SC 553 Paul, John et al v AA15 and PAAB

Link to Property Assessment Appeal Board Decision

JOHN & ELIZABETH PAUL, BERNARD & ALICE OLTHUIS
V.
ASSESSOR OF AREA 15 – FRASER VALLEY AND
PROPERTY ASSESSMENT APPEAL BOARD

SUPREME COURT OF BRITISH COLUMBIA (S141906) Vancouver Registry

Before the HONOURABLE MADAM JUSTICE FISHER
Date and Place of Hearing: June 18, 2014, Vancouver, B.C.

J. Paul (Self Represented) for the Appellant
C. G. Simkus for the Respondent

Classification – Interpretation of Classification of Land as a Farm Regulation

This appeal involved the classification of land as a farm. The property was classified as Class 1-residential for the 2013 tax year.

The Appellants contended that the Assessment Act and the Classification of Land as a Farm Regulation, BC Reg 411/95 (the Regulation) did not require that the land be used for qualifying agricultural purposes, or be sufficiently prepared to do so, by October 31 of the year prior to the taxation year for which the application was made. They relied on the fact that there was a lease in place by that date to farm the land for a qualifying agricultural use during the taxation year.

The Assessor took the position that the property did not meet the requirements of subsections 4 and 8 of the Regulation because the property was not being used or developed as a farm as of October 31, 2012 and did not meet the requirements of section 7 because the leased land did not make a reasonable contribution to the farm operation by that date.

Therefore, the crux of the dispute centered on what the relevant date is by which property is to be assessed in relation to the requirements of the Regulation, which the Court noted was not clear in this regard.

HELD:

The Court held that the requirements must be in place by October 31 of the year prior in order for the Assessor to determine the classification for the following year.

Reasons for Judgment June 27, 2014

[1] This is an appeal by stated case under s. 65 of the *Assessment Act*, RSBC 1996, c 20 (the *Act*). The applicants applied to the Assessor of Area #15 (the Assessor) to have certain land classified as a farm for the taxation year 2013. They were unsuccessful before the Assessor and again before the Property Assessment Appeal Board (the Board). They now seek a determination that the Board erred in law in its

interpretation and application of various provisions of the *Act* and the *Classification of Land as a Farm Regulation*, BC Reg 411/95 (the *Regulation*).

[2] The Board concluded that the land in question did not meet the requirements of ss. 4 and 8 of the *Regulation* because it was not being used for a qualifying agricultural purpose, nor was it sufficiently prepared to do so, as of October 31, 2012, the year prior to the taxation year for which the application was made. The applicants say that neither the *Act* nor the *Regulation* require these things to be in place as of October 31 in the year preceding the taxation year where a lease is in place by that date to farm the land for a qualifying agricultural use during the taxation year.

The facts

[3] The relevant facts are set out in the stated case:

> 1. The appeal before the Board was from the decision of the 2013 Property Assessment Review Panel with respect to property located at 33700 McConnell Road, in the City of Abbotsford (the Property).
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> 2. The Property was classified as Class 1 – residential for the 2013 assessment roll. The issue before the Board was whether the Property should be classified as Class 1 – residential or as Class 9 – farm.
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> 3. The Property is a 4.99 acre parcel in south central Abbotsford. It is improved with a residence, tennis court, workshop, and barn. An aerial photograph dated 2012 shows a rectangular parcel with improvements in the northwest quarter and fields or other cleared areas in the remaining three-quarters of the Property.
>
> 4. The Property is within the Agricultural Land Reserve and its classification was split between Class 1 and Class 9 for a number of years. Until August 2011, the Property was farmed by a lessee. After the lease expired in that month, an application for farm classification was made by the owners of the Property. However, farm class was denied for the 2012 assessment roll because, according to the Assessor, the ground was not prepared for planting as of the state and condition date of October 31, 2011**.**
>
> 5. Another application for farm classification was made in October 2012. The application states that an owner lives in the residence on the Property. The application indicates that four acres are involved in a "dairy" farm operation but in the "additional information" of section the application states: "The 4 acres to be used for hay production. There is some material (hog fuel and compost) to be removed in the next couple weeks, besides that, grass was planted in 2010." The application refers to a lease of the four acres for the calendar year 2013 (starting January 1, 2013). The application is signed both on behalf of the owners and by the lessee.
>
> 6. After a site inspection in November 2012, farm classification was denied for the 2013 roll. Photographs of the Property dated November 21, 2012 show what appears to be vacant farmland with some large heaps of soil or other material.
>
> 7. Another inspection took place in February 2013. Photographs dated February 2013 appear to show that there was some clearing of the large heaps of material shown in the earlier photographs.

8. Additional information was provided to the Assessor on May 17, 2013. It was stated that a forage corn crop was planted approximately on May 15, 2013. A photograph dated May 16, 2013 shows a field with furrows.

9. The Board found the four acres in question do not meet the requirements of section 4 of the *Farm Class Regulation* [referring to the *Regulation*]. The Board found the relevant date for determining entitlement to farm class to be October 31 in the year prior to the taxation year. The Board found that no part of the Property was being used for a qualifying agricultural use as of October 31, 2012. The Board found nothing was planted, the fields were not clear of debris, and it was acknowledged by one owner that "nothing had been done on the land because it was too wet".

10. The Board found the four acres in question do not meet the requirements of section 8 of the *Regulation.* The Board found the four acres in question were not "prepared for planting" within the meaning of the *Regulation* by October 31, 2012.

11. The Board found the whole of the Property must be classified as Class 1 – residential for the 2013 assessment roll. The Board confirmed the decision of the 2013 Property Assessment Review Panel as follows:

Roll No. 15-34-313-61030-0460-3:

Land: Class 1 - Residential $ 715,000

Improvements: Class 1 - Residential $ 177,000

Total Assessed Value: $ 892,000

The legislative framework

[4] The classification of land for property taxation purposes is governed by the *Act*, the *Regulation,* and the *Prescribed Classes of Property Regulation*, BC Reg 438/81.

[5] An owner who wants all or part of the land classified as a farm must apply to the assessor under s. 23 of the *Act*. Section 3 of the *Regulation* requires this application to be made on or before October 31 of the year preceding the taxation year.

[6] Section 4(1)(a) of the *Regulation* requires the assessor to classify as farm all or part of a parcel of land that is used for a qualifying agricultural use. Sections 4(2) and (3) provide:

> (2) Land will only be classified as a farm where part of a parcel or parcels of land are
>
> (a) necessary to the farm, and
>
> (b) predominantly used for a qualifying agricultural use.
>
> …
>
> (3) Despite subsections (1) and (2), the assessor must classify land as a farm if
>
> (a) the land is in an agricultural land reserve,
>
> (b) the land is part of a parcel, a portion of which is used for a qualifying agricultural use,

(c) the portion of the parcel being used for a qualifying agricultural use makes a reasonable contribution to a farm operation and meets the other requirements of this Part, and

(d) the land

(i) is used only for purposes ancillary to a farmer's dwelling, or

(ii) has no present use and is neither specifically zoned nor held for business, commercial or industrial purposes.

[7] Section 7 addresses the classification of leased land. Section 7(1) requires that a copy of the lease document be submitted to the assessor on or before October 31. Section 7(3) provides:

(3) To be classified as a farm the leased land must

(a) make a reasonable contribution to the farm operation, and

(b) be 0.8 ha or greater except if

(i) the land is in an agricultural land reserve, and

(ii) despite section 4 (3), the land is used for a qualifying agricultural use.

[8] Section 8 deals with the classification of land under development as a farm. Sections 8(1), (2) and (8) provide:

(1) The assessor must, for a taxation year, classify all or part of a parcel of land of a farm operation as a farm if the assessor is satisfied that, on or before October 31,

(a) the land is being developed for a qualifying agricultural use,

(b) the land does not meet the applicable requirements of section 5 [gross annual value requirements], and

(c) the requirements in subsections (2) to (7) of this section that relate to the applicable qualifying agricultural products are met.

(2) The requirement for qualifying agricultural products that require less than one year after planting before harvesting occurs is that there is a sufficient area prepared and planted to meet the requirements of this Part on or before October 31 of the following year.

…

(8) Despite subsections (2), (3) and (4), the requirement in subsection (2), (3) or (4) (a), as applicable, that a sufficient area of land must be planted on or before October 31 is deemed to be met in respect of the taxation year referred to in subsection (1) if

(a) the applicable area of land is prepared for planting on or before October 31,

(b) the development plan approved under subsection (7) shows that the crop will be planted by June 21 of that taxation year, and

(c) the assessor is satisfied that a viable farm will be established in accordance with the requirements for that crop based on sound agricultural practices.

[9] Qualifying agricultural uses are defined in a Schedule attached to the *Regulation*, and include forage production. There is no dispute in this case that the production of feed corn, which began after January 1, 2013, is forage production and therefore a qualifying agricultural use.

Issues

[10] There are eight questions of law in the Notice of Stated Case, which was prepared and submitted by the Board. I will address these questions later in these reasons. The questions essentially boil down to one primary issue.

[11] The land sought to be classified as a farm in this case is leased land. The primary issue is whether the legislative scheme requires leased land to have a sufficient area prepared and planted on or before October 31 in the preceding year to meet the requirements in sections 4, 7 and 8 of the *Regulation*.

The Board's decision

[12] The Board described the standards, set out in ss. 4, 7 and 8 of the *Regulation*, which apply to farm classification:

> [13] … Section 4 sets out several paths which may be followed to conclude that land can be classified as farm, the unifying factor of which is that the land is used for a qualifying agricultural use. Section 7 contains some additional requirements when the land in question is leased land. Section 8 applies to land which does not yet have a qualifying agricultural use but which is being developed for a qualifying agricultural use.

[13] It then considered the arguments of the Assessor and the Appellant. The Assessor's position was that the property did not meet the requirements of ss. 4 and 8 because the property was not being used or developed as a farm as of October 31, 2012, and it did not meet the requirements of s. 7 because the leased land did not make a reasonable contribution to the farm operation by that same date. The Appellant's position was that the *Regulation* did not require the lease to be effective as of October 31 but simply in place by then, nor did it require leased land to be prepared for planting.

[14] The Board concluded that the land did not meet the requirements of s. 4 of the *Regulation* because it was not being used for a qualifying agricultural use as of October 31, 2012. It held that the October 31 time set in s. 18 of the *Act* established this date as the specific time by which the matter was to be assessed under the *Regulation*. In doing so, it followed a previous Board decision, *Quality Poultry Ltd. v Assessor of Area #15 – Langley/Abbotsford*, 1999-15-00004. In that case, the Board recognized that using the October 31 date "may result in bona fide farmers not being entitled to the farm classification for lands that are not actively farmed in any one year" but noted that it had no discretion to make any changes or exceptions to the *Regulation* as written.

[15] The Board found that no part of the property in this case was being used for a qualifying agricultural use as of October 31, 2012, as nothing was planted and the fields were not clear of debris. Since the requirements of s. 4 were not met, the Board found it unnecessary to consider the questions arising from s. 7 in respect of leased land.

[16] The Board then considered s. 8 as a whole and concluded that this section required that a sufficient area of the land had to be prepared and planted by October 31, 2012, reasoning that this must be done so that the other requirements of the *Regulation* will be met by October 31, 2013. It held that this interpretation made sense given that the assessment roll is prepared well in advance of October 31, 2012 and the assessor must be able to make this determination in 2012.

[17] On the facts, again the Board found no evidence of any farm activity in 2012 but some preparation in February 2013. It considered an argument by the Appellant that "prepared for planting" may include things other than preparation of a seed bed and would include things like any irrigation, drainage or other enhancements necessary for growing the crop (as stated in a BC Assessment document "We Value BC 2013"). It agreed with the Appellant that in the context of s. 8 of the *Regulation*, "prepared" refers not just to planting of seeds or to all steps just short of planting but to any purposeful steps taken to make the land suitable or ready for qualifying agricultural production. However, in the absence of evidence of any steps that could be considered as such in 2012, it found that the requirements of s. 8 were not met.

Standard of review

[18] The standard of review of decisions of the Board has been determined to be reasonableness under the common law test set out in *Dunsmuir v New Brunswick*, 2008 SCC 9. In *Weyerhaeuser Company Ltd. v British Columbia (Assessor of Area #4 - Nanaimo Cowichan)*, 2010 BCCA 46, Garson J.A. conducted the four-part *Dunsmuir* analysis and concluded that on an appeal by stated case under the *Act*, the standard of review is reasonableness where the Board is interpreting a regulation promulgated under its own constating statute. The same standard was applied by Cohen J. in *Assessor of Area No. 09 v Alsco Canada Corp.*, 2013 BCSC 1037. At para. 16 he referred to *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, where the Supreme Court of Canada emphasized that absent an exceptional situation, the interpretation by a tribunal of its home statute, or statutes closely connected to its function, should be presumed to be a question of statutory interpretation subject to deference.

[19] I apply the standard of reasonableness in this case on the same basis as it was applied in *Weyerhaeuser* and *Assessor of Area No. 09.* Here, the Board was clearly interpreting its home statute and regulations enacted thereunder. As such, its interpretation must be given deference.

[20] The reasonableness standard means that the Board's decision may fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at para. 47.

Stated case - questions of law

[21] The stated case submitted by the Board sets out eight questions of law:

> 1. Did the Board err in law by deciding that the requirements of section 4(1)(a) of the Farm Class Regulation were not met for this property for the 2013 taxation year because the property was not being used for a qualifying agricultural use as of October 31, 2012?
>
> 2. Did the Board misapply Section 4 of the Farm Class Regulation, by not considering subsection (3) where it states, "Despite subsections (1) and (2), the assessor must classify land as a farm if (a) the land is in an agricultural land reserve"?
>
> 3. Did the Board err in law by concluding that it was unnecessary to consider section 7 of the Farm Class Regulation - when the property owners clearly submitted a lease as per Section 7 of the Farm Class Regulation?
>
> 4. Did the Board err in law by suggesting that the "physical condition of the property as of October 31 (2012)" as defined in Section 18 (2)(a) of the Assessment Act refers to the classification of land as a farm?
>
> 5. Did the Board err in law by using a statement in a previous Board decision (Quality Poultry Ltd. v Assessor of Area #15) out of context and without reference to the regulations?
>
> 6. Did the Assessor err in law in the interpretation of Part 2 Section 7 (3) of the Classification of Land as a Farm Regulation when it was stated that the property needed to make a reasonable contribution to the farm in 2012 (the year prior to the taxation year)?
>
> 7. Did the Assessor and the Board act without considering the evidence that the property was making a reasonable contribution to the farm operation during the taxation year (2013) as required in Section 7(3)(a)?
>
> 8. Did the Board misapply Section 8 of the Farm Class Regulation by including the requirement that the property had to be "prepared for planting" by October 31, 2012, when section 8 does not refer to requirements for leased land, but to "land under development as a farm"?

[22] The parties agreed that question #2 is unnecessary and questions #6 and 7, which ask whether the Assessor erred in law, are not properly within the scope of this appeal.

Analysis

[23] Before considering the stated questions of law, I will address the primary issue (identified above) that is relevant to each question: what is the relevant date by which property is to be assessed in relation to the requirements of the *Regulation*?

[24] On behalf of the applicants, Mr. Paul submitted that the *Regulation* does not require a lease to be active by October 31, 2012, nor does s. 4 identify a specific time by which a qualifying agricultural use must be in effect. He further submitted that under ss. 7 and 8, the land must make a reasonable contribution to the farm operation during the taxation year (here, 2013), and that under s. 8(2), the requirement that the land is being developed for a qualifying agricultural use is met by the lease being in place by October 31, 2012. Therefore, he says that the criteria for classifying the land as farm were met because (1) the land is in the Agricultural Land Reserve, (2) the land was leased to a *bona fide* farmer, which lease was in place by October 31, 2012 to commence January 1, 2013, and (3) the forage crop was planted before June 21, 2013, to be harvested before October 31, 2013, and therefore would contribute to the farm in 2013.

[25] On behalf of the Assessor, Mr. Simkus submitted that the statutory scheme, when considered as a whole, requires that all matters related to a property's "state and condition" must be assessed as of October 31 in the year preceding the taxation year. He referred to *Quality Poultry* and *Wall Financial Corporation v Assessor of Area #09*, 1998-09-00017 (previous decisions of the Board), and to *Jericho Tennis Club v British Columbia (Assessor of Area #9 - Vancouver)*, [1999] BCJ 1552 (SC), a decision of this Court (leave to appeal refused, 1999 BCCA 590).

[26] In *Quality Poultry*, the Board held that it must look at activity on the land in the year in which the assessment is prepared in order to determine if the land qualifies as a developing farm under the *Act* and the *Regulation*, and there must be more than an intention to use the land for farm purposes. It applied the "legislated state and condition date" of October 31 of the year preceding the taxation year. Mr. Paul submitted that this case is distinguishable because it did not involve a farm lease but rather an application for a developing farm. Mr. Simkus submitted that it was reasonable for the Board to rely on this case in the circumstances here, given the provisions of the *Act* and the *Regulation* considered as a whole.

[27] While *Quality Poultry* did not address a farm lease, I agree with Mr. Simkus that it was reasonable for the Board to apply the same principle in respect of a "state and condition date" of October 31 in respect of ss. 4, 7 and 8 of the *Regulation*. This is consistent with *Jericho Tennis Club*, where this Court held that the classification of land under the *Prescribed Classes of Property Regulation* is to be based on the use of the land as of the state and condition date of October 31 of the year the assessment is made (i.e. the year preceding the taxation year). This decision has been followed by the Board in other cases dealing with classification of land generally: see *Wall Financial*.

[28] The Board's interpretation is consistent with the broader framework of the *Act* and the *Regulation*. The *Act*, in s. 3, requires the assessor to make assessments of property and update the assessment roll every year. The assessment roll must be completed in the year preceding the year for which the roll is being updated. Under s. 18(1), an assessment is based on a property's value as of a valuation date of July 1 of the year in which the roll is completed. Section 18(2) provides that the actual value of property is to be determined as if, on July 1:

> (a) the property and all other properties were in the physical condition that they are in on October 31 following the valuation date, and
>
> (b) the permitted use of the property and of all other properties were the same as on October 31 following the valuation date.

[29] I appreciate that s. 18 addresses valuation. However, the October 31 date is specifically defined in s. 1(1) of the *Regulation* as "October 31 in the year preceding the taxation year for which the assessment roll is prepared". Section 3 requires applications for farm classification to be made on or before that date, and s. 7 requires lease documents to be submitted on or before that date as well. Section 4 sets out the general requirements for land to be classified as a farm, which include all or part of a parcel of land that is used for a qualifying agricultural use, which is necessary to the farm, and which makes a reasonable contribution to the farm operation. Section 7 specifies that leased land must make a reasonable contribution to the farm operation. Although neither of these sections refer to October 31, it is reasonable to conclude that the requirements must be in place by October 31 in order for the assessor to determine the classification for the following year. Nothing in s. 7 suggests that simply having an executed lease document, without more, is sufficient to meet the requirements for farm classification.

[30] Significant in this case, in my view, is s. 8, which applies to land under development as a farm. This was clearly the case here, a fact not challenged by Mr. Paul. Section 8(1) specifically requires the assessor to be satisfied "on or before October 31" (as defined) that the land is being developed for a qualifying agricultural use. I cannot accept the submission of Mr. Paul that simply having a lease in place for the assessment year is sufficient to meet this requirement. Section 8(2), which applies for products that need less than one year after planting before harvesting occurs, requires that "there is a sufficient area prepared and planted to meet the requirements … on or before October 31 of the following year". In my opinion, it was reasonable for the Board to interpret this section to require a sufficient area of the land to be prepared and planted by October 31, 2012 so that the other requirements of the *Regulation* will be met by October 31, 2013.

[31] The Board's interpretation overall is also consistent with the legislative scheme, where the assessment roll is prepared well in advance of October 31, 2012 and the assessor must make a determination of classification in 2012. In the absence of a provision in ss. 4, 7 or 8 of the *Regulation*

specifying a date other than October 31 (as defined), there is no basis on which this Court should interfere with the Board's interpretation. It is entitled to deference under the reasonableness standard.

[32] For these reasons, I will answer the stated case questions of law as follows:

> 1. Did the Board err in law by deciding that the requirements of s. 4(1)(a) of the *Farm Class Regulation* were not met for this property for the 2013 taxation year because the property was not being used for a qualifying agricultural use as of October 31, 2012?
>
> No.
>
> 2. Did the Board misapply s. 4 of the *Farm Class Regulation*, by not considering subsection (3) where it states, "Despite subsections (1) and (2), the assessor must classify land as a farm if (a) the land is in an agricultural land reserve"?
>
> No answer required.
>
> 3. Did the Board err in law by concluding that it was unnecessary to consider s. 7 of the *Farm Class Regulation* - when the property owners clearly submitted a lease as per s. 7 of the *Farm Class Regulation*?
>
> No. Although the Board did not analyze the requirements of section 7, it is implicit in its reasons that it considered the submission of a lease, without more, insufficient to meet the requirement that the land made a reasonable contribution to the farm operation.
>
> 4. Did the Board err in law by suggesting that the "physical condition of the property as of October 31 (2012)" as defined in s. 18 (2)(a) of the *Assessment Act*, refers to the classification of land as a farm?
>
> No.
>
> 5. Did the Board err in law by using a statement in a previous Board decision (*Quality Poultry Ltd. v Assessor of Area #15*) out of context and without reference to the regulations?
>
> No.
>
> 6. Did the Assessor err in law in the interpretation of Part 2 s. 7(3) of the *Farm Class Regulation* when it was stated that the property needed to make a reasonable contribution to the farm in 2012 (the year prior to the taxation year)?

No answer required.

7. Did the Assessor and the Board act without considering the evidence that the property was making a reasonable contribution to the farm operation during the taxation year (2013) as required in s. 7(3)(a)?

No (with respect to the Board only). The record shows that the Board considered evidence of activity on the land in question at the relevant times and made findings of fact based on that evidence.

8. Did the Board misapply s. 8 of the *Farm Class Regulation* by including the requirement that the property had to be "prepared for planting" by October 31, 2012, when s. 8 does not refer to requirements for leased land, but to "land under development as a farm"?

No.

Procedural issues

[33] Two procedural issues arose during the hearing.

[34] The first was in respect of the record that was before the Board. The Board did not appear at the hearing and did not prepare the record. Mr. Paul took on that responsibility, and did an admirable job. I am satisfied that the record of the proceeding before the Board was properly before this Court.

[35] The second issue was in relation to a lack of compliance with the time requirements set out in s. 65 of the *Act*. As I indicated at the start of this judgment, this appeal is in the form of a stated case on a question of law under s. 65(1). Sections 65(2) – (5) set out certain time limits in mandatory terms:

> (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).

[36] Mr. Paul delivered a written request to refer the Board's decision to this Court on February 11, 2014. The stated case was filed on March 11, 2014, one week beyond the 21 day time limit in sub. (4). Mr. Paul brought the matter on for hearing on May 15, 2014, over one month beyond the one month time limit in sub. (5).

[37] Mr. Simkus submitted that the non-discretionary language in the *Act* required that the appeal should fail on the basis of the applicants' failure to comply with s. 65(5) alone. He submitted that the time limits exist to protect the efficiency of the property tax system and ensure certainty in the preparation of the assessment roll. Mr. Paul acknowledged this provision and explained that he had been discouraged by certain statements made by counsel for the Assessor regarding the limits of an appeal on a question of law. He also pointed out that the Board itself failed to comply with section 65(4).

[38] No authority was provided which supported the dismissal of an appeal on the basis of a failure to comply with the time requirements in section 65(5). It is quite apparent that these requirements, while stated in mandatory terms, do not result in an appeal being heard in the one month time frame. On March 13-14, 2014, there was correspondence from counsel for the Assessor to Mr. Paul which advised:

> As the appellant, it is your responsibility to set this matter down for a hearing. The rules say it must be set down to be heard within 30 days. Usually, because it is hard to find a day that works for both parties within 30 days the matter is set down on a pro forma basis, and then adjourned to a later date by agreement of the parties.

[39] Given the "pro forma" nature in which these matters may be set down, I saw no basis on which to dismiss this appeal due to the failure to comply with section 65(5), particularly in light of the Board's own failure to comply with the 21 day time limit in section 65(4). Accordingly, I heard full argument and have decided the matter on the merits.

Costs

[40] Section 65(8) of the *Act* provides that the costs of a stated case are at the discretion of the Court. The Assessor sought costs primarily due to its success on the appeal. Mr. Simkus argued that the basis of the applicants' claim bordered on frivolity given the statutory scheme and established assessment practice.

[41] The general rule is that costs follow the event. I see no reason to depart from that rule in this case given the substantive result. However, I will add that I do not agree that this appeal "bordered on frivolity". Mr. Paul pointed out that the Assessment Authority's published information about the farm classification process did not clearly specify that the requirements in these regulations had to be in place by October 31 of the preceding year, and he found the information confusing. In the event he was unsuccessful in this

appeal, he sought a direction from this Court that these requirements be clearly spelled out in the information provided to the public.

[42] While the “state and condition date” of October 31 may be in accordance with established assessment practice, it is not explicitly set out in ss. 4 and 7 of the *Regulation*. The process should be accessible and understandable to in person litigants. It is not for me to direct the Assessment Authority as requested by Mr. Paul. However, it is clear that it would be of benefit to the public if the regulatory requirements were explicitly set out in all publically available information about the assessment appeal process.

[43] I consider this appeal to have been a matter of less than ordinary difficulty. Accordingly, I award costs to the Assessor at Scale A.

“Fisher, J.”