

IN THE COUNTY COURT OF DISTRICT NUMBER THREE

BETWEEN:

DOROTHY M. MASON

APPELLANT

- and -

THE MUNICIPALITY OF THE
COUNTY OF ANNAPOLIS

RESPONDENT

HEARD: At Annapolis Royal, Nova Scotia, the 27th
day of July, A.D. 1982.

BEFORE: His Honour Judge Peter Nicholson, J.C.C.

DECISION: The 9th day of August, A.D. 1982

COUNSEL: W. Bruce Gillis, Esq., for the Appellant
Brian Norton, Esq., for the Respondent

NICHOLSON, J.C.C.

The Appellant, Dorothy M. Mason, is the owner of 2.5 acres of land, whereon is located a dwelling and some outbuildings, at Springfield, in the Municipality of the County of Annapolis, assessed to her under account number 03070719.

For the assessment year 1982, the assessors placed a value on this real property in the amount of \$22,700.00. An appeal was taken against this assessment to the Assessment Appeal Court. A decision on 12 May, 1982, at Annapolis Royal, dismissed her appeal. From that decision she appealed to the County Court under the provisions of Section 99 of the Assessment Act, being the Statutes of Nova Scotia, R.S.N.S. 1967, Chapter 14 and Amendments thereto. The Notice of Appeal was by way of a letter to the Clerk of the County Court at Annapolis Royal, with a copy to the Clerk-Treasurer of the Municipality of Annapolis. The body of the letter reads as follows:

"I hereby appeal the decision on my Assessment Appeal rendered on May 12, 1982; on the grounds that the property is over-assessed, in particular the building lot and grounds surrounding the home."

At the outset I had some doubts as to whether this Notice was in terms required by Section 100(4) of the Assessment Act which reads:

"A Notice of Appeal shall state with particularity the grounds of the appeal."

Taxing Statutes ought not to be strictly construed against the taxpayer and I therefore determined to give a rather liberal interpretation of Section 100(4) and to find that the Notice was adequate, and that the Appeal was properly before the Court.

Evidence was given on behalf of the Appellant by her husband, Robert E. Mason, the Warden of the Municipality of the County of Annapolis, and by Mr. Robert Flanagan, an assessor in the employ of the Regional Assessment office of Digby-Annapolis-Kings.

From the evidence it appeared that property values were not high in the Springfield area, and that there was a rather sluggish market in real estate. This situation did not afford the assessor many examples of sales of real property of like kind and value. The assessor frankly admitted that this did not make the task of assessing the property in question an easy one.

Mr. Flanagan testified that on the 27th of April, 1981, he had personally reviewed the assessment on the property and had attended at Springfield for that purpose. Insofar as the buildings on the property were concerned he used the "cost approach". As he related in Exhibit 1, the

cost approach establishes a replacement cost of the structure that is calculated from a reliable costing manual. If available, the actual costs of construction are used. Adjustments are made for the structural deviations from the specifications in the model used. He further testified that depreciation allowances are made for the age and condition of the buildings, and this depreciated and adjusted cost are added to the land market value to arrive at an indication of value of the whole parcel.

He made it clear that another approach was the "market data" which involves the use and comparison of sales data of comparable properties that have been recently sold in the open market. This data is characteristically analyzed to give an indication of the probable selling price of the subject property. He said that without reliable and current sales information, this method cannot be used with any reasonable reliability.

Mr. Flanagan had already testified that there was a very thin market in the Springfield area and the Court therefore concluded that the market data approach was not of any particular use to him.

Having examined carefully the exhibits in the file relating to the methods used to value the buildings on the property, and applying the depreciation factors of 30%

to the valuation, and allowing for that the assessor determined to be a 70% zone discount factor because of the poor sales response in that area, he came to a value on the buildings, net of \$17,900.00. To this he added a total land value of \$4,800.00.

Under examination and cross-examination, Mr. Flanagan testified that he had valued the land itself at \$2,000.00 for the main original improved building lot; \$2,300.00 for septic disposal system and drilled well; plus \$500.00 for an unimproved 1½ acre lot at the rear of the main lot, which had been purchased by Dorothy Mason from Leitha Brewster of Springfield, N.S. on the 30th day of December, 1980, for a price of \$150.00.

In his evidence, Mr. Robert Mason advised the Court that ~~while~~ Leitha Brewster was a neighbour of himself and Dorothy Mason, but that he got no bargain from her. The transaction was stated to be one at arm's length. In his view the property was not under any circumstances worth more than the \$150.00 which he paid for it.

I accept his evidence in that regard, and find that the purchase from Ms. Brewster was one made in an open, albeit thin, market on an arm's length transaction basis.

The Supreme Court of Nova Scotia on many occasions has held that a valid test an assessor can use in valuing property is a recent sale of property of like features in the same area. Here we have a situation of a recent sale, i.e. on 30 December, 1980, not only of property of like value, but of the identical property at an arm's length transaction at \$150.00, whereafter the assessor without any explanation to the taxpayer assessed it at \$500.00. In my view, this assessment was not a proper one and I find that the additional lot purchased from Ms. Brewster and assessed at \$500.00 was over-assessed in the amount of \$350.00.

As to the assessment of the remaining land I find that the assessor used his best judgment in fixing the value at \$2,000.00 and the septic tank system and drilled well at \$2,300.00. He demonstrated to the Court that certain other properties of similar size and in the reasonably near area were also assessed at \$2,000.00, and there being no evidence before the Court that these particular lots had any unusual characteristics that would render them of less value than the lot in question or of more value of the lot in question I am constrained to find that a reasonable value for an improved lot in that area measuring 1 acre on Trunk #10 would be \$2,000.00 as the assessor had fixed in other cases. The evidence as a whole indicated to me that neither the 1 acre lot at \$2,000.00 nor the septic tank system and drilled

well at \$2,300.00 were over assessed.

Turning now again to the assessment of the dwelling house, the witness Robert Mason testified that the basement in the dwelling house was low i.e., five feet from the basement floor to the first floor, and that the same was in a wet condition for most of the time. He testified that it was unsafe to store anything on the floor and that anything that was put in the basement had to be put up on racks to keep it from getting contaminated by the water running through the basement as it did on many, many occasions. No reduction was given by the assessor for this condition. Upon questioning of Mason it appeared that the dwelling house was below the grade level of the main trunk highway and that of necessity surface water flowed down and entered a basement wall which had been constructed in 1912 and that moisture was a constant problem. I accept the evidence of Robert Mason as to the condition of the basement.

At the request of the Court Mr. Flanagan, after making inquiry, advised that an adjustment in the value of the building had been made because of the low basement which was discounted by 30% from the amount that would be allowed for a normal basement. He also testified that in the case of a wet basement that 15% of the cost of the basement would be deducted from the assessed value on that account and that

in connection with the house under consideration the total reduction on that formula would be \$208.00. I find that the dwelling house was therefore over-assessed by the amount of \$208.00, because of the fact that no allowance was made for the wet basement.

In the result, it is ordered that the assessment of the dwelling house on the Dorothy Mason property be reduced by the amount of \$208.00 and that the valuation put on the $1\frac{1}{2}$ acre unimproved lot be reduced by the sum of \$350.00 making a total reduction of \$558.00.

The Appeal is therefore allowed to the extent above set out, with costs to the Appellant.

DATED at Annapolis Royal, Nova Scotia, this 9th day of August, A.D. 1982.



JUDGE OF THE COUNTY COURT OF
DISTRICT NUMBER THREE

TO: The Clerk of the Court,
The Court House,
Annapolis Royal, N.S.

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