The following version is for informational purposes only

ASSESSOR OF AREA 10 - BURNABY/NEW WESTMINSTER & CITY OF NEW WESTMINSTER

v.

HAGGERTY EQUIPMENT CO. LTD.

Supreme Court of British Columbia (A970220) Vancouver Registry

Before the HONOURABLE MR. JUSTICE G.D. BURNYEAT (in chambers)

Vancouver, September 9, 1997

Guy E. McDannold for the Appellant Assessor
Michael R. McAllister for the Appellant City
Leigh P. Holmes for the Respondent

Reasons for Judgment (Oral) September 9, 1997

THE COURT: Let me deal with some of the matters that you have raised, Mr. Holmes. Firstly, on the question of duplication, counsel is correct in saying that both of the parties have the right to be here, and so the question is then whether they should be entitled to their costs. The fact that they are dealing with the same set of facts, albeit from different angles, if I can describe it that way, does not really relate to the question of costs.

On the differing potential gain, I do not think of the decision as being precedent setting. It really did not have to be dealing with contaminated land, as opposed to the methods by which assessments are done and appealed and proper things to be reviewed. In that regard at least half of the matters which were before the previous bodies were as a result of your appeal and half were as a result of the appeal by the City. Accordingly, in some ways you set into motion this process, and the two parties that are here asking for costs came before the court, at least in part, as a result of something that you had set into motion.

Regarding whether the awarding of costs would be a deterrent, because costs are not available to the parties at the prior two levels, I do not think that any award that I make on an appeal where environmental assessment is secondary will have any effect on taxpayers taking an appeal before the prior two bodies to have their assessments reviewed. Therefore, although there is a peripheral interest in environmental matters here, the case really revolved around the question of what they should and should not have looked at and how they looked at the matters before proceeding. As I said earlier, it could have been a case that had absolutely nothing to do with environmental concerns.

Going to the question that you raised as to whether the only question raised by New Westminster was answered in the negative, in fairness to them, that was my organization. Rather than having to deal with eight questions, I looked at all of the questions and determined, perhaps arbitrarily, that the questions could be combined, in order that my judgment would be shorter rather than longer and in order to organize my own thoughts. So it is perhaps a bit unfair to do that sort of "baseball innings" approach to questions and answers. I think the overriding position taken by New Westminster and by the Assessor was upheld by me, even though one of the questions was

answered in the negative and even though, in my organization, that appeared to be the question raised by New Westminster.

The Rules provide that unless there is an indication to the contrary in the judgment, costs will follow the event. That, in the vernacular, means if you win, you get your costs. I think it is fair to say that the position taken by both New Westminster and the Assessor produced wins on their behalf and forced you, unfortunately, to go back again to see what the Appeal Board has to say about the matters that I have raised. In the circumstances, my ruling is that they are both entitled to their costs.

I will set the costs on a Scale 3 basis for both parties but in order to avoid another trip back to the Registrar or another drawing of the bill of costs, I am going to set the costs of the Area Assessor at $4,500, inclusive of disbursements, and the costs of New Westminster at $3,000, inclusive of disbursements. Those are the costs set to and including today's hearing. Accordingly, so it won't be necessary to go back and incur further expense regarding the assessment of the costs of the parties.