SC 550 KBK No. 197 Ventures Ltd. v AA09 and PAAB

Link to Property Assessment Appeal Board Decision

KBK NO. 197 VENTURES LTD.
v.
ASSESSOR OF AREA 09 – VANCOUVER SEA TO SKY and
PROPERTY ASSESSMENT APPEAL BOARD

SUPREME COURT OF BRITISH COLUMBIA (L120065) Vancouver Registry

Before the HONOURABLE MADAM JUSTICE WATCHUK
Date and Place of Hearing: October 5, 2012, Vancouver, B.C.

D.H. Clarke for the Appellant
Guy Holeksa for the Respondent, Assessor of Area 09 – Vancouver Sea to Sky

Commercial Building – Equity – Apportionment

The property is a 101,800 square foot, three-storey, commercial building. The appellant challenged the value of the property on the 2009 and 2010 assessment rolls. The parties agreed on the following:

- *July 1, 2007 was the appropriate valuation date for the 2009 roll;*
- *the highest and best use is redevelopment to a mixed-use commercial/residential complex; and*
- *the direct comparison approach is the appropriate valuation methodology*

The Property Assessment Appeal Board concluded that the 2009 and 2010 assessments were at actual value and equitable. The Board further concluded that the values were appropriately apportioned between land and improvements and confirmed the 2009 and 2010 decisions of the Property Assessment Review Panels. The appellant appealed the Board's decision asking the following four questions:

1. *Did the Property Assessment Appeal Board err in law by failing to act in accordance with Section 57(1)(a) of the Act which provides that the Board must ensure that properties within a municipality are assessed in a consistent manner?*
2. *Did the Property Assessment Appeal Board err in law in acting without any evidence or on a view of the evidence that could not reasonably be entertained in finding that the comparable assessments cited by the Appellant were not persuasive evidence that the subject had been assessed inequitably as regards other similar properties?*
3. *Did the Property Assessment Appeal Board err in law by applying a value to the subject that is inequitable as compared to other competitive properties in the municipality such that the value does not bear a fair and just relationship to the assessments of those properties, contrary to the principles set by the British Columbia Court of Appeal in Vancouver (Assessor of Area #09 v. Bramalea Ltd., 1990 CanLII 284 BCCA) (sic)?*
4. *Did the Property Assessment Appeal Board misapply a principle of general law by having valued the land as if vacant for redevelopment purposes, then go on to value the*

improvements thereon conventionally, and thereby ignore or misapply the principle enunciated in Toronto v. Ontario Jockey Club [1934] S.C.R 224 [Jockey Club], as applied in Western Indoor Tennis v. Assessor of Area 11 – Richmond-Delta (1981) B.C. Stated Case 148 and Botham Holdings Ltd. v. Assessor of Area #09 (2008-09-00239)?

HELD: *Appeal Dismissed.*

The Court found that the standard of review was reasonableness and answered each question in the negative. At paragraph 69, the Court stated that "On all issues regarding equity, the [Board] Decision stated the correct principles and decided them reasonably on a view of the evidence it was entitled to take." Specifically, the Court found that the subject property, although unique, was assessed equitably. The Court held that the Board identified the uniqueness of the property and appropriately applied an adjustment factor to the assessed value of comparable properties.

With respect to apportionment, the Assessor argued and the Court agreed, that the Board's decision could be upheld for three reasons:

- *the overall property value is correct and there is no basis to reduce the improvement value;*
- *the value, based on a three-five year holding period supports the assessed value of the improvements; and*
- *appraisal tolerance.*

Reasons for Judgment June 4, 2013

I. FACTUAL BACKGROUND

[1] This stated case involves the valuation for the 2009 and 2010 assessment rolls of property owned by the Appellant KBK No. 197 Ventures Ltd. (the "Appellant") with a civic address of 905 Cambie Street, Vancouver, B.C. (the "Property").

[2] The Property consists of a large three-storey building on an entire city block bounded by Cambie Street, Nelson Street, Mainland Street and Robson Street. Details regarding the Property and its assessments are set out in paragraphs 2 and 9 of the Stated Case, noted below, and in the decision of the Property Assessment Appeal Board (the "Board") dated January 24, 2012 (the "Decision").

[3] The Decision confirmed the decision of the Property Assessment Review Panel.

II. JURISDICTION OF THE COURT

[4] Section 65(1) of the *Assessment Act*, R.S.B.C. 1996, c. 20 [*Assessment Act*], states the statutory basis for an appeal by stated case:

> 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.

The parties agree that the jurisdiction of this Court under s. 65 is limited. The Court ought to intervene only where the Board has committed an error of law.

[5] What constitutes an error of law was set out in *Crown Forest Industries v. British Columbia (Assessor of Area 6 – Courtenay)*, [1985] B.C.J. No. 163 at paras. 29-30 (S.C.):

> Under the British Columbia statute, this Court has no power to substitute its opinion on questions of fact for those of the Board.

So long as the Assessment Appeal Board which must, in deciding appeals to it, apply the Act does not:

1. misinterpret or misapply the section – see *Pacific Logging Co. Ltd. v. The Assessor* [1977] 2 S.C.R. 623 adopting the dissenting judgment of McIntyre, J.A. in the Court of Appeal 12th November, 1976 (unreported);
2. misapply any applicable principle of general law (a concept relevant only to one of the questions in the stated case), or
3. act without any evidence or upon a view of the facts which could not reasonably be entertained

this Court has no power to intervene.

[6] Rule 18-2 of the *Supreme Court Civil Rules* governs the procedure for stated cases in the Supreme Court.

III. STANDARD OF REVIEW

[7] The parties agree that the standard of review which is relevant to the issues raised by the appellant is reasonableness: *Weyerhauser Company Ltd. v. British Columbia (Assessor of Area No. 04 – Nanaimo Cowichan)*, 2010 BCCA 46 at paras. 36-47. The reasonableness standard was described in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paras. 46-47.

[8] The principle of curial deference which is discussed in *Dunsmuir* is relevant with respect to the Board. As the members generally have appraisal qualifications and expertise in determining appraisal issues, the Board is accorded curial deference.

IV. ISSUES

[9] The Court has jurisdiction only to answer the questions which are stated in the stated case. The issues are therefore defined by the questions in the stated case.

[10] The questions in the stated case are:

> Question 1. Did the Property Assessment Appeal Board err in law by failing to act in accordance with Section 57(1)(a) of the Act which provides that the Board must ensure that properties within a municipality are assessed in a consistent manner?
>
> Question 2. Did the Property Assessment Appeal Board err in law in acting without any evidence or on a view of the evidence that could not reasonably be entertained in finding that the comparable assessments cited by the Appellant were not persuasive evidence that the subject had been assessed inequitably as regards other similar properties?
>
> Question 3. Did the Property Assessment Appeal Board err in law by applying a value to the subject that is inequitable as compared to other competitive properties in the municipality such that the value does not bear a fair and just relationship to the assessments of those properties, contrary to the principles set by the British Columbia Court of Appeal in *Vancouver (Assessor of Area #09 v. Bramalea Ltd.,* 1990 CanLII 284 BCCA) (sic)?
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> Question 4. Did the Property Assessment Appeal Board misapply a principle of general law by having valued the land as if vacant for redevelopment purposes, then go on to value the improvements thereon conventionally, and thereby ignore or misapply the principle enunciated in *Toronto v. Ontario Jockey Club* [1934] S.C.R 224 [Jockey Club],

as applied in *Western Indoor Tennis v. Assessor of Area 11 – Richmond-Delta* (1981) B.C. Stated Case 148 and *Botham Holdings Ltd. v. Assessor of Area #09* (2008-09-00239)?

[11] These questions can be divided into two groups:

(a) Questions 1 to 3 address the issue of equity; and

(b) Question 4 addresses the issue of valuation of development land with improvements in place.

[12] The Appellants' Submission does not state the questions regarding equity separately or discuss that issue other than in a general way. It challenges the Board's decision on the issue of equity and the issue of improvement value without specifically referring to any of the questions. Although the Court only has jurisdiction to answer the questions stated, I will address the law regarding the broad issue of equity before turning to the first three questions.

V. FACTS

[13] The following facts which are relevant to the questions of law to be determined by this Court are set out in the Notice of Stated Case:

1. The appeals before the Board were from the 2009 and 2010 decisions of the Property Assessment Review Panel with respect to property owned by the Applicant, KBK No. 97 Ventures Limited, located at 905 Cambie Street, in the City of Vancouver (the Property). The issues before the Board were to determine the actual value of the Property for the 2009 and 2010 rolls and to determine whether the assessments were equitable. The relevant valuation date for the 2009 appeal was July 1, 2007 and for the 2010 appeal was July 1, 2009.

2. The Property occupies an entire city block bounded by Cambie, mainland, Nelson and Smithe Streets, in the Yaletown neighbourhood of Vancouver. The rectangular land parcel occupies nearly 101,800 square feet or approximately 2.34 acres. The three storey building is currently utilized for offices and warehousing. Although the building is about 50 years old, it has been well maintained and is in good condition. There are multiple tenants, one of which occupies about 100,000 square feet and is apparently content to remain in possession for the near to medium term. The building has about 270,500 square feet of leasable area. There is a rooftop parking lot. The Property is zoned "Downtown District - Area 2" (DDL2) and permitted uses within this category include office, retail, hotel and high density residential.

3. The parties agreed that the Property's highest and best use is not its current use, but that the Property should be redeveloped as a mixed-use commercial/residential complex. The parties agreed that the Property should be valued based on the direct sales comparison method.

4. The current zoning allows for a maximum floor-space ratio ("FSR") of 5.0 to be contrasted with the current FSR for the building on-site of 2.74. The FSR identifies the maximum amount of total floor space that may be built on a given plot of land. The Property is a prime redevelopment site and the parties agreed that the overwhelming majority of the total property value should be attributed to

land rather than improvements. The parties also agreed that the appropriate unit of comparison among the various sales comparables is the adjusted sale price per square foot of buildable area ("PBA"). Thus, this Property, being approximately 101,800 square feet has, with an FSR of 5.0, a total buildable area of approximately 509,000 square feet. Accordingly, the PBA for the 2009 assessment as a whole is approximately $194 and about $190 for the land alone.

5. The Board found that the 2009 assessment appeared to be, if anything, a conservative estimate of the Property's actual value as of July 1, 2007, and that the actual value of the Property as of July 1, 2007 was at least as much as the total value reflected in the 2009 assessment of $98,669,000.

6. The Board found that the total actual value of the Property as of July 1, 2009 was at least as much, if not more, than the assessed value of $68,359,000.

7. The Board was unable to conclude that the Property had been inequitably assessed on either the 2009 or 2010 assessment rolls.

8. The Board found that if the Property were to be resold at fair market value, the building would likely not be demolished for at least three years. The Board found the proper approach to valuing the improvements is to calculate the economic return to the developer prior to demolition less demolition costs. The Board found the current valuation for the improvements for both the 2009 and 2010 assessment rolls appeared to be supported. The improvement values were apportioned from the overall value of the Property which the Board fixed at $98,669 million for the 2009 assessment and $68,359 million for the 2010 assessment.

9. The Board confirmed the decisions of the 2009 and 2010 Property Assessment Review Panels as follows:

Roll No. 09-39-200-029-604-156-04-0000 - Appeal No. 2009-09-00301		
Land:	Class 6 - Business and Other	$96,800,000
Improvements:	Class 6 - Business and Other	$1,869,000
Total Assessed Value:		$98,669,000

Roll No. 09-39-200-029-604-156-04-0000 - Appeal No. 2010-09-00125		
Land:	Class 6 - Business and Other	$66,231,000
Improvements:	Class 6 - Business and Other	$2,128,000
Total Assessed Value:		$68,359,000

VI. THE DECISION

[14] The Decision is divided into six sections:

(a) Introduction;

(b) The Property;

(c) The Appellant's Submissions & Evidence;

(d) The Assessor's Submissions & Evidence;

(e) Findings and Analysis – with the following subheadings:

Is the 2009 Assessment at Actual Value?

Is the 2010 Assessment at Actual Value?

Are the 2009 and 2010 Assessed Values "Equitable"?

What is the Appropriate Improvement Values for the 2009 and 2010 Assessments? and

(f) Order.

[15] The Introduction provides a brief history of the appeal, and notes there was a similar appeal for 2008 which found the Property had a value of $106,500,000. The assessment of $98,669,000 was therefore confirmed. The Appellant brought a stated case of that decision, but subsequently abandoned the stated case.

[16] The Introduction notes that originally it was agreed that the 2008 value would apply to subsequent years, but the parties later abandoned that agreement, resulting in the appeals for the 2009 and 2010 years being continued. The valuation date for both the 2008 and 2009 appeal is July 1, 2007.

[17] The Introduction identifies the two principal issues:

(a) what the market value of the Property was at July 1, 2007 for the 2009 year and July 1, 2009 for the 2010 year; and

(b) whether the values were equitable.

[18] In the section titled "The Property", the Board describes the Property as consisting of 2.34 acres or 101,800 square feet of land with a fifty year old building maintained in good condition. The Board noted that the parties agreed that the highest and best use of the Property was to be redeveloped as a mixed-use commercial/residential complex.

[19] In this section the Board noted that the Property had a maximum floor-space ratio of 5.0 which resulted in a buildable area of 509,000 square feet and a value per buildable square foot ("PBA") of $190 for land alone for 2009.

[20] In the sections titled "The Appellant's Submissions & Evidence" and "The Assessor's Submission & Evidence", the Board summarizes the evidence and positions of each of the parties.

[21] In the section titled "Findings and Analysis", the Board considers the evidence and submissions regarding four sub-issues, and makes conclusions regarding each issue:

(a) Is the 2009 Assessment at Actual Value?

The Board concludes that the 2009 value was probably greater than the assessment of $98,669,000 and confirms the assessed value.

(b) Is the 2010 Assessment at Actual Value?

The Board concludes that the 2010 value was probably greater than assessment of $68,359,000 and confirms the assessed value.

(c) Are the 2009 and 2010 Assessed Values "Equitable"?

The Board concludes that no inequity had been shown.

(d) What is the Appropriate Improvement Vales for the 2009 and 2010 Assessments?

The Board concludes that the improvement values of $1,869,000 for 2009 and $2,128,000 for 2010 were both simply issues of apportionment and appropriate.

[22] The Order confirms the values in the decision of the Property Assessment Review Panel.

[23] In this appeal, the Appellant does not take issue with the conclusions of the Board regarding actual value as set out in (a) and (b) above. The conclusions regarding items (c) and (d) are the subject of this appeal.

VII. SUBMISSIONS OF THE PARTIES

[24] The Appellant takes issue with the Decision regarding equity as the Board, it submits, made an error of law because the Decision is based on an erroneous view of the evidence.

[25] With regard to the value of the improvements, the Appellant submits that the Board did not properly calculate the value and was in error by using the cost approach.

[26] The Respondent states that the sole function of the Court in a stated case is to answer the questions in the stated case. He notes that the Appellant has failed to specifically refer to any of the questions and has instead made general submissions about the decision as a whole and submitted the decision is incorrect. Unless the Appellant has established that there is an error of law based on the answer to one of the questions asked, the Appellant is not entitled to relief.

[27] The Respondent submits that the result from this procedure is reasonable since the Appellant drafted the questions in the stated case.

[28] The Respondent further submits that there is no error of law in the Decision and that the appeal ought to be dismissed with costs.

VIII. EQUITY

A. The Law Regarding the Principle of Equity

[29] The relevant statutory provision is section 57(1)(a) of the *Assessment Act*, which states:

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 . . . .

[Underlining added.]

[30] The requirement in the subsection that assessments must be "applied in a consistent manner" is a statement of the principle of equity. The following cases discuss equity in the context of the taxation of property:

(a) *British Columbia (Assessor of Area #09 – Vancouver) v. Bramalea Ltd.* (1990), 52 B.C.L.R. (2d) 218 (C.A.) [*Bramalea*];

(b) *Ross v. British Columbia (Assessor of Area #08 – Burnaby/New Westminster)*, 2000 BCCA 5 [*Ross*];

(c) *Allard Contractors Ltd. v. British Columbia (Assessor of Area #05 – Port Alberni)*, [1999] B.C.J. No. 2437 (S.C.) [*Allard*];

(d) *571016 B.C. Ltd. v. British Columbia (Assessor of Area No. 9 – Vancouver Sea to Sky Region)*, 2010 BCSC 790 [*571016 B.C.*]; and

(e) *Beach Town House Apartments Ltd. v. British Columbia (Assessor of Area No. 9 – Vancouver Sea to Sky Region)*, 2012 BCSC 1060 [*Beach Town House Apartments*].

[31] *Bramalea* is the leading case regarding the principle of equity. It stated that the principle of equity, which is found both in the statute and in common law, arises from the presumption that taxing authorities are required to deal even-handedly with all taxpayers. According to the Court of Appeal, at 221, it is a requirement that "assessed values of similar properties shall bear a fair and just relationship to each other". *Bramalea* discusses this principle in conjunction with the principle that property is to be assessed at "actual value". That statutory provision is found in section 19(2) of the *Assessment Act*.

[32] The *Ross* case discussed "similarity". It establishes that zoning can be a factor which results in different values for otherwise similar properties. At para. 7, the Court of Appeal quoted the Board's decision:

> Similarity is not an absolute. There is a continuum of similarity ranging from perfect similarity (as in, for example, condominiums in a development) to virtually zero similarity. In the case of perfect similarity, equity requires that properties in that group bear the same assessed value. However, as we move along the continuum and begin to see differences between properties, (like, for example, if one of the condominiums was otherwise identical, but was the penthouse) then, since the difference is one to which the market would respond, equity would permit, indeed require, that the assessed value for the penthouse be higher than for the others.
>
> Thus, "similar", as used in the equity edict, is a term of appraisal art. It can be defined as 'having characteristics or factors to which the market tends to respond in a similar fashion'.

[33] The Court of Appeal affirmed this description, at para. 15:

> Similarity is a spectrum, aptly described by the Assessment Appeal Board in the passages above. Points of similarity and dissimilarity will lead to different value responses from the market. The market value will reflect potential uses of the property, and in this zoning may be a factor. While zoning in itself does not determine the highest and best use of land, it is a factor which the Board may properly consider. While zoning sometimes may overstate the practical uses of the property, or may limit the use of the property (subject to any application to rezone, the risks of which will be reflected in the market price), it may be a factor which influences the market value of the land, and hence its actual value. Zoning, thus, may be a basis on which to assess otherwise similar

> parcels differently, subject to evidence that this point of dissimilarity is reflected in the market value.

[34] The *Allard* decision establishes that the Court gives substantial deference to the Board on findings of which properties are similar for purposes of equity. At para. 23, the Court said:

> While the other properties were similar in size and zoning to the Allard property, there was evidence that the locations were more remote and that the Assessor did not consider them as comparable. As Mr. Savage put it for the respondent, the Board was faced with conflicting evidence as to whether the other properties were comparable and found the Assessor's evidence to be more thorough and compelling. The Board's findings were not unreasonable.

[35] In *571016 B.C.* at paras. 27-30, the Court accepted and applied the findings from *Allard*, ruling that the Board was entitled to deference in its conclusion that an automobile dealership was built to its highest and best use and the comparables cited by the Appellant were not similar on that basis.

[36] In *Beach Town House Apartments* at paras. 45-49, the Court upheld the decision of the Board finding that a cooperative housing complex was not similar to various rental apartment buildings that the Applicant offered as comparables. In the process, the Court noted the applicability of the comments in *571016 B.C.* regarding deference to the Board.

B. Discussion - Questions involving Equity

1. Question 1. Did the Property Assessment Appeal Board err in law by failing to act in accordance with Section 57(1)(a) of the Act which provides that the Board must ensure that properties within a municipality are assessed in a consistent manner?

[37] Neither the question nor the Appellant's submissions specifically describe the method by which the Board failed to act in accordance with s. 57(1)(a) of the *Assessment Act*. The Decision referred to s. 57(1)(a) and then considered the issue of equity under a separate subheading and discussed equity between paras. 31-36. The Appellant submits that the error in the Decision is found in those paragraphs.

[38] At para. 33, the Board found that the property is unique:

> One of the most difficult aspect of this case when considering whether the assessments are "equitable" is the fact that the Appellant's property is unique in the general downtown Vancouver area and thus, finding appropriate equity comparables is highly problematic if not impossible.

The Board then listed the factors that make the Property unique:

(a) much larger than other properties;

(b) access from four streets;

(c) no additional land acquisition required;

(d) zoned to allow development;

(e) allows residential development; and

(f) lack of view cone restriction results in ability to develop to 5 FSR.

[39] The Board next referred to the evidence regarding the properties that the Appellant submitted established inequity. It noted that none of the properties submitted by the Appellant had the same zoning. It also noted that the Appellant failed to refer to one of the properties which the Board noted in a previous decision was most comparable to the Property.

[40] Having identified zoning as an issue with regard to the application of equity, the Board instructed itself with reference to paras. 14-15 of the Court of Appeal decision in *Ross* where it considered whether zoning alone can create a dissimilarity. The Court held that differences in zoning can result in different values.

[41] The Board then used the Appellant's suggested comparables, adjusted them for market factors, and found that the resulting values were within the range of equity.

[42] The adjustments made between the subject Property and the Appellant's equity comparables were approximately 25%. For the 2009 year when the Board applied the 25% adjustment, the adjusted assessed values of the equity comparables had a range of $170 to $188 PBA for the land component with six properties at the upper end of the range. This compared favourably to $190 for the land component of the Property. For the 2010 year when the Board applied the 25% adjustment, the assessed values of the equity comparables had a range of $122 to $137 for the land component. This compared favourably to a $130 for the land component of the Property.

[43] Section 57(1)(a) requires that assessments are applied in a consistent manner. The actions taken by the Board in ensuring that the requirement was met identified the uniqueness of the Property and an issue of zoning. It reviewed the evidence of comparable properties, and applied an adjustment factor.

[44] In so doing, the Board acted in accordance with section 57(1)(a). The answer to Question 1 is therefore "no".

> ***2. Question 2 - Did the Property Assessment Appeal Board err in law in acting without any evidence or on a view of the evidence that could not reasonably be entertained in finding that the comparable assessments cited by the Appellant were not persuasive evidence that the subject had been assessed inequitably as regards other similar properties?***

[45] The first question dealt with the actions of the Board in applying the relevant statutory requirement. Those actions involved hearing evidence. In this question, the Appellant asks whether the Board acted upon a view of the evidence that could not reasonably be entertained in finding that the Appellant's comparables did not establish that the subject had been assessed inequitably. I understand that this is the main attack of the Appellant on the Decision.

[46] The Respondent submits that there are two requirements to establish inequity: (a) the existence of comparable properties; and (b) the treatment of the subject Property different to comparable properties.

[47] The Respondent also submits that the Board found that neither requirement was satisfied because: (a) the subject Property was unique; and (b) if the Appellant's comparables were adjusted to account for the differences, equity was established.

[48] The Appellant takes issue with the adjustment of the comparables. It submits that there is not a basis on the evidence for the finding that an adjustment of 25% must apply, or that that finding is made upon a view of the evidence that could not reasonably be entertained.

[49] The issue taken by the Appellant is that the adjustment was calculated on the basis of sales data which tend to show that the properties with the zoning more similar to that of the Property tend to sell for about 25% more per PBA. However, it says that that is not the value at which the properties were assessed for the years under appeal. How the properties were assessed is key to the application of the equity principle.

[50] The error contended by the Appellant is that the Board used actual sales data and ignored the assessment data thus placing importance on that which is irrelevant and ignoring that which is relevant.

[51] With respect, the Decision and the evidentiary basis for it are not capable of this interpretation. The chart prepared by the Assessor and relied upon by the Board lists the Appellant's equity comparables and their respective 2009 assessed values. The adjustment was made to the assessed values.

[52] The decision in *Bramalea* is of assistance. The Court of Appeal, at 224, discussed the concept of ranges of value:

> So the Act, read in light of the general law, requires, except where otherwise clearly stated, that assessments be both at "actual value" and also be equitable as between taxpayers. It contemplates the possibility that an assessment may be at "actual value" and yet be inequitable. There may, of course, be a limited range of values of a particular property, none of which could be said to be other than actual value, and a range of values of a particular property, none of which could be said to be inequitable as between taxpayers. For any particular property, those two limited ranges may coincide, they may overlap but not coincide, or the highest point of one may be lower than the lowest point of another. The existence of such ranges may sometimes provide an opportunity to reconcile actual value with equity.

[53] Actual value is often the main issue in an assessment appeal. The Board determined that the Property's actual value for 2009 was $98,669,000 and for 2010 was $68,359,000. Assessments are based on actual value. Those findings are not appealed.

[54] The Appellant states that the Assessor brought no evidence or data to the Board as to what was actually done in creating the assessment for the subject Property. However, the Assessor established that the subject Property was assessed at actual value or market value.

[55] The onus is on the owner to establish the unfairness by reference to other assessments. An analysis of the method used to determine the assessment is not necessary as it is the assessment itself that is important, not the method used to create the assessment.

[56] The issue of equity arises where an owner believes that a property has been valued unfairly in relation to other properties. The substance of a finding that there is a lack of equity is that the owner must find that other similar properties have been assessed at less than their actual value.

[57] In this case the evidence supported the findings that the Property is unique and the Appellant's comparables were not similar primarily due to the differences in zoning. The evidence also supported the application of an adjustment factor of 25%. That equity was achieved in this manner with the evidence before the Board was a reasonable interpretation of the evidence.

[58] The answer to Question 2 is therefore "no".

3. Question 3 - Did the Property Assessment Appeal Board err in law by applying a value to the subject that is inequitable as compared to other competitive properties in the

municipality such that the value does not bear a fair and just relationship to the assessments of those properties, contrary to the principles set by the British Columbia Court of Appeal in Vancouver (Assessor of Area #09 v. Bramalea Ltd., 1990 CanLII 284 BCCA) (sic)?

[59] This question does not state the reason that the Appellant says that the Board applied a value to the Property which was inequitable in relation to other comparable properties. I understand that the Appellant takes issue with the Board's reliance on the Assessor's evidence.

[60] The Board did not accept the Appellant's expert's conclusion. The Board needed to assess competing opinions and determine whether the properties were sufficiently comparable to require the analysis. Part of that assessment was a determination of whether the Appellant's expert opinion was correct.

[61] The Board, when faced with conflicting evidence, relied upon the Assessor's evidence. As in *Allard*, the Board's findings of facts were not unreasonable.

[62] The Appellant submits that as its expert had no evidence of the Assessor's calculation of the Property's assessment, he needed to work with the marketplace information.

[63] The evidence relied upon by the Assessor was available to the Appellant. The calculation of value for all properties is contained on a Property Valuation Summary. The Appellant's expert received the Property Valuation Summary for the subject Property and also had access to the Property Valuation Summary cards of other properties that were assessed.

[64] A challenge to equity is advanced by whichever method is most appropriate in the circumstance. Circumstances vary with the properties. For the subject Property a comparison of value per buildable area ("PBA") was the most appropriate. However, with a unique property, the question is whether there are any proper comparables.

[65] The Board's Decision, at para. 36, establishes the basis of the 25% difference in value. The subject Property is unique and an equity analysis could not appropriately be performed. The rationale for the 25% adjustment implicitly accepts the Assessor's evidence on this issue. The Board is entitled and required to accept the evidence of one party. The Board was entitled to select between competing evidence and opinions.

[66] The Appellant also takes issue with the use of the assessment-sales ratio. While assessment-sales ratios are used to test equity in some segments of the market, such as residential homes, it was not used in this case.

[67] The Appellant also says that the Assessor's expert used 1300/1320 Richards as the best comparable. However, on page 14 of the Assessor's Report, the Assessor relies principally upon the comparison of the paired sales of 891 Cambie and 560 Davie Street to determine the premium between DD-C3 and DD-L1 zoning.

[68] The Appellant has not established that there was an error by applying a value to the Property that was inequitable.

[69] On all issues regarding equity, the Decision stated the correct principles and decided them reasonably on a view of the evidence it was entitled to take. The answer to Question 3 is also "no".

IX. APPORTIONMENT

1. Question 4 - Did the Property Assessment Appeal Board misapply a principle of general law by having valued the land as if vacant for redevelopment purposes, then go on to value the improvements thereon conventionally, and thereby ignore or misapply the principle enunciated in Toronto v. Ontario Jockey Club [1934] S.C.R 224 [Jockey Club], as applied in Western Indoor Tennis v. Assessor of Area 11 – Richmond-Delta (1981) B.C. Stated Case 148 and Botham Holdings Ltd. v. Assessor of Area #09 (2008-09-00239)?

[70] At paras. 37-41 of the Decision, the Board dismissed the Appellant's submission that the improvements should be valued at $10,000 on two bases:

> (a) the Board was determining the overall value which was correct and the allocation of part of the value to the improvements was merely an apportionment and was not determinative of value;
>
> (b) the Board held that based upon a three to five year holding period, the value of the improvements was greater than the value on the roll.

[71] The Appellant submits that the series of cases that follow *City of Toronto v. Ontario Jockey Club*, [1934] S.C.R. 223, hold that, in effect, it is an error of law having valued the land on the basis of redevelopment to value the improvements otherwise.

[72] The Respondent submits that the Decision can be upheld on any of three bases: that the overall value is correct and there is no basis to reduce the improvement value; that the value based on a 3 to 5 year holding period supports the assessed value of the improvements; and that as a result of appraisal tolerance the Decision should be upheld even if the Board erred in its Decision.

[73] With regard to overall value, section 57(1)(b) of the *Assessment Act* states that the Board must determine the value of the land and improvements together:

> 57(1) In an appeal under this Part, the board
>
> (b) when considering whether land or improvements are assessed at actual value, must consider the total assessed value of the land and improvements together.

[74] At para. 37, the Board notes that this issue was before the Board in the 2008 appeal and that decision held that the valuation of improvements was solely an apportionment issue. By apportionment issue, the Board meant that the most important question is the total overall value and the question of the allocation of the value is secondary.

[75] In the 2008 appeal, the value on the roll was $98,669,000, the same as the 2009 value on the roll. In the 2008 appeal, the Board held that the value of the Property was $106,500,000 and affirmed the value on the roll. After finding the value of the land and buildings was $106,500,000 and accepting that the roll value should be $98,669,000, there was no basis to reduce the assessment by $1,869,000 because that amount had been attributed to improvements.

[76] In the 2009 and 2010 appeal, the Board agreed with the 2008 decision and based the result on the same point, at para. 37:

> In the 2008 appeal, Board Member Bridal held that the valuation of the improvements was "solely an apportionment issue" (para. 79) and I similarly conclude that since the overall assessments for both the 2009 and 2010 assessment roll years appear to be in accord with full market value, the value of the improvements is, once again, an apportionment issue.

[77] The only difference between the 2008 decision and the 2009 and 2010 decisions is that in the 2008 decision the Board found that the value was $106,500,000 while in the 2009 and 2010 decisions the Board did not give a specific value for the property. The Board clearly considered the overall value of the Property to be more than the assessed value. At para. 26, the Board said:

> Overall, I am of the view that the 2009 assessment appears to be, if anything, a conservative estimate of the property's actual value as of July 1st, 2007. I share Board Member Bridal's view that the actual value of the property as of July 1st, 2007 was at least as much as the total value reflected in the 2009 assessment.

[78] The Board, at para. 29, made a similar statement in relation to the 2010 appeal. The Appellant's submission can be summarized as follows:

(a) the land should not be valued for redevelopment and the improvements on the land valued in a manner that does not recognize the redevelopment;

(b) the values placed upon the roll by the Assessor were based upon the cost approach;

(c) therefore, the improvement value is incorrect.

[79] The Respondent submits that in the result, the overall value is correct and there is no basis to reduce the improvement value. Alternatively, if the improvement value was reduced, the value of the land should be correspondingly increased so the overall value remains the same.

[80] With regard to whether the assessed value of the improvements should reflect a 3 to 5 year holding pattern, the Board noted that the question is whether the current improvements have economic value. The Appellant submitted that "it must be determined if the income producing potential over the development time frame is higher than the demolition costs" and "if this is so, the improvements would have some value even though they are going to be demolished."

[81] The Appellant submitted that the improvements should be valued at a nominal amount of $10,000. The Board noted that the 2008 decision rejected this approach and applied an estimate of holding income relative to demolition costs to estimate the value of the improvements.

[82] The Board noted that the disagreement between the parties was based on the length of the holding period before the property would be developed. The Appellant submitted it would be 9 months. The Assessor submitted it would be 3 to 5 years.

[83] The Board accepted the Assessor's evidence that the development period would be from 3 to 5 years. Accordingly, it accepted the value of improvements as being $1,869,000 for 2009 and $2,128,000 for 2010. These values are apportionments of the total value.

[84] The Appellant's submission is that the procedure that the Assessor used to set the assessment value was in error but it does not address the substantive issue of whether the value was correct.

[85] The cost approach was applied to calculate the value upon the roll. However, it was applied in an adjusted method to recognize the correct basis of determining the improvement value. As the existing improvements were good quality with a longer holding period, the improvements continue to have value in their interim use.

[86] In *Broadway Properties v. British Columbia (Assessor of Area #09 – Vancouver),* 2004 PAABBC 20040493, the Board considered 10 properties on the west side of Vancouver. Each of the properties

had a highest and best use for redevelopment. Each of the properties had an older building on the property. The appellants argued that the buildings on the properties should be valued at $0.

[87] The Board disagreed. The Board reviewed appraisal literature regarding interim uses and found that concept applied to these properties that were not going to be immediately redeveloped. The Board said, at para. 48:

> I find from the articles the value of the improvements under interim use must be considered as part of good appraisal practices. The method of evaluating the value seems to be dependent upon the suitability of the individual property and the analysis undertake by the expert appraiser. *However, I find the concept is clear; income producing improvements on interim property do have value.* (Emphasis added.)

[88] This decision was upheld on stated case: *Broadway Properties Ltd. v. British Columbia (Assessor of Area #09 – Vancouver)*, Vancouver Registry No. L042658 (B.C.S.C.). At para. 26, the Court referenced this paragraph and stated:

> The appellants' argument both before the board and in this court is that the concept of interim use is reserved for unusual circumstances and is not a principle which can be applied in the present case. However, there is no support for this proposition either in the previous decisions or in the textbooks to which I was referred.

[89] A further appeal to the Court of Appeal was dismissed: *Broadway Properties Ltd. v. British Columbia (Assessor of Area #09 – Vancouver)*, 2007 BCCA 298.

[90] This case establishes that the rationale used by the Assessor to support the improvement value in these circumstances was correct. The Board reasonably accepted the evidence that the calculation following this rationale established the values on the roll. Therefore, no error of law is established.

[91] With regard to appraisal tolerance, the *Assessment Act* in section 57(1)(b) provides that the consideration of assessed value for an appeal is the total value of land and improvements together. The total value of the properties under appeal for 2009 was $98,669,000 and 2010 was $68,359,000. The total value of the improvements that were challenged by the Appellants for 2009 was $1,869,000 and for 2010 was $2,128,000. For 2009, the value being challenged is 1.89% of the total value of the Property. For 2010, the value being challenged is 3.11% of the Property.

[92] I note that appraisal is not an exact science. For any property there are ranges of value, all of which are correct. In *Bentall Retail Services v. British Columbia (Assessor of Area #09 – Vancouver),* 2006 BCSC 424 [*Bentall*], the Court said, at para. 96:

> The Respondent has provided me with summaries of 27 previous Board Decisions dealing with the question of range of values. While there have been some exceptions the vast majority of these cases suggest an approximate range of plus or minus 5% of the assessed value as being within an acceptable range of actual value.

[93] The amounts in dispute for the improvement value in this case are less than 5% which is a tolerable range.

[94] In *Bentall*, the Board made a math error of $11,346,000 in the Decision. When it corrected the error, it did not change its Decision because of the concept of appraisal tolerance. The Court agreed, at para. 100:

> The Board concluded that the calculations, after the math error was corrected, were still within the tolerable range of values. In my view, this means that, not only is it

> unnecessary to change the original assessments; it would be *wrong as a matter of law* to change them. (Emphasis added.)

[95] This principle is applicable to the present case. Although I find no error in the use of the cost approach in these circumstances, or with the approach to overall value, even if an error was found the improvement values are within a reasonable range of value.

[96] The answer to Question 4 is also “no”.

X. CONCLUSION

[97] For the reasons stated above, I find that Questions 1 to 4 in the stated case should each be answered “No”.

[98] There is an award of costs to the Respondent on Scale B.