

NOVA SCOTIA COURT OF APPEAL

Jones, Hart and Freeman, J.J.A.

Cite as: Maritime Telegraph & Telephone Company Ltd. v. Nova Scotia (Assessment),
1993 NSCA 72

B E T W E E N:

MARITIME TELEGRAPH & TELEPHONE
COMPANY LIMITED

appellant

- and -

DIRECTOR OF ASSESSMENT FOR THE
PROVINCE OF NOVA SCOTIA and
CITY OF HALIFAX

respondents

) Thomas P. Donovan and
) Judith F. Ferguson
) for appellant

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) Randall R. Duplak, Q.C.
) for Department of Municipal Affairs

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) Mary Ellen Donovan
) for City of Halifax

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) Appeal Heard:
) March 9, 1993

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) Judgment Delivered:
) March 9, 1993

THE COURT: Appeal dismissed per oral reasons for judgment by Freeman, J.A.; Jones and
Hart, J.J.A., concurring.

The reasons for judgment of the Court were delivered orally by:

FREEMAN, J.A.:

The appellant is seeking a reduction in its 1989 assessment of \$4,570,300 for 9.72 acres of land and two buildings located at 3601 Joseph Howe Drive in Halifax and used by it in a variety of activities related to its business as a communications utility.

The assessment was reduced by \$686,600 in an appeal to the Regional Assessment Appeal Court. The present figure was confirmed after a 13 day hearing on a further appeal to the Nova Scotia Municipal Board. That Board, under s. 87(1) of the **Assessment Act**, R.S.N.S. 1989, c. 23, was bound to "inquire into the matter *de novo* and . . . examine such witnesses and take all such proceedings as are requisite for a full investigation of the matter."

The appeal to this court is on an entirely different basis under s. 34 (1) of the **Municipal Board Act**, R.S.N.S. 1989, c. 297. Under that section an appeal lies to the Nova Scotia Court of Appeal from any order of the Board "upon any question as to its jurisdiction or upon any question of law." Such an appeal is only by leave, which was granted.

The grounds of appeal are as follows:

1. The Board erred in law and exceeded its jurisdiction by stating that the value of the subject property as a continuation of its existing use would make no difference in value contrary to section 42 (1) of the **Assessment Act**, the jurisprudence

and the expert evidence.

2. The Board erred in considering an increased valuation of the property put forward by the director where no cross appeal had been filed by the director, thereby disenti tling the Board as a matter of jurisdiction to consider an increase of value. (The appellant abandoned this ground of appeal.)

3. The Board erred in law by exceeding its jurisdiction and basing its decision on erroneous findings of fact regarding the following matters:

(a) In ignoring expert evidence regarding the land value of the subject and in substituting a value without any support in the evidence; and

(b) In ignoring evidence of an expert witness called by the City of Halifax regarding the value of the property in its existing use and in characterizing such evidence as relating to the "market value" of the subject.

In determining the assessment for the property *de novo* the Municipal Board was governed, as were the original assessor and the Regional Assessment Appeal Court, by s. 42(1) the **Assessment Act**, which provides:

"All property shall be assessed at its market value, such value being the amount which in the opinion of the assessor would be paid if it were sold on a date prescribed by the Director in the open market by a willing seller to a willing buyer, but in forming his opinion the assessor shall have regard to the assessment of other properties in the municipality so as to ensure that taxation falls in a uniform manner upon all residential and resource property and in a uniform manner upon all commercial property in the municipality."

The property in question falls within the **Act's** comprehensive definition of commercial property rather than residential or resource property. The issue of uniformity has not been raised. The Municipal Board, in the person of its Vice-Chairman Linda Garber standing in the position of the assessor, was clothed in a very broad discretion.

With respect to the first ground of appeal, Ms. Garber noted that both industrial and commercial uses are included under the term commercial property for purposes of the **Assessment Act**. She found:

"The property is used for a variety of purposes. In the Board's opinion, its main use is commercial. The Board does not believe that if the use of the subject property is light industrial its 1989 assessed value will be different than if its use is commercial."

That is a finding of fact within Ms. Garber's jurisdiction and supported by the evidence. The first ground of appeal does not disclose a question of law or jurisdiction, nor does it show that she was swayed by any wrong principle relating to the use of the land in arriving at her opinion as to market value. The first ground of appeal is therefore dismissed.

The third ground of appeal is based on evidentiary considerations. The appellant asserts that Ms. Garber rejected the expert evidence of two appraisers and was left without a sufficient evidentiary foundation for concluding that the land should be valued at \$7.50 per square foot. What Ms. Garber actually rejected, after considering the evidence of the experts, was the conclusions they reached.

Ms. Garber reviewed facts and evidence including various comparables, the testimony of a professional appraiser who had prepared a confidential report on the value of the property for the appellant, use made of the property in question and property in the surrounding neighbourhood, and other relevant considerations. She instructed herself that "it is the actual use and not the potential use which is important in this case."

In our opinion there was ample evidence to support the conclusions she reached as to the valuation of the property. The appellant has not satisfied us that Ms. Garber

committed any errors as to law or jurisdiction, nor any error of fact going to jurisdiction. The appeal is therefore dismissed without costs.

Freeman, J.A.

Concurred in: Hart, J.A.

Jones, J.A.

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COMPANY LIMITED**

- and -

**DIRECTOR OF ASSESSMENT FOR THE PROVINCE
OF NOVA SCOTIA and CITY OF HALIFAX**

) **REASONS FOR**
)
) **JUDGMENT BY:**
)
) **FREEMAN, J.A.**
)
) **(Orally)**
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