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**SLUMBER LODGE DEVELOPMENT CORP.**

**v.**

**ASSESSOR OF AREA 20 - VERNON-REVELSTOKE**

Supreme Court of British Columbia (A873356) Vancouver Registry

Before: Mr. Justice Meredith

Vancouver, February 1, 1988

J.R. Lakes for the Appellant

C.M. Considine for the Respondent

**Reasons for Judgment**

February 4, 1988

This is an appeal by way of Stated Case from a decision of the Assessment Appeal Board fixing the "actual" value of the Slumber Lodge in Vernon at \$770,000.

The Appellant says, as it must, that the Board was wrong in law. that submission would be tenable if the decision was "arbitrary", if there was no acceptable evidence in support of the decision, or if the decision is in the view of the Court unreasonable as groundless. These three assertions cover much of the same ground: if there is no acceptable evidence, or if the decision is groundless, the Board will have acted arbitrarily.

I conclude that the Appeal must fail as none of these submissions have been make out.

What is meant by arbitrary? If the Board bases its conclusions on the criteria for arriving at actual value set forth in the *Assessment Act*, it will not be acting "arbitrarily". Section 26(e) of the Act directs that:

"(d) In determining actual value, the assessor may, except where this Act has a different requirement, give consideration to present use, location, original cost, replacement cost, revenue or rental value, market value of the land and improvements and comparable land and improvements, economic and functional obsolescence and any other circumstances affecting the value of the land and improvements."

In determining "actual" value as defined by the Act, the Board did not go beyond the statutory mandate. All the factors considered were "circumstances effecting the value of the land and improvements" including "use", "location", "revenue" (both gross and net), and "comparable land improvements" (and the comparable revenues therefore).

The Board refused to accept as relevant the purported actual revenue and expenses of the proprietor. The small ostensible profit margins, if correct, would determine value to owner. This factor, in the view of the Board, for one reason or another, was rejected. A prospective purchaser

would appraise value, not at what had been done in the particular circumstances of the owner, but what could be done as gauged by other similar operations. The criteria selected therefore would lead to some uniformity of assessment as between the similar operations in Vernon. The conclusion was sound I could not take issue with the conclusion even if I were to disagree with the reasoning.

That the circumstances considered by the Board were relevant to value, is demonstrated by the "facts" stated in the case itself:

- "11. The Respondent analyzed eight income statements from comparable properties in Vernon and demonstrated a range of gross income per unit from \$4,562 per annum to \$6,460 per annum with a median of \$5,230.
12. The Respondent chose a rate of %5,100 per annum as being representative of the gross income per room that should be attainable in the subject property and, applying this rate to the forty two units in the subject derived a reconstructed gross income, for the motel unit portion of the operation, of \$214,200.
15. The Respondent applied a 60.8% in his expense calculation of the value by the income approach. This expense ratio was a typical expense ratio drawn from a survey of the operating experience of motels similar to the subject.
17. The Respondent applied an 11% capitalization rate which was derived from a range of capitalization rates established by analyzing three sales of motel properties in the Vernon are. The range of rates, from these sales was between 10.6% and 11.6%."

Whether the conclusions reached on these considerations were right or not, is not for me to say. The considerations were appropriate, given that they bore on the question of value.

In *Pacific Logging v. Assessor* (1974) Stated Case 99, the Supreme Court of Canada agreed with the conclusion reached by McIntyre, J.A. that the base chosen therefore assessment had not to do with value but as (I would gather) an unrelated factor the Assessor chose to adopt.

I conclude that the decision of the Board was not arbitrary. It was based on acceptable evidence going to the very questions the Board was called upon to determine.

The questions posed in the Stated Case will be answered accordingly.

The respondent is entitled to its costs.