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DONALD K. RIIS

v.

ASSESSOR OF AREA 19 - KELOWNA

Supreme Court of British Columbia (54536) Kelowna Registry

Before the HONOURABLE MR. JUSTICE F.W. COLE (in chambers)

Date and Place of Hearing: February 5, 2002, Kelowna, BC

Donald K. Riis On His Own Behalf
Guy E. McDannold for the Respondent

Reasons for Judgment (Oral) February 5, 2002

[1] **THE COURT:** This is a Stated Case filed with the Property Assessment Appeal Board pursuant to s. 65 of the *Assessment Act* at the requirement of the Appellant, Donald Riis. The material facts as set out in the Stated Case are as follows.

[2] The appeal before the Board was from the decision of the 2001 Property Assessment Review Panel. The Panel upheld the Assessor's decision to reclassify the property from farm to residential in 2000 by supplementary roll, and to deny the developing farm status for the 2001 assessment roll. The property is an 8.15 acre rectangular lot on the bench above Wood Lake. It is improved with two dwellings and fruit trees. The Appellant, Mr. Riis, is the owner of the property. The property had no reported farm income in 1998 and 1999 during which time Mr. Roger Bailey managed the property without a lease from Mr. Riis.

[3] During the fall of 1999 to the spring of 2000, Mr. Riis cleared the property of the older apple trees with the plan to replant the area with late producing cherry trees. In October 2000, Mr. Riis filed a farm application indicating the new trees were being planted in 2002. However, the trees became available in 2001 and Mr. Riis planted about one thousand, two hundred cherry trees and seventy-three plum trees on the property.

[4] The Board found the classification of the property by supplementary roll was part of an overall review by the Assessor and that the Assessor made reasonable attempts to involve Mr. Riis in the review. The Board found that while the property was used for primary agricultural production in 1999, it failed to meet the income threshold in the *Standards for the Classification of Land as a Farm Regulation*, B.C. Reg. 411/95 (the "Regulation"). The Board confirmed the loss of farm classification for the 2000 supplementary roll. The Board found the land was sufficiently prepared for planting in 2001. It was planted as of July 1st, 2001. The Board found that to meet the criteria in the Regulation, the property should be prepared in 2000 and planted in 2001. The Board found that the application for developing farm status filed with the Assessor was deficient in that it stated the land preparation would be in 2001 and planting would take place in 2002, one year later than required by s. 8(3)(b) of the Regulation. The Board also found the application was deficient in the expected yield and selling price information. The Board found the property was not entitled to developing farm status for the 2001 roll. The Board confirmed residential classification for the 2000 supplementary and 2001 roll.

[5] The questions raised by the Appellant, to be answered by this Court, are:

> (1) Did the Board err in that it changed the property classification without notifying the owner of any change?
>
> (2) Did the Board err and the Assessor misrepresent the condition of the property at the hearing?
>
> (3) Did the Board err in that it did not give adequate time to submit an application for reclassification?

[6] It is clear that the question should be did the Assessor err, not did the Board err. In *Winkler* v. *Assessor of Area 09 – Vancouver* (27 February 1998), Vancouver A973327 (B.C.S.C.) a decision of Mr. Justice Owen-Flood, at para 9 he stated:

> On this aspect, I also bear in mind the dicta of Mr. Justice Finch as he then was in the *District of Tumbler Ridge* v. *Assessor of Area 27 – Peace River* (unreported), Vancouver Registry number A851790 December 2, 1985 (B.C.S.C.), where at page 3, he noted, "The questions should be questions of law only. The questions should be framed by and are the sole responsibility of the appellant."

[7] In the case of *New Vista Society* v. *Burnaby/New Westminster Assessor, Area No. 10*, [1992] B.C.J. No. 1127 (Q.L.) (C.A.), the Court stated:

> In any event, having answered the question as I have indicated, he then went on to discuss other matters in relation to answering that question. Counsel for the Appellant contends that in doing so, he invaded the jurisdiction of the Board and exercised his discretion. Section 74(6) of the *Assessment Act* provides in part, "The court shall hear and determine the question."

[8] The question, did the Board err, is in my view, therefore fatal to the Appellant's case and the case should be dismissed on that basis alone. If, however, I am in error in reaching that conclusion, I will deal with each of the three questions in a summary manner. *Winkler* sets out the three principles that I must apply. First, the Board is the master of the procedure of its own hearings and is not bound by any legal or technical rules of evidence. Two, Stated Case appeals are limited to questions of law only, and questions of mixed law and fact are not acceptable. Finally, questions which are non-factual or do not rise from the decision below, are not proper questions of law.

[9] With respect to the first question, it is in my view, a non-factual question that does not arise from the case. With respect to the second question, it is not a question of law, but a question of fact which is beyond the jurisdiction of this Court on the hearing of a Stated Case. With respect to the third question, it is a non-factual question that does not arise from the decision. The appeal is therefore dismissed. Costs on scale 3.

[10] Anything else?

[11] **MR. McDANNOLD:** No, thank you, My Lord.

[12] **THE COURT:** We're adjourned.