, Class 1, under B.C. Regulation 438/81 as amended, in view of the fact that the properties are zoned Commercial C-2?

As noted, the only issue in the appeal before the Board was that of the classification of the properties in question under the "Prescribed Classes of Property" Regulation, B.C. Reg. 438/81 as amended. That Regulation was passed pursuant to s. 26 (8) of the *Assessment Act*, which provides:

> 26. (8) The Lieutenant Governor in Council shall prescribe classes of property for the purpose of administering property taxes and shall define the types or uses of land or improvements, or both, to be included in each class.

It is common ground that the only way in which these properties could properly be classed as Class 1 - Residential is if they could fall within s. 1 (c) of the Prescribed Classes Property Regulation, which reads:

> 1. (c) land having no present use and which is neither specifically zoned nor held for business, commercial. forestry or industrial purposes.

Section 6 of that regulation provides:

> 6. Class 6 property shall include all land and improvements not included in Classes 1 to 5 and 7 to 9.

As the properties in question are "specifically zoned for commercial purposes" the Board had no power whatsoever to classify them as residential. Question 1 must, accordingly, be answered in the affirmative.

Question 2:

> Did the Board err in law in basing its decision in part on its own knowledge of the property obtained outside the hearing?

In light of the answer to Question 1, counsel were agreed that this question need not be answered. Accordingly, I refrain from doing so.

Question 3:

> Did the Board err in law in directing that the parcel under Folio 03-65-315-05357.000 be 'revalued for the 1985 Roll to reflect the Residential classification?'

As the only issue in the appeal was that of classification the Board erred in law directing that the parcel under Folio 03-65-315-5357.000 be revalued for the 1985 Roll to reflect the Residential classification because it purported to answer a question which was not before it. Question 3 is, therefore, answered in the affirmative.

In response to the questions set out in the case stated for the opinion of the Court, I set out my opinion in the following answers:

Question 1: Yes.

Question 2: Unnecessary to consider and not answered.

Question 3: Yes.

In accordance with s. 74 (6) of the *Assessment Act*, these reasons will be forwarded to the Board as the opinion of the Court.