NOVA SCOTIA COURT OF APPEAL

Citation: Nova Scotia (Assessment) v. Schrader,
2010 NSCA 90

Date: 20101116
Docket: CA 319651
Registry: Halifax

Between:

Director of Assessment

Appellant

v.

W. MacLeod Schrader
Attorney General of Nova Scotia
Nova Scotia Utility and Review Board

Respondents

Judge(s):	Oland, Fichaud, Farrar, JJ.A.
Appeal Heard:	September 20, 2010, in Halifax, Nova Scotia
Held:	Appeal is dismissed without costs
Counsel:	Robert W. Andrews, for the appellant R. Lester Jesudason and S. Bruce Outhouse, Q.C., for the respondent, Nova Scotia Utility and Review Board Edward Gores, Q.C., for the respondent, Attorney General of Nova Scotia, not appearing W. MacLeod Schrader, not appearing

Reasons for judgment:

[1] This is an appeal from an assessment decision of the Utility and Review Board (Board). The Board's decision was released in tandem with Board decisions on four other assessment appeals. The Director of Assessment (Director) appealed all five to this court. This decision is released concurrently with the court's decisions on the other four appeals [*Nova Scotia (Assessment) v. van Driel, Creelman, Crane, Aucoin*, - 2010 NSCA 87, 88, 89 and 91].

[2] Except for one additional ground of appeal, the written submissions to the Court of Appeal here replicated those in *Nova Scotia (Assessment) v. van Driel*, 2010 NSCA 87. At the Court of Appeal hearing the parties agreed that, except for the additional issue, a single set of oral submissions would be made for both appeals, and the same principles would govern the court's conclusions in both appeals. The court's *van Driel* decision analyzes the replicated issues at length, and this decision should be taken as incorporating *van Driel*'s discussion on those common issues.

[3] Mr. Schrader owned vacant land in Tor Bay, Municipality of Guysborough. It had been assessed at $11,000, being $100 per acre. In 2004 the land was reclassified as a building lot, lifting the assessment to $42,500 in 2004 and $46,500 in 2005. Mr Schrader appealed the 2005 assessment to the Regional Assessment Appeal Court (RAAC), which confirmed the assessment.

[4] Mr. Schrader appealed to the Board. After a hearing, the Board issued a decision and order on October 8, 2009 (2009 NSUARB 148). The Board allowed the appeal and reduced the 2005 assessment to $11,648.86. The Board found that the land was vacant, one third a protected beach, most of the rest a swamp or bog, and the remainder barren land with some diseased trees. The Board found (¶ 86) that the lands "were unused for any purpose by Mr. Schrader" and "[t]here was absolutely no evidence before this Board that there was any present intent to use any part of the lands for residential property". The Board followed the well known principle from *Sun Life Assurance of Canada v. Montreal (City)*, [1950] 2 D.L.R. 785 (S.C.C.), affirmed [1952] 2 D.L.R. 81 (P.C.), that an assessment is supposed to value existing use, not future potential as would be valued in an expropriation. The Board rejected the residential classification of Mr. Schrader's land, and rejected for comparison the use of data involving residential use. The Board

valued the vacant land at $100 per acre, or $11,900, and accepted the Director's calculation of the general level of assessment (GLA) as 97.48 %. Multiplying $11,900 by the GLA, the Board derived the assessment of $11,648.86. The Board's decision incorporated the principles stated in the Board's *van Driel* decision respecting the GLA and uniformity.

[5] The Director appealed to this court under s. 30(1) of the *Utility and Review Board Act*, S.N.S. 1992, c. 11 (*URB Act*). Except for the additional argument that I will address shortly, the Director's submissions on this appeal repeat the Director's submissions on the *van Driel* appeal that: (1) the Board wrongly issued a quasi legislative "directive" on the calculation of the GLA, (2) the Board's approach to the GLA was erroneous, and (3) the Board improperly introduced the GLA issue into the appeal without any contest on that matter between Mr. Schrader and the Director. These are the second and third issues discussed in this court's *van Driel* decision.

[6] I will not repeat the analysis that I have set out in detail in the *van Driel* decision.

[7] To summarize, I reject the Director's submission that the Board issued a quasi-legislative directive respecting the GLA. The Board's order just reduced Mr. Schrader's 2005 assessment, and said nothing about future calculations of the GLA. The Board's reasons explain, or incorporate from *van Driel*, the Board's reasoning for its conclusion. That the Board's reasons may have precedential value in a later case is par for the course in a ruling by a quasi-judicial tribunal that establishes its own body of caselaw.

[8] The Board made no legal error in its reasoning respecting the GLA process to achieve uniformity under s. 42(1) of the *Assessment Act*, R.S.N.S. 1989, c. 23 as amended.

[9] The Board did not violate principles of fairness, or upend the burden of proof or otherwise err by considering the GLA issue. Mr Schrader's notice of appeal to the Board said "The assessment is too high". This placed uniformity in issue, as discussed in this court's *van Driel* decision, ¶ 45, and in *Nova Scotia (Director of Assessment) v. Wolfson*, 2008 NSCA 120, ¶ 3, 20. The Director's material and evidence to the Board also placed the GLA and uniformity matters

squarely in issue. The Director's Summary of Practice was the same as discussed in *van Driel* (¶ 48). The Board was entitled to express its views on those matters, and the Board's conclusions exhibit no error under s. 30(1) of the *URB Act* or under the standard of review.

[10] I will next consider the Director's additional ground on this appeal. The Director acknowledges that, based on *Sun Life*, the "notions of assessing a special 'value to the owner' and assessing a speculative use of land have no place in the assessment regime". The Director also "concedes that the subject property was erroneously classified as residential" and "should be classified as resource". But the Director says that the market data does not distinguish resource from residential properties, and that the sales of residential land should be taken as comparable for valuation purposes. The Director submits that the Board erred by rejecting the comparability of residential land sales.

[11] I refer to the discussion of the standard of review in ¶ 13-15 of this court's decision in *van Driel*. Reasonableness, not correctness, governs this court's review of the Board's rulings on matters, within the Board's jurisdiction, that engage the Board's institutional expertise to apply and administer the Board's home statutes. Clearly the Board had jurisdiction to consider the market value "in the narrow sense of whether the tribunal had the authority to make the inquiry" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, ¶ 59). For purposes of an assessment appeal, the *Assessment Act* is a home statute for the Board. The Board hears an appeal *de novo* from the RAAC which, under s. 62(1) of the *Assessment Act*, decides whether the property "has been undervalued or overvalued by the assessor". Section 87(2) authorizes the Board to exercise the powers of the RAAC. The weighing and choice of comparable market data to determine market value is a core function that the Legislature intended be determined by the Board on appeal from the RAAC. This court's standard on that matter is reasonableness.

[12] The Board's conclusions respecting comparability of market data to the Schrader property are reasonable, under the principles explained in *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, ¶ 22. The Board's reasoning was clear, and I can understand it sufficiently to apply the outcome analysis. The Board's conclusion occupied the set of rational outcomes. On the evidence and the Board's explicit finding, any residential value to Mr. Schrader's land would be purely speculative. The Director concedes that speculative value

has "no place in the assessment regime". So it is rational to exclude that speculative residential value from the comparison analysis. That residential value may exceed the value of undeveloped land is consistent with the assessments here of $11,000 before 2004 (undeveloped) and $42,500 or $46,500 in 2004 and 2005 (building lot).

[13] I would dismiss the Director's appeal, without costs.

Fichaud, J.A.

Concurred in:

Oland, J.A.

Farrar, J.A.