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PITT MEADOWS GOLF CLUB

v.

ASSESSOR OF AREA 13 - DEWDNEY-ALOUETTE

Supreme Court of British Columbia (90-2031) Victoria Registry

Before the HONOURABLE MR. JUSTICE MURPHY

Victoria, November 23, 1990

W. S. Johnson for the Appellant
C. M. Considine for the Respondent

Reasons for Judgment (Oral) November 23, 1990

This comes to this Court by means of a Stated Case from the assessment of the Assessment Appeal Board in Area 13 of a golf course.

Nine Questions have been propounded by the Board:

1. Did the Assessment Appeal Board err in law by including what it describes as site improvements as part of the value of the land for assessment purpose?

2. Did the Assessment Appeal Board err in law by holding that the inclusion in the land value of such components as landscaping, bunkers and greens was valid for determining the actual value for assessment purposes?

3. Is the value determined by the Assessment Appeal Board invalid because it includes business interests of the Appellant which should not be assessable?

4. Is the valuation as determined by the Assessment Appeal Board invalid by including components of value to owner which cannot be included in the determination of an actual value for assessment purposes?

5. Did the Assessment Appeal Board err in law by finding that the sprinkler system was an improvement albeit there was no evidence that the sprinkler system came within (b) of the definition of improvements in the Act and also that it may be exempt under (n) of the said definition?

6. Did the Assessment Appeal Board err in law in finding that the Appellant had not offered any market evidence of the subject property when the Appellant accepted the assessment value on the original assessment but alleged nonetheless that the value included components which were not assessable?

7. Did the Assessment Appeal Board err in law by determining a value that is discriminatory and inequitable and therefore contrary to the requirements of the Assessment Act?

8. Did the Assessment Appeal Board err in law because it denied the Appellant the opportunity to present evidence to challenge the valuation presented to the Board by the Assessor which was applied by the Board to increase the original assessment?

9. Did the Assessment Appeal Board err in law by failing to include an allowance for entrepreneurial profit in the determination of actual value of the subject property?

Questions 1, 2, and 3

The first three questions have been lumped together by counsel -- inasmuch as they all deal with the same question -- and that is whether or not the land should be valued only on a "raw land" basis. If I understand the argument or submissions of the Appellant, land is land and it is also land plus improvements. The improvements are those defined in the Act. It is agreed that in all of these matters that are before me with respect to the golf course, such as the creation of tees, fairways, bunkers, greens, and the like, do not fall within the term "improvements." However, they do increase the value of the land in question.

The increase in value as a result of preparing a course to be a golf course or the value of the land once the golf course is created certainly is increased over and above the raw land value. The Appellant submits, however, that these site improvements should not be included when determining the value of the land in question.

I reject the argument, as I indicated during the hearing. According to the Act, land has to be valued at its actual value, and it seems obvious to me that the actual value must take into account any improvements placed on the land or caused to the land by the addition of fairways, bunkers, and the like.

Question 4

Question Number 4 has been withdrawn, no answer is required.

Question 5

With respect to Question Number 5, the issue here is whether the sprinkler system is an improvement within the terms of the Assessment Act. In other words, is it a landlord's fixture or tenant's fixture? If it is the latter, it does not fall within the purview of the Assessor to assess the system.

The sprinkler system in the main consists of a series of pipes throughout the golf course, located, I think, about six inches below the surface. At various places there are monitors for regulating the system; that is, determining at what time the water will come on and go off and so on. There is no doubt, and it is agreed, that these monitors and also the main panel can be removed. However, the system itself is designed to replace labour, I suppose, in watering the golf course by means of a hose.

It is true that the pipes can be taken up and can be moved and I think in this case they were - or at least a portion of them were, because when they were installed it was found that they did not serve the golf course as well as they should. In other words, certain areas presumably were not getting water and consequently a portion of the system was moved in order to provide an overall watering system that would be more appropriate.

The fact that they were moved and could be moved does not itself indicate that the system is not an improvement within the meaning of the term "improvements" in the Assessment Act. These

pipes are not moved in the ordinary course of events and may be moved once or twice after installation, as I previously mentioned, in order to improve the overall operation of the system or to provide for a better watering system throughout the golf course. It is conceded that if the system itself, consisting of the pipes, is found to be an improvement, the fact that the monitors and the main panel can be removed with ease does not bring it within the purview of a tenant's fixture.

I am satisfied and find that the Board was correct in concluding that this is an improvement within the Act and subject to assessment.

Question 6

The sixth question relates to the finding of the Board that the Appellant had not offered any market evidence of the subject property. In this particular case, the Board did state that the only evidence of actual market value before it was that presented by the Assessor. I should state at this time that the Assessor used the Cost Approach to determine the value of the property and compared this against certain market evidence that he had in order to confirm the value reached through the Cost Approach.

The Appellant objected to this because the method of assessing the golf course was not provided in the first instance. In other words, when the matter came before the Court of Revision, the assessment was based on a previous assessment, but when the Appellant appealed and it came before the Assessment Appeal Board, the Assessor had re-assessed the golf course which resulted in a very much higher assessment.

The Appellant points out from the transcript that in fact evidence was introduced by the Appellant as to the raw land value of certain comparable pieces of property which had not been taken into consideration by the Assessor. The Assessor had in fact taken into consideration other raw land values. In other words, in order to arrive at the value of this property, the Assessor had to determine the raw land value to begin with and then factor in the improvements that I have referred to.

The Board was not incorrect in stating that no evidence had been introduced by the Appellant as to actual market value or any evidence as to value. What the Appellant did was to introduce and to rely on the value shown on the assessment roll. It is true that when evidence was introduced by the Assessor pertaining to a higher value, Appellant's counsel objected. The Board rejected the objection and stated that it would consider these objections during the hearing if any were raised. I am not sure whether any were raised or not. There may well have been. I do not recall from the submissions of counsel, but in any event, at the conclusion of the hearing the Appellant was given the opportunity to introduce rebuttal evidence. The Appellant did not avail itself of this opportunity. Consequently, I find that there was no denial of natural justice, if one wants to use that term, in the presentation of the evidence before the Assessment Appeal Board.

Question 7

Question seven relates to whether or not the Board erred in law and produced a discriminatory and inequitable assessment with respect to this golf course. As I mentioned previously, the assessment now before me and which was before the Assessment Appeal Board, was only introduced about three or four days before the hearing before the Appeal Board. Prior to that, the assessment had been based on previous assessments, I think probably simply by increasing the percentage.

There are other golf courses in the area, and they were not dealt with in this way. However, there is no evidence before me to indicate that had the method used in this case to assess this golf

course which is the subject matter of the appeal been applied to these other golf courses that it would necessarily have resulted in a larger assessment to those courses. The Assessor indicated that he was going to consider the matter and apply a similar method of assessing these golf courses to the others and that if his assessment on that basis indicated that these golf courses should have been assessed at a higher value, he was going to do that.

What this court has to do is to determine whether or not in fact the Assessor assessed the property in question at actual value. I find that this is a matter that was determined by the Assessment Appeal Board in finding or holding that the method used by the Assessor was correct and resulted in the actual value of the land as a golf course for assessment purposes.

Question 8

Question 8 has been withdrawn.

Question 9

Question 9 in one that was propounded by the respondent Assessor. In this case the Assessment Appeal Board in determining the value of the gold course did not include an allowance for entrepreneurial profit in determining the actual value of the property.

It would seem that in using the Cost Approach in determining the value of any property that there is included in that value the cost to the developer for the time involved in developing the property. In other words, if it takes one year or eighteen months to develop a golf course, as has been indicated in this case, then the entrepreneur is out of pocket any interest he would have earned on his money or any income he would have received from the golf course had it not taken eighteen months to develop. This is what I understand is known as entrepreneurial profit, and in the ordinary course of events should be added to the cost of developing the golf course in order to find the actual market value.

This entrepreneurial profit will not always be included, however, if I understand the submissions of counsel, in that if the market value of properties falls between the time the development is commenced and the time it is completed, then of course there would be no entrepreneurial profit. For example, if the property to be developed is going to be worth five million dollars at the end of the time and there is no fall in the value of properties, the entrepreneurial profit would be an additional ten or twenty per cent, depending upon the rate of interest and how long it takes to develop the property, so that it might well mean that the property is worth at the end of that time six million dollars. However, if the value of golf courses or properties generally fall to say five million dollars, then the entrepreneurial profit is gone.

The Board in this case declined to include any allowance for entrepreneurial profit. Consequently, I cannot conclude that the Board is incorrect.

With respect to the questions propounded, Questions 1, 2 and 3 are answered in the negative. Question 4 requires no answer. Question 5, 6 and 7 are answered in the negative. Question 8 requires no answer, as it has been withdrawn. Question 9 is also answered in the negative.