The following version is for informational purposes only

ASSESSOR OF AREA 22 - EAST KOOTENAY

v.

WILF T. BOARDMAN

Supreme Court of British Columbia (A903031) Vancouver Registry

Before the HONOURABLE MR. JUSTICE DRAKE (in chambers)

Vancouver, November 9, 1990

G. E. McDannold for the Appellant No other appearances

Reasons for Judgment November 6, 1990

This is an appeal by way of Stated Case from a decision of the Assessment Appeal Board regarding a parcel of land occupied by the Respondent Boardman on the Bull River east of Cranbrook on the edge of the British Columbia Rockies. Mr. Boardman occupies under licence Crown Land, and on this he has put up some cabins for a base camp for what appears to be a guiding operation or something of that sort. The questions which I have been asked to answer are put in this way:

> "1. Did the Assessment Appeal Board err in law when it concluded that the actual value of the land determined under section 26 of the Assessment Act was diminished by the form of tenure held by the occupier?"

The answer to that question is yes for the reason that the form of tenure of land held anywhere is irrelevant as was decided in the Newmont Mining case. Under the statute section 26, land occupied by a person when the fee remains in the Crown is to be assessed as if it were fee simple. All tenures are to be dealt with in that way apparently.

The second question is:

> "2. Did the Assessment Appeal Board err in law when it discounted and then rejected the only evidence of the actual value of the subject property in evidence before the Board?"' And the answer to that again is yes. The method of valuation is determined by the Assessment Act. It is to be actual value, and the only evidence for the Board on this was that provided by the Assessor in question. Whether or not he proceeded properly is another question, with which I am not concerned. I find some difficulty in finding comparable sales of land, of similar land could have occurred. You cannot sell tenure such as that held by the Appellant but that is by the way. I think that the Board was perhaps influenced by that and some other considerations of a sympathetic nature.

The third question:

> "3. Did the Assessment Appeal Board err in law when it adopted a value for the subject property based upon a method of valuation arbitrarily invented by the Board?"

And the answer to that as well is yes. The Board, evidently horrified at the value put upon the matter by the Assessor who proceeded under the ordinary rules of assessing land and as required by the Act, departed from his evidence and based a very low valuation on something that appears to be a capitalization of the normal licence fee which the Appellant paid to the Crown, and that is not the right way to go because the result of it was to obtain something very much akin to the value to the owner, a concept which was authoritatively rejected as a basis of valuation in the Sun Life v. City of Montreal case many years ago.

The fourth question:

> "4. Did the Assessment Appeal Board err in law when it adopted a value of the subject property and a method of valuation not supported by any evidence before the Board?"

The answer to that question is yes for the reasons I have given above and additionally for what was said in the Lornex Mining case recently decided.

Fifth question:

> "5. Did the Assessment Appeal Board err in law when it determined the value of the subject property without any evidence and upon a view of the facts which could not reasonably be entertained?"

That is, I think, really a redundant question that reaches out and takes in all the other considerations but certainly the answer to that has got to be yes as well. And again, in cases like this judges of this Court have found the application of the Act to be harsh and even unjust. I do not hesitate to join their distinguished company both in saying that and also bowing to the clear requirements of the legislature as set out in the Assessment Act.

So the matter is remitted back to the Assessment Appeal Board; costs very properly are not asked for so there will be none.