

Decision and Order

http://www.assessmentappeal.bc.ca/decisions/dfull/dec_2009-01-00068_20091799x.asp?PrinterFriendly=yes

IN THE MATTER OF AN APPEAL PURSUANT TO S. 50 OF THE ASSESSMENT ACT

CONCERNING:

GORDON A DENFORD

APPELLANT

AND

ASSESSOR OF AREA #01 - CAPITAL

RESPONDENT

Appeal No.: 2009-01-00068

Refer to as: Denford v. Area 01 (2010 PAABBC 20091799)

Date of Decision: March 9, 2010

Property: 01-63-302-36-1820-015
617 Senanus Drive, District of Central Saanich

Heard: By Written Submissions, closing February 5, 2010

Submissions: From the Appellant received January 8, January 11 & February 5, 2010
From the Respondent received January 22 & February 11, 2010

Board Panel: Kenneth Wm. Thornicroft, Panel Chair

INTRODUCTION

[1] Gordon A. Denford (the "Appellant") appeals a decision issued by the 2009 Property Assessment Review Panel (the "Review Panel") concerning his property situated at 617 Senanus Drive in the District of Central Saanich (the "property"). The Review Panel confirmed the Assessor's original valuation and "split-classification" decision and thus, as matters now stand, the property's assessment is as follows:

Land:	Class 1 – Residential	\$	1,209,000
	Class 9 – Farm	\$	3,537
Improvements:	Class 1 – Residential	\$	<u>2,713,000</u>
TOTAL		\$	3,925,537

[2] Although there are many contentious issues in this appeal, the fundamental disputes between the parties concern, first, the correct classification of the property, second, whether the property has been “equitably” classified and, third, whether the property has been correctly valued. As will be seen, the Assessor says that the Review Panel’s decision should be confirmed whereas the Appellant says that the entire land component should be classified as “farm” land and, failing a favourable reclassification decision, that the total assessed value for the property is too high.

[3] In accordance with the Board’s August 20th, 2009 order, I am adjudicating this appeal based solely on the parties’ written submissions. I have before me the Appellant’s initial and reply submissions as well as the Assessor’s submission. The Assessor, in addition, filed a “surrebuttal” to which the Appellant has taken objection. I shall first address this objection before turning to the substantive issues raised by this appeal.

PRELIMINARY OBJECTION REGARDING THE ASSESSOR’S “SURREBUTTAL”

[4] The Board’s August 20th, 2009 order set out a submission cycle (with fixed dates) whereby the Appellant would file an initial submission to be followed by the Assessor’s submission and then, finally, the Appellant’s reply submission. By order dated October 22nd, 2009, the Board, at the behest of the parties, modified the submission filing dates but did not alter the submission cycle format, namely, Appellant – Assessor – Appellant. The Board’s October 22nd order included the following notice (in **boldface**): **“The Board member(s) deciding the appeal may refuse to admit the submissions if they are not produced by the dates in this Order.”**

[5] Notwithstanding the above notice – and in the absence of having obtained leave to do so – on February 10th, 2010 the Assessor filed (by e-mail) what she described as a “surrebuttal”. This document was filed on the principal basis that several points raised in the Appellant’s reply submission constituted new evidence or arguments that, presumably, the Assessor believes should have been set out in the Appellant’s initial submission. As previously noted, the Appellant says that the Board should not consider the Assessor’s “surrebuttal” since it represents a contravention of the Board’s October 22nd order. I agree.

[6] The Assessor filed the “surrebuttal” without the benefit of an enabling Board order and in the face of clear notice that late submissions may not be admissible. The Assessor’s position is that, at least in part, the Appellant’s reply submission contains “new evidence”. However, to the extent that the reply does contain material that was not contained in the Appellant’s initial submission, or is otherwise not evidence that simply responds to the evidence and argument contained in the Assessor’s submission, those portions of the Appellant’s reply will simply be disregarded. Both the Board’s August 20th and October 22nd, 2009 orders put the Appellant on notice that the reply submission is “NOT an opportunity for the Appellant to present more submissions to expand on [his] case” and that such submissions “should have been produced earlier in accordance with the Order above” (CAPITALIZATION and underlining in original text).

[7] Accordingly, the Assessor’s “surrebuttal” dated and filed February 10th, 2009 is not admissible in these appeal proceedings and thus does not form part of the record before me.

[8] In his February 11th, 2009 letter objecting to the “surrebuttal”, counsel for the Appellant submitted “that our client should be compensated for its costs in dealing with the failure of the BC Assessment Authority to comply with the October 22, 2009 Board Order”. Although the Board has the authority to award costs (*Assessment Act*, section 60), this power is “subject to the regulations”. Section 74(2)(u) of the *Assessment Act* provides for Board rules of practice and procedure to be promulgated by regulation. The Board’s “Rules of Practice and Procedure” authorize the Board to order one party to pay another party’s costs (Rule 18(4)(n)) and Rule 21 specifically deals with cost orders where a party has engaged in conduct that is frivolous, vexatious, egregious or otherwise an abuse of process. In this instance, I do not find that the Assessor’s conduct can be so characterized.

[9] Clearly, the preferable course of action would have been for the Assessor to seek the Board’s leave to file a further submission rather than simply proceeding unilaterally. In the face of such unilateral action, I do not doubt that the Appellant’s counsel felt compelled to respond in some fashion. However, the Appellant’s reply was rather cursory and does not strike me as being the fruit of an extended labour. The Board did not invite the Assessor to reply to the Appellant’s application for costs. All in all, I think it best to simply admonish the Assessor, remind the Assessor that unsolicited submissions are not welcome and point out that, in a future case, the Board may well decide that a costs order should be made in similar circumstances.

[10] I now turn to the substantive issues raised by this appeal.

THE PROPERTY

[11] The property consists of either a 3.87-acre (Appellant) or 3.79-acre (Assessor; although in some sections of her submissions the Assessor also describes the property as being 3.87 acres) oceanfront land parcel that is improved by a home that was originally built in 1987 and was renovated during that last five years. The Assessor says that the home is 6,000 square feet while the Appellant says the home is 4,500 square feet. There home has an attached garage and there is a boathouse at the foreshore. The property is wholly outside the provincial Agricultural Land Reserve ("ALR") and is zoned as a "Rural Estate" (R-3). The property cannot be subdivided under the present zoning designation.

[12] The property is very heavily treed and slopes south from Senanus Road to a 30-foot oceanfront bank above Saanich Inlet. The home is sited at the southern boundary of the property near the bank. The lot is essentially a rectangle at the northern portion of the property that is adjoined by a "pie-shaped" segment (the widest portion at the ocean cliff) that lies at the southern end of the property to the west of the northern rectangle.

[13] In addition to its use as a residential oceanfront acreage property, it is the site of a small nursery operation. In his original application to secure "farm" status (see *Assessment Act*, section 23) filed January 4th, 2006, the Appellant estimated that he would achieve \$3,000 to \$4,000 for the production year ending October 31st, 2006. The Appellant's Income Statement filed November 28th, 2007 reported \$5,862.50 in gross sales for the 12-month period ending October 31st, 2007. Although I do not have any information regarding the total gross sales for the 12-month period ending October 31st, 2008, the "farm production year" for purposes of this appeal, in the absence of any evidence regarding significant expansion of the farm operation from 2007 to 2008 (the evidence appears to be that there was no such expansion over this period), I am assuming that the total gross sales for the 2008 production year were in the same neighbourhood as in 2007.

[14] The property improvements are currently assessed at \$2.713 million and the Appellant states in his submission, and notwithstanding section 57(1)(b) of the *Assessment Act* that mandates the Board to consider the combined value of both land and improvements in any valuation appeal, that he "is not appealing the value ascribed to the buildings and improvements" (underlining in original text). Thus, it seems clear that the Appellant's farm operation is what might be called a "hobby farm" rather than a commercial farming operation.

[15] There is, of course, nothing inappropriate about property owners conducting small farming operations in order to secure the very favourable property tax status that flows from "farm" classification (see *Van Kerkoerle v. Area 04*, 2001 PAABBC 20015336), however, in order to obtain farm status, the property must meet all of the applicable provisions of the *Standards for the Classification of Land as a Farm* regulation (B.C. Reg. 411/95 – the "*Farm Classification Regulation*"). The issue in this appeal is whether the Appellant's land wholly qualifies for "farm" status (the Appellant's position) or, as is asserted by the Assessor, only about 53% of the land parcel so qualifies.

[16] The Appellant's argument regarding the farm classification issue is essentially twofold. First, the Appellant says that as a matter of evidence and regulatory interpretation, 60% of the entire land component of his property should be classified as a "farm". Second, the Appellant says that regardless of what the correct "split classification" as between "farm" (currently 53%) and "residential" (currently 47%) land might be, the entire land parcel should be classified as a "farm" – at least for the 2009 roll year – in order to create an "equitable" result as between the Appellant and several of his near neighbours. I now turn to these two issues.

WHAT PORTION OF THE LAND QUALIFIES FOR "FARM" STATUS?

[17] Although the property is a single lot (known as "Lot A"), the Appellant has notionally divided the property into two sections identified in his material as "Area A" and "Area B" – the latter area is a rectangular shaped section at the northernmost portion of the property; the former is an irregularly shaped portion that constitutes the balance of the property and includes the residence and ocean cliff perimeter.

[18] The Appellant says that Area A is predominantly used for farming activity and that "the area subject to primary farming activity and including the dwelling totals 101,162 square feet in size and comprises approximately 60% of the total area" (Appellant's January 8th, 2010 submission, p. 3). Area B is heavily wooded and is bisected by an access road about in the middle of the land area and running north to south (Senanus Road runs east-west at the property's northern boundary). The Appellant concedes "Area B on Lot A is not used for farming purposes except for the road access bisecting Area B which is used to access the nursery operations and dwelling" (Appellant's January 8th, 2010 submission,

p. 3). The Appellant says that the access road covers about 5,000 square feet and that the remainder of Area B constitutes about 34% of the property's total land area.

[19] The *Prescribed Classes of Property Regulation* (B.C. Reg. 438/81; the "*Property Classification Regulation*") currently establishes eight separate property classifications including "residential" (Class 1) and "farm" (Class 9). The "farm" classification is typically very beneficial to a property owner since "farm" land is not valued at its fair market value for property taxation purposes but, rather, is valued in accordance with schedules appended to the *Land Values for Farm Land Regulation* (B.C. Reg. 276/84). The difference between market values and scheduled values can be dramatic – for example, in this case, and using the Assessor's area estimate simply for purposes of illustration, the 47% land area classified as "residential" is valued at \$1,209,000 whereas the 53% "farm" land portion is valued at only \$3,537 (or less than 3/10ths of 1% of the "residential" land value).

[20] Given the nature of the property valuation and taxation regime, it is perhaps not surprising that section 23 of the *Assessment Act* places the burden on farmers to apply for "farm" status. By section 23(2) "the assessor must classify as a farm any land, or any part of a parcel of land, that meets the [prescribed standards]". The prescribed standards are set out in the *Farm Classification Regulation*. Subsections 4(1) and (2) of this regulation states:

4. (1) Unless this regulation provides otherwise, the assessor must classify as farm all or part of a parcel of land used for
 - (a) primary agricultural production,
 - (b) a farmer's dwelling, or
 - (c) the training and boarding of horses when operated in conjunction with horse rearing.
- (2) Land will only be classed as farm where part of a parcel or parcels of land are
 - (a) necessary to the farm, and
 - (b) predominantly used for primary agricultural production.

[21] The Appellant says that if the land is to be split as between "farm" and "residential" classifications (see *Property Classification Regulation*, section 10), the "farm" component should be 60% rather than, as matters now stand, 53% of the total land area (Appellant's January 8th, 2010 submission, paras. 15 – 17). In his reply submission filed February 5th, 2010, the Appellant says that 62.5% of the total land area should be classified as "farm" land (para. 5).

[22] The Assessor conducted a site inspection on July 14th, 2009 and both the Appellant and the Assessor agree that not all of the land was being used for farm purposes during the 12-month period ending October 31st, 2008 (the relevant period for the 2009 assessment roll). However, the Assessor says that the Appellant's farm area calculation includes bedding areas that were not prepared and/or planted as of October 31st, 2008 and thus can only be taken into account for the 2010 roll year.

[23] Unfortunately, the material before me does not allow me to make an affirmative finding regarding the precise area that qualifies for "farm" status. Both the Appellant and the Assessor simply assert that a particular proportion of the land should be given farm status but neither party has provided any detailed survey evidence that would permit me to determine what proportion of the land area actually qualifies for farm status. Since this conflict in the evidence cannot be resolved without hearing further evidence, I am not, at this point, making any affirmative finding regarding this issue. As will be seen, at least for this roll year, the point is moot in light of my conclusion regarding the Appellant's "equity" argument.

HAS THE APPELLANT'S LAND BEEN "EQUITABLY" ASSESSED?

[24] The Appellant says that even though the entire land area is not being farmed, it should nonetheless be wholly classified as "farm" land since a split classification for the 2009 roll year is "inequitable". The Appellant identified four nearby properties, all located on Senanus Drive, where the entire land area has been classified as "farm" land for the 2009 roll year. The Appellant notes that only his property and another nearby Senanus Drive property were given "split classifications" on the 2009 assessment roll. The Appellant's argument on this point is set out, below:

The [Assessor] has elected not to impose a split classification upon [four Senanus Drive properties] for the 2009 assessment year. The Appellant has established evidence that only a minimal area on each property is in use for agricultural production purposes. These properties are in the same neighbourhood, same municipality and subject to similar use for farming activity as [the Appellant's property]. It is fundamentally

inequitable that a split classification be imposed on [the Appellant's property] when it is not imposed on [the four other Senanus Drive properties].

(January 8th, 2010 submission, para. 22)

[25] The Assessor, for her part, agrees that only six properties on Senanus Drive were classified, either in whole or part, as "farm" land on the 2009 assessment roll. She acknowledges that only two properties (including the Appellant's property) were given a "split classification" as between "farm" and "residential" and that the four other properties were wholly classified as farms. The Appellant, in his affidavit sworn on January 3rd and filed on January 11th, 2010, avers that since July 1st, 2008 there has only been limited chicken farming operations on each of the four farms with the chickens being penned in coops and not ranging free in order to protect them from racoons and other predators. The Assessor has not challenged the Appellant's evidence on this point. Since only a limited portion of the entire land area of these four farms is truly dedicated to farm production, it seemingly follows that the land classification for these properties should have been split as between "farm" and "residential" (and perhaps with a much greater share of the land being classified as "residential" rather than "farm").

[26] The Assessor apparently agrees that at least three of these four "farm" properties were incorrectly classified for the 2009 roll year but says that this error will be corrected on the 2010 assessment roll:

Of the six properties on Senanus Dr. affected by farm class for the 2009 Assessment Roll, 4 properties are wholly in farm class and 2 properties are split class between farm and residential, one of which is the Subject property. After each of the properties was reviewed, it was found that the two split classed properties were correctly valued and classified and 3 of the 4 properties, which were wholly in farm, needed further review. Subsequent to information received by the Assessor, it was found that income was insufficient to maintain farm class for 2010. Three of the wholly classified as farm properties have been declassified for 2010. The remaining one property which is wholly in farm for 2009 was found to be correctly classified for 2010. It is the Assessor's opinion that the Appellant's concerns regarding the equity of farm class on Senanus Dr. has [sic] been resolved by the 2010 Assessment Roll.

[27] With respect to the last point made by the Assessor in the above-quoted extract, the Appellant says that even if it could be said that the Appellant's concerns about equity will be addressed in 2010 through a series of declassification decisions, the inequity remains in place for the 2009 assessment year.

[28] As I previously observed, the impact of "farm" classification on value determination for taxation purposes is significant since "farm" land is valued at scheduled rates rather than at fair market value. The Appellant has provided evidence – and the Assessor has not affirmatively contradicted this evidence – that four of his nearby neighbours have had their lands wholly classified as "farm" land even though, in each case, farming activity (chickens held in chicken coops) only occupies a comparatively small portion of the total land area.

[29] The Board is mandated by section 57(1)(a) to assess whether a particular property's assessment is accurate and derived from a consistent methodology utilized within the relevant municipality or rural area. This is the source of the Board's so-called "equity" jurisdiction. A property may be "inequitably" assessed if its value or classification is "inequitable" when compared to similar properties within the same municipality or rural area. With respect to the question of equity in classification decisions, the Board made the following observations in *Area 19 v. Stewart* (PAAB Decision No. 20002887) (at page 5):

...the [Assessment] Act [through the classification system] specifically authorizes discrimination between properties having different actual uses [and] authorizes municipalities and rural areas to assign different rates of taxation to each different class of property. That is, those Acts specifically authorize discrimination in the treatment of taxpayers based on classification. If the Assessor had no duty to be equitable in the assignment of properties to classes, properties having like uses could be placed in different classes. In that event, properties having like uses would be taxed at different rates. That is, owners of properties having the same actual use would be treated unequally; there would be discrimination between taxpayers within the same class of use. Therefore, the direct effect of a failure to apply a consistent set of criteria to classification, is discrimination in taxation. A power to discriminate must be expressly authorized. The Board was not directed to any provision of the *Assessment Act* that expressly, or even impliedly, authorizes discrimination between taxpayers within the same class of actual use.

The Board finds that assessors are obliged to ensure that properties are classified on a consistent basis within each municipality or rural area.

(see also, *Pugh et al. v. Area 01*, 2009 PAABBC 20090216, at para. 54, stated case appeal dismissed: *Lowan v. British Columbia (Assessor of Area #01 – Capital)* 2010 BCSC 194)

[30] Similarly, in *C & C Holdings Inc. v. Assessor of Area #04 (Nanaimo-Cowichan)*, 2003 BCSC 230, Justice Pitfield of the B.C. Supreme Court stated (at para. 27): “Since classification affects the determination of actual value and, therefore, the amount of the assessment which is defined as the valuation of property for taxation purposes, s. 57 [of the *Assessment Act*] must be construed to require the Board to ensure consistency of classification within a municipality or rural area.”

[31] This is not a case, such as *Nicholls v. Area 15* (2006 PAABBC 20061685), where a property owner whose property clearly did not qualify for even partial farm status, nonetheless asserted an equitable right to farm status since other allegedly non-qualifying properties had been erroneously granted farm status. The Assessor concedes the Appellant is a *bona fide* farmer but also argues that not all of his land is being used for farm purposes. The Appellant does not dispute this latter assertion (although he does say that he is farming more land than he has been given credit for). However, the Appellant also says that his similarly situated neighbours are receiving farm status for *all* of their lands. The Appellant says this state of affairs is inequitable.

[32] The relative impact of obtaining “farm” status for all, rather than simply for a portion, of the land is highlighted in the following table (these data are taken from the Assessor’s “Property Record Cards” appended as Exhibit “E” to the Appellant’s affidavit):

<i>Property Address</i>	<i>Percentage of Land in Farm Class (2009)</i>	<i>Land Area (Acres)</i>	<i>2009 Assessed Value (Land)</i>	<i>Assessed value/Acre</i>
617 Senanus Drive (Appellant’s Property)	53%	3.87	\$1,212,537	\$313,317
629 Senanus Drive	100%	2.00	\$3,520	\$1,760
630 Senanus Drive	100%	4.00	\$2,010	\$502
651 Senanus Drive	100%	2.90	\$5,104	\$1,760
675 Senanus Drive	100%	3.70	\$6,512	\$1,760

[33] The net effect of the Assessor’s decision to leave several of the Appellant’s neighbours within farm class for the 2009 roll year, is to impose a much greater property tax burden on the Appellant for 2009 than is being imposed on those neighbours. It may be fair to say, as the Board observed in *Pugh, supra* (at paras. 55 – 56), that granting “farm” status to a property that does not fully qualify for “farm” status creates an element of unfairness within the property taxation scheme since the differential tax burden is shifted to the fully residential property owners within the municipality. On the other hand, “equity” is determined within a class of comparable properties and, in this case, the parties have defined the appropriate class to be the six hobby farms along Senanus Drive. In my judgment, the Assessor has not acted consistently in the classification of these properties. As Justice Pitfield stated in *C & C Holdings Inc. v. Assessor Area #04-Nanaimo-Cowichan*, 2003 BCSC 230 (at para. 17): “It is an accepted principle of property taxation that taxing authorities must deal even-handedly with all taxpayers in a municipality or rural area and that all taxpayers within a class be treated in the same way.”

[34] The Assessor has known, for quite some time, about the Appellant’s concerns *vis-à-vis* his neighbours’ farm classifications. The Assessor could have issued a supplementary roll for the 2009 assessment year correcting the erroneous classifications for the neighbouring hobby farms that were, apparently in error, wholly classified as “farms” (see *Assessment Act*, section 12). However, the Assessor chose not to do so; instead, the Assessor decided to let the error stand for 2009 and correct it on the 2010 assessment roll. In order to be consistent, the Appellant, it seems to me, should have also received the benefit of this dispensation. I propose to make the enabling order in favour of the Appellant for the 2009 roll year.

[35] I suppose, in order to achieve maximum consistency, the sixth property that was given a “split classification” should also be reclassified to full “farm” status on the 2009 assessment roll, however, that owner did not appeal their assessment and the proper classification of that property is not before me in this appeal. I adopt the comments of my colleague, Board Member Bridal, in *Broadway Properties et al. v. Area 09* (2009 PAABBC 20090187) (at para. 67): “I agree with *Bramalea* and *Apex Self Storage* that where a decision will lead to inequity in any alternative, then it is

preferable to pursue equity for the property under appeal rather than the properties not under appeal. In doing so, *Bramalea* states that “the Board will have done what it can, in the light of its limited powers; it will have enforced the rights of the taxpayer before it”.

THE FAIR MARKET VALUE ISSUE

[36] The Appellant’s principal position was that the entire land component of the property should be classified as “farm” land. Solely on equitable grounds, and only for the purposes of the 2009 assessment roll, I agree that the entire land component should be classified as “farm” land. That being the case, the parties’ dispute regarding the appropriate “split” as between “residential” and “farm” class is moot for this roll year.

[37] The Appellant accepts that the current valuation of the property improvements, namely, \$2,713,000, is accurate. However, in the event that he was unsuccessful in having the land classified wholly with the “farm” classification, the Appellant advanced an alternative argument regarding the correct value (and proper valuation methodology) of the “residential” portion of the total land area.

[38] The “residential” land component is currently assessed at \$1,209,000 whereas the Appellant says that this component should have been valued at the much lower figure of \$385,000. However, the entire land component valuation issue is now moot since all of the land will be valued in accordance with the scheduled rates set out in the *Land Values for Farm Land Regulation*. Therefore, I see no reason to explore this issue further. Any comments that I might make regarding the valuation of the “residential” component would be *obiter dicta* and, equally importantly, would not necessarily have any probative value regarding the value to be ascribed to any residential land component for purposes of the 2010 roll year. The courts generally do not render legal judgments when there is no longer a live issue to be adjudicated. I believe that is a sensible policy to adopt in the administrative decision-making context.

ORDER

[39] The Board varies the decision of the 2009 Property Assessment Review Panel in this matter so that the Appellant’s land is wholly classified as “farm” land (Class 9) and its value for assessment and property taxation purposes shall be determined in accordance with the provisions of the *Land Values for Farm Land Regulation*. The value attributed to property improvements remains unchanged at \$2,713,000. If the parties are unable, within 30 days after the publication of this decision, to agree on land value, the Board will retain jurisdiction to determine that matter.

Decision and Order

http://www.assessmentappeal.bc.ca/decisions/dfull/dec_2006-01-00063_20061637.asp?PrinterFriendly=yes

IN THE MATTER OF AN APPEAL PURSUANT TO S. 50 OF THE ASSESSMENT ACT

CONCERNING:

Berwick Investments Ltd.

APPELLANT

AND

Assessor Of Area #01 - Capital

RESPONDENT

Appeal No.: 2006-01-00063

Refer to as: Berwick Investments Ltd v. Area 01 (2006 PAABBC 20061637)

Date of Decision: October 19, 2006

Property: 01-63-302-36-1820-015
617 Senanus Drive, District of Central Saanich

Heard: By Written Submissions, last received September 11, 2006

Panel: Rosemary Barnes, Panel Chair

Submissions By: Gordon Denford, for the Appellant
Rick McMahon and Diane McWilliams, for the Respondent

INTRODUCTION

[1] The appeal is from the decision of the 2006 Property Assessment Review Panel (the Review Panel). The Review Panel determined the assessed value of the land at \$2,126,000 and improvements at \$2,298,000 for a total assessed value of \$4,424,000.

[2] The Appellant is the owner of an oceanfront residential property located at 617 Senanus Drive in the District of Central Saanich on Vancouver Island, BC (the Property). He contends that the assessed value of the improvements are too high and should be reduced to the 2005 improvement value of \$1,828,000 or, alternatively, should be reduced to be more consistent with those of his neighbours. The Assessor says the value determined by the Review Panel should be confirmed.

ISSUES

[3] The issues are:

- What is the actual (market) value of the Property as of July 1, 2005?
- Is the assessment fairly applied in a consistent manner when compared to similar properties in the municipality?

[4] The Board is required to determine whether the Property has been assessed at actual value. Actual value means market value. The Board must value the Property as of July 1, 2005, in its condition as of October 31, 2005 (*Assessment Act*, section 18).

[5] The Board may also determine whether the assessment is equitable. Section 57(1) allows the Board to "ensure accuracy and that assessments are at actual value applied in a consistent manner in the municipality or rural area".

DESCRIPTION OF THE PROPERTY

[6] The Property is described as an irregular shaped oceanfront acreage of approximately 3.87 acres in size situated on the west side of the Saanich Peninsula on Henderson Point. The lot has approximately 429 feet of south facing water frontage. There is a moderate slope from the road to the building site and is then terraced down to a 30 foot bank onto a rocky beach. The building site is level with extensive landscaping and site development.

[7] The Property is improved with a 6,008 square foot, architecturally designed, single family dwelling built in 1989 using contemporary design and high quality finish. The overall design and character of the house was built to accommodate the

marine views and southern exposure. It was noted that the owner had refused physical access for a 2006 site inspection; therefore the description of the Property had been taken from a 2003 site inspection. BC Assessment's appraisal report stated that the depreciated cost to build the dwelling would range between \$300 and \$350 per square foot.

EVIDENCE AND SUBMISSIONS

[8] Mr. Denford, the Appellant, provided a written submission to the Property Assessment Appeal Board (the Board) on August 24, 2006. The Respondent provided an appraisal report by Diane McWilliams dated August 25, 2006 and a written rebuttal by Rick McMahon on September 11, 2006.

[9] Ms. McWilliams, an appraiser employed by BC Assessment, submitted an appraisal report in which she used the direct comparison approach to value the Property. Because there are no comparable sized vacant land sales in the South Island Region, and using the land residual method is considered to be too subjective in this case, Ms. McWilliams did not use the cost method in her appraisal of the Property.

[10] In her direct comparison approach, Ms. McWilliams provided market evidence of four sales, located in the neighbourhood. Three of these sales are located on the same street as the property under appeal. The sales ranged in price from \$1,780,000 to \$5,000,000. Ms. McWilliams adjusted the sale prices for time of sale, site size and water frontage, as well as for the age, size and quality/condition of the dwelling. She also applied adjustments to account for differences in garage versus carport, basement finishing, outbuildings, yard improvement, waterfront development and foreshore improvements. Ms. McWilliams based her time of sale adjustments on a time adjusted sales analysis of multiple listing residential statistics comparing changes in market value between 2004 and 2006. The adjusted sale prices ranged from \$4,495,400 to \$4,705,325. Ms. McWilliams concluded a value for the Property as of July 1, 2005 of \$4,500,000.

[11] Ms. McWilliams also referred to an additional sale at 568 Senanus Drive that had recently come to her attention. It was listed for \$5.9 million in April 2006 on the multiple listing service and had sold on July 14, 2006 for \$4.9 million. This property consists of 5.94 acres of north facing waterfront with 794 feet of foreshore. It is improved with a 4,800 square foot house with a 2,500 square foot basement and was built in 1984. There is also a guesthouse, caretaker cottage, two boathouses, tennis court and three large storage buildings on the site. In her opinion, this sale supports the assessed value of the property under appeal.

[12] Ms. McWilliam's report noted that the Property was for sale on the open market in September 1998 for \$4,000,000, in March 2001 for \$4,250,000, in June 2003 for \$4,675,000 and in June 2005 for \$6,450,000. It was pointed out that each listing significantly exceeded the assessed values of the Property.

[13] Mr. Denford provided the Board with his Curriculum Vitae which set out his qualifications regarding land development and market evaluations. He noted that his fifty year career included all phases of construction and land development including single and multi-family residential, commercial and institutional buildings. He has also been consulted by both the provincial and federal governments and many major appraisers in the City of Victoria.

[14] Mr. Denford contended that the substantial annual increase in the Property's improvement value over the past three years is unjustified and is inconsistent with those of other new waterfront homes. He criticized the methods used by BC Assessment in order to arrive at their evaluations. Mr. Denford provided copies of BC Assessment 2006 "Property Record Cards" for his property at 617 Senanus Drive; as well as for 629 Senanus Drive, 568 Senanus Drive and 8080 McPhail Road. He explained that BC Assessment uses a "Green Manual" produced in the 1970's, and last updated in 1992, to assign a manual class to all residential buildings. He noted that the base rate was the same for all the properties, but questioned how this base rate was chosen. Mr. Denford said that the base rate is then applied to the house square footage, etc. and a total base manual replacement cost (MRC) is calculated. The base MRC was then increased by 40% in the assessment for his property and for that of 8080 McPhail to arrive at an adjusted MRC. It was 0% for 629 Senanus and 20% for 568 Senanus. He submitted that the source of this percent adjustment for quality is not known and, in his opinion, may be subjective. Mr. Denford compared his 16 year old home with dated kitchen and bathrooms to 8080 McPhail which is brand new and top quality in every respect. He also noted that 629 Senanus has been recently renovated with substantial additions.

[15] Mr. Denford concluded that the methods used by BC Assessment; an outdated green manual and two subjective multipliers for updating costs and the level of quality, would not be acceptable in the real world of buying, selling and financing property.

[16] He stated that his property has been on the market for the past 7 years. The first 5 years, it was priced at \$3.5 to \$4 million with no success. In his opinion, some of the drawbacks that have affected its marketability are:

- Lack of municipal water and wells that have become contaminated.
- Lack of an ensuite bathroom in the master bedroom.
- Multiple levels – i.e. the main floor has nine different levels, each separated by stairs with four risers.
- It is an open plan with floor to ceiling glass across the front perimeter which raises privacy concerns.

[17] Mr. Denford says that, although he does not have a particular desire to sell his home; for estate purposes and given the type of buyers roaming out there he has raised his price several times just in case the one buyer will come along who loves it as much as he does and is willing to pay the price whether it is "market" or not.

[18] Mr. Denford provided a comparison list of six of the top waterfront homes currently listed for sale in Victoria. He also included 629 Senanus, 8080 McPhail and the property under appeal. Mr. Denford compared the assessed values (land, improvement and total), finished square footage including the basement and boathouses, date of construction, and listed price, where applicable. He calculated a per square foot assessed improvement value for each of the properties. Mr. Denford submitted that these values vary wildly, with his property having the highest per square foot value even though it is the second oldest home and is located in an area with no services.

[19] In conclusion, Mr. Denford asked the Board to reduce his 2006 assessed improvement value to the 2005 figure of \$1,828,000 or, alternatively, roll it back to the same level accorded his neighbours.

[20] In his written rebuttal, Mr. McMahon, Acting Deputy Assessor, replied to Mr. Denford's criticism of BC Assessment's valuation process. He pointed out that Mr. Denford's improvements were valued by a qualified appraiser using a mass appraisal model which has been uniformly delivered for all improvements in the jurisdiction and which had been proven through many assessment roll quality tests as being accurate. As for Mr. Denford's comments that the methods used by BC Assessment "would not be acceptable in the real world", Mr. McMahon submitted that the role of BC Assessment under section 19 of the *Assessment Act*, in part, is to determine the actual value of land and improvements and enter the actual value on the roll. In his opinion, the valuation process has been proven year after year as being accurate and equitable based on the current market sales and trends and does indeed determine actual value of land and improvements.

[21] As to why Mr. Denford's property has not sold, Mr. McMahon stated that every listing of the Property has historically been approximately two times the actual value on the assessment roll, which suggests that the market is unwilling to pay an inflated price.

[22] In reference to Mr. Denford's comparison list of waterfront homes, Mr. McMahon contended that the accuracy of using information from a listing is doubtful; hence the conclusions drawn may not be correct. Further, he pointed out that the listing is an asking price and not a sale price. Mr. McMahon stated that Mr. Denford included housing stock in different areas of the Capital Region which may have different market forces at work in the marketplace. Further, he noted that Mr. Denford attempted to draw comparisons to the improvements only, which is not the focus of the appeal. Total market value including both the land and the improvements is the mandate of BC Assessment. In Mr. McMahon's opinion, Mr. Denford did not provide any market evidence and the best evidence is the market evidence put forward by the Assessor.

[23] Mr. McMahon submitted that the Assessor's opinion of value is supported by a comprehensive appraisal report which includes evidence of fact and uses adjustments which are reasonable and supported by fact and expert opinion.

[24] On behalf of the Assessor, Mr. McMahon asked the Board to confirm the Review Panel's determination of value for the 2006 roll.

ANALYSIS AND DECISION

What is the market value of the Property as of July 1, 2005?

[25] Section 19 of the *Assessment Act* defines actual value as the market value of the fee simple interest in the land and improvements. The Board in determining actual value typically gives significant weight to relevant evidence from the marketplace.

[26] The only market evidence before me is that provided by Ms. McWilliams. She analyzed four sales, all from the immediate area, adjusting them to reflect differences between them and the property under appeal. I am satisfied that the adjustments were reasonable and based on market data and appraisal experience. The recent sale at 568 Senanus Drive was not adjusted for differences between it and the property under appeal. However, I find that it provides supporting evidence of market value for waterfront properties in the immediate area.

[27] Mr. Denford provided "listing evidence" which is not "market evidence". Buyers and sellers in negotiation will decide what the market will bear.

[28] Mr. Denford contended that the marketability of the Property is affected by several drawbacks but he did not provide any market evidence to support a reduction in value for these negative attributes.

[29] Mr. Denford had concerns with the increase over the past three years in the assessed improvement value of the Property.

[30] The distinction between land and building values in the assessment roll often causes property owners to dispute one or the other of these values without consideration for the total assessed value. However, section 57(1)(b) of the *Assessment Act* requires the Board, when considering whether land and improvements are assessed at actual value, to consider the total assessed value of the land and improvements together. To reduce the improvement value, the Board would have to have evidence to support reducing the total value.

Is the assessment applied in a consistent manner when compared to similar properties in the municipality?

[31] In addition to the requirement to determine actual value, section 57(1) of the *Assessment Act* gives the Board the discretionary power to re-open a property's assessment to ensure it is accurate and "assessments are at actual value applied in a consistent manner in the municipality or rural area".

[32] Mr. Denford asked the Board to reduce the assessment of the Property in order to be consistent with those of other newer waterfront homes.

The principle of equity requires that similar properties be valued on a similar basis and that differences between them be adjusted for based on market evidence and appropriate appraisal judgement. I find that the evidence does not support a conclusion that the Property is assessed inequitably in comparison to similar properties in the area.

CONCLUSION

[33] I find the actual or market value of the Property as of July 1, 2005 to be \$4,424,000 with \$2,126,000 attributed to the land and \$2,298,000 attributed to improvements. I also find the assessment of the Property has been fairly applied in a consistent manner when compared to similar properties in the municipality.

ORDER

[34] The Board confirms the decision of the 2006 Property Assessment Review Panel as follows:

Roll No. 01-63-302-36-1820-015:

Land:	Class 1 - Residential	\$	2,126,000
Improvements:	Class 1 - Residential	\$	2,298,000

Total Assessed Value: \$ 4,424,000

Decision and Order

http://www.assessmentappeal.bc.ca/decisions/dfull/dec_2003-01-00058_20031221.asp?PrinterFriendly=yes

IN THE MATTER OF AN APPEAL PURSUANT TO S. 50 OF THE ASSESSMENT ACT

CONCERNING:

Assessor Of Area #01 – Capital

Heather R Berrang

APPELLANT/

RESPONDENT

Appeal Nos.: 2003-01-00058; 2003-01-00083

Refer to as: Berrang v. Area 01 (2004 PAABBC 20031221)

Date of Decision: January 14, 2004

Property: 01-63-302-36-1823-000
643 Senanus Drive, District of Central Saanich

Heard: October 20, 2003 at Victoria

Panel: Rob Fraser, Panel Chair

Appearances: Gordon Denford, Agent, for the Appellant
Guy McDannold, Legal Counsel, for the Respondent

INTRODUCTION

[1] The appeals are from the decision of the 2003 Property Assessment Review Panel.

[2] These appeals are part of a larger number of appeals for properties located on Senanus Drive filed by both the owners and the Assessor. In an effort to find resolution to the major issues, the owners and the Assessor selected this property to go to hearing.

[3] The owner complains about the quality of their water, which is supplied by a well. In the owner's view, chronic problems with the quality and quantity of potable water so impacts the property value that the assessed value should be frozen at their 2002 levels until such time that the municipality of Central Saanich has a solution in place. The owner asks that the 2003 assessed value be reduced to the 2002 assessed level. Generally, the Senanus owners propose this as the assessment solution for all of their properties until the water problem is rectified.

[4] The Assessor accepts that there is a real or apparent problem with the water to the extent that the market recognizes it as a negative factor. In spite of this, the Assessor believes the 2003 assessment is below market value and the assessment is not equitable with other similar properties. Based on detailed appraisal evidence, the Assessor asks the Board to increase the 2003 assessed value. As well, the Assessor asks the Board to determine a formula for resolving the other appeals from Senanus Drive, based on recognition of the water problems, plus higher land values.

ISSUES

[5] The issues the Board must decide are:

- Is the assessed value at market value or is the actual value above or below the assessed value?
- If the actual value is above the assessed value, is the new proposed value equitable?

[6] The *Assessment Act* says actual value "means the market value of the fee simple interest in land and improvements". Section 57 of the *Act* sets out the Board's jurisdiction to find actual value and ensure equity in assessments:

57 (1) In an appeal under this Part, the board

- a. may reopen the whole question of the property's assessment to ensure accuracy and that assessments are at actual value applied in a consistent manner in the municipality or rural area;

THE PROPERTY

[7] The property is located on Henderson Point, located on the west side of the Saanich Peninsula. The lot is a rectangular shaped 2.85 acre parcel with approximately 150 feet of south facing water frontage. The improvements consist of an architecturally designed home built in 1952, renovated in 1989, plus other improvements consistent with this quality of residential property.

EVIDENCE & PRELIMINARY FINDINGS OF FACT

[8] Gordon Denford and Peter Berrang gave evidence for the Appellant. Dianne McWilliams, an appraiser with the Capital Assessment Office gave evidence for the Assessor. Ms. McWilliams has experience in valuing waterfront properties, including ones in the subject property's market area.

[9] Mr. Denford produced as Exhibit No. 1, a binder of 68 pages containing documents relating to the history of the water problems for the residents of Senanus Drive. The Assessor does not dispute there is a problem obtaining adequate quantities of potable water and accepts that the market recognizes this as a negative feature. I find that there is clear evidence that the either the lack of adequate potable water or the perception of chronic problems in obtaining potable water negatively impacts the market value of this property.

Actual Value

[10] Mr. Denford did not provide any evidence of actual value, such as an appraisal or other opinion of value. He stated that given the uncertainty of the water supply and no likelihood of a solution, such as joining the municipal water system, the actual value should be frozen at the 2002 level. I find that the Board lacks the jurisdiction to freeze assessments at any particular level. The *Assessment Act* directs the Board to determine the actual value for the property for the year under appeal, and there is no legislated provision that gives the Board the jurisdiction for this or future assessment years to freeze the assessment at some value that may not be the actual value.

[11] Mr. Berrang provided his recollections of the purchase of the subject, a comparable used in the Assessor's valuation analysis. He said he was out of the country when the purchase was consummated, his wife made the decision to buy, and he used a local realtor and lawyer to effect the purchase. He claims he was not an informed purchaser, and the quantity and quality of water was not disclosed. As well, he was not aware of any restrictions in the zoning. This contrasts somewhat with the evidence of the collapsed offer for Mr. Denford's property, as detailed on pages 35 to 41 of Exhibit No. 1. There, the purchaser exercised due diligence and on the basis of investigations collapsed an offer to purchase based

on difficulty in obtaining potable water, plus other factors. I find it odd that in a transaction involving both a realtor and a lawyer that Mr. Berrang can claim he was not sufficiently informed, when he had the same opportunities for disclosure as another potential purchaser for a property on the same street. I find little in Mr. Berrang's evidence useful in reaching a decision on the 2003 actual value, other than he provides an indication he may have paid at the top of the range of possible purchase prices.

[12] Ms. McWilliams produced as Exhibit No. 2, an appraisal of the property. She concludes the actual value as of July 1, 2002 is \$1,476,000 in contrast to the assessed value as of the same date of \$1,197,000.

[13] Ms. McWilliams relied on the direct comparison approach, separating her analysis into two segments. She first relied on the sales of four waterfront properties including the sale of the subject, all located on Senanus Drive, and concluded a value of \$1,476,000 appropriate for the subject. Next she analyzed four sales of four other waterfront properties located on the west side of the Saanich Peninsula, and concluded a value of \$1,723,000. She attributed the difference of \$250,000 to the actual problems associated with obtaining potable water, and any stigma in the market arising from this problem. Ms. McWilliams believes this method is superior to applying a cost to cure adjustment of \$50,000, a figure found in Exhibit No. 1.

[14] For three of the Senanus Drive properties, Ms. McWilliams adjusted the sale prices for time of sale, size of waterfrontage and quality, lot size, and differences in improvements, as appropriate. The time adjustments were 23% for Sales No. 1 and 2, 29% for Sale No. 3, and no time adjustment for Sale No. 4. For the sale of the subject, which occurred in March of 2002, Ms. McWilliams only adjusted for time of sale since there were only minimum changes to the property from the time of sale to the valuation date. Ms. McWilliams said the basis for her time adjustments were monthly Multiple Listing Service (MLS) average sale prices, which included both vacant and improved non-strata waterfront properties. She conceded that there may be a huge variation with the average for each month and, until prompted, appeared uncertain of the derivation of these statistics. Due to the mix of undifferentiated property types, the potential for variability and Ms. McWilliams lack of familiarity with the derivation of the statistics acquired from a third party, I cannot give full weight to the absolute values of her time adjustments.

[15] The adjustments for each sale are significant. For the sale of the subject, the only adjustment was a positive 23% for time of sale. For Sales No. 2, 3, and 4, Ms. McWilliams' total adjustments' (which are actually net adjustments) are 99%, 106% and 46% of the sale prices respectively. Based on 'gross adjustments', the adjustments for Sales No. 2, 3, and 4 are 118%, 110%, and 50%. Ms. McWilliams gave most weight to the sale of the subject, which required the least adjustments (time only) and produced an estimate of actual value of \$1,476,000. I believe that the quantum of the adjustments calls into question the comparability of at least three of the sales comparables.

[16] For the other four sales in her analysis, Ms. McWilliams made adjustments for time of sale, site size, waterfrontage and quality, and for differences in the improvements. The time adjustments were 7% for Sale No. 5, 8% for Sale No. 6, 4% for Sale No. 7 and 0% for Sale No. 8.

[17] Ms. McWilliams calculated the 'total adjustments' (net adjustments) as 14%, 32%, 14% and 121% for Sales No. 5, 6, 7 and 8 respectively. The 'gross adjustments' are 54%, 41%, 23% and 121% respectively. Relying on these four sales, Ms. McWilliams estimated the actual value of the subject to be \$1,723,000. I believe that the quantum of adjustments indicates at least one if not three of these sales significantly lack comparability with the subject.

[18] The difference of approximately \$250,000, Ms. Williams explained, is attributable to the availability of potable water for Sales No. 7, 8, 9, and 10 as compared to the stigma attached to the sales from Senanus Drive. Although I found difficulty accepting that some of the sales are comparable to the subject property due to the necessity for large adjustments, I find that the difference between the two analyses is reliable since Ms. McWilliams used the same process for both. She relied on the direct comparison approach, and used the same comparative techniques for each sample set, indicating to me that her analysis is consistent between the two sets of data. The result of her analysis is the identification of the reason for the difference between the two sets of properties, which she concludes and I agree, is attributed to the difficulties in obtaining potable water. Therefore, I find that the subject suffers from a stigma due to the problems associated with potable water, and the best market evidence before me indicates the quantum of the stigma to be in the range of \$250,000.

[19] Mr. Denford raised the problem of fire protection as a further factor that the Assessor ought to consider in determining the actual value. Ms. McWilliams said this may be a factor but she has no specific market evidence. In the absence of any evidence, I find I cannot attribute any value to lack of fire protection without being speculative and arbitrary.

[20] Mr. Denford raised the issue of restrictive zoning. The zoning for the Senanus Drive properties is RE-3, Rural Estate (water). This zoning restricts the site coverage to 5%, with a minimum lot size of 2.0 hectares (4.9 acres). Ms. McWilliams believes the zoning for at least one of her comparables is the same and the others are different, being RE-2, which is probably a neutral valuation factor. I find that even if the zoning is a market factor, neither party produced sufficient evidence permitting me to establish a suitable adjustment. For the minimum lot size, the zoning permits a site coverage of over 10,000 square feet which may not impact a 2.0 hectare lot. However, if a lot is smaller and non-confirming to size, then the impact might be significant, but without evidence any adjustment is simply speculative and arbitrary.

[21] I find that Ms. McWilliams produced the only reliable evidence for actual value, and that she considered as best she could the available market data. I have doubts regarding the accuracy of her absolute final values, since few of the sales used in the analysis are truly comparable because of the magnitude of the adjustments, and that the usefulness of her best comparable is limited due to my concerns regarding the calculation of the time adjustments. However, I am satisfied that the relationship between the two analyses is sound, since she used the direct comparison methodology in both, applying the same analytical process to each set of sales.

Equity

[22] In Exhibit No. 3, Ms. McWilliams relied on two approaches to determine her opinion of the equitable value of the property. In her primary approach, she relies calculates the median Assessment to Sales Ratio (ASR) and the Coefficient of Dispersion for sales of improved Central Saanich waterfront properties for the quarter before and the quarter after the valuation date of July 1, 2002 (February 2002 to September 2002). In her analysis, Ms. McWilliams attempts to compare only properties that are in a similar class, and restricts her analysis to jurisdiction 302, which includes the Senanus area. Based on a total of seven sales, including one from Senanus Drive, she finds the median ASR to be 95% with a COD of 8.63%. She says these measures exceed the standards set by the International Association of Assessing Officers (IAAO), and "illustrates that the Residential waterfront assessment in the District of Central Saanich are at 'actual value' and are uniform in their application".

[23] Ms. McWilliams said it is difficult to compare waterfront with waterfront, but since they compose a class of expensive properties, it was reasonable to compare them with each other. She said the IAAO did not set any minimum sample sizes when calculating the ASR or COD, and that her sample size would increase if the parameters for time of sale were increased and the median ASR and the COD might change. Since there has been a reassessment of some waterfront properties, the ASRs derived from pre-reassessment sales might not be as accurate as those after, and currently there remain some properties not reassessed.

[24] The sample includes properties as small as 0.21 of an acre to 6.80 acres. Selling prices range from \$415,000 to \$4,250,000 and ASRs ranging from 76% to 105%. Of these, Ms. McWilliams identified the sale on Lawrence at \$2,000,000 (5.62 acres), the sale on West Saanich for \$4,250,000 (6.80 acres), and the sales on Senanus for \$2,150,000 (1.23 acres) as the best equity comparables. All sales occurred in August of 2002. The ASRs calculated from these sales are 100%, 73% and 95% respectively. Since these sales occurred significantly before the setting of the 2003 assessments, and the same holds true for the other four sales, one would predict that if the Assessor gives any weight to sales evidence in setting assessments, that the 2003 assessments should reflect the market evidence. Since this market data was likely used in setting the 2003 assessments, the high median ASR and low COD are not remarkable. Since it is exactly the sales data which forms part of the assessment, I would expect such a result, and the only thing noteworthy are the instances of a 73% and 86% ASR, which means that for two sales the assessments are at odds with the market evidence.

[25] Ms. McWilliams relied on a secondary tool to measure equity. As part of a 2002 reassessment (for the 2003 assessment), each property on Senanus Drive was visited and a base rate per front foot and for acreage derived after considering such factors as the cost to cure the water problem, beach quality, beach access, exposure and easements. This rate was compared with the rate derived from the other waterfront properties in Central Saanich. Her results for Senanus Drive are a front foot rate of \$3,255 based on the PARP's decision and \$3,472 based on her proposed increase. The rate for the other residential waterfront properties is \$4,286 per front foot. Based on this, Ms. McWilliams finds that the difference between PARP's decision and the rest of the waterfront properties is 24%, and between her proposed

increased value is 19%. This means that the proposed values for Senanus Drive are 19% lower than that derived from other Central Saanich waterfront properties, and are less than the 15% difference between Senanus properties and other nearby waterfront properties determined from the direct comparison analysis.

[26] I find this a very crude measure of differences, particularly since Ms. McWilliams said that not all waterfront properties in the municipality have been reassessed. Also, reducing all of the factors influencing value to one measure, value per front foot, introduces a degree of uncertainty, although reflecting one of the most valuable attributes of waterfront property. I find this technique at least points to a regional difference, but is not sufficient to establish an inequity.

[27] Content that her estimated value for the subject from the market analysis of \$1,476,000 is equitable, Ms. McWilliams then adjusts her result by the median ASR of 95% to arrive at a value of \$1,402,200 as the equitable value of the subject.

[28] In closing, Mr. Denford complained that the owner did not have time to get their own appraisal, and was not afforded time to provide an appraisal. During Appeal Management, the appeal manager issued an order on July 18, 2003 for the production of evidence the parties intend to rely on at the hearing. In the same order, the appeal manager set a date for the production of rebuttal evidence, noting that rebuttal is not an opportunity to introduce new evidence. I find the owner had ample time to have commissioned an independent appraisal report, given the time lapse between the date of the order and the date of the hearing. If Mr. Denford is complaining that he did not have time to commission an expert rebuttal report, that is a different matter. However, there was time between the production of evidence and rebuttal to allow for the preparation and production of rebuttal reports, and if that was not adequate time, it was open to either party to apply to the Board for an amendment to the date or the adjournment of the hearing. In the circumstances, I find the owner had the opportunity to produce expert rebuttal evidence. Therefore, I find there is no substance to Mr. Denford's complaint.

[29] In closing, the Assessor argued Ms. McWilliams produced the only reliable evidence for actual value and equity. Based on her findings that the market recognizes a difference of approximately 15% between the actual value of improved waterfront properties in the Senanus area as compared with other similar properties, and her finding that the land is assessed at 19% per front foot than all other residential waterfront lands in Central Saanich, the Assessor asks the Board to increase the 2003 assessment to \$1,402,200.

ANALYSIS

[30] This is not a typical residential appeal, where both sides have opinions of value, and there is a reasonable pool of good comparative market evidence that supports one side or the other. In this case, the Assessor has produced the only evidence for value and equity, and the owner has crafted their case to minimize and discredit that evidence. My decision, then, turns largely on the credibility of Ms. McWilliams, the Assessor's witness, the extent of evidence she produced, and the quality of the analysis she performed. I believe that Ms. McWilliams has done a good job, but the evidence available limited the quality of her analysis.

Actual Value

[31] The owner produced no opinion of market value. Rather, the approach adopted by the owner (and the other owners in the area) was to ask for the 2003 and presumably later years assessments to be frozen at the 2002 assessment levels. I rejected this solution, as the Board is required to find the actual value for the property under appeal, the Board lacks the jurisdiction to place values on assessments not yet under appeal, and it is wrong in law for the Board to make arbitrary and speculative decisions (*Pacific Logging Company Limited. The Assessor for the Province of British Columbia BCSC 1974, Stated Case 99*). Therefore, I cannot find the actual value for the property to be less than the value determined by the 2003 Property Assessment Review Panel, as I have no evidence to support a lower value.

[32] I have two possible alternatives for deciding the actual value. Either the Assessor has substantiated a value higher than the current assessed value, or in the absence of any better evidence, the current assessed value is the actual value.

[33] I appreciate that waterfront properties are some of the most difficult residential properties to appraise. The improvements tend to be unique and waterfront lands frequently differ in topography, quality of waterfrontage, direction of exposure, quality of beach, nearness to public beach access, and other intangibles that make these very special properties. This accounts for the difficulty in finding good comparables, and for the size and subjectivity of the

adjustments. It also makes it difficult to accept as absolute any adjustment for a feature where the element of subjectivity is high.

[34] I am troubled that the large adjustments applied to the sales by Ms McWilliams in the direct comparison approach. Given the magnitude of the adjustments, I conclude that the majority of the sales used differ so significantly from the subject that they lack comparability. However, they make up the available pool of sales near the relevant valuation date and although I cannot give them great weight, they deserve more weight than the other evidence of value. Therefore, I have no choice but to rely on them as the best available evidence.

[35] For the Senanus sales, Ms. McWilliams gives most weight to the sale of the subject itself, which only required an adjustment for time of sale. Because I have doubts about the reliability of the time adjustment, I give less weight to the accuracy of her result. However, I do give some weight to Mr. Berrang's evidence, which indicates to me that he paid at the high end of the range of purchase prices. Therefore, I believe this sale sets the upper possible limit for the actual value of the subject. This is supported by the values found for the other three sales, which all produce estimated of value lower than that suggested by the sale of the subject, although I give them little weight due to their lack of similarity other than location

[36] For the other set, Sale No. 7 stands out as being most similar based on the size of the adjustments, supported by sales 5 and 6 that require larger adjustments. I give more credence to these sales as value indicators because the magnitude of the adjustments is less than those for the Senanus sales, and I accept that if potable water were not an issue, they are the best evidence before me to indicate an actual value for the subject higher than the current assessment.

[37] I find the actual value of the subject to be in the range of \$1,700,000, if the supply of potable water, and the stigma attached to this issue, were not factors in the market place. I find that the actual value of the subject, accounting for the stigma, is less than \$1,476,000 as found in Ms. McWilliams analysis because I cannot accept the accuracy of her conclusion.

[38] Ms. McWilliams analyzed each set of waterfront sales independently from each other, and concluded that there is an approximately 15% or approximately \$250,000 difference attributable to nothing other than the stigma attached to the subject due to the water problem. This amount is the difference between her two conclusions of value. I accept that this is likely a conservative estimate, since I believe her conclusion of \$1,476,000 to be at the high end of the possible range, but reasonable based on the available market evidence. However, there is nothing in Ms. McWilliams evidence to suggest that the participants in the market attribute this value difference to the land only. The direct comparison approach is typically the preferred approach when analyzing residential properties because it best reflects the actions and motivations of the participants in the market. There is no evidence, and it runs counter to common sense, that purchasers tend to separate out the individual cost of the land and the improvements, and then calculate a discount to the land to reflect the problem with the water. Rather it is more likely that the market recognizes that there is a problem with properties on Senanus Drive, since this has been a very public issue over the years, and make a deduction to the total value of these properties in comparison to those on the waterfront with secure supplies of potable water. We don't know whether this amount would have been greater or lesser if another property were analyzed. What Ms. McWilliams did was establish is that a stigma exists and for the subject it equates to approximately 15% of the total value. Based on this evidence, I find it reasonable that the market would make the same proportional discount to the market value of every property so affected. Said another way, the market would adjust downwards by the same proportion any waterfront acreage on Senanus drive, improved or not, by the same amount and not by some percentage of the assessed land value.

[39] I find that it is not necessary to consider the \$50,000 cost to cure adjustment. The market indicates a conservative difference of \$250,000, and any cost to cure is accounted for in that amount. The cost to cure estimate is simply that, the projected cost to provide water through a process rejected by the Municipality, and it is not market based. Given the stigma adjustment is conservative, the magnitude of the values of the Senanus waterfront properties, and the difficulty in determining their actual value, I find it is not necessary to adjust the stigma amount to account for double counting.

[40] I find there is no evidence to support an adjustment due to the lack of fire protection or due to restrictive zoning. Although these may both be factors in the market place, it is not sufficient to simply name them and expect a downward adjustment to follow. To influence the value, the parties must produce some evidence to establish whether the market actually discounts for these factors, otherwise the Board would be arbitrary in making speculative adjustments, and this would be wrong in law (*Pacific Logging supra*). Therefore, these factors are given no weight in my final decision.

[41] During appeal management, the parties expressed a hope my findings might result in a formula to resolve the balance of the appeals from Senanus Drive. I believe that the Assessor has established that the conservative market impact of the stigma is approximately 15% of the total value of this property if free from stigma, and this is a reasonable factor to apply to the other waterfront properties on Senanus Drive under appeal.

Equity

[42] I have found that the Assessor's proposed actual value is not supported by the evidence, and that the actual value is lower. It follows that I cannot accept the Assessor's calculation of an equitable value of \$1,402,000, since the starting point was the proposed new value.

[43] I am not satisfied that the Assessor established that the properties on Senanus Drive in general, and the subject in particular, are assessed inequitably when compared to other waterfront properties in Central Saanich. I give little weight to the ASR and COD study, since only three of the sales used approach comparability with the subject, and I am not convinced that the assessments were not a product of the exact sales data they were compared to for establishing the ASRs and COD. As well, a sample size of three is likely too small to accurately use for a median ASR. The secondary approach demonstrates a difference between the assessed land values for Senanus and non-Senanus waterfront properties. The results of this approach support my finding that the stigma adjustment of 15% applied to the subject may be conservative, but I am not convinced that the results lead to a conclusion of inequity.

[44] I conclude from the evidence that for equity purposes, the Senanus properties fall into a class of their own. The test for equity is the comparison of similar properties within the same class. Class, for an equity discussion, is not the prescribed property class, but that group of properties that share common features (*Assessor of Area 09-Vancouver v. Bramalea Limited (Trizec Equities Limited) and T. Eaton Company* (SC277 1990)). The Senanus properties stand out from other waterfront acreages, other waterfront properties, and from all other residential properties in the area, because they suffer from the stigma attached to the provision of potable water. Ms. McWilliams established that the market values the negative attributes of the Senanus properties at a rate some five times greater than the estimated cost to cure, not based on any rational estimate, but on the intangibility of stigma. No other waterfront properties in the area were identified as sharing this stigma, or identified as suffering from any other stigma. I find that the Senanus properties, because of their unique situation, are for equity purposes in a class unto themselves, and equity comparisons outside of this area become unreliable due to the problem of accounting for the water problem.

Conclusion

[45] I find that the evidence does not support an increase in the actual value over that determined by the Property Assessment Review Panel. I find that the evidence suggests the value found by the Review Panel is within the range of market value, since the evidence establishes the difficulty in finding good comparables, and that the analysis of comparable sales requires large adjustments that are difficult to support. Actual value is always a range of values and not an exact or precise number, and in this case, the range for actual values is large because of the difficulty in finding precise evidence.

[46] I find that for purposes of equity, Senanus waterfront properties form a class for comparative purposes. I have no reason to believe that the decision from the 2003 Property Assessment Review Panel is not equitable when compared to the other properties in its class, being those other waterfront properties sharing a similar stigma related to the supply of potable water.

ORDER

[47] The Board confirms the decision of the Property Assessment Review Panel as follows:

Roll No. 01-63-302-36-1823-000:

Land:	Class 1 - Residential	\$	900,000
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Improvements:	Class 1 - Residential	\$	297,000
Total Assessed Value:		\$	1,197,000

Decision and Order

http://www.assessmentappeal.bc.ca/decisions/dfull/dec_2003-01-00021_20040298.asp?PrinterFriendly=yes

IN THE MATTER OF AN APPEAL PURSUANT TO S. 50 OF THE ASSESSMENT ACT

CONCERNING:

William T Graham

Charlotte M graham

Russell B Robertson

Assessor Of Area #01 - Capital

APPELLANTS/RESPONDENTS

Appeal Nos.: 2003-01-00021; 2003-01-00085

Refer to as: Graham et al v. Area 01 (2004 PAABBC 20040298)

Date of Decision: May 10, 2004

Property: 01-63-302-36-1824-020
651 Senanus Drive, District of Central Saanich

Heard: By Written Submissions, last submission received April 16, 2004

Panel: John Bridal, Panel Chair

Submissions By: William Graham, for Charlotte Graham William Graham and Russell Robertson
Jim Stewart, for the Assessor

INTRODUCTION

[1] These appeals are part of a larger number of appeals for properties located on Senanus Drive filed by both the owners and the Assessor. There are two main bases for these appeals: (a) determining the value effect of a poor quality water supply, and, (b) equity concerns. The water issue was put to a test case and was decided upon by the Board on January 14, 2004 [*Berrang v. Area 01* (2004 PAABBC 20031221)]. However, this decision has since been appealed as a Stated Case to the Supreme Court of British Columbia. The Assessor had requested that this appeal be put on hold until the *Berrang* case was decided upon, but has since agreed to continue with it, with the appeal's scope limited to the heritage concerns. This decision is limited only to evaluating any potential value implications from the existence of a First Nations

shell midden on the Grahams' property; the final value of the property will be determined upon the *Berrang* Stated Case decision.

BACKGROUND

[2] The appeals are from the decision of the 2003 Property Assessment Review Panel. The property, owned by William and Charlotte Graham, is a 2.9 acre lot at 951 Senanus Drive, located on Henderson Point on the western shore of the Saanich peninsula, one kilometre from Brentwood Bay. The property has 145 feet of ocean waterfront and is improved with a 54 year old log cabin. The southeast corner of the property encompasses a portion of Recorded Archaeological Site No. 57, a First Nations shell midden. The Recorded Site encroaches on 40 feet of the waterfront to a depth of approximately 20 feet up from the waterfront. Mr. Graham states that this midden significantly affects the future developability of his property and thus detracts from its market value. The Assessor counters that this midden's size and location does not interfere with the development potential of the property and thus it has no significant impact on the property's value.

ISSUE

[3] The issue is:

- What effect, if any, does the existence of the First Nations midden have on the actual value of this property?

EVIDENCE AND SUBMISSIONS

[4] The parties' agree upon the presence of Recorded Site No. 57 on the southeast corner of the property. The Assessor has provided maps from the BC Archaeology Branch outlining the dimensions of Recorded Site No. 57 overlaid on a map of the subject and its neighbours. The parties disagree on the impact that this archaeological site may have on the property's market value.

Owner's Submission

[5] Mr. Graham provided two written submissions, dated April 16, 2003 and March 24, 2004. His submissions explain the site's archaeological status, listing the artifacts found at various locations on the site and outlining a 1993 tribal elder's account of a burial there. He provides a letter from John Elliott, Chairman of the Saanich Native Heritage Society, stating their wish for the burial site to remain as undisturbed as possible and expressing their desire that "if there are plans to change the present status of this area, we would like to be informed". Mr. Graham interprets this to imply that any development may be subject to expensive constraints imposed by the Archaeological Heritage Branch.

[6] Mr. Graham points out that his property is the only one on Henderson Point that is not fully developed, with only a 3 room log cabin on the site. He submits that his property is "tainted" and because this detrimental condition would have to be disclosed to any prospective buyer, it will have a negative impact on market value. In support of this, he provides a letter from Quentin Mackie, Ph.D., an Assistant Professor in the University of Victoria's Department of Anthropology, who states that "the presence of this [archaeological site] on your property may constrain your ability to develop your property, cause you considerable costs in such development, or both."

Assessor's Submission

[7] Jim Stewart, AACI, P.App., a Senior Appraiser with British Columbia Assessment, provided a written submission dated April 8, 2004. Mr. Stewart points out that the property's zoning requires a rear yard setback of 7.5 metres and a watercourse setback of 15 metres, and thus any future development of the property would not be affected by the Recorded Site, since the normal setback required for any new development would place it outside the Recorded Site. Mr. Stewart recognizes that larger Recorded Sites on other properties in BC have interfered with development and significantly increased redevelopment costs, in particular where the new structures required excavation within the Recorded Site. However, he points out that there are many waterfront lots in the subject's vicinity with similar Recorded Sites and states that he is unaware of any similar case that has resulted in significant additional redevelopment costs.

[8] Mr. Stewart offers a comparable property, 875 Towner Park Drive, as evidence that the market did not discount value for a similar shell midden. The Towner Park Drive property is smaller than the subject, but similar in shape and with a waterfront section that is also partially encroached upon by a Recorded Site. This property was assessed at \$609,100 and sold two months after the assessed valuation date for \$650,000, with the existing dwelling demolished and the site redeveloped. Mr. Stewart submits that there was no significant impact on the property's value from the existence of the midden.

[9] Finally, Mr. Stewart replies to Mr. Graham's speculation that there are other middens on the property beyond the boundaries of Recorded Site No. 57. Mr. Stewart states that BC Assessment must rely upon the records of the Archaeological Branch in making their valuation decisions. He concludes that the Recorded Site No. 57 would have no impact on a redevelopment of the site or reduce the utility or enjoyment of the property in any way.

ANALYSIS

[10] These appeals are not typical, in that there is only one very specific appraisal issue under analysis and my decision will not determine the actual value of the property, but only the possible effect of this one issue. The evidence submitted by the parties is limited as well. Neither side has presented an opinion of value, only support for their specific position on this one issue. Mr. Stewart has provided the only specific valuation evidence, while Mr. Graham has provided only evidence to support his position regarding limited redevelopment potential, but no evidence to quantify the effect of this. My analysis first outlines the basis for the valuation of detrimental conditions in general and then examines the application of this to the subject specifically.

Evaluating the Effect of Detrimental Conditions

[11] In *Hackett v. Area 09* (2002 PAABBC 20016551), the Assessor argued that the valuation of properties impacted by archaeological issues is similar to that for site contamination. I agree and find that similar valuation principles are applicable for properties experiencing any detrimental condition or impairment.

[12] *Sobic v. Area 22* (2003 PAABBC 20030822) outlined valuation techniques for quantifying the effect of contamination on property value and explained why property impairment is a particularly difficult appraisal assignment. Some aspects can be quantified quite readily, such as investigation costs, while others are more elusive, such as the possibility of long-term effects on value due to stigma. Stigma, in this sense, refers to a property being viewed negatively by the market, and thus worth less, even though the property may offer no limitations in terms of current or future use or satisfaction.

[13] The *Sobic* decision outlined a lifecycle for the effect of property impairments, from the book *Real Estate Damages – An Analysis of Detrimental Conditions*. When a detrimental condition is first discovered, the impairment's extent is unknown and uncertainty is at its highest level, with the property suffering the greatest loss in value during the impairment lifecycle. Investigation and assessment of the impairment lessens uncertainty, reduces risk, and likely increases value from the pre-assessment stage. Once the property is determined to be unimpaired, it should return to its unimpaired value. However, in some situations, the stigma of a property impairment may continue to influence value even beyond the presence of any observable impairment or adverse influence on use. The model presented in this book characterizes archaeological conditions as a permanent impairment, meaning that there may be an immediate detriment to value upon discovery and, depending on the circumstances, it may represent an on-going detriment with a long-term negative impact that cannot be mitigated.

[14] The standard to be applied in evaluating the potential effect of the impairment will be that stated in *Assessor of Area No. 10 v. Haggerty Equipment Co.* (1997) S.C. 396: "there must be a 'reasonable expectation' before a factor can affect the actual value. The mere possibility that some factor may affect value is not sufficient to either reduce or increase actual value." To reduce a property's value due to detrimental conditions, it must be clearly demonstrated with market evidence that the impairment's effect on value is a reasonable expectation rather than a speculative "mere possibility". The value implications of the property impairment in this appeal will be analyzed based on three categories: assessment costs, use limitations, and stigma.

Assessment Costs

[15] For the subject in this appeal, at least some degree of assessment has been carried out, with the Recorded Site designated and mapped. This reduces uncertainty and risk. While there is the possibility of the property containing as yet undiscovered sensitive archaeological sites that may impact value, there is no persuasive evidence to substantiate this. Because it would be speculative to consider the possibility of additional assessment costs, this potential value impact will not be considered further.

Use Limitations

[16] The property has no use limitations in its current use. However, Mr. Graham submits that the property is ripe for redevelopment as a new single-family residence. Mr. Graham's submissions highlight difficulties that can occur in attempting to develop properties impacted by archaeological sites. Mr. Stewart's submission counters with evidence outlining why this specific property will not suffer any value detriment as a result of the midden.

[17] Mr. Stewart's argument regarding setback requirements and the site's buildable area is compelling. Because of the setback requirements, building on the Recorded Site would not be allowable even if there were no archaeological implications. This lessens the likelihood of the midden impacting residential development on the property.

[18] Mr. Graham points to Mr. Mackie's letter as evidence that future development may be significantly limited. However, there is no evidence provided that Mr. Mackie is an expert on development issues or property valuation, and thus his statement is given limited weight in the analysis. Mr. Graham also refers to Mr. Elliott's letter to indicate potential future resistance to development in the area. However, Mr. Stewart's comparable property on Towner Park Road offers an example of a similar property in the general area where this was not the case. This property has a similar archaeological site and the owners were able to secure a building permit and redevelop the property. I find that the risk of resistance to development is more speculative than probable, and thus find no value loss due to current or foreseeable use limitations.

Stigma

[19] Assessment costs and use limitations represent rational concerns. However, impaired property valuation also considers the possibility of unreasonable or irrational concerns: value loss due to stigma, where an otherwise fully functional property may suffer detrimental value effects solely based on the market's perception of a defect.

[20] Common sense dictates that a purchaser, if given the choice between two otherwise identical properties, prefers an unimpaired property over an impaired one. Thus, a prospective purchaser of an impaired property should only be willing to buy the property at a discount from its unimpaired value. However, this logic assumes that a comparable unimpaired property is available to be purchased; in reality, this may not be the case, especially for unique properties. The Grahams' property is in a rare and limited class, oceanfront land in a desirable area with infrequent sales. Mr. Graham's submission outlines the circumstances of the only property sold in the neighbourhood since 2000, and his explanation appears to highlight a market with strong demand and premium prices. In a buoyant market with limited supply, buyers may be more willing to overlook negative attributes in order to "win" a unique property from competing buyers. The common sense analysis above can be used to justify why an impaired property might suffer a value loss due to stigma, but this equally plausible counter-argument can also explain why stigma may not exist even when an impairment is present.

[21] To prove a value loss due to stigma, market evidence must show it to be a reasonable expectation and not simply a "mere possibility". The *Berrang* decision states that "it is not sufficient to simply name [factors] and expect a downward adjustment to follow. To influence the value, the parties must produce some evidence to establish whether the market actually discounts for these factors, otherwise the Board would be arbitrary in making speculative adjustments, and this would be wrong in law." Mr. Graham alleges that the subject is now "tainted". However, he has provided no market evidence to quantify this perceived loss in value. Without evidence to support this notion, any adjustment made to reflect it would be speculative and arbitrary. Therefore, I have no alternative but to find that there is no value loss due to stigma for this property.

CONCLUSION

[22] Valuing the impact of archaeological impairment is a difficult appraisal problem. The analyst first needs to establish a reasonable expectation of a loss in value, beyond a speculative "mere possibility". Second, market evidence must be provided to quantify any loss. In this appeal, the owner has not achieved either requirement. I find no loss in value due to assessment costs, use limitations, or stigma for this property. While there may be a remote possibility of a value loss due to one or more of these factors, the evidence provided in this appeal is insufficient to support any deduction.

Decision and Order

http://www.assessmentappeal.bc.ca/decisions/dfull/dec_2007-01-00010_20071280.asp?PrinterFriendly=yes

IN THE MATTER OF AN APPEAL PURSUANT TO S. 50 OF THE ASSESSMENT ACT

**CONCERNING:
KAREN V KNOTT**

APPELLANT

AND

ASSESSOR OF AREA #01 - CAPITAL

RESPONDENT

Appeal No.: 2007-01-00010

Refer to as: Knott v. Area 01 (2007 PAABBC 20071280)

Date of Decision: November 07, 2007

Property: 01-63-302-36-1820-012
629 Senanus Drive, District of Central Saanich

Heard: By Written Submissions, last received on August 17, 2007

Panel: Patricia Begg, Panel Chair

Submissions By: Gary Blake, for the Appellant
Mark Townsend, for the Respondent

INTRODUCTION

[1] The appeal is from the decision of the 2007 Property Assessment Review Panel (the Review Panel) which reduced the assessed value of the land to \$3,520 (farm status) and the improvements to 2,796,000 for a total assessed value of \$2,799,520.

[2] The Appellant, Karen Knott, is the owner of a 2 acre residential oceanfront property located at 629 Senanus Drive, Central Saanich, BC (the property). The property is classified as farm and is improved with a high quality single family residence of unusual design. The parties disagreed on the size of the improvements: the Appellant says the size is 8,432 square feet, while the Assessor says it is 8,794 square feet. Ms. Knott contended that the assessment of the property's improvements is too high.

[3] The Assessor contended the assessed value of the property is the market value and requests that the Board confirm the decision of the Review Panel.

ISSUE

[4] The issue is whether the assessed value accurately reflects the market value as of July 1, 2006.

EVIDENCE AND SUBMISSIONS

[5] The following written submissions comprise the evidence and submissions before me:

- Appellant's notice of appeal dated April 30, 2007.
- Assessor's appraisal report dated July 20, 2007.
- Appellant's appraisal report dated August 8, 2007.
- Appellant's response to the AMC dated August 2, 2007.
- Assessor's rebuttal submission dated August 16, 2007.
- Appellant's rebuttal submission dated August 17, 2007.

[6] The Appellant is represented by Gary Blake of Blake Appraisals Ltd. Mr. Blake contended that the Assessor has assessed the property's improvements too high and has failed to consider the water deficiency and poor quality, as well as a number of outstanding defects with respect to the property and the improvements. Also, Mr. Blake says that the Assessor used an excessive replacement cost per square foot rate to determine the value of the improvements.

[7] The Assessor's submission was prepared by Mark Townsend who provided an appraisal report using the direct comparison approach with an opinion of market value for the property of \$4,900,000.

ANALYSIS

[8] Mr. Blake, for the Appellant, provided an appraisal report in which he used a direct comparison of four comparable sales which he adjusted for time, size and condition and he provided an adjusted range of value between \$4,082,000 and \$4,200,000 and an opinion of market value of \$4,100,000. To support his opinion and to provide a reasonable test, he used a direct comparison of nine sales of vacant waterfront properties and he determined an opinion of land value of \$2,200,000. He then concluded a building residual value of \$1,900,000 which he argued supported a replacement cost of \$300 per square foot less 25% depreciation which, in his opinion, is reasonable for the property given its design, quality and condition. He argued the necessity to determine a market value for the land and then determine the value for the improvements because of the necessity to apportion value between land and improvements.

[9] Mr. Townsend, for the Assessor, provided an appraisal report which showed seven comparable sales which he adjusted for time, location, size, quality and condition and he provided an adjusted range of value between \$4,495,000 and \$4,895,000 and an opinion or market value of \$4,700,000. In his report, Mr. Townsend made reference to the high quality of the improvements and noted that the construction industry and BC Assessment's costing manual supported a replacement cost range of \$360 to \$410 per square foot and a depreciated replacement cost value of \$290 which he utilized for comparison purposes in his report. However, he did not provide an opinion of land value and improvement value in his report.

[10] Mr. Townsend argued that to determine land value and derive a residual improvement value is inappropriate in that the requirement is to determine the actual value of land and improvements and the total assessed value of the property. He argued further that Mr. Blake's replacement cost value was not indicative of the high quality of the subject's improvements and was an individual opinion not supported by market evidence. He argued that "buyers and sellers do not normally consider the cost of acquiring a vacant parcel of land, plus the replacement cost of the improvements, less depreciation" and noted that the price obtained for a property in the market may vary significantly from the depreciated replacement cost determined in the cost approach.

[11] The parties disagreed with a number of the comparables and the adjustments used by each. Mr. Townsend argued that seven of Mr. Blake's vacant land sales, 2681 Seaview, 2600 Queenswood, 4627 Ocean Park, 5185 Agate, 5319 Parker, Arbutus and Dolphin were in different areas from the subject and were subject to different market forces and that another at 236 Stevens was lakefront property and not comparable to the subject's oceanfront. He also argued that the Ardmore and Seaview sales occurred outside the time frame having been sold in February and March 2007 and that the comparable at 568 Senanus was not a good comparison due to its recent history of financial difficulty.

[12] Mr. Blake argued that his land value estimate was based on available waterfront land sites in the Greater Victoria area and noted that purchasers normally consider all the relevant information when purchasing a waterfront property.

[13] Mr. Blake argued that he had appraised 568 Senanus for a bank in June 1996 at \$4,184,000 and that it had been listed for 394 days at \$4,900,000, was reduced to \$4,250,000 and subsequently sold in July 2003 for \$3,163,000. He noted further that it had been recently listed for \$5,900,000 and sold in July 2006 after 88 days on the market for \$4,900,000 and he argued that it should be considered.

[14] Mr. Blake argued that three of Mr. Townsend's sales, 535 Senanus, 507 Senanus and 536 Senanus ranged from \$1,780,000 to \$1,850,000 and that they had been given significant upward adjustments making them unreliable. In his report, Mr. Townsend also noted that the sales at 535 Senanus and 507 Senanus were significantly under improved and were representative of a good value indicator for south facing waterfront comparable with the subject.

[15] Mr. Blake noted that Mr. Townsend appeared to rely on a land value estimate of \$1,816,000 which he did not provide evidence to substantiate and which he extracted from the total market value to provide a value for the improvements.

[16] Mr. Blake argued that Mr. Townsend's comparables at 9354 Ardmere and 536 Senanus also had significant upward adjustments for size and were unreliable. He also noted that Mr. Townsend's adjustments were based on his estimates of replacement cost and depreciation and were not supported by market evidence and he referred to Mr. Townsend's comment that "buyers do not consider the cost of acquiring a property less accumulated depreciation", but that he had used this for adjustment purposes.

[17] Mr. Townsend argued that Mr. Blake's cost per square foot adjustments for size were not supported by market evidence and were inconsistent, ranging from \$99.49 to \$167.17 per square foot and he argued that his costs per square foot were supported by both market builder's costs and the BC Assessment Costing Manual.

[18] Mr. Blake argued that he had adjusted the comparables he used based on \$100 per square foot and argued that beyond a certain building size, additional square footage contributes less due to economies of scale and obsolescence.

[19] Mr. Townsend argued that Mr. Blake's time adjustments were not supported by market evidence and were inconsistent ranging between 0.6% and 1% per month.

[20] Mr. Blake noted that the median price of housing for 2005 supported a 10% increase or 0.83% per month and he argued further that Mr. Townsend's upward adjustment of 2% for market conditions to the comparables at 9354 Ardmere, 872 Lands End and 536 Senanus appeared excessive. He noted further that four of the seven sales used by Mr. Townsend supported an adjustment factor less than 2% and noted that it is difficult to consider individual sales due to upgrades and changes made by vendors prior to re-sale and he argued that Mr. Townsend's overall upward adjustments for market conditions and house size significantly distorted his final conclusion.

[21] Mr. Blake argued that the Senanus peninsula has a "blighting influence" due to the shortage and quality of water and as such should be valued at the low end of the range of value.

[22] Mr. Townsend argued that the property's water and maintenance disadvantages were also unsupported by market evidence and in his opinion do not affect the property's market value.

[23] Mr. Blake's adjusted market value for 507 Senanus was \$4,100,000, Mr. Townsend's \$4,495,000. Mr. Blake's adjusted market value for 8338 Saanich was \$4,200,000, Mr. Townsend's \$4,694,000. Mr. Blake's adjusted market value for 9354 Ardmere was \$4,082,000, Mr. Townsend's \$4,894,000.

[24] The parties agreed that the direct comparison approach to value is the best method to value residential properties, best represents a typical purchaser in the market and that the market does not separate land and improvement values in the process of buying and selling.

DECISION

[25] In that the issue is whether the assessed value of the improvements is reflected in the market value of the property, it is necessary to determine a value for the improvements. It is also necessary to determine a total market value for the property.

[26] The parties agreed that the best method of valuation is the direct comparison to other similar properties. However, they provided conflicting market values for several comparables and they disputed the adjustments each had applied in order to determine their opinions of market value. Mr. Blake's range of value was \$4,082,000 to \$4,200,000 and his

opinion of market value was \$4,100,000. Mr. Townsend's range of value was \$4,495,000 to \$4,895,000 and his opinion of market value was \$4,700,000.

[27] In that the parties could not agree on the total market value and are far apart in their opinions, applying a replacement cost approach to provide a building residual estimate and a comparison to vacant land to determine the land value is a reasonable test to determine the market value.

[28] Mr. Blake provided a direct comparison to vacant properties and provided an opinion of land value of \$2,200,000 and a replacement cost for the residual building of \$1,900,000. I accept Mr. Blake's opinion of market value for the land of \$2,200,000.

[29] Both parties provided evidence to determine a value for the improvements based on a depreciated replacement cost per square foot. Mr. Blake provided a replacement cost factor of \$300 per square foot less 25% depreciation which was not supported by market evidence. Mr. Townsend argued that his depreciated replacement cost factor of \$290 per square foot is supported by current market builder's costs and the BC Assessment residential costing manual and he applied \$290 per square foot to adjust his comparables. However, his value for the subject improvements indicated a replacement cost factor of \$318 per square foot.

[30] Mr. Townsend's depreciated replacement cost for the improvements of \$290 per square foot is supported by the evidence and I will accept it to determine a value for the improvements and a market value for the property.

[31] The parties had differing improvement sizes and in that Mr. Blake's evidence contained more interior details for the purpose of his appraisal for the owner, I will accept Mr. Blake's square footage for the improvements. Therefore, using Mr. Blake's square footage of 8,432 square feet and a value of \$290 per square foot an improvement value of \$2,445,280 is achieved.

[32] Therefore, the total market value of the property is \$4,645,280, however, due to the land being in farm class, the land value is \$3,250 as per the Review Panel's decision.

ORDER

[33] The Board orders the Assessor to amend the 2007 assessment roll as follows:

Roll No. 01-63-302-36-1820-012:

			FROM		TO
Land:	Class 9 – Farm	\$	3,520	\$	3,250
Improvements:	Class 1 – Residential	\$	2,795,000	\$	2,445,000
	Class 1 – Residential (Farm Bldg)	\$	1,000	\$	1,000
Total Assessed Value:		\$	2,799,520	\$	2,449,250

