

The following version is for **informational purposes only**, for the official version

see: <http://www.courts.gov.bc.ca/> for Stated Cases

see also: <http://www.assessmentappeal.bc.ca/> for Property Assessment Appeal Board Decisions

SC 548 AA15 v Conair Group Inc and PAAB

[Link to Property Assessment Appeal Board Decision](#)

**ASSESSOR OF AREA 15 – FRASER VALLEY**  
**v.**  
**CONAIR GROUP INC. and**  
**PROPERTY ASSESSMENT APPEAL BOARD**

SUPREME COURT OF BRITISH COLUMBIA (S118935) Vancouver Registry

Before the HONOURABLE MR. JUSTICE MACAULAY (in chambers)

Dates and Place of Hearing: June 28, 2012 and December 11, 2012, Vancouver, B.C.

G. Holeksa for the Plaintiff

L.B. Herbst for the Defendant, Conair Group Inc.

***Special use property – Functional Obsolescence – Superadequacy***

*The Subject Property is a 235,183 square foot airplane hangar at the Abbotsford Airport, which is used for the business of maintenance, repair and overhauling (MRO) of aircraft. Value was at issue in the appeal to the Property Assessment Appeal Board ("the Board"), and specifically,*

- whether the property should be valued by a sale/leaseback of the Subject Property;*
- whether an adjustment of \$3 million for fixtures and chattels should be removed; and*
- whether value should be adjusted due to functional obsolescence.*

*The Assessor argued that the cost approach to value should be used, and that the sale/leaseback transaction was the best evidence of value. The Assessor argued that there should neither be a reduction to the sale/leaseback transaction as a result of chattels and fixtures. The Assessor also argued that because MRO was a cyclical industry, there should not be any adjustment for functional obsolescence. The Appellant argued the income approach to value should be used, with a reduction for the chattels. The Appellant further argued a 50% reduction in value for functional obsolescence was warranted.*

*The Board agreed with the Assessor that the sale/leaseback was the appropriate basis for valuing the Subject Property and that there should be no reduction in value for fixtures and chattels. However, the Board reduced the value of the Property by 20% to account for functional obsolescence due to superadequacy of the overbuilt improvements.*

*The Assessor and Conair each appealed. The Assessor asked the Court to determine the following questions:*

- 1. Did the Board err in law or breach natural justice by deciding the appeal on the basis of issues not addressed in argument, and without notifying the Assessor of the issues and providing the Assessor with an opportunity to make submissions on the issues?*
- 2. Did the Board err in law by applying an approach to functional obsolescence that was contrary to appraisal principle or contrary to legal principles relating to functional obsolescence?*
- 3. Did the Board err in law in determining that there was functional obsolescence without any evidence of functional obsolescence or upon a view of the facts that could not reasonably be entertained?*

*Conair asked the Court to determine whether the Board took into account an incorrect ceiling height of the warehouse/shop and office when it determined the valuation of the property.*

**HELD: Appeals Dismissed.**

*In answer to Question 1, the issue of superadequacy as a basis for a finding of functional obsolescence was clearly before the Board. The Board made factual findings regarding superadequacy and there was evidence on which to base those findings. The Board has a wide statutory discretion to measure superadequacy. The Board's decision was not arbitrary nor was it unfair to proceed to a decision without first inviting further submissions from the Assessor on the issue of superadequacy and functional obsolescence. In determining questions 2 and 3 this Court followed Assessor of Area 10 – Burnaby/New Westminster v. Sears Canada Inc. (1995), Stated Case 332 (B.C.C.A.) and found that even if the Board erred in its approach to measuring the negative impact of superadequacy, it did not affect the outcome of its decision.*

*In regards to Conair's issue, the Court found that the evidence did not go far enough to demonstrate that the Assessor made a mistake by inputting 40 feet as the height for the purpose of his calculations and the Board did not err in principle by accepting his conclusion without directly addressing Conair's submission.*

*In summary, this Court answered all the questions in the negative and dismissed the appeals.*

**Reasons for Judgment**

January 28, 2013

[1] This Stated Case arises from a decision of the Property Assessment Appeal Board (the "Board") dated November 14, 2011, respecting an aircraft hangar at Abbotsford Airport (the "property") owned by Aero Abbotsford Nominee Corp. ("Aero"). Aero purchased the property in 2007 from Conair Group Inc. doing business as Cascade Aerospace ("Conair" sometimes referred to as "Cascade") and then leased it back to Conair. The Assessor of Area #15 - Fraser Valley (the "Assessor") and Conair each seek a determination of issues arising out of the Board's decision.

[2] The Stated Case sets out the questions to be determined, required by the Assessor, as follows:

1. Did the Property Assessment Appeal Board err in law or breach natural justice by deciding the appeal on the basis of issues not addressed in argument, and without notifying the Assessor of Area #15 – Fraser Valley of the issues and providing the Assessor of Area #15 – Fraser Valley with an opportunity to make submissions on the issues?
2. Did the Property Assessment Appeal Board err in law by applying an approach to functional obsolescence that was contrary to appraisal principle or contrary to legal principles relating to functional obsolescence?
3. Did the Property Assessment Appeal Board err in law in determining that there was functional obsolescence without any evidence of functional obsolescence or upon a view of the facts that could not reasonably be entertained?

The question to be determined, required by Conair, is as follows:

4. Did the Property Assessment Appeal Board err in law by using in its determination of the value of the property as of July 1, 2009 and July 1, 2010:
  - a) RCNs for warehouse/shop and office based on a 40' ceiling height; and/or
  - b) RCNs for the office based on a 40' ceiling heightwhen:
  - c) the evidence was that the ceiling heights for those spaces were in

fact substantially lower than 40';

- d) Cascade and the Assessor agreed that the actual ceiling height of the office was approximately 8-10';
- e) the ceiling heights and RCNs were derived and inserted into the valuation without any evidence or on a view of the facts that could not reasonably be entertained; and
- f) the ceiling heights and RCNs resulted in the material overstatement of the value of the property without any evidence or on a view of the facts that could not reasonably be entertained?

The context in which these issues arose was the Board's determination of the actual or market value of the property as of July 1, 2009 and July 1, 2010.

[3] The relevant facts are set out in the Stated Case as follows:

1. The appeals before the Board were from the 2010 and 2011 decisions of the Property Assessment Review Panel with respect to property located at the Abbotsford Airport identified by Roll No. 15-34-313-95000-6952-0 (the Property). The Review Panel confirmed the 2010 assessment of \$40,687,000 (land \$9,144,000 and improvements \$31,543,000) and the 2011 assessment of \$40,046,000 (land \$9,144,000 and improvements \$30,902,000).
2. The issue before the Board was to determine the actual or market value of the Property as of July 1, 2009 and July 1, 2010.
3. The Property is an aircraft hangar owned by Aero Abbotsford Nominee Corp. (Aero). The Property was sold by Conair Group Inc., doing business as Cascade Aerospace (Cascade) to Aero in 2007 for \$45 million and leased back. The hangar is purpose-built to do high volume aircraft maintenance, repair and overhaul (MRO). There have been changes in the MRO industry since the hangar was built. In determining actual value, the Board was asked to determine whether the Property's market value was affected by economic or functional obsolescence, how the sale/leaseback transaction was to be considered in the determination of market value, and whether a \$3 million adjustment for fixtures/chattels, included in prior years' assessments, should be removed.
4. The Property is comprised of a large aviation hangar with storage, shop and office facilities with airside access at Abbotsford Airport, completed in 2000. The site is an irregularly shaped lot of 22.86 acres with a 235,183 square foot improvement. The hangar bay area is 187,258 square feet, the shop/storage is 64,200 square feet and the offices are 47,925 square feet. The improvement was purpose-built to do high volume aircraft maintenance, repair and overhaul (MRO). It was designed with eight bays to handle eight narrow body commercial aircraft (Boeing 737's) at one time and was also designed with extra-high ceilings and doors to handle wide body aircraft up to Boeing 777's. Two of the eight bays can be converted to paint bays with the use of curtains and high volume exhaust equipment.
5. The zoning of the Property – Aerospace Industrial Zone (18) restricts the permitted use to only airport hangar and accessory uses such as office and storage for the permitted use. This zoning precludes conversion to other

industrial non-hangar uses.

6. The Board accepted Cascade's position that the original business model of serving US-based commercial carriers, which dictated the design and size of the Property improvement, has changed.
7. The Board accepted the Assessor's evidence that the MRO business is cyclical.
8. The Board found the purchase price of \$45 million was the market value of the Property at the purchase date in 2007. The Board found there was no basis for an adjustment to the purchase price to reflect chattels and/or fixtures.
9. The Board found Cascade has seen a change in demand resulting in a superadequate functional obsolescence that at the present time and foreseeable future is incurable, resulting in a loss of value. The Board found the best method to measure functional obsolescence in this case is to use the difference in gross revenue between the full capacity year 2008 and 2010, the highest year since 2007, to recognize the cyclical nature of the MRO business. The Board calculated superadequacy functional obsolescence as follows:

100% capacity year in 2008:	Gross revenue	\$72,720,000
2010:	Gross revenue	<u>\$57,145,000</u>
		\$15,575,000 or approximately 20%

10. The Board accepted the Assessor's cost approach as the most reliable approach to value the Property with the addition of 20% functional obsolescence due to a superadequacy of the hangars and shop/storage space. The Board found no superadequacy of office space.
11. The Board found the following:

July 2009 Value Estimate – Cost Approach

Hangars replacement cost new less physical depreciation		\$18,718,205
Less 20% functional obsolescence		<u>3,743,641</u>
Hangars replacement cost all depreciation		\$14,974,654
Warehouse/shop replacement cost new 40% of \$11,838,262		\$4,735,305
Less 20% functional obsolescence		<u>947,061</u>
Warehouse/shop replacement cost all depreciation		\$3,788,244
Hangars	\$14,974,654	
Warehouse/shop	3,788,244	
Office	7,102,957	
Paving and Fencing	<u>918,796</u>	

Total depreciated Improvement Value	\$26,784,561	
Round to	\$26,785,000	
Plus land value	\$10,287,000	
<b>Value as of July 1, 2009</b>	<b>\$37,072,000</b>	

July 2010 Value Estimate – Cost Approach

Hangars replacement cost new less physical depreciation		\$18,297,571
Less 20% functional obsolescence		<u>3,659,514</u>
Hangars replacement cost all depreciation		\$14,638,057
Warehouse/shop replacement cost new 40% of \$11,638,580		\$4,655,432
Less 20% functional obsolescence		<u>931,086</u>
Warehouse/shop replacement cost all depreciation		\$3,724,346
Hangars	\$14,638,057	
Warehouse/shop	3,724,346	
Office	6,983,146	
Paving and Fencing	<u>898,149</u>	
Total depreciated Improvement Value	\$26,243,698	
Round to	\$26,244,000	
Plus land value	\$10,287,000	
<b>Value as of July 1, 2010</b>	<b>\$36,531,000</b>	

12. The Board ordered the Assessor to amend the 2010 and 2011 assessment rolls as follows:

Roll No. 15-34-313-95000-6952-0 - 2010-15-00194

	<b>FROM</b>	<b>TO</b>
Land: Class 6 – Business and Other	\$9,144,000	\$10,287,000
Improvements: Class 6 – Business and Other	<u>\$31,543,000</u>	<u>\$26,785,000</u>
Total Assessed Value:	\$40,687,000	\$37,072,000

Roll No. 15-34-313-95000-6952-0 - 2011-15-00161

	<b>FROM</b>	<b>TO</b>
Land: Class 6 – Business and Other	\$9,144,000	\$10,287,000

Improvements: Class 6 – Business and Other	<u>\$30,902,000</u>	<u>\$26,244,000</u>
Total Assessed Value:	\$40,046,000	\$36,531,000

For convenience, I will also use the term “MRO” when referring to high volume aircraft maintenance, repair and overhaul. As is apparent from paras. 6, 7 and 9 in the extract, the Board found that the MRO business is cyclical and that it had changed, resulting in superadequate functional obsolescence.

[4] The issues that the Assessor raises challenge the Board’s reasoning and conclusions that the value of the hangars and warehouse/shop on the property was reduced 20% in each year for superadequate functional obsolescence. The Board found no superadequacy relating to the office space and there is no challenge to that conclusion.

[5] In its decision, at para. 97, the Board accepted the following definition of functional obsolescence:

“the loss in value due to the inability of the structure to perform adequately the function for which it is used, as of the appraisal date. Functional obsolescence results from change in demand, design and technology and can take the form of deficiency, need or modernization or superadequacy.”

Superadequacy in this context apparently means, as one of the experts, Mr. Gertsman, stated in his report:

An over improvement to real property whose cost exceeds the value it adds in terms of what the market needs and wants at the time of valuation. Superadequacies occur when something (can be any component or equipment) in the subject property exceeds the market requirements but does not contribute to value an amount equal to its cost.

The Board did not specifically define superadequacy in its decision but it is apparent from the discussion of the evidence and the positions of the parties set out below that the Board applied the definition as set out above. Further, the Assessor asserted, as correct, a similar definition on the hearing of the Stated Case.

[6] Immediately below, I set out the evidence relating to superadequacy and its impact that the Board referred to in its decision as well as the Board’s recital of the positions that the parties advanced. After that, I set out the Board’s conclusions respecting the impact on value.

[7] Under the heading MRO Industry, the Board discussed significant changes in the industry and then stated, commencing at para. 12:

[12] These changes in the MRO industry have resulted in a change in the Cascade business plan. They moved from a high volume, low margin operation to a lower volume, higher margin operation. They argue that this move to the new business plan has resulted in the Property improvement having excess capacity. In addition, the two bays capable of being converted to paint bays are little used due to labour concerns regarding the perceived health effects of the work done there.

[13] Mr. Gertsman, in his report, and Mr. Currie, in his testimony, state that if the facility was built today, it would be approximately half its present size. They note the Property improvement was designed for a million maintenance hours of use and is presently in the 500,000 range.

[14] Mr. Prit Sidhu, an accredited appraiser for the Assessor, describes a more positive

economic outlook for MRO operations in Canada. In his report, he quotes David Schellenberg, present [sic] and CEO of Cascade Aerospace:

“But with our commercial and military mix our strategic shift into more complex and long term major programs, our business is thriving nicely.”

...

[16] Mr. Sidhu also provides statistics from the Aerospace Industries Association of Canada that indicate the value of the Canadian MRO market increased from \$3.9 billion in 2007 to \$4.1 billion in 2009. Mr. Sidhu also supplies photographs taken in November 2010 that indicate the Property hangar is at or near aircraft capacity. Mr. Currie responds that three of those aircraft are in a stalled program and have been there for 18, 20 and 36 months. The Board notes Cascade with revenues in the \$60 million range has approximately 1.5% of the total MRO market in Canada.

[17] In summary, the parties have divergent views on the current and future state of the MRO business in Canada, and in particular its effect on Cascade. The Appellant takes a pessimistic view, whereas the Assessor provides a more positive report on the business climate.

...

[19] The use of maintenance man hours can be misleading as the business model has changed from high volume low margin to lower volume high margin work. The planes are in the hangar but not all of the work is done on the hangar floor. As Mr. Currie states, the new business model has more engineering work than the old high volume commercial fleet model.

[20] The Board does not accept Mr. Currie's contention that the three CL-215 contract planes using 3/8 or 37.5% of the hangar space are not producing revenue. Except for the year 2008 when the Westjet and Alaska Air contracts were the only revenue producers outside of the DND contract, Cascade has for 2009 and 2010 received revenues from the C-215 contract of over \$6 million in each year. This revenue represented approximately 12% of the total Cascade revenue in 2009 and 2010.

...

[27] The Board accepts Mr. Gertsman's and Mr. Currie's position the original business model of serving US-based commercial carriers, which dictated the design and size of the Property improvement, has changed.

[28] The Board also accepts Mr. Sidhu's evidence that the MRO business is cyclical as it is directly affected by the cyclical airline industry.

Later, the Board reiterates Mr. Gertsman's contention about the effect of superadequacy.

[95] Mr. Gertsman expresses concern with the location factor used in Mr. Sidhu's cost approach, but is unable to provide any evidence to offset it. He also argues that because of the change in the business plan, resulting in less than eight bays fully occupied, the present facility is overbuilt and thus has some degree of functional obsolescence, which is not taken into account by Mr. Sidhu.

The Board went on, in its decision, to state its conclusion that there is superadequacy and its approach to measuring its impact on value, at paras. 98 to 104:

[98] The Board finds Cascade has seen a change in demand resulting in a superadequate functional obsolescence. As this is a special purpose property with no identified alternate use for excess space, the functional obsolescence at the present time and foreseeable future is incurable, thus resulting in a loss of value. While the DND contract and WestJet have made use of a large proportion of the hangar area the present and near future outlook for MRO work in Canada does not indicate the facility as designed can run at full capacity.

[99] In measuring functional obsolescence, it must be rated against adequate, not optimal, performance. Most facilities do not run at 100% design capacity all the time.

[100] Mr. Gertsman suggests the Property facility is approximately 50% super adequate based on peak maintenance hours.

[101] The Board agrees with the Assessor the change in business model from high volume, low margin to lower volume, high margin means the number of employees does not accurately predict hangar floor space usage, and therefore, is not the best measure of superadequacy.

[102] The Board finds the best method to measure functional obsolescence in this case is to use the difference in gross revenue between the full capacity year 2008 and 2010, the highest year since 2007, to recognize the cyclical nature of the MRO business.

[103] Superadequacy functional obsolescence:

100% capacity year in 2008:	Gross revenue	\$72,720,000
2010:	Gross revenue	<u>\$57,145,000</u>
		\$15,575,000 or approximately 20%

[104] The Board accepts Mr. Sidhu's cost approach to value the Property, with the addition of 20% functional obsolescence due to a superadequacy of the hangars and shop/storage space. Mr. Currie's evidence is the new business model required more office space and less hangar and warehouse/shop, thus the Board finds no superadequacy of office space.

In its final conclusion that followed, the Board used the Assessor's cost approach but deducted 20% functional obsolescence relating to the hangar and warehouse/shop replacement costs for each of 2009 and 2010. Also, in para. 107, in determining a value for the property based on the income approach, the Board referred to reducing the square footage of the hangar and the warehouse/shop by 20% for superadequate space.

[8] The Stated Case does not directly raise the adequacy of the Board's Reasons for Decision as an issue for determination but the Assessor contends that the Board failed to adequately explain its finding of superadequacy. According to the Assessor, the Board simply stated its conclusion in the decision without explanation or rationale, and contrary to its earlier finding, at para. 101 of the decision, that the number of employees is not an accurate predictor of hangar floor usage.

[9] Accepting without deciding that the law relating to the adequacy of reasons in criminal and civil proceedings, as discussed in *Shannon v. Shannon*, 2011 BCCA 397, and elsewhere, applies in the current context, I do not agree that the reasons are inadequate for the purpose of my review and

determination of the issues raised in the Stated Case. In advancing this argument, the Assessor slices both the evidence and the reasons too finely.

[10] In *Shannon*, at para. 7, D.M. Smith J.A. explained that the duty to give reasons must be functionally and purposefully interpreted and a failure to comply does not, in itself, provide a free-standing right of appeal. Further, at para. 8, the intelligibility of reasons does not import a requirement to fully recite or exhaustively survey all the evidence. It only matters if the failure to discuss evidence supports a reasoned belief that the decision maker must have forgotten, ignored or misconceived the evidence in a way that affected the conclusion. Finally, even if reasons are objectively inadequate, appellate intervention is not justified if the record itself permits meaningful appellate review (para. 9).

[11] Read as a whole, the record and reasons are sufficient for the task at hand. For example, the conclusion at para. 101 of the decision is simply a rejection of one method of measuring superadequacy but is not, when read in context, a finding that there is no superadequacy. Nor is there any doubt about the manner in which the Board ultimately measured superadequacy. There is no viable suggestion that the Board forgot, overlooked or misconceived any of the evidence before it.

[12] Whether it was legally permissible for the Board to measure superadequacy in the manner it did is, as discussed below, directly raised in the Stated Case, Questions No. 2 and 3, and I will address it at that point. As did counsel for the Assessor in submissions before me, I will address those questions together because they are inter-related. Before doing so, I will deal with Question No. 1.

[13] Question No. 1 is whether the Board erred in law or breached natural justice by deciding the question of superadequacy on a basis not argued by counsel and without inviting counsel to make submissions.

[14] The issue of superadequacy as a basis for a finding of functional obsolescence was clearly before the Board. It is also clear that the Board found that there was superadequacy; the key factual findings in that regard are not all expressly identified as such in the reasons, but appear to be, as follows:

1. The Property is a special purpose property and cannot be used for other industrial non-hangar uses (para. 22);
2. The original business plan in 1999 was to offer third party MRO service to American commercial airlines. The facility was designed to handle both narrow and wide body aircraft. In 1999, the low Canadian dollar provided a major competitive advantage (para. 9);
3. Since 1999, the currency exchange advantage has disappeared; as well, other world events have reduced air travel resulting in airlines looking for least-cost options to keep costs down (para. 10);
4. Commercial MRO work is leaving Canada for cheaper labour markets and no US carriers are having any MRO work done in Canada (para. 26);
5. These changes resulted in a change to the business plan for the Property, from a high volume, low margin operation to a lower volume, higher margin operation. The change to the business plan resulted in the Property improvement having excess capacity (para. 12);
6. The original business model of serving US-based commercial carriers, which dictated the design and size of the improvement, has changed (para. 27); and
7. The present and near future outlook for MRO work in Canada does not indicate

the facility as designed can run at full capacity (para. 98).

The issues relating to whether there was superadequacy were squarely before the Board and addressed by both parties.

[15] The thrust of the Assessor's submission under this heading goes, in my view, to whether the Board measured, or quantified, superadequacy on a basis not addressed by the parties. In this regard, the Board reached the following conclusions:

1. The MRO business is cyclical but downturns or changes in business models do not immediately translate into decreased property values (para. 29);
2. The sale of the Property occurred in 2007; the purchase price of \$45 million represented market value at the time (para. 41);
3. In 2008, the facility operated at or near design capacity with MRO contracts with Alaska Air, WestJet and DND (para. 38);
4. Without any deduction for functional obsolescence, the Assessor's cost approach reveals total depreciated improvement values for the hangars, warehouse and shop, paving and fencing of: July 2009 - \$31,475,263 and July 2010 - \$30,834,300 (para. 93);
5. The Board accepted the Assessor's cost approach subject to deducting 20% functional obsolescence on the values of the hangars, warehouse and shops (paras. 104, 105, 108 and 109).

The Board explained its methodology as follows:

1. Functional obsolescence must be rated against adequate, not optimal, performance (para. 99);
2. The best method to measure functional obsolescence in the circumstances is to use the difference in gross revenue between the full capacity years 2008 and 2010, the highest year since 2007, to recognize the cyclical nature of the business (para. 102); and
3. The difference in gross revenue between 2008 and 2010 is approximately 20% (para. 103).

The Assessor contends that the Board erred in law or breached natural justice in measuring functional obsolescence in this manner without first offering the parties an opportunity to make submissions.

[16] Conair contends that the Assessor argued before the Board that there was no functional obsolescence and chose not to address quantification in the alternative. As a result, Conair says that the matter should not be returned to the Board so that the Assessor can argue the matter now.

[17] The Assessor relies on *British Columbia (Assessor of Area No. 10 - Burnaby/New Westminster) v. Carter*, [1996] B.C.J. No. 2484 (S.C.), for the proposition that the Board erred in law by deciding the case upon a basis not canvassed before it and by failing to provide the parties with an opportunity to address the basis of its decision. I accept that the court remitted the matter to the Board in that case "to enable the appellant a due opportunity to argue the issue of value in an informed way" (para. 13) but I do not accept that the Assessor did not have an opportunity to address the various approaches to measuring superadequacy in the present case.

[18] In *Carter*, the Board faced an unusual challenge, determining the value, statutorily defined as the market value of a fee simple interest, of a water lot that was not held in fee simple and not tradable on the open market. The Board rejected the valuation approaches of both parties and ultimately concluded that, for assessment purposes, the value was a nominal \$1,000. In reaching the conclusion in *Carter*, the judge commented on the Board's "fundamentally novel approach to the valuation for assessment purposes of this class of property" (para. 12). Further, there was at least an arguable basis that the Board had legally erred in its approach. Finally, the Board had instructed the Assessor to assess other water lots in the same manner. These factors likely contributed significantly to the judge's finding that it was unfair for the Board to proceed to a decision without first giving the Assessor an opportunity to argue the specific valuation methodology.

[19] It does not follow, in my view, that the Board must, in fairness, extend such an opportunity in all cases. The Board had a wide statutory discretion to measure superadequacy in the present case. As I will set out in more detail later, the *Assessment Act*, R.S.B.C. 1996, c. 20 ("*Assessment Act*"), requires a determination of the actual value of the land and improvements. Section 19(3) expressly permits a consideration of "revenue or rental value" in determining actual value in the present circumstances.

[20] Likely because Conair did not specifically argue before the Board that superadequacy should be measured with regard to changes in revenue, the Assessor decided not to advance an opposing submission, but that left the Board, having rejected the principal arguments of both parties, to address the measurement of superadequacy on its own. Implicitly, the Assessor accepted that risk.

[21] The Assessor is still entitled to challenge the legal correctness of the Board's methodology and conclusion but the Board's decision was not arbitrary nor, in the circumstances, was it unfair to proceed to a decision without first inviting further submissions. In the result, the answer to Question No. 1 is negative.

[22] Question No. 2 asks whether the Board erred by applying an approach that was contrary to appraisal or legal principles relating to functional obsolescence. Question No. 3 asks whether the Board erred in determining functional obsolescence without any evidence or upon a view of the facts that could not reasonably be entertained. I accept that it is an error of law if the Board misapplies any applicable principle of general law or acts without any evidence or upon a view of the facts that could not reasonably be entertained (*Crown Forest Industries v. Assessor of Area 6 – Courtenay* (1985), B.C. Stated Case 210 (S.C.)). Further, questions of misapplication of principle may extend to questions of mixed fact and law (*British Columbia (Assessor of Area No. 27 – Peace River) v. Burlington Resources Canada Ltd.*, 2005 BCCA 72).

[23] The Assessor does not contend that the Board misstated the applicable principles and accepts that the Board correctly defined functional obsolescence, as set out at para. 97 of the decision. The Assessor also accepts that the Board correctly defined the relationship of superadequacy to functional obsolescence. In perhaps simpler terms than Mr. Gertsman's definition found in the evidence and set out earlier in my reasons, the Assessor submits that superadequacy is a result of the building having too much area and thus being too large for its intended use.

[24] In an earlier decision, *British Columbia (Assessor of Area No. 5 – Port Alberni) v. McDonald's Restaurants of Canada Ltd.*, 2002 BCSC 1446, the court described the Board accepting that functional obsolescence is a loss in value that may be caused by a deficiency or superadequacy and that the latter is "a property component that exceeds requirements" (paras. 15, 16). The Assessor accepts these definitions and acknowledged that the Board was aware of them in the present case. The Assessor further concedes that the Board accurately stated two further principles: that functional obsolescence must be measured against adequate, not optimal, performance; and functional obsolescence does not normally apply in cyclical industries.

[25] From the above, one might expect the Assessor's contention to be that the Board failed to correctly

apply these principles to the evidence but the Assessor does not limit its argument so bluntly. Instead, the Assessor asserts in written submission that in order for the Board “to find that superadequacy exists as a result of excess space, [it] must be able to identify and measure the excess space.” In the result, the Assessor seems to argue for a more restrictive definition of superadequacy, apparently tied, in the circumstances of this case, to excess floor area.

[26] If I understand the submission correctly, it is too narrow in scope. Excess floor area might indicate superadequacy but it is not the only possible indicator.

[27] There was substantial evidence to reasonably support a conclusion that the improvement was overbuilt in terms of ceiling height rather than floor area, resulting in superadequacy. The ceiling height in the hangar had been built particularly high to accommodate commercial wide body aircraft due to the higher than average tail heights.

[28] Publications filed in evidence listed excessive height as a factor capable of leading to functional obsolescence. The Gertsman report expressly discussed the excess ceiling height as an “incurable” example of functional obsolescence “because there is no cost effective way to reduce the height of the building, nor would doing so add any value (i.e., higher price) to property ...” The Assessor’s expert agreed that the hangar area “has a higher than average ceiling height to house all types of aircrafts.”

[29] The evidence went further. The centre hangar door itself is 63 feet high. Tail heights for narrow body aircraft and military cargo planes of the types now worked on are usually about 40 feet high. Absent any opportunity to work on wide body planes, there is no longer a need for a clearance height up to 63 feet.

[30] The foregoing is sufficient to demonstrate an available reasoning pathway to the Board’s conclusion that there was superadequacy. It is, accordingly, not necessary for me to discuss other evidence that Conair submits was also capable of supporting the conclusion.

[31] Read as a whole, the decision of the Board accepts superadequacy based on the overbuilding of the facility to accommodate MRO service to wide body American commercial airlines; and finally, the subsequent loss of that work resulting in a long-term change to the business plan. After identifying the change in demand, the Board stated, at para. 98:

As this is a special purpose property with no identified alternate use for excessive space, the functional obsolescence at the present time and foreseeable future is incurable, thus resulting in a loss of value.

There was, in my view, ample evidence to support that conclusion.

[32] I also do not accept the Assessor’s specific contention that the Board “must be able to identify and measure the excess space.” In my view, it is sufficient for the Board to find a basis for superadequacy as it did here, resulting from the change in MRO demand. This leaves the question whether the Board was entitled to measure functional obsolescence using the difference in gross revenue between 2008 and 2010 “to recognize the cyclical nature of the MRO business” (para. 102).

[33] The Assessor submits that the Board erred in its approach. According to the Assessor, the Board failed to apply the principles that superadequacy be measured against adequate, rather than optimal, performance and that changes in cyclical industries will not normally result in reduced real estate values.

[34] Conair submits that consideration of revenue derived from the business carried out on the Property “is well within the scope of inquiry that would be expected in relation to functional obsolescence” and, to illustrate, points to s. 19(3) of the *Assessment Act* which provides that “[i]n determining actual value, the assessor may, except where this Act has a different requirement, give consideration to the following ... (e) revenue or rental value ...” (emphasis added). Conair submits that “special purpose” properties, as the

Board found the Property here to be, are usually not rented but derive value from producing goods or services that generate profit. Cascade sells the MRO service that it offers on the Property and, as such, its financial health ties in to the actual value of the Property.

[35] In *Provincial Assessors of Comox, Cowichan and Nanaimo v. Crown Zellerbach Canada Limited* (1963), 42 W.W.R. 449 (B.C.C.A.), the Court of Appeal considered the reach of the predecessor section to s. 19, which also listed “revenue or rental value” as a factor for consideration in determining actual value. The court stated, at p. 455:

The statutory duty of the assessor is to find the “actual value” of the taxable property, but sec. 37 permits him to use several different methods and to consider many different elements in finding actual value. I do not think that the use of any specifically mentioned method of finding actual value, or the inclusion or exclusion of any enumerated element, provided there is evidence to support the reasoning, can be said to raise a question of law appealable to the courts on a stated case, for those matters lie in the judgment of the assessor and the assessment equalization board: [citation omitted].

As Conair points out, revenue differentials between 2007 and 2010 were in evidence before the Board. I agree that the Board was entitled to have regard to that factor in measuring the impact of superadequate functional obsolescence on actual value.

[36] This leaves the Assessor’s contention that the Board erred in relying on the 2008 “full capacity year” revenues as a comparator because superadequacy is to be measured against adequate, not optimal, performance. The evidence before the Board revealed gross revenues as follows:

<u>NO.</u>	<u>YEAR</u>	<u>REVENUE</u>
1.	2007	\$56,449,000
2.	2008	72,720,000
3.	2009	51,621,000
4.	2010	57,145,000

The Assessor says that if functional obsolescence is to be measured against gross revenue, the Board should have measured against 2007.

[37] The Assessor says that 2007 would have been the correct choice because it represents an adequate, rather than optimal, year and is also the year in which the Property sold for a market value of \$45,000,000. According to the Assessor, using 2007 as a comparator would result in no reduction in actual value. The Assessor further submits that the Board, having accepted that changes in cyclical industries do not necessarily result in a reduction of value, failed to apply the principle.

[38] In response, Conair points out that the Board did not describe 2008 as an optimal year. Instead, in its conclusion at para. 102, the Board described 2008 as a full capacity year.

[39] I interpret the Board’s descriptor as referring to full capacity in servicing wide body American airplanes according to the original business plan. I find support for that in para. 38 of the decision where the Board referred to “Cascade’s best year in 2008 when it operated at or near designed capacity ...” [emphasis added]. However, I also note that the Board concluded, at para. 11, that, in 2008, Cascade lost an American Airline contract worth 25% of its revenue.

[40] Overall, do these passages represent a finding that 2008 was an optimal year that should not have been used as a comparator? According to the Concise Oxford Dictionary, 9th ed., “optimal” means “best,

or most favourable, esp. under a particular set of circumstances.” The evidence was capable of demonstrating that the MRO share of gross revenue dropped significantly after 2008 and never recovered. The Board set out that evidence at para. 18, as follows:

<u>NO.</u>	<u>YEAR</u>	<u>PERCENTAGE</u>
1.	2007	48%
2.	2008	50%
3.	2009	28%
4.	2010	32%

Although total gross revenue was less in 2007 than in 2008, the proportionate revenue generated by MRO was roughly the same each of the years and dropped thereafter by about 20%. As the Board stated in its decision, at para. 25:

The Board notes MRO commercial work in 2009 and 2010 comprises approximately 30% of total revenue as compared to 2008, when it was 50% of total revenue, a drop of 20%.

The drop also supports the Board’s apparent conclusion that, despite the cyclical nature of the airline industry, MRO business would not be restored to the 2008 level. Viewed in this way, the Board’s choice to use 2008 as a comparator rather than 2007 is inconsequential.

[41] Later, in para. 103, the Board used the difference in total gross revenues between 2008 and 2010, also resulting in a 20% difference. If that were the sole means of justifying the 20% measurement, the Board would have erred, but it is not. I also agree with Conair that the findings could have supported a reduction of 20% based on measuring economic or external obsolescence, although the Board found it unnecessary to address that aspect of Conair’s claim.

[42] In the result, even if the Board erred in its approach to measuring the negative impact of superadequacy, it did not affect the outcome and, as a result, I affirm the order of the Board. In doing so, I follow *Assessor of Area 10 – Burnaby/New Westminster v. Sears Canada Inc.* (1995), CanLII 2179 (B.C.C.A.), at para. 23:

Here, the court dismissed the appeal as the chambers judge concluded neither of the errors affected the outcome of the Board’s deliberations. If she was right in this conclusion she exercised a jurisdiction inherent in the statutory right of appeal – to affirm the order the tribunal appealed from made even if the latter’s reasoning was faulty.

The answers to Questions No. 2 and 3 are both in the negative.

[43] I turn next to the final Question, required by Conair, relating to the Board’s determination of the RCNs for non-hangar space using a 40 foot ceiling height. Simply put, Conair says the answer to the question set out in the Stated Case should be yes because the Board used the wrong figure for ceiling height in calculating the value of the warehouse/shop and office on one level and offices on another. The cost approach to determining actual value includes calculating the RCN, or Replacement Cost New, and adding it to a market determined site value. The use of the RCN for this purpose is not in issue.

[44] However, according to Conair, the Board carried forward an error made by the Assessor’s expert, Mr. Sidhu, in calculating the replacement cost. Mr. Sidhu used Marshall & Swift tables as a cost guide to itemize construction costs in calculating replacement costs. The use of the tables includes factoring in various measurements, including ceiling heights. The expert used 40 feet as the ceiling heights of the office and shop/storage facilities.

[45] Conair submits that the expert, and the Board, were plainly wrong in using 40 feet as the ceiling height for those parts of the building. It is evident from various photographs in evidence that the ceiling height of the office area is much lower, and is, as the Assessor's expert agreed in cross-examination, apparently a standard eight to ten feet high. Other photos indicate that the height of the storage/warehouse area is also less than 40 feet high.

[46] As I will set out shortly, the evidence is less clear about the effect on the RCN calculation. The Assessor says that, on a correct understanding of the evidence, there was no error based on ceiling heights and points out that there was no other evidence, including Conair submitting any cost evidence or rebutting the Sidhu evidence. Accordingly, it is necessary to examine exactly what the Board found and the expert testified to.

[47] In describing the evidence respecting actual value using the cost approach, the Board stated, at para. 93: "Mr. Sidhu calculates the improvement value using Marshall and Swift to determine the following depreciated values" and then sets out the expert's conclusions respecting depreciated improvement values. These included: July 2009 – warehouse and shop \$11,838,262; and July 2010 – warehouse and shop \$11,638,580.

[48] In his report, Mr. Sidhu addressed the Marshall & Swift calculations under the heading "Improvement Value", as follows:

The improvement value is calculated using Marshall & Swift with the indicated property uses and sizes as specified by the owner.

There is 131,100 sf of good quality airport hangar space. There is also 56,158 sf of good quality warehouse/shop space and 47,925 sf of good quality office space. The Marshall & Swift costs calculated on BC Assessment's valuation system are used (see Appendix K for 2009 cost summary and Appendix L for 2010 cost summary)

Under separate headings for Value Estimate Cost Approach July 2009 and July 2010, the report indicates market adjusted Replacement Cost New Less Depreciation ("RCNLD") values for the warehouse/shop and office space in the totals referred to by the Board and set out above. No issue is raised as to the correctness of the Marshall & Swift calculations other than in relation to the input of the ceiling heights.

[49] Appendices K and L to the Sidhu report are the BC Assessment Property Record Cards. They set out many of the details of the calculations that lead to the calculation of the market adjusted RCNLD for each of the years.

[50] The appendices also include some details of the inputs for the Marshall & Swift calculations. The entries, under the heading "Height" for the warehouse/shop and office building show 40 feet. In his report, Mr. Sidhu describes the warehouse/shop and office as a partial two-storey section adjacent to the hangar:

There is also a section of the building that contains 2 stories of warehouse and shop (56,158 sf) on the main floor and office space (47,925 sf) on the second floor.

The interior photographs included in the report appear to show typical ceiling heights in the office area and about double the height in the storage/warehouse area. By contrast, the interior photograph of the hangar is significantly higher than the latter. As earlier pointed out, the ceiling height in the hangar exceeds 60 feet.

[51] In similar terms, the Gertsman report describes the Property as improved with an aviation hangar and ancillary office, warehouse and storage space. The photos in that report reveal that the ancillary space is a flat roofed structure or component immediately adjacent to the taller hangar space.

[52] During his cross-examination, Mr. Sidhu confirmed that the ceiling height in the office space appeared to be standard eight to ten feet. He was then asked what height he had recorded for the office building and responded 40 feet. The next questions and answers related to the appendices described above and were, as follows:

Q If the assumed height is eight-to-ten feet, is that an error?

A Yeah, it looks like – it looks that way on – on – on that – on that calculation.

Q Do you have the ability to calculate this if it was 10 feet instead of 40 feet, or do you need the system for that?

A I'd probably need the system for that.

Q Okay. Would that – would that bring me – at the far right, I'm guessing that's the value for – that it spits out at 40 feet, the 5.8?

A The 5.793 [\$5,793,739]?

Q Yes.

A Yes.

Q So at ten feet it would be less than that?

A I would say so, yes. I'd – I'd have to get the right calc.

Q No, that's fine.

Based on that exchange, Conair submits that the Assessor's expert admitted his error and that the Board failed to appreciate the error and rectify the Marshall & Swift calculations. Counsel did not direct my attention to any other evidence on the record addressing these calculations or the operation of the "system" that Mr. Sidhu required access to in order to "get the right calc."

[53] The content of the appendices suggests they are internally generated BC Assessment records and, it is reasonable to expect that the Board has a good working understanding of the inputs and calculations. I find no reference directly to ceiling height on the appendices. The only reference to "Height" is unqualified as set out on the Property Record Cards. The only additional further reference to height relates to the combined hangar, maintenance and office at 60 feet.

[54] Conair did not adduce any cost evidence to rebut the conclusions in the Sidhu report and instead relied on the cross-examination set out above to challenge the Sidhu conclusions. The Board did not address the issue in its reasons.

[55] Mr. Sidhu's somewhat equivocal admission would have little impact if the Board understood, as the Assessor suggests, that the height inputs relate to the external height of buildings rather than interior ceiling heights. In the context of formulae intended to assist in determining the replacement costs for buildings, it would not make sense, for example, to calculate the replacement cost of a multi-storey building without, in some way, taking into account the cost of common building components such as the roof relative to each floor underneath.

[56] According to the Assessor, the cross-examination did not go far enough to establish the accuracy of the proposition that the necessary input related to ceiling rather than building height. While Conair now

assumes that to be the case, the Assessor says that the assumption is wrong.

[57] The photographs in evidence appear reasonably consistent with a height of 40 feet for the ancillary flat roofed warehouse and office space and 60 feet for the pitched roof hangar, depending on how the height of the latter roof structure is typically calculated.

[58] The Assessor also points out that the appendices provide a breakdown by percentage use of office space versus shop/warehouse in the ancillary building. The offices, according to Mr. Sidhu's report, take up 47,925 square feet on the second floor and the warehouse/shop area is 56,158 square feet on the main floor. Mr. Gertsman came to the same conclusion respecting the offices. As between the two areas, Mr. Sidhu attributed 46% to the former and 54% to the latter.

[59] This tends to support the Assessor's contention that the height input necessarily relates to the external building height, not the internal ceiling heights, and is inconsistent with Conair's contention that the inputs necessarily relate to interior ceiling heights, even though the offices are primarily, if not totally, located above space used for another purpose.

[60] I am not persuaded that the evidence goes far enough to demonstrate that Mr. Sidhu made a mistake by inputting 40 feet as the height for the purpose of his calculations. It follows that I am not persuaded that the Board erred in principle by accepting his conclusion without directly addressing Conair's submission. In the result, the answer to the Conair question is also no.

[61] In summary, my responses to all the questions on the Stated Case are in the negative. The appeals of both parties are dismissed.

[62] The parties may make written submissions on the matter of costs. Unless the parties otherwise agree, submissions are to be filed and exchanged on the following schedule:

1. Assessor within two weeks;
2. Conair within two weeks thereafter; and
3. Assessor's reply within one week thereafter.

[63] I will provide further reasons respecting costs after receiving the submissions.