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BEVERLY AND DAVID ROSS & ALAN J. GRUBB

v.

ASSESSOR OF AREA 10 – BURNABY/NEW WESTMINSTER

British Columbia Court of Appeal (CA025677) Vancouver Registry

Before the HONOURABLE MR. JUSTICE MACFARLANE (in chambers)

Vancouver, May 6, 1999

Guy Holeksa for Assessor of Area 10 – Burnaby/New Westminister
Beverly Ross appearing on her own behalf

Reasons for Judgment (Oral)

May 6, 1999

MACFARLANE, J.A. This is an Application for Leave to Appeal the decision of a Supreme Court judge upon a Stated Case concerning the assessment of lands in downtown New Westminister. Section 65(9) of the *Assessment Act* provides for an appeal to this Court on a question of law. The appeal by way of Stated Case to the Supreme Court of British Columbia from the decision of the Assessment Appeal Board is also confined by Section 65(1) to a question of law alone.

The questions raised on this appeal are stated by the Appellant in its outline of argument in this way:

11. Should similar properties, with different zoning which creates different value, be assessed at the same value or at the different values determined by the market?
12. Did the Learned Chambers judge err in law by overturning the Board Decision when there was ample evidence to support the Board Decision?

The first question challenges the opinion of the appeal judge that the differential in assessed value is not justified on the basis of zoning alone. The second question challenges the finding of the appeal judge that on the evidence the Assessment Appeal Board was not correct in finding an increased value of the subject properties because of their potential for development for commercial and/or residential use. The error alleged is that the appeal judge exceeded his jurisdiction by entertaining an appeal on the facts rather than on a question of law alone.

In my opinion the proposed appeal to this Court raises a question of law. It is a question of general and particular importance. The extent to which zoning can lead to increased valuations, and the long-standing debate between these property owners and the Assessor should be resolved.

I have taken time to read again the written submissions of the parties, and in particular, the cases cited by Mrs. Ross. Mrs. Ross asserts that the Application for Leave to Appeal should be refused because the law is clear on the question of zoning and the appeal is bound to fail. I have read the cases to which she has referred and I am not persuaded that those cases are determinative of

the issues raised in the appeal. However, it's not my function to discuss in detail those authorities which will be considered by the panel which hears this appeal. Suffice it to say, in my opinion, those cases upon which Mrs. Ross relies so heavily are not directed to the precise points raised on this appeal.

Leave to Appeal is granted.

Mrs. Ross has asked the Clerk of the Court to hand to me a memorandum which she has written with respect to costs. I have read that memorandum. I am not prepared to make the order proposed by Mrs. Ross. The costs of this application will be costs in the appeal.