

NOVA SCOTIA COURT OF APPEAL

Citation: Nova Scotia (Assessment) v. Aucoin,
2010 NSCA 91

Date: 20101116

Docket: CA 319652

Registry: Halifax

Between:

Director of Assessment

Appellant

v.

Yolande Marie Aucoin
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
Estate of Yolande Marie Aucoin, 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 in 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 five appeals [*Nova Scotia (Assessment) v. van Driel, Creelman, Crane and Schrader*, 2010 NSCA 87, 88, 89 and 90].

[2] The written submissions in the Court of Appeal here replicated those in *Nova Scotia (Assessment) v. van Driel*, 2010 NSCA 87. At the Court of Appeal's hearing the parties agreed that 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 issues at length, and this decision should be taken as incorporating *van Driel's* discussion on the common issues.

[3] Ms. Yolande Marie Aucoin (now deceased) owned vacant land behind her home in Cheticamp, Inverness County. Her 2005 assessment was \$21,600. On review, the Director reduced the assessment to \$15,900 because the land had been wrongly coded as waterfront. Ms. Aucoin continued her appeal to the Regional Assessment Appeal Court, which confirmed the Director's \$15,900 assessment.

[4] Ms. Aucoin appealed to the Board. After a hearing, the Board issued a decision and order on October 8, 2009 (2009 NSUARB 149). The Board found that the market value of the vacant land was \$2,530, and accepted the Director's calculation of the General Level of Assessment (GLA) as 96.09 %. After multiplying the \$2,530 by the GLA, the Board determined that the 2005 assessment should be \$2,431. The Board's decision incorporated by reference the principles stated in the Board's *van Driel* decision.

[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*). The Director's factum says "the Director does not seek to disturb the value conclusion made by the Board". The Director's submissions on this appeal repeat the Director's submissions in 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 Ms. Aucoin 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 reduces Ms. Aucoin's 2005 assessment and says 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. Ms. Aucoin's assessment appeal claimed that her "assessment was too high". This placed uniformity in issue, as discussed in the *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 issues 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 issues, and the Board's conclusions exhibit no error under s. 30(1) of the *URB Act* or under the standard of review.

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

Fichaud, J.A.

Concurred in:

Oland, J.A.

Farrar, J.A.