SC 467 Terminal City Club Tower v. AA09

Link to Property Assessment Appeal Board Decision

Quick Link to Stated Case #467 (BCCA)

TERMINAL CITY CLUB TOWER

v.

ASSESSOR OF AREA 09 - VANCOUVER

SUPREME COURT OF BRITISH COLUMBIA (L022040) Vancouver Registry

Before the HONOURABLE MR. JUSTICE BURNYEAT (in chambers)
Date and Place of Hearing: April 16, 2003, Vancouver, BC

B.T. Gibson, Q.C. for the Appellant
J.H. Shevchuk for the Respondent

"Air Space Parcel" - "Residential Purposes" - "Reside"

The property is the Terminal City Club Tower ("Tower"). The Tower is a 27 storey mixed use building including strata titled office units, strata titled residential condominium units, a club operation, and a hotel. The hotel consists of 60 individually owned strata titled units that are managed and rented out by the Terminal City Club as overnight accommodation but which are potentially available for use by the individuals or entities who own the 60 Strata Lots. The 60 strata lots are located within Air Space Parcel LMS 3324 and that air space parcel is located immediately above Air Space Parcel LMS 3323.

The Appellant seeks the opinion of this Court on the following two questions, 1) did the Board err in law in its interpretation of the word "parcel" as it appears in section 1(a)(iii)(B) of B.C. Regulation 438/81, the Prescribed Classes of Property Regulation, and 2) when the Board determined that the 60 strata lots were used for "residential purposes" did the Board incorrectly interpret the phrase "residential purposes" found in section 1(a) of B.C. Regulation 438/81 and thereby err in law?

HELD: Appeal Allowed.

This Court concluded that the 60 strata lots are not "on one parcel or contiguous parcels". It is the 225 strata lots which are on the "parcel or contiguous parcels" of land which lies under the tower. Accordingly, it cannot be said that Terminal City Club Inc. controls or manages 85 percent or more of the 225 strata lots on the "parcel or contiguous parcels". This Court is satisfied that the interpretation given by the Board when it included air space parcels within the definition of "parcel or contiguous parcels" contained in section 1(a)(iii)(A) of the regulation creates an "unworkable absurdity" so that the interpretation must be rejected. The Court answered Question 1 "yes".

The Court found that there is nothing in the wording of s. 1 of the regulation that would allow it to conclude that the residential nature of a property can be "lost" if the use of the property is on an extended basis. In the absence of clear language that would substantiate a clear Legislative intent in that regard and from the decisions in Hardt*,* Whistler*, and* Hennessy*, the Court*

concluded that each of the 60 strata lots were being used for residential use and that residential use does not have to include an element of "extended duration". Question 2 is answered "No".

Reasons for Judgment May 7, 2003

[1] This is a Stated Case by the Property Assessment Appeal Board of British Columbia ("Board") pursuant to s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20 ["*Act*"] wherein the Board seeks the opinion of this Court on two questions.

BACKGROUND

[2] The appeal before the Board was from the decision of the 2001 Property Assessment Review Panel with respect to the Terminal City Club Tower ("Tower") located at 837 West Hastings Street, Vancouver. The Tower is a 27 storey mixed use building including strata titled office units, strata titled residential condominium units, a club operation, and a hotel referred to as the Terminal City Club Tower Hotel ("Hotel"). The owners of the 60 Strata Lots have pooled their units as part of a rental pooling arrangement whereby Inc. manages and operates the 60 Strata Lots as part of the Hotel.

[3] The Hotel consists of 60 individually owned strata titled units ("60 Strata Lots") that are rented out as overnight accommodation but which are potentially available for use by the individuals or entities who own the 60 Strata Lots.

[4] The Tower contains 4 air space parcels which have been subdivided into 225 strata lots by way of 4 strata plans:

(a) Strata Plan LMS 3322 contains one strata lot consisting of the Terminal City Club ["Club"], six strata lots consisting of retail units and one strata lot consisting of an underground parking facility;

(b) Strata Plan LMS 3323 contains 84 strata titled office units;

(c) Strata Plan LMS 3699 contains 73 strata titled condominium units for individual residences; and

(d) Strata Plan LMS 3324 contains the 60 Strata Lots.

[5] The 60 Strata Lots are rented by the Club on a nightly basis and are marketed as the Hotel. Terminal City Club Inc. ["Inc."] manages the eight strata lots in Strata Plan LMS 3322 and all of the 60 Strata Lots. Inc. does not manage or control any other strata lots in the Tower.

[6] The 60 Strata Lots are located within Air Space Parcel LMS 3324 and that air space parcel is located immediately above Air Space Parcel LMS 3323.

APPLICABLE PROVISIONS OF THE *ASSESSMENT ACT*, THE REGULATIONS AND THE *LAND TITLE ACT*

[7] Under the *Land Title Act*, R.S.B.C. 1996, c. 250, ("L.T.A."] "subdivision" means the division of land into two or more parcels, "whether by plan, apt, descriptive words or otherwise", an "air space parcel" means: "a volumetric parcel, whether or not occupied in whole or in part by a building or other structure, shown as such in an air space plan" and an "air space plan" means a plan that: "(a) is described in the title to it as an air space plan, (b) shows on it one or more air space parcels consisting of or including air space, and (c) complies with the requirements of section 144".

[8] Under the *Act*, "parcel" means: "a lot, block, or other area in which real property is held or into which real property is subdivided and includes the right or interest of an occupier of Crown land but does not include a highway or portion of a highway;".

[9] Under the Prescribed Classes of Property Regulation, B.C. Regulation 438/81 which was in effect at the time pertinent to this Stated Case ("Regulations"), "Class 1 - Residential" property is to include only:

> (a) land or improvements, or both, used for residential purposes, including single family residences, duplexes, multi-family residences, apartments, condominiums, manufactured homes, nursing homes, rest homes, summer and seasonal dwellings, bunkhouses, cookhouses and ancillary improvements compatible with and used in conjunction with any of the above, but not including
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> (i) hotels or motels other than the portion of the hotel or motel building occupied by the owner or manager as his or her residence ... and
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> (iii) 20 or more strata lots
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> (A) on one parcel or contiguous parcels,
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> (B) controlled or managed by persons, or a person, who control or manage 85% or more of the strata lots on the parcel or contiguous parcels referred to in clause (A), and
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> (C) offered for rent, or rented, for periods of less than 7 days to persons, or a person, as overnight accommodation for at least 50% of the 12 month period ending on October 31 of the year previous to the taxation year for which the assessment roll is completed.

MAY 23, 2002 DECISION AND ORDER OF THE BOARD

[10] Written submissions were made to the Board and the Board delivered its decision on May 23, 2002. The issues as described by the Board were whether the phrase "parcel or contiguous parcels" in s. 1(a)(iii)(B) of the Regulations refers to the air space parcels in the Tower or to the underlying lot or lots on which the Tower was built and whether the 60 Strata Lots are used for "residential purposes" pursuant to s. 1(a) of the Regulations.

[11] The Board stated that, if the answer was that: "parcel or contiguous parcels" refers to the air space parcels and strata plans in the complex, then Inc. manages 100% of the 60 Strata Lots which comprise Air Space Parcel LMS3324 and Strata Plan LMS3324 so that the property was not residential whereas, if the reference to "parcel or contiguous parcels" is to the underlying parcels on which the Tower was built, then Inc. managed only 27% of the total of 225 strata lots in the Tower and the property was residential.

[12] On the issue of whether the 60 Strata Lots were used for "residential purposes", the Board stated that, if the answer was "no", then the 60 Strata Lots were to be excluded from residential classification.

Question 1: Did the Board err in Law in its interpretation of the word "Parcel" as it appears in ss. 1(a)(iii)(B) of B.C. Regulation 438/81?

[13] The Board found that the definition of "Parcel" or "Parcels" as used in the *Act* and the Regulations includes air parcels, that Air Space Parcel L.M.S. 3324 has been subdivided into the 60 Strata Lots, and that Inc. manages 100% of the 60 Strata Lots in Air Space Parcel L.M.S. 3324 and with Strata Plan L.M.S. 3324. Accordingly, the 60 Strata Lots should be classified as

"Class 6 - Business" for assessment purposes and should not be classified as in "Class 1 - Residential" for assessment purposes.

[14] After referring to the definition of "parcel" in s. 1 of the *Act* and the decision in *East et al.* v. *Assessor of Area 8 - North Shore/Squamish Valley* (1996), 19 B.C.L.R. (3d) 151 (B.C.S.C.) affirmed (1997) 27 B.C.L.R. (3d) 298 (B.C.C.A.), the Board stated:

> [28] In that case, the argument was whether "parcel" or "parcels" included strata lots. Here, the Assessor's argument is that it includes an air space parcel or strata *plan*, and that the strata plan represents an area in which real property is held. The Appellant argues that "parcel" refers to the underlying lot or lots on which the complex is constructed and uses it synonymously with "building".
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> [29] The Board finds that the question here is whether the air space parcel of which the 60 Strata Lots are a part are included in the meaning of "parcel" or "parcels" in the Regulation. Strata plans are a mechanism by which the land is subdivided into individual strata lots by the deposit of the strata plans in the Land Title Office. The strata plan itself is not an area in which real property is held or can be transferred or into which real property is subdivided.
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> [30] Air space parcels, however, are something more.
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> [31] As indicated earlier, the complex has been subdivided into air space parcels under the *Land Title Act*.
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> [32] Section 139 of the *Land Title Act* specifically stipulates that airspace constitutes land and lies in grant. Section 141 of the *Land Title Act* states that the air space parcel created by an air space plan devolves and may be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as other land. As well, it states that an air space parcel may be subdivided in accordance with the *Strata Property Act*.
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> [33] That is what occurred here. The complex is comprised of four air space parcel plans, which in turn are subdivided under the *Strata Property Act* by way of strata plans, creating strata lots in each airspace parcel.
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> [34] Section 145 of the *Land Title Act* also states that an estate or interest in an air space parcel, if separately owned, must be separately assessed for taxation for all types of rates, assessments and taxes authorized to be assessed against land and improvements by any *Act*.
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> [35] Therefore, although the *Assessment Act* and the Regulation does not specifically deal with air space parcels, the land title scheme in the B.C. clearly acknowledges that air space constitutes land and lies in grant. It can be subdivided transferred, mortgaged, leased and assessed for taxation.
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> [36] "Real property" as used in the definition of "parcel" in the *Assessment Act* is not defined. Traditionally, the owner of land owns not only the ground and soil, but everything attached to the earth, whether natural or man-made. Ownership also extends indefinitely above and below the surface, taking in both the air above and the minerals below. This is the concept of land as a three-dimensional entity. This concept was discussed in the appraisal context in *The Appraisal of Real Estate* (Cdn Edition, 1992) at page 120:
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> > "The vertical division of real property is based on the legal conception of land as a volume of space with boundless height and depth ... the density of building in urban areas increases, fewer sites are available for new construction and land values escalates. This trend has produced a growing interest in developing air rights."

[37] This concept of land as a three-dimensional entity underlies the land title scheme in B.C., which allows air space parcels to be created, transferred, mortgaged, leased and subdivided.

[38] Consequently, the interpretation of "parcel" or "parcels" as used in the *Assessment Act* as including air space parcels, is entirely consistent with not only the ordinary meaning of the words, but also the assessment and land title scheme in the province.

[39] The Appellant relies on the *East* decision in arguing that "parcel" refers to the underlying lot or lots on which the strata complex is built. However, interpreting "parcel" as including air space parcels is not inconsistent with the Court's reasoning in the *East* decision. This is because air space parcels still have a physical relationship to the land, as air space rights are part of land and the ownership of land. As well, air space parcels may include part of the land or improvements. The Court in the *East* decision was concerned with whether strata lots were included in the meaning of "parcel" or "parcels", it did not contemplate in its decision how air space parcels are to be treated within or outside of that definition.

[40] In addition, the Board finds that this interpretation is entirely consistent with the intent of the Legislature in enacting the Regulation, and the object of the *Act* and Regulation. Section 1(a)(iii) of the Regulation was enacted by the Legislature in response to the decision of *Hardt ... [British Columbia (Assessor of Area No. 1 - Saanich/Capital)* v. *Hardt* (1992), 88 D.L.R. (4th) 183 (B.C.C.A.)]. Although, under section 1(a)(i) of the *Regulation*, hotels are specifically excluded from residential classification, the Court, in that decision, held that the Board had not erred when it reasoned that individual strata lots operated as an integrated hotel operation, are not hotels; therefore, they could not be excluded from residential Class 1. As the strata titled hotel operations were now no longer excluded from residential classification, the Legislature amended the *Regulation* by enacting section 1(a)(iii) to ensure that strata lots that were operated as hotels and met the criteria of the section could be excluded from residential class.

[41] Based on the ordinary meaning of the words, and the object of the *Act* and the intention of the Legislature, the Board finds that the definition of "parcel" or "parcels" as used in the *Act* and *Regulation* includes air space parcels. Also, the Board finds that the air space parcel which has been subdivided into the 60 Strata Lots is an area in which real property is held or into which real property is subdivided. Therefore, Terminal City Club Inc. manages 100% of the 60 Strata Lots in its air space parcel.

[15] The Stated Case in *East* involved 67 strata title condominiums which were pooled by their owners and operated as "Whistler Village Inns" in Whistler. The 67 strata lots had been assessed individually and the questions which the Board requested the opinion of the Supreme Court included the question of whether the properties participating in the condominium rental pool should be classified as Residential (Class 1) or as Business and Other (Class 6).

[16] Esson, C.J.S.C., as he then was, made this statement regarding the use of the word "parcel" in s. 1(a)(iii) of the *Regulations*:

The definition of "parcel" in the *Assessment Act* (so far as it may be applicable) reads:

> **"parcel"** means a lot, block, or other area in which real property is held or into which real property is subdivided, ...

Sections 63 and 110 of the *Condominium Act* (quoted supra) provide that each strata lot, for the purposes of assessment and taxation, together with the share of its owner in the common property, is deemed to be a separate parcel of land and improvements. So, the argument goes, the amendment to B.C. Reg. 438/81 which deals with assessment and taxation must be taken to employ the word "parcel" or "parcels" as meaning a strata lot or lots. The regulation therefore must be taken as referring to "20 or more strata lots on a strata lot or

> contiguous strata lots". If that was the language of the regulation, it would be an unworkable absurdity - that conclusion could be reached even without the assistance of Mr. Lakes' painstaking demonstration that a strata lot cannot be contiguous to more than eight other strata lots. The fact that such an interpretation would create an absurdity requires that interpretation to be rejected. The reference must be to "parcel" in the more ordinary meaning of that word, which is entirely consistent with the definition in the *Assessment Act*, of an area of land into which real property is subdivided. All strata lots are "on" a parcel of land. That is the sense in which the regulation refers to "parcel or contiguous parcels". It applies to the physical relationship of the units to the land. The circumstance that the land is assessed and taxed as part of the common property of each unit does not preclude such a reference for the purpose of classification.

[17] The appeal of that decision was dismissed with the panel of the Court of Appeal noting that they were not persuaded that the learned judge erred in any way but that they were of the view that: "... the learned judge arrived at the correct conclusion for the extensive reasons which he gave and with which we are in substantial agreement". (at para. 3)

[18] The Tower relies upon the definition of "parcel" set out in *East* to emphasize that the term parcel applies to the "... physical relationship of the units to the land" and not to the fact that the 60 Strata Lots were created as a result of Strata Plan LMS3324 being subdivided from Area Space Parcel LMS3324 which, in turn, is adjacent to Area Space Parcel LMS3323 which is immediately below it in the Tower.

[19] I am in agreement with the submissions made by the Tower. The definition of "subdivision" under the L.T.A. refers to the division of land and therefore it is land which is divided into "parcels". Taking into account the definition of "air space parcel", it is clear that an air space parcel relates to a division not of the land but rather of the "building or other structure" on the land.

[20] The definition of "parcel" under the *Act* refers to a "lot, block or other area ... into which real property is subdivided ...." I am satisfied that the word "parcel" refers to the real property itself and not to the portions into which the property has been subdivided. If "parcel" was also to include those portions of the property into which the "lot, block or other area" had been subdivided, then words such as "and the portions into which real property is subdivided" would have to have been present within the definition of "parcel". Such words were not included.

[21] In its deliberations, the Board referred to the *East* decision and concludes correctly that the decision did not deal with the question of whether "air space parcels" were included within the definition of "parcel" as contained in the *Act*. However, it is clear from the decision in *East* that, when dealing with "parcels", parcels are the underlying property and not the entities into which the property has been subdivided. *East* dealt with "strata lots" whereas this Stated Case deals with "air space parcels". However, I am satisfied that the principle remains the same. It is fundamental to the decision in *East* that it is the underlying land and not that which has been done with the land by way of further division that must be taken into account when there is a determination of what is a "parcel".

[22] As well, I cannot conclude that it can be said that the 60 Strata Lots are "on" one parcel or contiguous parcels. The 60 Strata Lots are *"in"* one "air space parcel". It is only Air Space Parcel LMS 3324 which is on a parcel of land.

[23] While Air Space Parcel LMS 3324 may be "on" Air Space Parcel LMS 3323, it cannot be said that the 60 Strata Lots are "on" Air Space Parcel LMS 3323 because, in many cases, each of the 60 Strata Lots are "on" each other. It is only all of Air Space Parcel LMS 3324 which is contiguous to Air Space Parcel LMS 3323 in order that it can be said that it is "on" Air Space Parcel LMS 3323. Most of the 60 Strata Lots are only contiguous to other strata lots within the 60

Strata Lots and only a limited number of the 60 Strata Lots are actually contiguous to Air Space Parcel LMS 3323.

[24] Therefore, I cannot conclude that the 60 Strata Lots are "on one parcel or contiguous parcels". I am satisfied that it is only the 225 strata lots which are within the parcel or contiguous parcel of property which underlines the Tower. Accordingly, it cannot be said that Inc. controls or manages 85 percent or more of the 225 strata lots. I am satisfied that the interpretation given by the Board when it included air space parcels within the definition of "parcel or contiguous parcels" contained in s. 1(a)(iii) of the Regulations creates an "unworkable absurdity" so that the interpretation must be rejected.

[25] In answer to the first question posed by the Board, I am satisfied that the first question should be answered "Yes".

Question No. 2: When the Board determined that the 60 Strata Lots were used for "Residential Purposes" did the Board incorrectly interpret the phrase "Residential Purposes" found in Section 1(a)(iii) of B.C. Regulation 438/81 - Prescribed Classes of Property Regulation and thereby err in Law?

[26] In dealing with the question of whether the 60 Strata Lots were used for "residential purposes", the Board stated that, because the Board had found that the 60 Strata Lots are specifically excluded from "Class 1 - Residential", it was not necessary for it to deal with the second issue of whether they are excluded because they are not used for "residential purposes". However the Board set out its decision on this question on the assumption that it was incorrect in arriving at its other conclusion.

[27] In finding that the 60 Strata Lots were used for "residential purposes", the Board stated:

> [46] The Court of Appeal in the decision of *Hardt*, *supra,* held that each of the individual strata units must be separately assessed, and that each of the individual units in question could not be described as a "hotel" or as the same type of property as a hotel. The Court upheld the Board's decision that the strata units in question were not specifically excluded under the hotel or motel exclusion of section 1(a)(i).
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> [47] The Board in the case of *District of Whistler*, held that the decision in *Hardt*, *supra*, assumed that, as long as the units remain individual lots with separate titles, their classification must be based on their individual use and not their collective use or operation. The Board in the *District of Whistler*, *supra*, considered the argument that the intention of the Regulation, with consideration of dictionary meanings of "reside" and "residential", was to only include those properties occupied by persons who normally reside there or are resident for a "considerable period of time". The Board rejected this argument and held that "... properties used for sleeping and other domestic activities are used for residential purposes, and that single lots are not hotels" (page 13).
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> [48] The Board agrees with that reasoning. Considering all of the examples used in section 1(a) of the Regulation, the Board confirms that they do not necessarily include a requirement that "residential use" must have an element of extended duration as argued by the Assessor. For example, summer and seasonal dwellings, which are included in the section as examples, can be rented out for short periods of time.
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> [49] Although it is not disputed that the 60 Strata Lots as a whole are operated as a hotel, the Board still must look to the use of the individual strata unit. Based on the decision of *Hardt*, *supra*, and the reasoning in the *District of Whistler*, the Board finds that the individual use of each of the 60 Strata Lots is for sleeping and domestic activities, even if it is on an overnight basis, and that this constitutes use for "residential purposes".

[28] The Assessor submits that the Board was wrong in its conclusion that the phrase "residential purposes" does not require residence for a considerable period of time and does include properties used for sleeping and domestic activities on an overnight basis. The Assessor submits that the decision in *Hardt* does not apply to the present circumstances as the Assessor does not argue that each unit within the subject property is a "hotel" but rather that the 60 Strata Lots are not used for residential purposes. The Assessor makes reference to dictionary definitions of "residential", "residence", and "reside" in submitting that the definition adopted by the Board for the phrase "used for residential purposes" does not account for the element of extended duration that is a common feature of all of the dictionary definitions cited.

[29] I am satisfied that the decisions in *Hardt, District of Whistler* v. *Assessor of Area No. 08 - North Shore/Squamish Valley et al - Property Assessment Appeal Board Decision January 3, 2001,* and *Hennessy* v. *British Columbia (Assessor of Area No. 01 - Capital*), [1995] B.C.J. (Q.L) No. 1502 (B.C.S.C.) are authorities for the proposition that strata lots used for hotels or motels are "used for residential purposes".

[30] In *Hardt*, Cumming, J.A. in giving judgment on behalf of the Court stated:

> What is included are "lands or improvements used for residential purposes". The focus here is upon "use" and the regulation is clearly authorized by the enabling legislation. What is specifically excluded is "hotels or motels". The regulation does not exclude lands and improvements "used for the purposes of hotels or motels" and so here the focus of the exclusion is on the type of property in question, not its use. Classification according to type is also clearly authorized by the enabling legislation. Excepted from this exclusion is the "portion of the hotel or motel occupied by the owner as his residence". Here, the focus returns to the use to which the premises are put.
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> The appellant, as I have already noted, relies upon the finding of fact that the property in question was being used for the purpose of operating a hotel and submits that once having made that finding of fact, B.C. Reg. 438/81 requires this property be placed in the Class 6 (Business and Other classification). Class 1 (Residential) specifically includes only those properties used for Residential purposes, and specifically excludes hotels from Residential classification.
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> In my opinion the appellant has misconceived the true import of the Board's finding. Each of the subject properties, being an individual strata title, has a separate number on the Assessment Roll and must be separately assessed. The Board's finding is that the "subject group of condominiums is being used for the purpose of operating a hotel", not that each individual condominium constitutes a hotel. By no stretch of the imagination could each of the individual condominiums be described as a "hotel", or as the same type of property as a hotel, and the board did not so find. Indeed, in the same structure are 14 other condominiums which are not in the pool and are classified Residential so that it could not, perhaps, even be said that the whole building constituted a hotel.

[31] While the decision in *Hardt* dealt primarily with the question of whether or not it could be said that each strata lot constituted a hotel, it is clear from the decision that the Court of Appeal was of the view that each strata lot was being used for residential purposes.

[32] In *Hennessy*, Newbury, J., as she then was, stated:

> In my view, the inclusion in Class 1 of seasonal dwellings, bunkhouses and cookhouses indicates an intention on the part of the Legislature to encompass the use of property for the accommodation of non-permanent guests, a conclusion reinforced by the fact that the Legislature felt it necessary to exclude hotels and motels expressly. Further, the phrase "used for residential purposes" when given its ordinary grammatical meaning seems broad enough to include persons in residence for one or more nights, whether in the main house or

> in surrounding cabins or cottages, provided the operation does not constitute a hotel or motel. (at para. 12)

[33] The appeal of that decision was successful [1996] B.C.J. (Q.L.) No. 1839 (B.C.C.A.) as Huddart, J.A. on behalf of the Court stated:

> Because the facts in the Stated Case can support the conclusion that the guest house is a hotel or motel, a portion of which is occupied by the owners and their family, the Board did not err in law determining that a portion of the property did not come within Class 1.
>
> Consequently, I am of the view that the learned trial judge exceeded the jurisdiction of the Supreme Court on a Stated Case when she characterized the use of land and improvements as a "bed and breakfast" operation that did not constitute a hotel or motel. She could reach that result only if the Board's classification was patently unreasonable. Clearly that is not the case.

[34] I am satisfied that the Court of Appeal did not cast doubt on the proposition that the use of property for the accommodation of non-permanent guests for one or more nights would not bring the property outside the phrase "used for residential purposes". Rather, I am satisfied that the Court of Appeal dealt only with the question of whether Newbury, J. had exceeded her jurisdiction when she found that the classification by the Board was patently unreasonable. It should also be noted that the decision in *Hennessy* dealt with a single property and not a number of strata lots which were collectively used as a hotel as was the case in *Hardt* and in the case at bar.

[35] In *Whistler*, the Board rejected each of the arguments which are now repeated in the submissions of the Assessor in the present Stated Case. After referring to the *Hardt* decisions of the Board, the Supreme Court and the Court of Appeal, the Board in *Whistler* concluded that the units had to be classified by their individual use and not their collective use and that any lack of flexibility in the pooling arrangements was not important to the question of the use being made of the individual units. The Board then stated:

> And, given the decision of the Court of Appeal, it is doubtful even the most inflexible of arrangements would justify viewing individual lots as a collective for classification purposes.

[36] The Board then reviewed the various definitions of "reside" and "residential" which were part of the submissions of the Assessor. Those submissions regarding the ordinary meaning of those words were repeated by the Assessor relating to this Stated Case. After reviewing those submissions, the Board concluded:

> So the Board cannot, based on the wording of section 1 of the Regulation, conclude that the intention of that section is to include in Class 1 only those properties occupied by persons who normally reside or are resident there "for a considerable period of time". First, if the term includes only properties where a person is resident, why would the Legislature have considered it necessary to exclude hotels and motels? Second, those summer and seasonal dwellings and bunk houses not used or intended to be used as residences, in the sense of being someone's home for a considerable length of time, would not qualify, yet all such properties are expressly included ....
>
> The Board has been presented with no clear authority requiring that it adopt a more narrow interpretation of section 1 (a) of the Regulation than the played words allow and the exclusion of hotels suggest.

[37] There is nothing in the wording of s. 1 of the *Regulations* that would allow me to conclude that the residential nature of a property can be "lost" if the use of the property is on an extended basis. In the absence of clear language that would substantiate a clear Legislative intent in that regard and from the decisions in *Hardt, Whistler*, and *Hennessy*, I can conclude that each of the

60 Strata Lots were being used for residential use and that residential use does not have to include an element of "extended duration". Accordingly, my answer to Question No. 2 is "No".

SC 467Cont'd Terminal City Club Tower v. AA09

TERMINAL CITY CLUB TOWER

v.

ASSESSOR OF AREA 09 - VANCOUVER

BRITISH COLUMBIA COURT OF APPEAL (CA030885) Vancouver Registry

Before the HONOURABLE MR. JUSTICE ESSON, the HONOURABLE MADAM JUSTICE SOUTHIN, and the HONOURABLE MADAM JUSTICE SAUNDERS
Date and Place of Hearing: March 26, 2004, Vancouver, BC

J.H. Shevchuk for Assessor of Area 09 - Vancouver
B.T. Gibson, Q.C. for Terminal City Club Tower

Strata Lots - Classification - "Used for Residential Purposes" - Air Space Parcel

The properties in question are 60 individually owned strata lots in an air space parcel that is "sandwiched" between two other air space parcels, and that is part of the Terminal City Club Tower in Vancouver. The lots are rented on a nightly basis by the Terminal City Club.

The Assessor assessed the 60 strata lots as Class 6 - Business & Other for the 2001 assessment roll. This classification was confirmed by the Property Assessment Review Panel and by the Property Assessment Appeal Board ("the Board"). The Board held that the 60 strata lots were used for residential purposes, but went on to find that the definition of parcel as used in the Assessment Act *and in B.C. Reg. 438/81 includes air space parcel. Thus although the strata lots were used for residential purposes, the "strata hotel" provision in Class 1 resulted in the 60 lots being excluded from Class 1.*

On appeal to the Supreme Court the learned chambers judge concluded that the Board was correct in finding that the 60 strata lots were being used for residential use, but that it erred in holding that the term "parcel" includes "air space parcel". On this basis, the Court held that the 60 strata lots were classified as Class 1 Residential for the 2001 Assessment Roll. The Assessor obtained leave to appeal.

HELD: Appeal Allowed.

The majority of the Court of Appeal held that the air space parcel was a "parcel" within the context of section 1(a)(iii) of Class 1. Esson, J.A. also commented on the interpretation the chambers judge and the dissenting Court of Appeal judge had given of one of his previous decisions, clarifying that the decision did not address the issue of whether an air space parcel was a "parcel". Because the majority found that the appeal was disposed of by finding that the air space parcel was a "parcel" for the purposes of the strata hotel regulation they declined to comment on whether the strata lots were used for residential purposes. The dissenting judge held that the chambers judge had been correct in holding that the strata lots were used residentially and that the air space parcel was not a "parcel" as that term is used in section 1(a)(iii) of Class 1.

Reasons for Judgment September 17, 2004

Dissenting Reasons by:
The Honourable Madam Justice Saunders

Majority Reasons by:
The Honourable Madam Justice Southin (paragraph 31)

Concurring Reasons by:
The Honourable Mr. Justice Esson (paragraph 35)

Reasons for Judgment of the Honourable Madam Justice Saunders:

[1] Strata lots, individually owned, in an air space parcel that is part of the Terminal City Club Tower in Vancouver, British Columbia, are rented on a nightly basis by the Terminal City Club. The question is their classification for property assessment purposes. The answer depends on two questions:

1) are the units used for residential purposes?

2) are the strata lots on a parcel?

[2] The classification of these strata lots is determined by s. 1 of B.C. Reg. 438/81, the *Prescribed Classes of Property Regulation* passed pursuant to the *Assessment Act*, R.S.B.C. 1996, c. 20:

> **1.** Class 1 property shall include only:
>
> (a) land or improvements, or both, *used for residential purposes*, including single family residences, duplexes, multi-family residences, apartments, condominiums, manufactured homes, nursing homes, rest homes, summer and seasonal dwellings, bunkhouses, cookhouses and ancillary improvements compatible with and used in conjunction with any of the above, *but not including*
>
> (i) *hotels* or motels other than the portion of the hotel or motel building occupied by the owner or manager as his or her residence,
>
> ...
>
> (iii) *20 or more strata lots*
>
> (A) *on a parcel or contiguous parcels,*
>
> (B) controlled or managed by persons, or a person, who control or manage 85% or more of the strata lots *on the parcel or contiguous parcels* referred to in clause (A), and
>
> (C) offered for rent, or rented, for periods of less than 7 days to persons, or a person, as overnight accommodation for at least 50% of the 12 month period ending on October 31 of the year previous to the taxation year for which the assessment roll is completed; ...
>
> [Emphasis added]

[3] The Terminal City Club Tower contains four air space parcels, divided into four strata plans collectively subdivided into 225 strata lots. One strata plan, LMS3322, contains the Club itself, the parking facility and six lots of retail units. Another, LMS3323, contains 84 strata titled office units located on several floors. Immediately above LMS3323 is LMS3324, containing the 60 strata units in issue in this case. Those units occupy several floors of the Tower. Above LMS3324 is LMS3699, containing strata titled condominium units.

[4] The strata lots of LMS3322, along with the 60 strata lots in issue, are managed by a company, Terminal City Club Inc. They are rented by the Club on a nightly basis and are marketed as the Terminal City Club Tower Hotel.

[5] People staying in the 60 strata lots in issue register through a front desk used jointly with the Terminal City Club. They use the food, beverage and health club facilities of the Club, there being no such facilities within the strata lot.

[6] The Assessor of Area 09 - Vancouver (the "Assessor") assessed the 60 strata lots as Class 6 - Business and Other, for the 2001 assessment roll. The classification was confirmed by the Property Assessment Review Panel and by the Property Assessment Appeal Board.

[7] The Board's conclusions relied upon, amongst other determinations, the conclusions that the individual use of the strata lots in issue is for residential purposes, and that the definition of parcel as used in the *Assessment Act* and in B.C. Reg. 438/81 includes air space parcel and thus that the strata lots are "on a parcel". On those conclusions, the 60 strata lots are excluded from Class 1 as being within s. 1(a)(iii) of the Regulation.

[8] On a Stated Case (2003 BCSC 711) the learned chambers judge concluded that the Board did not err in finding that the 60 strata lots were being used for residential use, and that it erred in holding that the term "parcel" includes "air space parcel". On this conclusion, the 60 strata lots are classified as Class 1 for the 2001 Assessment Roll. The Assessor then obtained leave to appeal. There are two questions: whether these units are "used for residential purposes" as those words are used in s. 1(a) of the Regulation and whether the strata lots are "on a parcel or contiguous parcels" as those words are used in s. 1(a)(iii) of the Regulation. The second question includes the question of whether "parcel" includes "air space parcel".

[9] The Assessor contends that the units are not used for residential purposes, that "parcel" includes "air space parcel" and that the strata lots are "on a parcel". Terminal City Club Tower contends the converse.

[10] The first issue is whether the use of the 60 strata lots through rental on a nightly basis by Terminal City Club Inc. is "for residential purposes." The central contention of the Assessor is that they are not used for residential purposes because they are used or are available for use on a nightly basis.

[11] In concluding that the strata lots were used for residential purposes the chambers judge referred to two decisions of this Court: *British Columbia (Assessor of Area 01 - Saanich/Capital* v. *Hardt* (1992), 88 D.L.R. (4th) 183, 10 B.C.A.C. 31 and *Hennessy* v. *British Columbia (Assessor of Area 01 - Capital)* (1996), 79 B.C.A.C. 275. The chambers judge also referred to a decision of the Property Assessment Appeal Board, *District of Whistler* v. *Assessor of Area 08 - North Shore/Squamish Valley* (3 January 1991), P.A.A.B. 2000-08-00004.

[12] *Hardt* considered the classification of a number of individual condominiums collectively used for a hotel. This Court, in a decision written by Cumming J.A., held that each strata lot could not be a hotel. The chambers judge concluded that implicit in the reasons for judgment of Cumming J.A. is the view that each strata lot was being used for "residential purposes".

[13] *Hennessy* considered the classification of a guest house as a hotel or motel. In her reasons for judgment, Newbury J. (now Newbury J.A.) stated at para 12:

> ... Further, the phrase "used for residential purposes" when given its ordinary grammatical meaning seems broad enough to include persons in residence for one or more nights, whether in the main house or in surrounding cabins or cottages, provided the operation does not constitute a hotel or motel. ...

[14] This Court allowed the appeal of *Hennessey* without comment on the issue of "use for residential purposes".

[15] In *Whistler*, the Board considered the use of properties for stays of short duration, concluding as it did here that "used for residential purposes" may include short term stays and is not limited to more permanent residence.

[16] On this appeal the Assessor observes correctly that this Court's decisions in *Hardt* and *Hennessy* did not address the issue presented here, and that the interpretation given of the phrase "used for residential purposes" in *Whistler* was not scrutinized by a Court. The Assessor contends that the plain and ordinary meaning of the term "residential" may be discerned from the dictionary meaning which in turn harkens to the word "residence" and connotes some degree of permanency of habitation.

[17] In seeking to discern the meaning of the phrase "residential purposes" as it appears in s. 1 of the Regulation, I think one must consider the examples of such purposes provided in that very section, and the balance of the provision. Looking beyond in that way reveals that the Regulation expressly excludes property that is "used for residential purposes" but is a hotel or motel. It is a fair implication from this language that hotels and motels, commonly used for short stays, are otherwise "used for residential purposes". Further, s. 1(a) expressly includes as property "used for residential purposes" premises that may be the abode of a person for the most transitory of stays, such as summer and seasonal dwellings, and bunkhouses. And it includes cookhouses that are never the abode of a person.

[18] The effect of the Assessor's submission is to, in effect, substitute the term "residence" for "residential purposes", as in "used for a residence", but that is not the phrase chosen for s. 1(a), and in my view, to adopt that approach is to ignore the aspects of s. 1(a) of the Regulation just referred to. I conclude that the ordinary grammatical meaning of the phrase, read in context, is broad enough to capture the short stay use of the 60 strata lots in issue, and that any exclusion from the class for shelter must be as a result of a specific exclusion, as it is for hotels and motels. I am satisfied that the view of the chambers judge on this matter is correct and the second question in the Stated Case should be answered in the negative.

[19] The second issue is the interpretation of the phrase "on a parcel" in s. 1(a)(iii)(A) of the Regulation. This question engages the meaning of the word "parcel" itself, defined in s. 1 of the *Assessment Act*, *supra*:

> **"parcel"** means a lot, block, or other area in which *real property* is held or into which *real property* is subdivided and includes the right or interest of an occupier of Crown land but does not include a highway or portion of a highway;
>
> [Emphasis added]

[20] The Board held that the strata lots were "on a parcel or contiguous parcel", being the air space parcel of which they are a part. The chambers judge came to the opposite conclusion; on his interpretation, these strata lots do not fit within the exclusion to Class 1 described in s. 1(a)(iii). The Assessor contends that his conclusion is wrong.

[21] In reaching the conclusion that the term "parcel" refers "to the real property itself and not to the portions into which the property has been subdivided", the chambers judge relied upon a decision of Esson C.J.S.C. (now Esson J.A.) in *East* v. *British Columbia (Assessor of Area No. 08 - North Shore/Squamish Valley)* (1996), 19 B.C.L.R. (3d) 151, 132 D.L.R. (4th) 499 (S.C.), aff'd (1997) 27 B.C.L.R. (3d) 298, 142 D.L.R. (4th) 191 (C.A.). Considering the applicability of s. 1(a)(iii)(A) of the Regulation, the chambers judge held:

[21] In its deliberations, the Board referred to the *East* decision and concludes correctly that the decision did not deal with the question of whether "air space parcels" were included within the definition of "parcel" as contained in the *Act*. However, it is clear from the decision in *East* that, when dealing with "parcels", parcels are the underlying property and not the entities into which the property has been subdivided. *East* dealt with "strata lots" whereas this Stated Case deals with "air space parcels". However, I am satisfied that the principle remains the same. It is fundamental to the decision in *East* that it is the underlying land and not that which has been done with the land by way of further division that must be taken into account when there is a determination of what is a "parcel".

[22] As well, I cannot conclude that it can be said that the 60 Strata Lots are "on" one parcel or contiguous parcels. The 60 Strata Lots are "*in*" one "air space parcel". It is only Air Space Parcel LMS 3324 which is on a parcel of land. [emphasis in original]

[23] While Air Space Parcel LMS 3324 may be "on" Air Space Parcel LMS 3323, it cannot be said that the 60 Strata Lots are "on" Air Space Parcel LMS 3323 because, in many cases, each of the 60 Strata Lots are "on" each other. It is only all of Air Space Parcel LMS 3324 which is contiguous to Air Space Parcel LMS 3323 in order that it can be said that it is "on" Air Space Parcel LMS 3323. Most of the 60 Strata Lots are only contiguous to other strata lots within the 60 Strata Lots and only a limited number of the 60 Strata Lots are actually contiguous to Air Space Parcel LMS 3323.

[24] Therefore, I cannot conclude that the 60 Strata Lots are "on one parcel or contiguous parcels". I am satisfied that it is only the 225 strata lots which are within the parcel or contiguous parcel of property which underlines the Tower. Accordingly, it cannot be said that Inc. controls or manages 85 percent or more of the 225 strata lots. I am satisfied that the interpretation given by the Board when it included air space parcels within the definition of "parcel or contiguous parcels" contained in s. 1(a)(iii) of the Regulation creates an "unworkable absurdity" so that the interpretation must be rejected.

[22] The leading authority is, as the chambers judge noted, *East*. *East* concerned 67 strata title condominiums that together comprised "Whistler Village Inns". Esson C.J.S.C., in reasons substantially endorsed by the Court of Appeal, determined that the complex did not fall within s. 1(a)(iii) of the Regulation. At para. 16 he explained:

... The definition of "parcel" in the *Assessment Act* (so far as it may be applicable) reads:

> **"parcel"** means a lot, block, or other area in which real property is held or into which real property is subdivided, ...

Sections 63 and 110 of the *Condominium Act* (quoted supra) provide that each strata lot, for the purposes of assessment and taxation, together with the share of its owner in the common property, is deemed to be a separate parcel of land and improvements. So, the argument goes, the amendment to B.C. Reg. 438/81 which deals with assessment and taxation must be taken to employ the word "parcel" or "parcels" as meaning a strata lot or lots. The regulation therefore must be taken as referring to "20 or more strata lots on a strata lot or contiguous strata lots". If that was the language of the regulation, it would be an unworkable absurdity that conclusion could be reached even without the assistance of Mr. Lakes' painstaking demonstration that a strata lot cannot be contiguous to more than eight other strata lots. The fact that such an interpretation would create an absurdity requires that interpretation to be rejected. The reference must be to "parcel" in the more ordinary meaning of that word, which is entirely consistent with the definition in the *Assessment Act*, of an area of land into which real property is subdivided. All strata lots are "on" a parcel of land. That is the sense in which the regulation refers to "parcel or contiguous parcels". It applies to the physical relationship of the units to the land. The circumstance that the land is assessed and

taxed as part of the common property of each unit does not preclude such a reference for the purpose of classification.

[23] The Terminal City Club contends that *East* is distinguishable because it dealt with strata lots under the *Condominium Act*, not air space parcels, and thus did not address ss. 138 and 139 of the *Land Title Act*, R.S.B.C. 1996, c. 250. Those sections of the *Land Title Act* provide:

> **138** In this Part:
>
> **"air space parcel"** means a volumetric parcel, whether or not occupied in whole or in part by a building or other structure, shown as such in an air space plan;
>
> **"air space plan"** means a plan that
>
> (a) is described in the title to it as an air space plan,
>
> (b) shows on it one or more air space parcels consisting of or including air space, and
>
> (c) complies with the requirements of section 144;
>
> ...
>
> **139** Air space constitutes land and lies in grant.

[24] The Assessor contends that as an air space parcel is land as provided by s. 139 of the *Land Title Act*, an air space parcel is within the definition of "parcel" in the *Assessment Act* because land is real property. The Assessor says it then follows from the reasoning of *East* that these strata lots are both on parcel LMS3324 and, because they are of an air space parcel that in turn is located above another air space parcel, on air space parcel LMS3323.

[25] In response, Terminal City Club Tower contends that the term "parcel" must be read as connoting the ground (seeking to use, for the moment a word other than land for the piece of earth involved in the discussion) that is the base for the various air space parcels above it. On this reading the parcel is the ground located on Hastings Street. There are 225 strata lots on that parcel. Therefore, says Terminal City Club Tower, the 60 units do not comprise 85% of the strata lots on the parcel (s. 1(a)(iii)(B)). The Terminal City Club observes that the *Condominium Act*, R.S.B.C. 1979, c. 61 in effect when *East* was decided, deemed each strata lot to be a separate parcel of land, but that Esson C.J.B.C. rejected an approach that would have relied upon that provision, looking instead to the underlying real property.

[26] I am not satisfied that the provisions of the *Land Title Act* definitively resolve the issue, as the Assessor contends, even considering the principle that "presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter": *R.* v. *Ulybel Enterprises Ltd.*, [2001] 2 S.C.R. 867, 2001 SCC 56, at para. 52. We are concerned here with a Regulation passed under the *Assessment Act* and a provision that uses different words than are employed by the *Land Title Act*. One must ask whether the section of the Regulation in which the term "parcel" is used supports the Assessor's submission. In my view the answer is no. I consider that the meaning intended for the word "parcel" may be discerned from its use with the word "on" in the phrase "on a parcel", and that as in *East*, it connotes a physical relationship between the strata lot and the land. Air space is, as determined by s. 138 of the *Land Title Act*, volumetric. I do not read the common meaning of the word "on" as implying a position within a volume, as must be the case if the Assessor is correct that these strata lots are "on" LMS3324. Rather, in dealing with the physical positioning of one thing to another, the word "on" most naturally refers to a relationship of adjacency, involving surface nearness of surface touching. While one may say that these strata lots are "in" an air space parcel, I would not say that in plain and ordinary

English, they are "on" the air space parcel of which they are a part, and to so say is to strain the word's plain meaning.

[27] The Board, on the volumetric aspect of an air space parcel, observed correctly that ownership of real property at common law extended both up and down and that the concept of land has a three-dimensional aspect to it. However that submission fails to consider the import of the word "on" in the Regulation.

[28] Nor would I say, as the Assessor contends, that these strata lots are "on" parcel LMS3323 immediately below them. If we are to say that, then certain of the strata lots would not be touching LMS3323 because they are on different floors. One could then as easily say that they are "on" LMS3322 and LMS3369, the former being contiguous to LMS3323 and the latter being immediately above LMS3324. This result creates great confusion in determining to which "parcel" one should look to determine whether the 85% referred to in s. 1(a)(iii)(B) is met, which suggests in my view, that the relationship referred to in the phrase "on a parcel or contiguous parcels" is the physical relationship referred to in *East*.

[29] In any case, were the strata lots "on" an air space parcel of which they do not form a part, as the Assessor suggested in the hearing, s. 1(a)(iii)(B) is not met.

[30] It follows that I see no basis on which to interfere with the conclusion of the chambers judge on this issue, and would dismiss the appeal.

The Honourable Madam Justice Saunders

Reasons for Judgment of the Honourable Madam Justice Southin:

[31] I have had the privilege of reading in draft the reasons for judgment of Saunders J.A. dismissing this appeal.

[32] For the reasons given by the Property Assessment Appeal Board, I am of the opinion that the lots in issue fall within s. 1(a)(iii)(B) of the Regulation. It follows that they are not assessable as Class 1.

[33] I would allow the appeal and answer the first question of the Stated Case, "No".

[34] On that footing, I need not, and, therefore, do not, give any answer to the second question.

The Honourable Madam Justice Southin

Reasons for Judgment of the Honourable Mr. Justice Esson:

[35] I have read the draft reasons prepared by Madam Justice Southin and those prepared by Madam Justice Saunders. The facts and the issues which arise from them are set out fully by Saunders J.A. I agree with the disposition proposed by Southin J.A. but, as the contrary view expressed by the chambers judge and Saunders J.A. rests largely on language of mine in the case of *East* v. *British Columbia (Assessor of Area No. 8 - North Shore/Squamish Valley)* (1996), 132 D.L.R. (4th) 499, 19 B.C.L.R. (3d) 151 (B.C.S.C.), aff'd. (1997), 142 D.L.R. (4th) 191, 27 B.C.L.R. (3d) 298 (C.A.), I wish to say something with respect to the applicability of that decision to this case.

[36] The passage in question is quoted in full in paragraph 22 of the reasons of Saunders J.A. I will note that, in dismissing the appeal from my decision, this Court said:

> ... the learned judge arrived at the correct conclusion for the extensive reasons which he gave and with which we are in substantial agreement.

[37] Whatever is meant by the words "substantial agreement" in that context, I think they may be taken as conveying an element of warning that a broadly stated proposition may not apply to cases arising on different facts. In this case, in finding my language in *East* not to apply, the Board emphasized the provisions of ss. 138 and 139 of the *Land Title Act* which are reproduced in paragraph 23 of the reasons of Saunders J.A. and particularly s. 139, which provides that, "Air space constitutes land and lies in grant." The Board distinguished *East* in these paragraphs of its decision:

> [29] The Board finds that the question here is whether the air space parcel of which the 60 Strata Lots are a part are included in the meaning of "parcel" or "parcels" in the Regulation. Strata plans are a mechanism by which the land is subdivided into individual strata lots by the deposit of the strata plans in the Land Title Office. The strata plan itself is not an area in which real property is held or can be transferred or into which real property is subdivided.
>
> [30] Air space parcels, however, are something more.
>
> [31] As indicated earlier, the complex has been subdivided into air space parcels under the *Land Title Act*.
>
> [32] Section 139 of the *Land Title Act* specifically stipulates that airspace constitutes land and lies in grant. Section 141 of the *Land Title Act* states that the air space parcel created by an air space plan devolves and may be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as other land. As well, it states that an air space parcel may be subdivided in accordance with the *Strata Property Act*.
>
> [33] That is what occurred here. The complex is comprised of four air space parcel plans, which in turn are subdivided under the *Strata Property Act* by way of strata plans, creating strata lots in each airspace parcel.
>
> [34] Section 145 of the *Land Title Act* also states that an estate or interest in an air space parcel, if separately owned, must be separately assessed for taxation for all types of rates, assessments and taxes authorized to be assessed against land and improvements by any *Act*.
>
> [35] Therefore, although the *Assessment Act* and the Regulation does not specifically deal with air space parcels, the land title scheme in B.C. clearly acknowledges that air space constitutes land and lies in grant. It can be subdivided transferred, mortgaged, leased and assessed for taxation.
>
> [36] "Real property" as used in the definition of "parcel" in the *Assessment Act* is not defined. Traditionally, the owner of land owns not only the ground and soil, but everything attached to the earth, whether natural or man-made. Ownership also extends indefinitely above and below the surface, taking in both the air above and the minerals below. This is the concept of land as a three-dimensional entity. This concept was discussed in the appraisal context in *The Appraisal of Real Estate* (Cdn Edition, 1992) at page 120:
>
> > "The vertical division of real property is based on the legal conception of land as a volume of space with boundless height and depth ....As the density of building in urban areas increases, fewer sites are available for new construction and land values escalates. This trend has produced a growing interest in developing air rights."
>
> [37] This concept of land as a three-dimensional entity underlies the land title scheme in B.C., which allows air space parcels to be created, transferred, mortgaged, leased and subdivided.

> [38] Consequently, the interpretation of "parcel" or "parcels" as used in the *Assessment Act* as including air space parcels, is entirely consistent with not only the ordinary meaning of the words, but also the assessment and land title scheme in the province.
>
> [39] The Appellant relies on the *East* decision in arguing that "parcel" refers to the underlying lot or lots on which the strata complex is built. However, interpreting "parcel" as including air space parcels is not inconsistent with the Court's reasoning in the *East* decision. This is because air space parcels still have a physical relationship to the land, as air space rights are part of land and the ownership of land. As well, air space parcels may include part of the land or improvements. The Court in the *East* decision was concerned with whether strata lots were included in the meaning of "parcel" or "parcels", it did not contemplate in its decision how air space parcels are to be treated within or outside of that definition.

[38] I am not persuaded that the Board erred in its conclusion which has the advantage of avoiding what strikes me as a somewhat strained and impractical result.

[39] I therefore agree with the conclusion proposed by Southin J.A. in paragraphs 33 and 34 of her reasons.

The Honourable Mr. Justice Esson