ECCOM DEVELOPMENTS LTD.

v.

ASSESSOR OF AREA 9 - VANCOUVER

British Columbia Court of Appeal (CA010419) Vancouver Registry

Before MR. JUSTICE HUTCHEON,
MR. JUSTICE LEGG and
MR. JUSTICE CUMMING

Vancouver, November 6, 1989

Barry T. Gibson for the appellant
James A. S. Legh for the respondent

Reasons for Judgment of Mr. Justice Cumming November 22, 1989

This is an appeal from the judgment of Mr. Justice Macdonald pronounced January 23, 1989, dismissing the appeal brought by way of a stated case by the appellant from a decision of the Assessment Appeal Board dated October 3, 1988. The appeal turned upon the proper classification under B.C. Regulation 438/81 for property assessed for tax purposes of a vacant lot in the downtown district of the City of Vancouver.

The issue in this appeal is whether the property falls within the definition of Class 1 - residential. If it does not it is common ground that the property falls within the residual class - Class 6 - business and other. The Board had found that it was properly classified as Class 6 and its decision was upheld by the chambers judge.

B.C. Regulation 438/81, as it stood in September 1987, sets out nine classifications into which property is placed for purposes of taxation. They are:

Class 1 - residential

Class 2 - utilities

Class 3 - forestry

Class 4 - machinery and equipment

Class 5 - industrial

Class 6 - business and other

Class 7 - tree farm

Class 8 - seasonal resort, recreational property and fraternal organization

Class 9 - farm

The definition of Class 1 - residential, reads as follows:

Class 1 property shall include only:

(a) land or improvements, or both, used for residential purposes, including single family residences, duplexes, multi-family residences, apartments, condominiums, mobile seasonal dwellings, bunkhouses, cookhouses, and ancillary improvements compatible with and used in conjunction with any of the above, but not including hotels or motels other than the portion of the hotel or motel building occupied by the owner as his residence;

(b) improvements on land classified as a farm and used in connection with the farm operation, including the farm residence and outbuildings;

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

The definition of Class 6 reads:

Class 6 - business and other

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

As the land was vacant it is common ground that it does not fall within part (a) or part (b) of the definition of "residential". The only question is whether the land falls within part (c) of that definition. It is the appellant's position that it does not.

In order to fall within part (c) of the definition, three separate elements must be shown:

(a) that the land has no present use;

(b) that the land is not specifically zoned for business, commercial, forestry or industrial purposes; and

(c) that the land is not held for business, commercial, forestry or industrial purposes.

The zoning applicable to this property is By-law 4911, known and described as "Downtown District (D.D.)", a general zoning bylaw which permits a wide variety of uses other than farming and heavy industrial. Section 3 of By-law 4911 reads:

3. The only uses permitted within the said areas and the only uses for which development permits may be issued, as prescribed in detail in the Official Development Plan By-law No. 4912, are:

(a) commercial uses;

(b) residential uses;

(c) institutional uses;

(d) industrial uses (light);

(e) parks and open spaces;

(f) public uses and facilities;

and other similar use or uses customarily ancillary to such uses . . .

The zoning scheme not only permits residential use; it is designed to encourage residential use as it appears from the following provisions found in the companion Downtown Official Development Plan By-law No. 4912, relevant portions of which read:

Application and Intent

The intent, in the adoption of this Official Development Plan and the accompanying guidelines, is as follows:

(1) to improve the general environment of the Downtown District as an attractive place in which to live, work, shop and visit;

* * *

(4) to encourage more people to live within the Downtown District;

(5) to support the objectives of the Greater Vancouver Regional District as referred to in "The Livable Region 1976/86" as issued March 1975, to decentralize some office employment to other parts of Greater Vancouver by discouraging office developments considered inappropriate in the Downtown District;

* * *

Section 1 of By-law No. 4912 provides:

Land Use

For many years only commercial (with some light industrial) uses have been permitted throughout the Downtown. In order to increase the variety, amenity and safety of Downtown, well-designed residential uses will be both permitted and encouraged throughout the Downtown. A mix of uses within single developments or in neighbouring sites is also permitted and encouraged.

The following uses may be permitted, subject to such conditions and regulations as may be prescribed by the Development Permit Board:

(a) Office commercial;

(b) Retail commercial;

(c) Other commercial;

(d) Residential;

(e) Hotels;

(f) Light industrial;

(g) Public and institutional;

(h) Social, recreational and cultural;

(i) Parks and open space;

(j) Parking area and parking garage, subject to the provisions of section 5.

It was common ground below that the land had no present use, and that it was held for residential purposes. In fact, by the time the case reached the Assessment Appeal Board, a residential building was under construction on it. The only issue before the Board, therefore, was whether the land was specifically zoned for business, commercial, forestry or industrial purposes, and that is the only issue on this appeal.

The learned judge below summarized the contentions of the appellant and the respondent. He said:

> The appellant argues that such zoning is general rather than specific in nature; that the word "specifically" in the regulation must be restrictive, otherwise it would be superfluous, and a meaning must be attributed to each word; that the word should be read in such a way to cause regulation 1 (c) to read ". . . zoned for purposes other than residential".
>
> The assessor, on the other hand, submits that what is important in the zoning is what uses are permitted, and that here the Downtown District "specifically" allows business, commercial and industrial as well as residential uses. The Assessment Appeal Board accepted that argument in these words:
>
> > ". . . the lands potentially have a number of uses, all of which are permitted by the present zoning . . . The word 'specific' tends to the meaning of definite as opposed to implied or indefinite and the possible land uses, namely, commercial, business or industrial are specific items of zoning."

and he concluded:

> I agree with that view of the proper interpretation of clause 1 (c) of the regulation.

He continued:

> The consequences of holding otherwise must be considered. This decision will apply to all vacant land in the Downtown District and the opposite conclusion would invite a rash of less than serious rezoning applications and residential development proposals in an effort to establish that those lands are not ". . . held for business, commercial or industrial purposes." That result is to be avoided if, on the plain meaning of the words in the regulation, it is open to do so.

Counsel for the appellant, in his factum, submitted that the interpretation adopted by the chambers judge is incorrect for a number of reasons. Specifically, he submitted that it:

> (a) conflicts with the natural and ordinary meaning of the word "specifically".
>
> (b) conflicts with the object and purpose of the regulation.
>
> (c) would produce an absurd result because virtually no vacant land could meet the test for residential classification.
>
> (d) fails to give effect to the word "specifically".
>
> (e) is based on a mischief which does not exist.

I do not accept the proposition that the interpretation adopted by the learned chambers judge conflicts with the natural and ordinary meaning of the word "specifically", nor that it fails to give effect to it.

The natural and ordinary meaning of the word "specifically" can be ascertained first from dictionary references. *Websters Third International Dictionary* defines "specifically" as:

> "in regard to the matter in question; with reference to a quality or condition that is specified or inherent."

and the word "specific":

> "being peculiar to the thing or relation in question:
>
> a: a specific or characteristic quality, trait, mark, or other feature;
>
> b: precise details or distinctions."

The Second Edition of that same work offers the following:

> "specific" 2. Precisely formulated or restricted; specifying; definite, or making definite; explicit; of an exact or particular nature; as, specific statement
>
> "specifically"
>
> a: From the aspect of species; in relation to or with reference to species.
>
> b: With exactness and precision; in a definite manner.

The *Senior Dictionary of Canadian English* defines "specific" as:

> "definite; precise, particular."

and defines "specifically" as:

> "in a specific manner; definitely; particularly: 'The doctor told Kate specifically not to eat eggs'".

Burton's *Legal Thesaurus*, Regular Edition, suggests that "specific" may have the following meanings:

> appropriate, categorical, certain, characteristic, definite, denominational, determinate, determined, different, *disertus*, distinctive, divisional, endemic, endemical, esoteric, especial, exact, exceptional, exclusive, explicit, express, idiomatic, idiosyncratic, idiosyncratical, indigenous, individual, individualistic, limited, marked, narrow, out of the ordinary, particular, peculiar, *peculiaris*, precise, precisely formulated, *proprius*, respective, restricted, sectarian, select, special, uncommon, unique, unusual

And *Black's Law Dictionary*, 5th edition, contains the following:

> Explicit. Not obscure or ambiguous, having no distinguished meaning or reservation. Clear in understanding.

> Express. Clear; definite; explicit; plain; direct; unmistakable; not dubious or ambiguous. Declared in terms; set forth in words. Directly and distinctly stated. Made known distinctly and explicitly, and not left to inference. Minneapolis Steel & Machinery Co. v. Federal Surety Co., C.C.A.Minn., 34 F.2d 270, 274. Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct. The word is usually contrasted with "implied."

That the interpretation adopted by the chambers judge is the correct one may be tested not merely by these dictionary references (a test which, in my view, it passes) but by asking oneself the several questions: "Is the land specifically zoned for business purposes? Is the land specifically zoned for commercial purposes? Is the land specifically zoned for forestry purposes? Is the land specifically zoned for industrial purposes?" A reading of the bylaw leads one to a clear answer in each case. In the first, second and fourth instances the answer is "Yes" while in the third instance it is "No".

This leads me to the conclusion that the natural and ordinary meaning of the word "specifically" in s. 1 (c) is one of its recognized dictionary definitions, namely "expressly" or "explicitly". So to interpret it is to give it full effect.

Neither do I accept the contention that the interpretation adopted by the chambers judge conflicts with the object and purpose of the regulation nor that it produces an absurd result because virtually no vacant land could meet the test for residential classification.

The history of this legislation leads me to the conclusion that s. 1 (c) of the regulation calls for a restrictive interpretation.

In *Western Peat Moss Ltd.* v. *Assessor of Area 11 - Richmond-Delta* (1981), Stated Case 154, Mackoff, J. dealt with an appeal by way of a stated case concerning some 5,000 acres of land in the Municipality of Delta which was found by the Assessment Appeal Board to be farmed out of peat moss or non-harvestable for peat moss. The board confirmed that the decision of the Court of Revision that the land in question fell into Assessment Class 6, "Business and Other". The appellant had argued before the board that the land in question should be classified as Class 1 (c), "Residential".

At that time Class 1 (c) included "land having no present use and which is not specifically zoned or held for business, commercial, forestry or industrial purposes". Mackoff, J. said, in allowing the appeal:

> On its interpretation of the wording in Class 1 (c) the board held that since the land was zoned by Municipal By-law 2750 as Extractive Industrial, it was "specifically zoned - for industrial purposes" and therefore it did not fall into Class 1 (c) even though it found that the land has no present use and that it was not held for business, commercial, forestry or industrial purposes.
>
> There are three parts to the definition in Class 1 (c). The first part is the mandatory requirement that the land have no present use. The second part is the requirement that it is not zoned for the purposes set out. The third part is the requirement that it is not held for the purposes set out. The first part is followed by the word "and", a co-ordinate conjunction, which requires that in addition to the first part there must be something else. That may be either the second part or the third part of the definition. This is so because of the use of the word "or" between the words "zoned" and "held". The word "or" between the words "zoned" and "held". The word "or" is a co-ordinate that creates an alternative between the second and third part. That being so, in my view, the section should be read in this way: land having no present use and which is not specifically zoned for - or land having no present use and which is not specifically held for -. Therefore for the land to fall within the definition of Class 1 (c) it is not necessary, as the Board held it to be, that all three conditions must be met. It is sufficient if the first and second or alternatively the first and third conditions exist. If it was intended that the definition of Class 1 (c) have the meaning given it by the Board, then the word "neither" instead of "not" and the word "nor" instead of "or" would have been used in the definition.

It appears that legislative counsel adopted the suggestion offered by Mr. Justice Mackoff as the regulation was promptly amended to read as it now does.

It is apparent that Class 1 property, along with certain recreational and farm property, receives more favourable tax treatment than do lands on which higher value, and mainly commercial, uses are permitted. It is a reasonable concession that land, currently vacant but held for residential purposes, should enjoy the same favourable treatment, but the obvious intent of the legislature is that that preferment should only be enjoyed by land which is not only genuinely held for that purpose, but also is land on which no other use is permissible.

It may well be that the amount of land which could qualify for this preferred classification will be more limited than would otherwise be the case but that result is, in my view, neither absurd nor in conflict with the object and purpose of the regulation.

Finally, I turn to the contention that the interpretation placed upon this regulation by the learned chambers judge was based on his perception of a mischief which does not exist. It is my respectful view that it is not so much the avoidance of a flood of rezoning applications as it is the avoidance of the long-term holding of vacant land (on which other, higher valued uses are permissible) under the pretense of intended residential development that the regulation is designed to achieve. If that is the mischief to be avoided, as I think it is, the regulation, while it may have been more artfully drawn to achieve that objective, succeeds in doing so.

For these reasons I would dismiss the appeal.

HUTCHEON, J. A.: I agree.

LEGG, J. A.: I agree.