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ASSESSOR OF AREA 10 – NORTH FRASER REGION

v.

FRANCIS S. RAM and SUSAN S. RAM

SUPREME COURT OF BRITISH COLUMBIA (L050919) Vancouver Registry

Before the HONOURABLE MR. JUSTICE MELNICK (in chambers)
Date and Place of Hearing: May 4, 2005, Vancouver, BC

G.E. McDannold for the Appellant
Edward Ram for the Respondents

Reasons for Judgment (Oral) May 4, 2005

[1] THE COURT: The Assessor of Area 10 – North Fraser Region, required the Property Assessment Appeal Board to file this Stated Case pursuant to s. 65 of the *Assessment Act*, R.S.B.C. 1996, Chapter 20.

[2] At issue is whether the Board erred by reducing a residential property valuation by a percentage amount to reflect the possibility that the subject property might be found in the future to be contaminated from leakage from a tank or tanks of a nearby Chevron service station because there was evidence that adjoining property was so contaminated.

[3] In this case, there was no evidence of contamination of the subject property. Specifically, the Board requires the court to answer three questions:

1. Did the Property Assessment Appeal Board err in law by reducing the actual value of the subject property by 10 percent to 15 percent due to the contingent possibility of a future finding of soil contamination when there was no evidence before the Board of soil contamination of the subject property?

2. Did the Property Assessment Appeal Board act arbitrarily by reducing the actual value of the subject property by 10 percent to 15 percent due to the contingent possibility of a future finding of soil contamination when there was no evidence before the Board of soil contamination of the subject property?

3. Did the Property Assessment Appeal Board act on a view of the facts which could not reasonably be entertained by reducing the actual value of the subject property by 10 percent to 15 percent due to the contingent possibility of a future finding of soil contamination when there was no evidence before the Board of soil contamination of the subject property?

[4] In this case, I have concluded that I must answer all three questions in the affirmative.

[5] The Board erred by reducing the valuation it assigned to the Respondents' property by 10 to 15 percent (from $390,000 to $329,000), largely because of a contingent possibility that upon a comprehensive investigation being undertaken evidence of contamination might be discovered.

[6] The Board relied on *Yennadon Holdings Ltd.* v. *Assessor of Area 01 – Capital Region* (1993-01-0057), but that was a case in which contamination of the subject property was admitted.

[7] It may well represent a common sense approach to valuation to say that a property's value may be affected by the condition of the neighbouring property, but there must be evidence before the Board upon which it may exercise its common sense, evidence that it is more probable than not that the condition of the neighbouring property can affect the subject property. The Board is not entitled to speculate, however much its speculation may accord with "common sense." (For example, see *Assessor of Area 10 – Burnaby/New Westminster* v. *Haggerty Equipment Co. Ltd.,* 1997 BCSC Stated Case number 396.) This makes sense in the context of a scheme whereby a property is assessed on an annual basis; that is, it is open to the Respondents to bring evidence of the contamination of their property before the Assessor should such contamination be found. There would then be evidence before the Assessor that he or she could consider.

[8] Having said that, Mr. McDannold concedes on behalf of the Assessor that it is reasonable and appropriate for the Board to include a deduction of $5,000 for the costs of the Respondents' undertaking a soil contamination study. That would put the value of the property at $385,000.

[9] The other percentage reduction applied by the Board was arbitrary in the face of there being no evidence of contamination of the subject property, nor any evidence of the probability of it becoming contaminated from the adjoining property. Thus, the Board acted on a view of the facts that could not be reasonably entertained on the evidence before it.

[10] In these circumstances, the Assessor does not seek costs against the Respondents. There is, therefore, no order as to costs.

The Honourable Mr. Justice Melnick