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**** HIGHLIGHTS ****

* A Justice of the British Columbia Supreme Court has overturned the decision of a Property Assessment Appeal Board which concluded that land which had been classified as a "farm" should be reclassified and taxed as "residential" property. The Court reviews the complex provisions of British Columbia's "Classification of Land as a Farm Regulation", that among other things, requires farmers to submit applications to tax assessors which include projected farm income, in order to have their land classified as farm land. The Court concludes that there is nothing in the Farm Regulation which entitles assessors to "declassify" farm land if revenue projections are not met, and that a Property Assessment Appeal Board had erred in relying on previous Court decisions to this effect as the previous decisions relied upon a provision in the Regulation which had been repealed. (Kelt v. British Columbia (Assessor of Area No. 4 -- Central Vancouver Island), CALN/2015-020, [2015] B.C.J. No. 1804, British Columbia Supreme Court)

**** NEW CASE LAW ****

Kelt v. British Columbia (Assessor of Area No. 4 -- Central Vancouver Island); CALN/2015-020, Full text: [2015] B.C.J. No. 1804; 2015 BCSC 1475, British Columbia Supreme Court, J.L. Dorgan J., August 21, 2015.

Property Tax -- British Columbia Land Classification Regulations -- Assessor's Authority to Reclassify Farm Land.

Bruce and Dorothy Kelt (the "Kelts"), who operated a 4.9 acre Christmas tree farm in Nanaimo, British Columbia, appealed a decision of the Property Assessment Appeal Board of British Columbia (the "Board") to the British Columbia Supreme Court. The Board had ruled that their farm should be reclassified from "Class 9-Farm" to "Class 1-Residential" for the 2014 assessment role, resulting in an increase in the assessed value to $1,460,000.00.

The appeal was by way of stated case pursuant to s. 65 of the Assessment Act, R.S.B.C. 1996, c. 20 (the "Act"). The appeal concerned the interpretation of the Classification of Land as a Farm Regulation, B.C. Reg. 411/95 (the "Farm Regulation").

Section 23 of the Prescribed Classes of Property Regulation, B.C. Reg. 438/81 provides, in part that an owner of land who wants all or part of his land classified as a farm must apply to an assessor using an appropriate application form and that the assessor must classify as a farm any land that satisfies standards prescribed by the Lieutenant Governor in Council:

> "23.(1) An owner of land who wants all or part of the land classified as a farm must apply to the assessor using the application form, and following the procedure, prescribed by the assessment authority.
>
> (2) Subject to this Act, the assessor must classify as a farm any land, or any part of a parcel of land, that meets the standards prescribed under subsection (3).
>
> (3) The Lieutenant Governor in Council must prescribe standards for classification of land as a farm."

The Farm Regulation includes a requirement for a gross annual value of $2,500.00 as prescribed in s. 5(4)(a):

> "5.(4) To be classified as a farm for a taxation year, the gross annual value in respect of the farm operation for at least one of the person's reporting periods for the taxation year must be at least
>
> (a) $2 500, if the total area of the farm operation is between 0.8 ha and 4 ha."

and a further requirement for farm classification with respect to "land being developed as a farm" set forth in s. 8(1) of the Farm Regulation. This section provides:

> "8.(1) The assessor must, for a taxation year, classify all or part of a parcel of land of a farm operation as a farm if the assessor is satisfied that, on or before October 31,
>
> (a) the land is being developed for a qualifying agricultural use,
>
> (b) the land does not meet the applicable requirements of section 5, and
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> (c) the requirements in subsections (2) to (7) of this section that relate to the applicable qualifying agricultural products are met."

A Christmas tree farm is defined as a "qualifying agricultural use" under the Farm Regulation. The Farm Regulation also set out a series of stipulations which required the assessor to classify farm land depending on the length of time from planting to harvest.

The Farm Regulation had contained the following provision which entitled an assessor to declassify a parcel of land, however, this provision had been repealed in 2007. Section 11 provided:

> "11.(1) The assessor must declassify all or part of a parcel of land as a farm if
>
> ...
>
> (vii) the owner or lessee does not follow a development plan approved by the assessor under section 8."

The Kelts applied for farm designation in 1997. Their application for farm classification included a development plan which indicated that they expected to gross at least $2,500.00 in annual revenue after a projected harvest date of 2003. Based on this application, their farm was classified as "Class 9-Farm" for the 1998 assessment roll. However by 2001, the Kelts Christmas trees were suffering from a high mortality rate. Their sales in 2007, 2008, 2012 and 2013 did not meet the $2,500.00 minimum.

On October 16, 2014, the Board rendered a decision reclassifying the Kelts' farm as "Class 1-Residential". The Board found that there must be strict adherence to the requirements set out in the Farm Regulation in order to receive the property value and taxation benefits afforded to a farm classification and that the Kelts had, on multiple occasions, failed to meet their projected harvest date, which was an integral component of the development plan. As the Kelts had failed to follow their development plan, the Board concluded that the property was not eligible for farm classification and that to decide otherwise would allow a property owner to "remain a developing farm in perpetuity by continually amending their harvest date and never meeting the gross value requirement" [at para. 15].

The appeal posed 13 stated questions to be decided by the Court, one of which (question 6) was as follows:

> "6. Did the Board err in law by relying upon AB 2004 Khazaie, Sirous & Susan v. AA14, SC 414 AA21 v. Jones, and other cases submitted by BC Assessment which were decided based on the Farm Regulation s. 11 Declassification which was repealed in 2012? [sic]"

Decision: Honourable Madam Justice Dorgan allowed the Kelts' appeal, concluded that the Board's decision was erroneous in law and unreasonable, and concluded that the Board is required to direct the assessor to amend the assessment roll to set aside the Board's decision [at para. 57 to 59].

Dorgan, J. concluded that the decisions in Khazaie and Jones were based upon s. 11 of the Farm Regulation, which had now been repealed, stating, at para. 44 and 45:

> "[44] This comment in Khazaie, and the result in Jones, turned on the obligatory language of the repealed s. 11, which required the Assessor to declassify l and as a farm where the owner did not follow an approved development plan. That express constraint on jurisdiction has since been removed. In its absence, the current version of the Farm Regulation does not expressly require the Assessor to declassify land as a farm where an owner fails to implement a development plan.
>
> [45] The issue is whether the repeal of s. 11 should lead to the opposite result sought by the Applicants -- that the Assessor must uphold farm classification even if a development plan, though approved, has not been followed."

Dorgan, J. responded to the assessor's argument that it is reasonable to interpret the Farm Regulation such that the assessor retains the discretion to refuse farm classification where an owner developing land as a farm has not followed a development plan, stating [at para. 47]:

> "[47] The problem with this position is that neither the Assessor nor the Board pointed to any requirement in the Farm Regulation which requires a development plan to be followed. Broad appeals to "meeting the requirements of the Farm Regulation" do not answer the question of what regulatory requirement the Applicants failed to satisfy."

Dorgan, J. concluded that the Board's decision could only be upheld on the basis of a provision under the Farm Regulation which had been repealed, and concluded that the Board's decision was therefore erroneous in law and unreasonable, stating at para. 54 to 56:

> "[54] The conclusion that a development plan must be followed for farm classification must be grounded in the requirements under the Act and the Farm Regulation. Both the Act and the Farm Regulation are clear that the Assessor must classify land as a farm where the requirements are met, but nowhere among these requirements is an owner required to follow or in fact meet the projected harvest date of a development plan.
>
> [55] Laws must be clear and intelligible to allow individuals to know their rights and obligations. The Board was nevertheless of the view that the objective of the legislation would be thwarted if the projected harvest date could be continually revised, and land under development as a farm could remain classified as such indefinitely. In my view, this observation by the Board cannot serve to confer jurisdiction on the Assessor to impose an additional requirement for farm classification unsupported by the language of the Act or the Farm Regulation.
>
> [56] The answer to question 6 is therefore "yes". The Board confirmed the assessment of the Applicants' Property through the lens of a repealed

> provision of the Farm Regulation. This decision was erroneous in law and unreasonable."

Dorgan, J. concluded that given her affirmative answer to question 6, it was not necessary to answer the remaining questions [at para. 57].

** CREDITS **

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