SC 549 Virani, Shiraz v AA11 and PAAB

Link to Property Assessment Appeal Board Decision

SHIRAZ VIRANI
v.
ASSESSOR OF AREA 11 – RICHMOND/DELTA and
PROPERTY ASSESSMENT APPEAL BOARD

SUPREME COURT OF BRITISH COLUMBIA (S118600) Vancouver Registry

Before the HONOURABLE MADAM JUSTICE ROSS
Date and Place of Hearing: January 18, 2013, Vancouver, B.C.

Shiraz Virani Appearing in Person
Robert B.E. Hallsor for the Respondent, Assessor of Area 11 – Richmond/Delta

Single family dwelling – Natural Justice – Procedural Fairness

The subject property is a 1,145 square foot condominium located in a wood frame building that is undergoing an envelope repair. The appeal before the Property Assessment Appeal Board (the "Board") was from a decision of the 2011 Property Assessment Review Panel (PARP). The issue before the Board was to determine if the property's assessed value accurately reflected its market value as of July 1, 2010. The Board heard the appeal by way of written submissions. The Board found the property's market value fell within a range of market value from $234,500 or $205 per square foot to $265,000 or $231 per square foot and confirmed the decision of the 2011 PARP.

The Appellant appeals the decision of the Board to this Court, asking the following questions:

1. *Did the Board err in law:*
   a) *to observe the principles of natural justice and procedural fairness that it should have observed?*
   b) *by acting without evidence or on a view of the facts which could not reasonably be entertained?*
2. *Is the Board's decision based on findings of fact made in a perverse or capricious manner, without regard for the material before it?*
3. *Did the Board err in law in:*
   a) *denying the Applicant the opportunity to examine or cross-examine the witness(es) of the Respondent whose evidence was suspect, but accepted by the Board without question?*
   b) *misinterpreting or misapplying Section 18 of the* Assessment Act *in that the outstanding repairs relating to the physical condition of the property as of October 31 needed adjustment to assessed value(s)?*
   c) *determining that the Parties' agreement, accepted by the Board, relating to the assessed values for Land ($132,000) and Improvements ($88,000) as of July 1, 2009, made on or around September 13, 2010 complied with section 3 of the* Assessment Act*? If it did, how then, did the assessment roll for the 2011 Property*

Assessment Notice show Land ($208,000) and Improvements ($31,600), without any flow through/continuation?

HELD: *Appeal Dismissed.*

This Court found that Questions 1(a) and (b) were fatally flawed because they were so broad and general in their scope that it was not possible to identify the particular error complained of [British Columbia (Assessors of Areas No 1 and No 10) v. University of Victoria, *2008 BCSC 1302]. As well, Questions 1(a) and (b) duplicate matters raised in Question 3. Therefore, the Court declined to answer Questions 1(a) and (b). Question 2 was found to be fatally flawed in that the nature of the alleged error was not identified. As framed, the question should not be answered and this Court declined to exercise its discretion to refer the Stated Case back to the Board for amendment.*

This Court found that the Appellant was given the opportunity to present evidence and submissions, which were regarded by the Board in its decision and that the duty of fairness did not require an oral hearing or cross-examination. This Court is not entitled to substitute its own assessment of the evidence. This Court declined to answer question 3(c) stating that the question was based on a misstatement of the Board's determination and called for the Court to explain the Board's reasoning.

All the questions were either answered in the negative or found to be inappropriate to answer, therefore the appeal was dismissed with costs.

Reasons for Judgment February 13, 2013

Introduction

[1] This is an appeal by way of Stated Case by the appellant Shiraz Virani from a decision of the Property Assessment Appeal Board of British Columbia (the "Board") dated November 4, 2011 (the "Decision") pursuant to s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20 (the "*Act*").

[2] The Board confirmed the decision of the 2011 Property Assessment Review Panel as follows:

Roll No. 11-38-320-R-101-891-061:		
Land:	Class 1 – Residential	$208,000
Improvements:	Class 1 – Residential	$ 31,600
Total Assessed Value:		$239,600

[3] The subject property is a 1,145 square foot, three bedroom condominium located at #304 – 3451 Springfield Drive, Richmond (the "Property"). Except for laminate flooring, the Property is in its original condition. The building was built in 1971 and is a three storey wood frame that is undergoing an envelope repair.

Section 65 Appeal

[4] Section 65(1) of the *Act* provides:

> 65 (1) Subject to subsection (2), a person affected by a decision of the board on appeal, including a local government, a taxing treaty first nation, the government or the

> assessment authority, may require the board to refer the decision to the Supreme Court for appeal on a question of law alone in the form of a stated case.

[5] The Court of Appeal in *British Columbia (Assessor of Area No. 27 - Peace River) v. Burlington Resources Canada Ltd*., 2005 BCCA 72, 37 B.C.L.R. (4th) 151, described at para. 18 the scope of the term "question of law" for the purposes of an appeal pursuant to the *Act* as follows:

1. A misinterpretation or misapplication by the Board of a section of the Act.
2. A misapplication by the Board of an applicable principle of general law.
3. Where the Board acts without any evidence.
4. Where the Board acts on a view of the facts which could not reasonably be entertained.
5. Where the method of assessment adopted by the Board is wrong in principle.

[6] The court, in considering categories 3 and 4, is not to trespass on the exclusive province of the Board with respect to findings of fact. In *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)* (1998), 112 B.C.A.C. 176, 62 B.C.L.R. (3d) 354, Newbury J.A., writing for the court, noted the five categories of questions of law described above and then stated at para. 9:

> ... As Mr. Savage points out in the case at bar, questions as to the sufficiency of evidence or as to which expert opinion should be preferred by the Board in deciding the highest and best use of a given property were questions of fact within the Board's exclusive jurisdiction: see *Comox Provincial Assessor v. Crown Zellerbach Canada Ltd.* (1963), 42 W.W.R. 449 (B.C.C.A.) at 458 and *Caldwell v. Stuart*, [1984] 2 S.C.R. 603 (S.C.C.), at 613.

The Stated Case

[7] The Stated Case sets out the following material facts:

1. The appeal before the Board was from the decision of the 2011 Property Assessment Review Panel with respect to the 2011 assessment of a residential condominium located at #304 — 3451 Springfield Drive, Richmond (the Property). The issue before the Board was to determine if the Property's assessed value accurately reflected its market value as of July 1, 2010.
2. The Property is 1,145 square foot, three bedroom condominium. Except for laminate flooring, it is in its original condition. The building was built in 1971 and is a three storey wood frame that is undergoing an envelope repair.
3. The Board heard the appeal by way of written submissions.
4. The Board found that the building envelope condition was identified in 2009 and that the owners were aware of the building's condition prior to October 31, 2010.
5. The Board found the Property's market value fell within a range of market value from $234,500 or $205 per square foot to $265,000 or $231 per square foot. The Board found the Property's market value was closer to the lower end of the range of market value and found that the assessed value reflects its market value as of July 1, 2010.

6. The Board confirmed the decision of the 2011 Property Assessment Review Panel...

[8] The questions of law set out in the Stated Case are as follows:

1. Did the Board err in law:
    a) to observe the principles of natural justice and procedural fairness that it should have observed?
    b) By acting without evidence or on a view of the facts which could not reasonably be entertained?
2. Is the Board's decision based on findings of fact made in a perverse or capricious manner, without regard for the material before it?
3. Did the Board err in law in:
    a) denying the Applicant the opportunity to examine or cross-examine the witness(es) of the Respondent whose evidence was suspect, but accepted by the Board without question?
    b) misinterpreting or misapplying Section 18 of the *Assessment Act* in that the outstanding repairs relating to the physical condition of the property as of October 31 needed adjustment to assessed value(s)?
    c) determining that the Parties' agreement, accepted by the Board, relating to the assessed values for Land ($132,000) and Improvements ($88,000) as of July 1, 2009, made on or around September 13, 2010 [Exhibit 1] complied with Section 3 of the *Assessment Act*? If it did, how then, did the assessment roll for the 2011 Property Assessment Notice show Land ($208,000) and Improvements ($31,600), without any flow through/continuation?

[9] The court's jurisdiction is limited to answering the precise questions asked on the Stated Case, see *Trustee Board of the New Vista Society v. Assessor of Area #10 – Burnaby/New Westminster*, [1992] B.C.J. No. 1127 (C.A.).

The Decision

[10] With respect to the Decision, the court is entitled to refer to the Board's reasons for purposes of interpreting or explaining the stated case: see *Bentall Retail Services v. Assessor of Area #09 – Vancouver*, 2006 BCSC 424 [*Bentall*], and to see if the reasons disclose an error in principle: see *Western Indoor Tennis Ltd. v. Assessor of Area 11 (Richmond-Delta)* (1981), 29 B.C.L.R. 265 (S.C.).

[11] The court is restricted to the facts set out in the Stated Case and Decision. The court is not entitled to substitute findings of its own or to weigh the evidence. The court is entitled to refer to the transcript of evidence to determine, where the matter is at issue, whether there is any evidence to support a finding of fact or for the purpose of interpreting or explaining the Stated Case: see *Caldwell v. St. Thomas Aquinas High School*, [1984] 2 S.C.R. 603; *Hennessy v. British Columbia (Assessor of Area No. 01 – Capital*) (1996), 79 B.C.A.C. 275; and *Bentall*.

Analysis

> **Question 1(a) and (b): Did the Board err in law: a) to observe the principles of natural justice and procedural fairness that it should have observed? b) By acting without evidence or on a view of the facts which could not reasonably be entertained?**

[12] The respondent has submitted that questions 1(a) and (b) are so broad and general in their scope that it is not possible to identify the particular error complained of, citing *British Columbia (Assessors of Areas No 1 and No 10) v. University of Victoria*, 2008 BCSC 1302 [*University of Victoria*], counsel submits that this amounts to a fatal flaw such that the question should not be answered.

[13] In *University of Victoria,* Madam Justice Ballance dealt with this issue at paras. 15-17 as follows:

> Question 1, as framed, raises an issue of the Board's interpretation of the phrase "*held or used for university purposes*", found in s. 54, but does not articulate, with an appropriate degree of specificity or clarity, the conclusion of the Board that is alleged to be in error. It is not clear precisely what legal issue is at the heart of question 1. The question is so broad and general in its scope that it is not reasonably possible to identify the particular error or errors complained of. In its essence, question 1 is tantamount to asking whether the Board correctly interpreted the phrase in question.
>
> To my mind, question 1 is plainly distinguishable in a material way from the types of questions posed and approved of as questions of law in the cases relied on by the Assessors, including, *Burlington, Delta Building Products Ltd. et al v. Greater Vancouver Transportation Authority* (2006), Stated Case 507 (B.C.S.C.); and *Leung v. Richmond/Delta (Assessor) Area 11,* 2006 BCSC 877 [2006] B.C.J. No. 1288 (QL) (B.C.S.C.): While question 1 does have features similar to those found in the questions posed in *Vernon (Assessor) Area #20 v. Interior Health Authority,* 2006 BCSC 930, [2006] B.C.J. No. 1381 (QL) (B.C.S.C.), it is noteworthy that in that case, the legitimacy of the questions was not challenged.
>
> For the foregoing reasons, I conclude that question 1 is fatally flawed and should not be answered.

[14] I have concluded that Questions 1(a) and (b) as framed are fatally flawed in that in each case the alleged error is not identified. For that reason, I conclude that the question is fatally flawed and should not be answered.

[15] The court has discretion pursuant to s. 65(7) of the *Act* to refer the Stated Case back to the Board to permit amendments. That course was adopted in *University of Victoria* following *British Columbia (Assessor of Area No. 12 - Tricities/Northeast Fraser Valley) v. Great Northern & Pacific Health Care Enterprises Inc.*, 2000 BCSC 1216. I have decided not to exercise the discretion to remit the question to the Board for amendment. It was evident from the submissions of the parties that the specific complaints raised by Mr. Virani concerning natural justice and procedural fairness are captured in Question 3(a) and his concerns with respect to the findings of the Board are captured in Question 3(b). Accordingly, Questions 1(a) and (b) are essentially duplications of matters raised in Question 3.

Question 2: Is the Board's decision based on findings of fact made in a perverse or capricious manner, without regard for the material before it?

[16] The respondent has the same objection to Question 2 as was raised concerning Questions 1(a) and (b). I have concluded that Question 2 is fatally flawed in that the nature of the alleged error is not identified. As framed, the question should not be answered. I have concluded that Mr. Virani's specific complaints with the fact finding of the Board are identified in Question 3. Accordingly, for the same reason as set out above, I decline to exercise the discretion to refer the Stated Case back to the Board for amendment.

Question 3(a): Did the Board err in law in denying the Applicant the opportunity to examine or cross-examine the witness(es) of the Respondent whose evidence was suspect, but accepted by the Board without question?

[17] By way of background:

(a) Mr. Virani delivered a timely Notice of Appeal to the Property Assessment Appeal Board on April 6, 2011.

(b) An Appeal Management Conference was held by telephone on June 22, 2011. Mr. Virani did not attend.

(c) A second Appeal Management Conference was conducted by telephone on July 11, 2011. The Appeal was set for hearing by way of written submissions. There is no suggestion that Mr. Virani requested an oral hearing at that time.

(d) Mr. Virani submitted his written submission on July 19, 2011. He did not request an oral hearing.

(e) Mr. Leung, an appraiser employed by the Assessor, submitted his reply submission to the Property Assessment Appeal Board on August 25, 2011.

(f) Mr. Virani submitted a rebuttal on September 5, 2011. In that rebuttal he requested that the evidence of the Assessor's appraiser be set aside, in part because of an alleged lack of opportunity to cross-examine witnesses. Those witnesses were two listing real estate agents who were reported to have provided information to the Assessor's appraiser regarding comparable properties. Mr. Virani did not however request an oral hearing.

[18] The evidence at issue concerned evidence of sales that were put forward as comparables. One relevant concern was the extent to which the comparables took account of the costs of external repairs. The evidence in question is as follows:

To address the costs of the external repairs, condition of the comparable unit #316 and to investigate the circumstances surrounding this transaction, BCA contacted the realtors involved in this sale. This sale transacted September 28th, 2010, a few days prior to October 2010 when the appellant claims strata owners discovered the problems.

The selling broker, Mr. Ed Ganeff explained that both parties were well aware of the ongoing remediation and that the purchaser negotiated the associated risk of envelope repairs into the price. Mr. Ganeff also confirmed that there were no in-suite renovations done to the unit at the time of purchase. Please see pictures showing the condition of unit #316 from the listing in attached *Addenda C*.

The listing broker for unit #316, Ms. Evelyn Lau was also contacted regarding the sale. She confirmed that the vendor and purchaser negotiated the price on the knowledge that there were problems with the building envelope.

[19] Mr. Virani's submission in his rebuttal was as follows:

1. At the outset, I submit that the expert witness evidence adduced by the Assessor, British Columbia Assessment ("BCA") be set aside because:
    a. the evidence is based on hearsay; no written report and/or analysis;
    b. I have not had the opportunity to examine or cross-examine the real estate experts - Mr. Ed Ganeff and Ms. Evelyn Lau;
    c. the evidence is not under oath;
    d. it is incomplete and inaccurate; and
    e. I have evidence from a third party that contradicts the said expert evidence, but would not be fair of me to taint my presentation with.

[20] The Board did not accept Mr. Virani's submission that the evidence should be set aside. The Board's reasons with respect to this issue are as follows:

[2] Mr. Virani requests that portions of the Assessor's evidence be set aside because, in his opinion, it is based on hearsay without written reports or analysis; he has not been given an opportunity to examine or cross examine the Assessor's real estate experts; the evidence was not given under oath; it is incomplete and inaccurate; and finally, he has evidence from a third party that contradicts the Assessor's evidence, but that he states it would be unfair for him to include in his submission.

[3] The Board has authority to accept and consider any evidence that the Board determines is relevant. Mr. Virani has been given opportunity and has submitted a rebuttal to the Assessor's evidence. Therefore, decline his request to disregard the Assessor's evidence.

[21] Mr. Virani submits that the Board has the power to order an oral hearing and erred when it failed to do so in this case. He notes that he first became aware of the evidence at issue when he received the Reply of the Assessor and objected to it in his rebuttal. He stated further that:

i. In response to para 26 of the Assessor's Submission, I did interview the expert witnesses on a "no names" basis, as a potential customer. However, I did not wish to get into a "he said, she said" type of contest. The best forum to clear the

> issues in the case of disagreements would be before the Board or a Court, under oath.

[22] The Court of Appeal in *Petro-Canada v. British Columbia (Workers' Compensation Board*), 2009 BCCA 396, clarified the test for procedural fairness. Mr. Justice Groberman, for the court, stated at para. 65:

> Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it. In some circumstances, a tribunal's decision to address an issue not raised by the parties may constitute a denial of procedural fairness – see, for example, *MacNeil v. Nova Scotia (Workers' Compensation Board)*, 2001 NSCA 3, 189 N.S.R. (2d) 310.

[23] The factors to be considered in determining issues of procedural fairness were discussed in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817. The factors to be addressed are summarized in the headnote to the Supreme Court Reports as follows:

> The duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker. Several factors are relevant to determining the content of the duty of fairness: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself.

[24] In the present case, Mr. Virani knew the case he had to meet. He was provided with all of the evidence and submissions considered by the Board. He was given an opportunity to respond. It is noteworthy that Mr. Virani did not request an oral hearing, nor did he request the opportunity to cross-examine. He made reference to evidence from a third party that contradicts the evidence of Mr. Ganeff and Ms. Lau but does not include it. I conclude that any failure to respond to the evidence of Mr. Ganeff and Ms. Lau was a tactical decision, not the result of any lack of opportunity to do so.

[25] In his rebuttal, Mr. Virani objects to the evidence on the basis that it is hearsay and not given under oath. However the Board is not bound by the rules of admissibility of evidence that are applicable in proceedings in court. The Board has the discretion to accept any information that it considers relevant, necessary and appropriate. This is provided in Rule 19 of the Property Assessment Appeal Board Rules which states:

Evidence

19. (1) A panel is not bound by the legal or technical rules of evidence and may, at its discretion, accept and act on evidence

(a) by oral or written statement;

(b) by affidavit;

(c) by the report of any person appointed by the panel or board; or

(d) obtained in any manner the panel thinks suitable.

[26] The *Act* gives the Board the discretion to decide whether an oral hearing is to be held. Section 55 provides:

55 (1) In a proceeding, the board may hold any combination of written, electronic and oral hearings.

[27] Property Assessment Appeal Board Rule 18 provides in part:

Hearings

18. (1) The board may direct that a hearing be conducted

(a) by way of an in person hearing;

(b) by way of telephone conference;

(c) by way of written materials and submissions delivered to the board, including any reports received pursuant to an investigation conducted by the board;

(d) any combination of (a), (b) or (c);

(e) by any other means the board deems appropriate.

[28] The Court of Appeal, in *Allard v. Assessor of Area #10 – North Fraser Region*, 2010 BCCA 437, has confirmed that an oral hearing is not necessarily required where there are facts in dispute. Madam Justice Rowles concluded that cross-examination was not a requirement of procedural fairness in the circumstances, stating at paras. 98-100:

It is apparent from the facts in the Stated Case and the reasons given by the Board that to determine the issue of the actual value of the Property, it was necessary for the Board to consider evidence as well as submissions. Under s. 40 of the *ATA*, the Board, on the admissibility of evidence, is not restricted by the rules of evidence applied in court proceedings. In this case, the evidence took the form of an appraisal report submitted by the Assessor but, as the Board's reasons demonstrate, the submissions made by Allard, based on the information he had about other properties and sales, were taken into account by the Board in deciding whether there was reason to question the underpinnings of the appraiser's opinion.

The letter from Ms. Vickers dated 11 August 2008, confirming the results of the Appeal Management Conference of the same date, set out the various bases upon which Allard intended to challenge the opinion contained in the appraiser's report. From the Board's

reasons, it is apparent that what Allard had said he wished to challenge was, in fact, considered on his appeal.

In the circumstances of this case, it appears to me that the fifth factor elucidated in *Baker* at para. 27 must be given considerable weight:

> 27 Fifth, the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances: Brown and Evans, [*Judicial Review of Administrative Action in Canada*, looseleaf (Toronto: Canvasback, 1998)], at pp. 7-66 to 7-70. While this, of course, is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints: *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, *per* Gonthier J.

[29] In the present case, as noted above, Mr. Virani knew the case he had to meet. He had the opportunity to present evidence and submissions both in the first instance and in reply to the material provided by the respondent. It is clear that the Board had regard to his submissions and evidence in reaching the Decision. Mr. Virani never requested an oral hearing or the opportunity to cross-examine. The *Act* has given the Board discretion with respect to evidence and procedure.

[30] In all of the circumstances I am satisfied that the duty of fairness did not require an oral hearing or cross-examination in the present case. The answer to Question 3(a) is no.

Question 3(b): Did the Board err in law in misinterpreting or misapplying Section 18 of the *Assessment Act* in that the outstanding repairs relating to the physical condition of the property as of October 31 needed adjustment to assessed value(s)?

[31] Section 18 of the *Act* provides:

> 18 (1) For the purpose of determining the actual value of property for an assessment roll, the valuation date is July 1 of the year during which the assessment roll is completed.
>
> (2) The actual value of property for an assessment roll is to be determined as if on the valuation date
>
> (a) the property and all other properties were in the physical condition that they are in on October 31 following the valuation date, and
>
> (b) the permitted use of the property and of all other properties were the same as on October 31 following the valuation date.
>
> (3) Subsection (2) (a) does not apply to property referred to in section 10 (3) (b), (c) or (c.1).
>
> (4) The actual value of property referred to in section 10 (3) (b), (c) or (c.1) for an assessment roll is to be determined as if on the valuation date the property was in the physical condition that it is in on December 31 following the valuation date.

[32] Mr. Virani submits that the Board erred in that the evidence of value of the subject property did not account for the 2011 Proposed Special Levy of the Strata Corporation for $2,304,000 for repairs to the building envelope, for which the Property's share would be $32,928.30. In addition, Mr. Virani submits that the Board did not take account of the fact that the Property is in largely the original condition and will require the expenditure of $60,000 to bring it into marketable condition. Finally Mr. Virani takes issue with the comparables relied upon by the respondent.

[33] It is clear from the Board's Decision that all of the arguments Mr. Virani advances in the appeal on the Stated Case were presented to the Board. The Board discussed the evidence and submissions and concluded:

> [41] The evidence before me shows that the building condition was reviewed in 2009 by RDH Engineering and that several meetings with the strata council and the owners had taken place to discuss phase 1 and all other aspects of the building envelope project including costs. Therefore, I find that the evidence does not support Mr. Virani's arguments that the condition of the building was not known until after October 31, 2010.
>
> [42] The best indication of market value is sales of similar properties adjusted to reflect dissimilarities. The Assessor provides an appraisal report analyzing three comparable sales and determines a range of market value. The comparables are not adjusted for dissimilarities and the range of market value is based on their sale prices.
>
> [43] I find the best comparison to the subject is comparable #1 that sold for $234,500 or $205 per square foot. Comparable #2 is superior in quality to comparable #1 and the subject, as well as having a view and it sold for $265,000 or $231 per square foot. Comparable #3 is the least comparable to the subject being smaller and having only two bedrooms and sold for $208,000 or $235 per square foot.
>
> [44] Based on the sale prices for comparable #1 and comparable #2, I find that the subject's market value falls within a range of market value from $234,500 or $205 per square foot to $265,000 or $231 per square foot.
>
> [45] I find that the subject's market value is closer to the lower end of the range of market value because it is more comparable to the sale of comparable #1. The subject's assessed value at $239,600 is close to the lower end of the range and I find that the assessed value reflects its market value as of July 1, 2010.

[34] There was evidence before the Board with respect to each of these issues. Mr. Virani's arguments amount to an invitation for the court to substitute its own assessment of the evidence but the court is not entitled to do so. The answer to Question 3(b) is no.

> **Question 3(c): Did the Board err in law in determining that the Parties' agreement, accepted by the Board, relating to the assessed values for Land ($132,000) and Improvements ($88,000) as of July 1, 2009, made on or around September 13, 2010 [Exhibit 1] complied with Section 3 of the *Assessment Act*? If it did, how then, did the assessment roll for the 2011 Property Assessment Notice show Land ($208,000) and Improvements ($31,600), without any flow through/continuation?**

[35] Mr. Virani submits:

When you compare the 2011 Property Assessment Notice showing:

Land	$208,000
Buildings (improvements)	31,600

it does not resemble the decision of the Board on September 13, 2010 where the Property was assessed as:

Land	$132,000
Improvements	88,000

This clearly shows that the assessment roll in 2011 as shown on the Property Assessment Notice was incorrect and did not follow was decided by the Board a year earlier. The Assessor has chosen to ignore the Board decision of September 13, 2010. Around September 2010 I was forced to go to the Board to have the land and improvements correctly valued at $132,000 and $88,000 respectively.

The Board failed to recognise this error and request the Assessor to amend the roll.

[36] The Board dealt with this issue as follows:

> [19] Mr. Virani submits a brief outlining his arguments. He refers to a copy of the Board's decision of September 13, 2010 that reduced his assessed value from $235,100 to $220,000 and set the land value at $132,000 and the improvements at $88,000. He argues that his 2011 assessed improvement value at $31,600 is incorrect and that the 2011 roll is also incorrect
>
> [20] The copy of the Board's decision of September 13, 2010 sets out an agreement and recommendation reached by the parties for a reduction in the assessed value. There is no discussion relating to the split between land and improvements. The Assessor is required to determine assessed values based on the total value of the land and improvements. The parties have not provided me with any evidence on whether or not the agreed-to assessment of $220,000 was at the property's market value as of July 1, 2009 (the valuation date for the 2010 assessment roll). Furthermore, I have no evidence as to the market movement been between July 1, 2009 and July 1, 2010 (the valuation date for the 2011 assessment roll). Therefore, I find that the evidence before me does not support Mr. Virani's argument that the 2011 assessed improvement value or total value for the subject is incorrect.

[37] The respondent submitted that:

> There are two questions under 3(c). The first question implies that the Board determined that the previous year's decision, which went by way of consent, "complied with s. 3 of the *Assessment Act*." The Board was not required to make any such determination in the course of the appeal, and did not do so. At paragraph 20 of its reasons, the Board made reference to the decision from the previous year, and concluded that there was no evidence before it that would permit it to use the previous year's assessment as a starting point for the current assessment. There is no finding as to whether the previous year's assessment did or did not comply with s. 3 of the *Assessment Act*, as that question would be outside the jurisdiction of the Board hearing the 2011 appeal.

> A question founded on a misstatement of the Board's determination should not be answered, see *University of Victoria*.
>
> The second question in 3(c) is not answerable. It asks for an explanation, rather than the Court's opinion on whether any error in law was made by the Board. The question is argumentative. The court should not be expected to attempt an answer that would require it to write reasons in support of the Board's decision.

[38] I agree with the submission of the respondent. The first part of Question 3(c) is premised on the assumption that the Board determined that the settlement, accepted by the Board in 2010 with respect to the values as of July 1, 2009 complied with s. 3 of the *Act*. There was no such finding and accordingly the question is based on a misstatement of the Board's determination. As such it should not be answered. The second question in question 3(c) is in a form that cannot be answered but rather calls for the court to explain the Board's reasoning.

Conclusion

[39] The questions have been answered in the negative or found to be inappropriate to answer. The appeal is dismissed with costs.