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MERRILL & RING CANADIAN PROPERTIES

v.

ASSESSOR OF AREA 1-SAANICH/CAPITAL, 6-COURTNEY & 8-NORTH SHORE/SQUAMISH VALLEY

Supreme Court of British Columbia (A891502) Vancouver Registry

Before MR. JUSTICE A. G. MacKINNON (in chambers)

Vancouver, December 6, 1989.

A. W. Carpenter for the appellant
G. E. McDannold for the respondent

Reasons for Judgment January 19, 1990

This case stated by the Board pursuant to s. 74 (2) of the *Assessment Act* seeks the opinion of the Court on certain questions of law in respect to which the following are the material facts:

1. The subject matter of this appeal consists of managed forest land located within the jurisdiction of the Assessor of Area 6 - Courtenay.

2. The question revolves around the valuation of this land for assessment purposes for the 1988 Assessment Roll.

3. "Forest land" is valued for assessment purposes under section 29 of the *Assessment Act* . The relevant portions of section 29 read as follows:

"Forest land 29.

(3) The actual value of forest land is

> (a) the value that the land has for the purpose of growing and harvesting trees, but without taking into account the existence on the land of any trees, plus
>
> (b) a value for cut timber determined in accordance with section (5).

(4) The value of land referred to in subsection (3) (a) shall be determined on the basis of its topography, accessibility, soil quality, parcel size and location and for the purpose of valuing forest land the commissioner shall prescribe land value schedules for use by assessors in determining the actual value of the land.

4. The Assessment Commissioner, pursuant to section 29 (4) of the Act, prescribed schedules to be applied (B.C. Reg. 341/87) which, among other requirements, refers to "access". This rating is divided into three sub-ratings:

(a) Close - being described as being "within 32 km of mill or dump".

(b) Normal - being "32 km to 64 km from mill or dump".

(c) Remote - being "over 64 km from mill or dump". (The Board understands that "dump" means a log dump and "mill" means a sawmill.)

5. The assessor classified all of the subject lands as "Close" and placed values on the Assessment Roll which reflected this categorization.

6. The Appellant Corporation argued that none of the appealed lands could be economically logged because of the lack of roads to and on the parcels, or lack of legal right-of-way to a water course, or lack of legal right to dump logs. It maintained that there was no vehicular access to the land from a public highway, and one must reach them by boat or float plane. While agreeing that there are log dumps in the area, it submitted that it had no legal right to use them, no right-of-way to them, and no foreshore rights. The Assessor, according to the Appellant Corporation, should have rated these lands "remote" for assessment purposes.

7. The Assessor and his witness maintained (using topographical maps) that all of the properties in question were less than 32 km to dumps, using existing roads, or if no road existed, the land contours would permit building roads of less than 32 km to existing dumps or to locations where a dump could be placed. They had ascertained from the Ministry of Crown Lands that if the Appellant Corporation applied for dumping permits they would not be difficult to obtain.

8. The Board found that the criteria in the Regulation are strictly of a physical nature. The Regulation does not require the Assessor to consider the legality of the access, cost to build roads, or the need to obtain right-of-way, or dump permits.

9. Since the subject lands have been proven to be within 32 km of logging dumps they were clearly within the "close" rating and the Board found that the Assessor was correct in rating them as such under the Regulation.

THE QUESTIONS

The questions on which the Board is seeking the opinion of the Court are:

2. Did the Board err in law in finding that section 3 and Appendix B of the Regulation require the Respondent Assessor to ignore the actual physical and/or legal "access" from a property to a "dump" in assessing that property or, in the alternative, if section 3 and/or Appendix B of the Regulation require the Respondent Assessor to ignore the actual physical and/or legal "access" from a property to a "dump" in assessing that property are these provisions, or either of them, inconsistent with the provisions of the Act and therefore beyond the power of the Commissioner to make pursuant to section 29 (4) of the Act and therefore ultra vires and of no force or effect?

3. Did the Board err in law in finding that under section 3 and Appendix B of the Regulation in determining "access" to a property the Respondent Assessor was authorized to measure distances to locations where no "dump" existed but "could be placed" or, in the alternative, if under section 3 and Appendix B of the Regulation on determining "access" to a property the Respondent Assessor was authorized to measure distances to locations where no "dump" existed but "could be placed" are these provisions, or either of them, inconsistent with the provisions of the Act and therefore beyond the power of the Commissioner to make pursuant to section 29 (4) of the Act and therefore ultra vires and of no force or effect?

THE BOARD'S FINDING

"The Board is satisfied that the issue is solely interpretation of s. 29 (4) and the access reading in the Regulation.

The Board is satisfied that the criteria in the Regulation are strictly of a physical nature. The words used throughout Appendix "B", e.g., topography 'favourable' 'average' 'difficult' 'soil quality' 'good' 'medium' 'poor', in the Board's opinion refer to physical attributes. The subratings under the heading 'access' are also of a physical nature, using physical distances such as 32 km and 64 km.

S. 3 of B.C. Reg. 341/87 states: The value of land shall be determined by reference to the land values for the appropriate valuation area having regard to topography, access and soil quality as set out in Appendix B. (underlining by the Board.)

In s. 3 there is no hint that the Assessor must consider legality of access or cost to the Appellant to build roads, or obtain rights-of-way, or dump permits.

The Board finds therefore that the assessors have correctly classified the lands in the following folios as 'close' and the appeal fails in respect to this issue."

ISSUE

Did the Assessment Appeal Board err when it found that the Assessor correctly classified the accessibility of the lands by reference only to distance from the lands to a sawmill or log dump?

VALUATION

Section 29 (4) sets out the manner in which the actual value of forest lands shall be determined, i.e., topography, accessibility, soil quality, parcel size and location.

In addition, s. 29 specifies that for the purpose of valuing the forest lands, the land commissioner shall prescribe land value schedules for use by assessors in determining the actual value of the land.

Pursuant to s. 29, the Commissioner caused Reg. 341/87 to be passed. For convenience I set out again s. 3 of the said Regulation which provides: The value of land shall be determined by a reference to the land values for the appropriate valuation area having regard to topography, access and soil quality as set out in Appendix B.

The Commissioner is therefore required to determine the value of land by making reference to Appendix B of the Regulation. Schedule B of the Regulation provides:

APPENDIX B

Forest Land - 1988 Assessment Year Schedule of Land Values for Managed and Unmanaged Land - sec. 29(3)(a) *Assessment Act*

[Appendix B not reproduced]

The Assessor inspected the lands and measured the distance those lands were from a mill or dump. He found all of the Appellant's lands were within 32 km of a mill or dump.

The measurement of distance was not necessarily along existing roads. If there were roads, he measured distance along those roads. If, however, there were no existing roads, he made a measurement of distance along the area where contours would permit roads. So long as the road or the imaginary road was within 32 km of a dump or mill, the Assessor classified such lands as "close". The Assessor then made his classification under the remaining criteria and then determined value.

The Assessor gave no consideration as to whether or not the owner of the lands had the right-of-way over the roads nor did he consider whether the roads could be built. He only gave regard to distance from a mill or dump. The Appellant submits that most of the lands have no roads and the owners have no rights-of-way for roads or log dumps. It is submitted such land should be valued at less than lands which have actual access to dumps or mills.

The Appellant argues that if Reg. 341/87 is to be interpreted so as to exclude such considerations as the absence of actual access roads or of rights-of-way (being matters that obviously have bearing on value), that such interpretation is inconsistent with s. 26 (1) and s. 29 (4) of the Act which requires lands to be valued at their actual value.

In addition the Appellant argues that the Assessor also determined value by measuring distances of the lands to dumps or mills that do not exist.

Thus the Appellant says, firstly that the Assessment Appeal Board's interpretation of 341/87 and Appendix B is inconsistent with the Act.

Secondly the Appellant argues that the Assessment Appeal Board placed an interpretation that leads to an unjust and absurd result.

CONCLUSION

As to the finding by the Board that the Assessor was correct in valuing the lands without regards to roads or rights-of-way, I am of the view that the Board did not err.

S. 29 (4) requires the Commissioner to prescribe land value schedules. The Commissioner did so having regard to all of the criteria mentioned in s. 29 (4). S. 3 of the Regulation requires that the value shall be determined by having regard to topography, access and soil quality. Appendix B, inter alia, classifies accessibility and the Assessor was correct when he made that classification by considering distance of the lands to a mill or dump and nothing else.

I do not agree, however, that the Assessor was entitled to determine distances to dumps that do not exist.

The language of Reg. 341/87 is "within 32 km of mill or dump". The Regulation does not say within 32 km of a site for a mill or dump. The words clearly imply that the distance to be measured is from the lands to an existing mill or dump.

Accordingly I find that the Assessor cannot assess lands on the basis of distance to a mill or dump that does not exist.

QUESTION NO. 2

The answer is NO.

AND: Section 3 of Reg. 341/87 is not inconsistent with the Act.

QUESTION NO. 3 The answer is YES.

The Appellant is entitled to costs.