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DONALD COATES AND ELLEN COATES
V.
ASSESSOR OF AREA #04 – CENTRAL VANCOUVER ISLAND
PROPERTY ASSESSMENT APPEAL BOARD

SUPREME COURT OF BRITISH COLUMBIA (S74439) Nanaimo Registry

Before the HONOURABLE MR. JUSTICE STEEVES
Date and Place of Hearing: March 5, 2015, Nanaimo, B.C.

Donald Coates for the Applicants
C. Megaffin for the Respondent, Assessor of Area 04 – Central Vancouver Island

Reasons for Judgment March 5, 2015

[1] **THE COURT:** The applicants seek a review of a decision of the Property Assessment Appeal Board, dated November 14th, 2014, by means of a Stated Case under s. 65 of the *Assessment Act,* RSBC 1996 c.20. Specifically, the applicants seek a decision that their property at 781 Hemsworth Road, Qualicum Beach, British Columbia, should be classified as Class 9 farm land. It is currently classified as Class 1 residential, as a result of the Board decision of November 14th, 2014.

[2] By way of background, the applicants own three adjacent properties on Hemsworth Road; all three properties are in the Agricultural Land Reserve. As a result of the November 14th, 2014, decision of the Property Assessment Appeal Board, and a prior decision of the assessor, two of the properties are classified as Class 9 farm. The November 14th decision confirmed a previous decision that the third property should be classified as Class 1 residential. I will refer to the property at issue as "The Property".

[3] The history of The Property is that before 2011 it was used for pasture, bush browse, and shelter for sheep. In 2014, an inspector with the assessor visited the property and recorded it as being vacant and unused. This and the fact there was uncut forage land, led to the conclusion of the assessor that the property was not actually actively farmed. That resulted in the loss of the farm status.

[4] This was appealed ultimately to the Property Assessment Appeal Board.

[5] In the November 14th, 2014 decision of the Board, the applicants were successful in a number of areas. In one area they were not successful.

[6] The Property at issue was discussed as a place for the disposal of manure from the applicant's chicken operation. The applicants said this made the land agricultural for assessment purposes. The Board panel did not agree.

[7] The legal context for this matter is a Stated Case pursuant to s. 65 of the *Assessment Act*.

> 65 (1) Subject to subsection (2), a person affected by a decision of the board on appeal, including a local government, a taxing treaty first nation, the government, the

Nisga'a Nation or the assessment authority, 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.

(2) Within 21 days after receiving the decision referred to in subsection (1), the person must deliver to the board a written request to refer the decision to the Supreme Court, and include in the request the question of law to be referred.

(3) On receipt of the request under subsection (2), the board must promptly provide written notice of the request to

(a) the parties to the appeal from which the reference is requested and any intervenors, and

(b) the chief executive officer of the assessment authority.

(4) Within 21 days after receiving the request under subsection (2), the board must file the stated case with the court registry, including the decision on appeal, a statement of the facts and all evidence material to the stated case.

(5) The stated case must be brought on for hearing within one month from the date on which it is filed under subsection (4).

(6) Subject to subsection (7), the court must hear and determine the stated case and within 2 months give its decision.

(7) The court may send the stated case back to the board for amendment and the board must promptly amend and return the stated case for the opinion of the court.

(8) The costs of, and incidental to, a stated case under this section are at the discretion of the court.

(9) An appeal on a question of law lies from a decision of the Supreme Court to the Court of Appeal with leave of a justice of the Court of Appeal.

(10) The board must direct the assessor to make any amendment to the assessment roll necessary to give effect to a decision made by the Supreme Court or the Court of Appeal under this section.

[8] The Property Assessment Appeal Board and previous decisions of the assessor were made under s. 19(4) of the *Assessment Act* and ss. 4 and 5 of the *Classification of Land and Farm Regulation*, B.C. Reg. 411/95. There is another set of regulations, titled the *Prescribed Classes of Property Regulation*, B.C. Reg. 438/81. I will call those the Farm Regulation and Property Regulation respectively.

[9] It is agreed that the following question is to be determined in this Stated Case: "Did the board err in law in finding that 781 Hemsworth Road, Qualicum Beach, B.C., was not included as part of the farm operation by failing to consider the evidence submitted to the board regarding the use of 781

Hemsworth Road, Qualicum Beach, B.C., for manure disposal in para. 13 of the submission and the map attached to the submission?"

[10] Our Court of Appeal has described the following as the definition of a question of law in these kinds of applications. *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 - Coquitlam),* 112 BCAC 176:

> 9 The Chambers judge was correct, however, in emphasizing that the scope of review on an appeal from an assessment by way of stated case is strictly limited to questions of law. The meaning of that phrase was defined by Ryan J. (as she then was) in Assessor of Area 26 - *Prince George v. Cal Investments* (1992) Stated Case 335 (B.C.S.C.) as follows:
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> For questions of the Act a "question of law" has been defined as follows:
>
> 1. A misinterpretation or misapplication by the Board of a section of the Act.
>
> 2. A misapplication by the Board of an applicable principle of general law.
>
> 3. Where the Board acts without any evidence.
>
> 4. Where the Board acts on a view of the facts which could not reasonably be entertained. . . .
>
> 5. Where the method of assessment adopted by the Board is wrong in principle. [at 1969-70]
>
> This definition was quoted with apparent approval by this court on appeal at 1984-8 of Stated Case 335. As Mr. Savage points out in the case at bar, questions as to the sufficiency of evidence or as to which expert opinion should be preferred by the board in deciding the highest and best use of a given property were questions of fact within the board's exclusive jurisdiction: see *Provincial Assessors of Comox, Cowichan and Nanaimo v. Crown Zellerbach Canada Limited* (1963) 42 W.W.R. 449 (B.C.C.A.) at 458 and *Re Caldwell and Stuart* 1984 CanLII 128 (SCC), [1984] 2 S.C.R. 603 at 613. Thus it is clear the Chambers judge was correct in declining to interfere with various findings of fact, which need not be recounted here, made by the board on the evidence before it.

[11] The applicants in particular rely on points 3 and 4 there; that is, they say that the Board acted without any evidence; alternatively they say the Board acted on a view of the facts which could not reasonably be entertained.

[12] During this hearing the applicants, ultimately said the remedy they were seeking was a setting aside of the Board decision of November 2014. I put it that way because at one point the applicant suggested I give him the tax status of the property in question. In some circumstances that might happen on a review, but in general the practice in courts is to refer back decisions to a tribunal.

[13] With respect to the standard of review, the *Administrative Tribunals Act*, SBC 2004 c.45 does not apply to decisions of the Property Assessment Appeal Board; (*Weyerhaeuser Company Ltd. v. British Columbia (Assessor of Area No. 4 - Nanaimo Cowichan),* 2008 BCSC 550). Therefore, the standard of review is reasonableness, and discussed in *Dunsmuir v. New Brunswick,* 2008 SCC 9.

> 28 Section 10 of the Regulation permits differing assessments of portions of a single parcel:
>
> > 10. Where a property falls into 2 or more prescribed classes, the assessor shall determine the share of the actual value of the property attributable to each class and assess the property according to the proportion each share constitutes of the total value.
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> 29 Esson J.A. said, in upholding the chambers judge's rejection of the board's reasoning at para. 22:
>
> > In my view, for the reasons stated in *Bosa (No. 2)*, it is premature to apply s. 10 to vacant land which is being held for residential purposes but is not yet being used for such purposes. At the present time, it is, in the language of s. 1(c), land specifically zoned for business purposes.

[14] Turning to the specific issues here, I begin by noting that the fact that the land in question is in the Agricultural Land Reserve does not necessarily mean it is entitled to be classified under the *Assessment Act* as farm land. The ALR operates
as a "different sphere". (*Gerzymisch v. Assessor of Area 21-Nelson,* (June 22, 1981) Victoria (81/971) BCSC decision, at para. 9).

[15] What is determinative here is the decision of the Property Assessment Appeal Board in the context of the *Assessment Act*, the Regulations, and in the context of the reasonableness standard of review.

[16] The applicants take particular issue with a subparagraph at the end of paragraph 26 titled "Manure Disposal". It says

> Manure Disposal: The Appellants assert that the entire area of Property 2 should be included in the calculation of the total farm operation as it is used for manure disposal. No evidence was presented to me regarding *this use*, and therefore I find that this area does not qualify as land contributing to agricultural production under section 4(2.1) of the Farm Regulation.
>
> [emphasis added]

[17] As will be seen, paragraph 28 is also relevant to the meaning of that paragraph: according to the applicants, paragraph 28 is about the disposal of manure, which is self-evident, but the applicants say they produced evidence of manure disposal, and therefore the Board committed an error of law when it said there was no evidence of manure disposal. I agree that there was

evidence of manure disposal before the Board, and I accept that as characterized by the applicants that would be an error of law under the *Gemex Development* decision.

[18] However, further consideration is necessary, and this includes some understanding of the legislative scheme of the Act and regulations. As a starting point, but for agricultural production, land is to be classified as residential. (*Lowan v. British Columbia (Assessor of Area No. 1 - Capital,* 2010 BCSC 194 decision at para. 21).

[19] Then under the *Classification of Land as a Farm Regulations*, B.C.Reg. 411/95 s. 4 (1) says:

> ... the assessor must classify as farm all or part of a parcel of land used for
> (a) a qualifying agricultural use,
> (b) a farmer's dwelling, or
> (c) the training and boarding of horses . . .

[20] Section 4(2.1) adds various purposes to be considered as part of qualifying agricultural use. Qualifying agricultural use is also defined in s. 1 of the Farm Regulations. Section 9 of the Property Regulations states that Class 9 farm land shall only include land classified as farm land. Schedule 1 of the Farm Regulations includes a detailed definition of qualifying agricultural use, including things such as agriculture and livestock raising.

[21] It is of significance that disposal of manure is not listed anywhere as part of qualifying agricultural use. The significance is that the use of the property in question for manure disposal/dispersal does not by itself mean the land is Class 9 farm.

[22] The applicants point to findings of the Board decision where the Board accepted uses not listed as qualifying agricultural use. Examples of these include a power line and waterline. The applicants were successful before the Board in having those included as part of the assessment of their farm land. However, the Board accepted the power line as a contribution to agricultural use under s. 4(2.1). The Board said the power line contributes to agricultural production. However, this is on the property where the applicants have their dwelling and which was previously accepted as Class 9 farm land, presumably because of the farm dwelling and the application of s. 4(1) of the Farm Regulations. The Property at issue is a separate property, and as above it is not classified as having a qualifying agricultural use. The same analysis applies to the waterline, which is on the same property as the power line.

[23] Returning to the Board decision of November 14th, 2014, again, the two paragraphs at issue are paragraph 26 and 29. I have set out paragraph 26 above which refers to “this use”, and paragraph 29 is as follows:

> I find however that no part of the Property qualifies for farm classification under the Farm Regulation. There is no evidence before me that would support a finding that any area of Property 2 is being used for a qualifying agricultural use or is contributing to a qualifying use.

[24] I can agree with the applicants that paragraph 26 could have been clearer about what was meant by "this use". However, when read together with paragraph

29, it is clear that the meaning of "this use" is qualifying agricultural use. As above, a qualifying agricultural use is needed to qualify land for farm use. I conclude that the last sentence in paragraph 29 is a correct one:

> There is no evidence before me that would suggest a finding that any area of Property 2 is being used for a qualifying agricultural use or is contributing to a qualifying use.

[25] It follows that I can find no error in the Board decision of November 14th, 2014, on an error of law. Specifically, the Board did not without any evidence make their decision, nor was it made on a view of the facts that could not reasonably be entertained.

[26] The application by Donald Coates and Ellen Coates is dismissed.
[SUBMISSIONS ON COSTS]

[27] THE COURT: Okay, so I am going to take you as adopting that submission, and there is no order for costs.