

NOVA SCOTIA COURT OF APPEAL

Citation: Greater Homes Inc. v. Nova Scotia (Assessment),
2006 NSCA 106

Date: 20060926
Docket: CA 258901
Registry: Halifax

Between:

Greater Homes Inc.

Appellant

v.

The Director of Assessment

Respondent

Judges: Roscoe, Saunders and Fichaud, JJ.A.

Appeal Heard: September 20, 2006, in Halifax, Nova Scotia

Held: Appeal is dismissed per reasons for judgment of Roscoe, J.A.; Saunders and Fichaud J.A. concurring.

Counsel: Sean Mudge, for the appellant
Richard Arab, for the respondent

Reasons for judgment:

[1] At the conclusion of the hearing before us we indicated that the appeal was dismissed with reasons to follow. These are the reasons.

[2] This is an appeal from a decision of the Utility and Review Board (NSUARB-AS-04-63; 2005 NSUARB 111) dismissing an appeal from the classification of a property owned by the appellant for the 2004 assessment year.

[3] The property, located at 11 Ridgepark Lane, Halifax was a model home in a new subdivision which was used as a sales center. The garage of the property had been converted to a showroom displaying available options of finishes and fixtures. Since the property was not occupied as a residence and the main activity taking place there was marketing and sales, the Director of Assessment classified it as a commercial property.

[4] The URB upheld the decision of the Regional Assessment Appeal Court which had confirmed the classification.

[5] The relevant definitions in the **Assessment Act** R.S.N.S. 1989, c. 23 provide:

Interpretation

2 (1) In this Act,

...

(d) "commercial property" means all property or part thereof except residential property and resource property, and includes the forest property owned by a person who owns fifty thousand acres or more of forest property in the Province;

...

(i) "intended to be used" means a present intent supported by some substantial act to carry out the intent;

...

(r) "residential property" means property or part thereof used or intended to be used for residential purposes, but does not include the portion of a hotel or motel used for the purpose of lodging for the public or an apartment hotel;

...

42 ...

(3) Notwithstanding subsections (1) and (2), the assessment of a property shall reflect its state as of the date referred to in subsection (2) of section 52.

52 ...

(2) The assessment shown on the roll shall be the assessment that reflects the state of the property as it existed on the first day of December immediately preceding the filing of the roll.

[6] The appellant argues that the URB erred in finding that the property was not one which was either being used, or intended to be used, for a residential purpose within the meaning of s. 2(1)(r) and 2(1)(i) of the **Act**. Without necessarily endorsing each of the Board's factual findings, after reviewing the decision of the Board and considering the record and the submissions of counsel, we are not persuaded that, in affirming the classification of the appellant's property, the Board made any error of law which would warrant judicial intervention.

[7] On the relevant date, December 1, 2003, the owners were not using the model home as a residence or currently intending to use it as a residence.

[8] The appeal is accordingly dismissed without costs.

Roscoe, J.A.

Concurred in:

Saunders, J.A.

Fichaud, J.A.