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GORDON BISHOP

v.

ASSESSOR OF AREA 08 – NORTH SHORE/SQUAMISH VALLEY

SUPREME COURT OF BRITISH COLUMBIA (L020098) Vancouver Registry

Before the HONOURABLE MR. JUSTICE PITFIELD

Date and Place of Hearing: July 3, 2002, Vancouver, BC

G Bishop on his Own Behalf

G.P. Holeksa for the Respondent

## Reasons for Judgment (Oral)

July 3, 2002

[1] **THE COURT:** This is an appeal by Gordon Bishop from the assessment of his property situated at 905 Braeside, in the Municipality of West Vancouver, British Columbia. The value of the land as determined by the Assessor was \$476,000. Mr. Bishop appealed that decision and ultimately the appeal found its way to the Property Assessment Appeal Board which, in reasons dated December 7, 2001, confirmed the assessment.

[2] The appeal comes to this court as permitted by s. 65 of the *Assessment Act*, which provides as follows:

- 65.** (1) Subject to subsection (2), a person affected by a decision of the board on appeal, including a local government, the government, the commissioner or an assessor acting with the consent of the commissioner, may require the board to refer the decision to the Supreme Court for appeal on a question of law alone in the form of a stated case.

[3] The Stated Case which comes before the court is phrased in four questions. In the statement of the Stated Case dated January 14, 2002, the questions are the following:

- (1) Did the Board err in law by deciding our property had an overall view of Ambleside, Burrard Inlet, Stanley Park and the UBC Endowment Lands when it is impossible to see this panoramic view at our property?
- (2) Did the Board err in law by deciding to obtain Highland Value to demolish our home and a new home constructed without any municipal approval feasible plan that would have both economic and environmental considerations to what our property presently has?
- (3) Did the Board err in law by deciding, with the description of elevation by Mr. Wilkinson (phonetic), that the west side of Braeside Street was higher than the east side and, therefore, better views when the opposite elevation is true?
- (4) Did the Board err in law by deciding with the description of moderate slope by Mr. Wilkinson? The road portion fronting our property on Braeside Street is an uphill grade of 35 to 40 degrees from our pre-existent home level driveway.

[4] The substance of Mr. Bishop's appeal is directed towards his complaint that the Property Assessment Appeal Board misconstrued the facts and in aggregate the extent to which the facts

were misconstrued constitutes an error of law. The errors of fact to which he points appear firstly in paragraph 12 of the reasons where the Board describes the view as comprising "Burrard Inlet, Stanley Park and the University of British Columbia Lands." It is agreed by counsel on behalf of the Assessor that the description of the view, including "Stanley Park", is an error. The same error is repeated in paragraph 14 of the reasons and again in paragraph 17 of the reasons.

[5] Another point of error to which Mr. Bishop points appears in paragraph 18 of the reasons where the Assessor is reported as having said that Mr. Bishop's property is on the west side of Braeside Street, which has higher elevation and therefore better views than properties on the east side of the street. That statement is in error in that the Bishop property is on the west side of Braeside, which is the lower side of the street with a lower elevation having regard for the topography of Sentinel Hill.

[6] The final error to which Mr. Bishop points is that the Assessor, at paragraph 21, is reported to have said that the Bishop property has the lowest land assessment of any property on Mr. Bishop's side of the street. Mr. Bishop points to the fact that another property somewhat to the north of his, in fact, has a somewhat lower assessed land value than does his property itself.

[7] The question with which I must be concerned is whether or not any of the objections which Mr. Bishop takes to the reasons of the Property Assessment Appeal Board and its decision, amount to an error of law. I am satisfied that an error of law may be found in the event that statements of fact which are in error are of sufficient import or sufficiently material to permit one or to require one to characterize the decision of the Board as amounting to an error in law.

[8] I have reviewed the reasons of the Property Assessment Appeal Board and I am satisfied that in their entirety the reasons do not disclose any error of law and the points to which objection is taken are errors in matter of fact which in aggregate or alone do not undermine or nullify the reasons of the Property Assessment Appeal Board. I say that for these reasons.

[9] The reference by the Board to the view encompassing a view of Stanley Park is admittedly in error. The question that remains, however, is the value of this property having regard for the view which it does have. The property was viewed by the Assessor and I am satisfied that the expression of opinion with respect to value takes into account the opinion of the appraiser and amounts to a question of fact properly before the Assessment Appeal Board and does not amount to a question of law.

[10] The fact that the property is described as being on the west side of Braeside Street and having a higher elevation and better views than the properties on the east side of the street is also in error but neither standing alone or in aggregate with any of the other errors does this undermine the reasoning of the Property Assessment Appeal Board so as to amount to an error in law. The evidence in the form of the appraisal which was tendered to the Property Assessment Appeal Board indicates that the appraiser, when he was assessing the land, was aware of its location and was mindful of its physical location on the west side of Braeside Street.

[11] Finally, I am not persuaded that the statement that the Bishop property had the lowest land assessment of any property on the west side of Braeside Street is an error which undermines the reasonableness of the Property Assessment Appeal Board's decision. The property to which reference is made is, in fact, a property which fronts on Inglewood Avenue rather than Braeside Street and it is some considerable distance from the Bishop property. It is quite possible and indeed probable that the Assessor was referring to lots which faced Braeside Street rather than those which faced Inglewood Avenue. In any event, regardless of whether the Assessor was mindful of the property at the intersection of Inglewood and Braeside which was assessed at a lower value than that of the Bishop property, I am satisfied that reference to the reasons overall indicates that the Property Assessment Appeal Board did not misconstrue evidence of sufficient importance to result in the judgment amounting to an error in law.

[12] I want to say that in the course of the proceeding before the Property Assessment Appeal Board, which is in the nature of a trial for the purposes of determining value, the Board did have the evidence of the Assessor's appraiser. It had no evidence of appraisal values from any expert called on behalf of Mr. Bishop. The Board did have the benefit of Mr. Bishop's opinion but in matters of this kind, as Mr. Bishop has been told on other occasions I am advised, it is the opinion of the experts who understand the principles of valuation which will be respected rather than the personal perceptions of those who are the owners of the properties in question.

[13] In this particular case, Mr. Bishop did point to the fact that the building capability on his lot is restricted by a rock ridge at the south edge of the property. There is no engineering or other evidence to indicate that the rock ridge would interfere with building capacity or capability on the property. There was a suggestion by Mr. Bishop that some amount of land preparation would be required before anybody could redevelop his property as a residential site. There is no engineering or other evidence to support that conclusion.

[14] Finally, there is a suggestion by Mr. Bishop that his property is denied access in the form of a driveway. There are indications that the Property Assessment Appeal Board was aware of the fact and took into account the fact that the property was not currently accessible by a driveway but it appears from all of the material before the Property Assessment Appeal Board that driveway access would be available either to Mr. Bishop or to any subsequent owner of the property who might redevelop it.

[15] As I have said, the Board was perfectly justified in acting upon the expert evidence that it had before it with respect to the questions of value. It appears, as I read their reasons, that they carefully considered the comparables and the analysis that had been carried out by the appraiser with a view to, if you like, adjusting the sales of the comparable properties of which there were three to reflect their values as if they were similar in time, place, location, condition and all other respects to the subject property, namely, the Bishop property at 905 Braeside.

[16] I am satisfied that overall the reasons disclose no error of law and while Mr. Bishop might quarrel with the findings of fact made by the Property Assessment Appeal Board, his quarrels in that regard are going to have to be saved for another day when he might return to the Property Assessment Appeal Board in respect of the appraisal for another year armed with the necessary expert evidence.

[17] Failing expert evidence, Mr. Bishop, the likelihood is that the Assessment Appeal Board will be acting upon the evidence that it has before it in the future as it has in the past. The appeal is dismissed.

[18] What do you wish to do with respect to costs?

(DISCUSSION BETWEEN THE COURT AND COUNSEL RE COSTS)

[19] **THE COURT:** Well, Mr. Bishop, I have told you that there may be some minor errors of fact. They do not affect the underlying validity of the judgment. They are not errors which alone are an aggregate amount to an error of law. Your appeal has been dismissed. I am going to order that the Assessor will be entitled to costs at Scale 2. Okay.

[20] **MR. BISHOP:** Yes. You will have to clarify that for me.

[21] **THE COURT:** Well, there is a tariff in the Rules and in the ordinary course costs that are awarded to a successful party are at Scale 3 which is a matter of average difficulty and complexity. There are five schedules – five levels, if you like: Schedules 1, 2, 3, 4 and 5; 5 being the heaviest, 1 being the lightest. What I am doing in this case is accepting Mr. Holeksa's suggestion that the costs should be taxed at Scale 2, which is a somewhat lighter load to bear than the average.

[22] If you come back again in other circumstances having gone to the Assessment Appeal Board without having your factual evidence in a row and your appraisal evidence there and the engineering or other evidence that you need, then, you know, it will go up again. Next time it will be Scale 3. This time it is Scale 2.

[23] What will happen is that Mr. Holeksa will prepare a bill of costs. He will send it over to you; you can consult with somebody if you wish. If you wish to agree with the amount, you can do that. If you wish to dispute it, you can take it to a registrar and the registrar will determine whether or not the amounts that have been claimed are accurate.

[24] **MR. BISHOP:** This isn't quite clear to me now.

[25] **THE COURT:** I beg your pardon?

[26] **MR. BISHOP:** It's not quite clear. Who's the registrar?

[27] **THE COURT:** The registrar is downstairs in the court. I am sure Mr. Holeksa will give you some advice on that. He will be preparing a bill of costs. It is a form that is prepared in accordance with the Rules. You will have the opportunity to consult with anybody you want to see whether or not the items that he has claimed in accordance with the Rules and the tariff to the Rules are appropriate. If you agree that they are, then you can agree that the costs will be paid in the amount claimed. If you dispute his calculations, then you have the right to take out an appointment before the registrar of the court. You can do that by attending at the registry and asking for an appointment and they will give you the assistance you require, okay? And then you would come on an appointed day, and Mr. Holeksa would be there, as well, and the registrar would decide whether or not the bill of costs, as prepared and presented by Mr. Holeksa on behalf of the Assessor, was correct.