

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1180268 B.C. Ltd. v. British Columbia
(Assessor of Area #4 – Central Vancouver
Island),*
2026 BCSC 870

Date: 20260511
Docket: 247824
Registry: Victoria

Between:

1180268 B.C. Ltd.

Applicant

And:

**Assessor of Area #4 – Central Vancouver Island and
Property Assessment Appeal Board**

Respondents

Before: The Honourable Justice K. Wolfe

Reasons for Judgment

Counsel for the Applicant:

D.G. Quantz

Counsel for the Assessor of Area #4:

S. Evans

Place and Date of Hearing:

Victoria, B.C.
September 4-5, 2025

Place and Date of Judgment:

Victoria, B.C.
May 11, 2026

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Overview

[1] This is a statutory appeal of a July 18, 2024 decision (the “Decision”) of the Property Assessment Appeal Board (the “Board”) brought by way of stated case on questions of law under s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20 (the “Act”). The Decision resulted in an increase of the 2023 assessment of a property located at 1482 Pacific Rim Highway, in Tofino, British Columbia (the “Property”) from \$732,000 to \$2,347,450.

[2] The owner of the Property and applicant in this proceeding, 1180268 B.C. Ltd. (the “Numbered Company”), says the Board committed multiple errors in valuing the Property, including in deciding: the potential for access and highest and best use; the useable area; the methodology and factors influencing value; and what evidence was relevant to value. Most significantly, the Numbered Company says the Board’s value assessment failed to properly account for the current lack of access to the Property and the prohibitive cost of creating access. The Numbered Company says there is no reasonable view of the facts that could support the very significant increase in the assessed value of the Property, particularly in the absence of changes or improvements.

[3] The respondent assessor (the “Assessor”) defends the Board’s conclusion. The Assessor says the Board adequately accounted for the access challenges of the Property and appropriately determined the Property’s useable area, given its topography, zoning and other land use restrictions. Among other things, the Assessor says the Numbered Company did not provide sufficient evidence to refute the possibility of multiple future access points. As a result, the Assessor asks the Court to dismiss the stated case and award it costs.

[4] The Board’s conclusions are under appeal in this proceeding; the Board did not participate in or take a position on the stated case.

[5] For the reasons that follow, I find the Board erred in law as alleged in the first three stated questions. I therefore allow the stated case and remit the matter to the Board for reconsideration in accordance with these reasons.

Statutory framework and standard of review

[6] The *Act* establishes a process for “the annual valuation and classification of real property in British Columbia to facilitate taxation”: *TELUS Communications Inc. v. British Columbia (Assessor of Areas #08/09 – Vancouver Sea to Sky Region)*, 2024 BCSC 2210 [*TELUS*] at para. 13.

[7] In simple terms, every year, an assessor determines the “actual value” of each property on the assessment roll for an assessment area, with reference to the statutory criteria under the *Act*. Actual values are determined as of July 1, based on the physical condition and permitted use as of October 31: *Act*, ss. 18(1) and (2). When the assessment roll is complete, a notice of assessment is mailed to each person named on the assessment roll; the assessed value informs the taxes payable.

[8] A person who is dissatisfied with their property assessment may, by January 31 of the year following completion of the assessment roll, file a notice of complaint with the assessor for their area: *Act*, ss. 32, 33(1)-(2). This is usually done by emailing a notice of complaint to the BC Assessment office for that assessment area. Complaints may be made on various grounds set out in s. 32 of the *Act*, including disputes about the actual value of the land under s. 19 of the *Act*. If the complaint is not resolved with the assessor directly, it will be reviewed at first instance by a Property Assessment Review Panel (“PARP”), which holds hearings for this purpose before March 16 of each year: *Act*, s. 35. The powers of a PARP are set out in ss. 38-39 of the *Act*.

[9] A person who is dissatisfied with a decision made by a PARP can appeal the decision to the Board under s. 50(1)(a) of the *Act*. As Justice J. Hughes noted at para. 3 of *TELUS*, the Board is “a statutory tribunal empowered to conduct second-level reviews of property assessments in British Columbia”. The Board’s powers and duties on an appeal are primarily set out in s. 57 of the *Act*.

[10] The Board’s decisions are, in turn, subject to a limited statutory appeal to this Court on questions of law alone, under the stated case procedure set out in s. 65 of

the *Act* and governed by Rule 18-2 of the *Supreme Court Civil Rules* [SCCR].

Section 65 of the *Act* provides as follows:

Appeal of board decision on question of law

65(1) Subject to subsection (2), a person affected by a decision of the board on appeal, including a local government, a treaty first nation, the government, the Nisga'a Nation 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.

(2) Within 21 days after receiving the decision referred to in subsection (1), the person must deliver to the board a written request to refer the decision to the Supreme Court, and include in the request the question of law to be referred.

(3) On receipt of the request under subsection (2), the board must promptly provide written notice of the request to

(a) the parties to the appeal from which the reference is requested and any intervenors, and

(b) the chief executive officer of the assessment authority.

(4) Within 21 days after receiving the request under subsection (2), the board must file the stated case with the court registry, including the decision on appeal, a statement of the facts and all evidence material to the stated case.

(5) The stated case must be brought on for hearing within one month from the date on which it is filed under subsection (4).

(6) Subject to subsection (7), the court must hear and determine the stated case and within 2 months give its decision.

(7) The court may send the stated case back to the board for amendment and the board must promptly amend and return the stated case for the opinion of the court.

(8) The costs of, and incidental to, a stated case under this section are at the discretion of the court.

(9) An appeal on a question of law lies from a decision of the Supreme Court to the Court of Appeal with leave of a justice of the Court of Appeal.

(10) The board must direct the assessor to make any amendment to the assessment roll necessary to give effect to a decision made by the Supreme Court or the Court of Appeal under this section.

[11] The courts take a “generous view” of what constitutes a “question of law” in the context of a stated case under the *Act*. The cases decided under s. 65 of the *Act* have established the following five categories of legal error:

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.

See: *TELUS* at para. 29; *Knezevic v. British Columbia (Assessor Area #01 – Capital)*, 2024 BCSC 561, at para. 9, citing *North Vancouver (District) v. Seaspan ULC*, 2021 BCSC 1345 [*Seaspan SC*] at paras. 34-35, aff’d 2022 BCCA 433; *Gemex Developments Corp. v. British Columbia (Assessor of Area #12)*, 62 B.C.L.R. (3d) 354, 1998 CanLII 6466 (C.A.) at para. 9.

[12] The Court cannot consider a question that has not been stated or alter the questions stated: *Broadway Properties Ltd. v. Vancouver (Assessor of Area #09)* 2007 BCCA 298 at para. 8; see also *Knezevic* at paras. 12-13.

[13] In addition, the Court is restricted to the facts set out in both the stated case and the Board’s decision, and may not substitute its own factual findings or weigh and consider the sufficiency of the evidence: *TELUS* at para. 18, citing *Kuhn v. Assessor of Area#14 – Surrey/White Rock*, 2016 BCSC 448 at para. 16. That said, the evidence filed in support of the stated case can assist the Court in determining if there was any evidence that was logically probative of the Board’s conclusions: *Allard v. Assessor of Area #10 – North Fraser Region*, 2010 BCCA 437 at para. 114, citing *Petro Canada Inc. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1991] B.C.J. No. 1081, 1991 CanLII 934 (B.C.S.C.). The Court may also refer to the evidence to amplify the facts in the stated case with respect to uncontroversial facts: *Allard* at paras. 116-117. This may assist the Court in considering alleged legal errors falling within the third and fourth categories described above.

[14] As a stated case under s. 65 of the *Act* is a statutory appeal, the standard of review is correctness: *Shato Holdings Ltd. v. British Columbia (Assessor of Area #09)*, 2022 BCSC 345 [*Shato Holdings SC*] at para. 36, aff'd 2022 BCCA 211, citing *Coquitlam (City) v. British Columbia (Assessor of Area #10 – North Fraser Region)*, 2020 BCSC 440 at paras. 16-17. The Court does not owe deference to the Board's decision or reasoning process; rather, the Court must undertake its own analysis of the questions and decide if the Board's decision was correct: *TELUS* at paras. 33-34, citing *Beach v. Assessor of Area #01 – Capital*, 2021 BCSC 1770 at paras. 22-23.

The stated case at issue

[15] The current proceeding arises because the Numbered Company was dissatisfied with the 2023 assessment for the Property and followed the process under the *Act* to challenge the value assessment. It is uncontroversial that the Property was originally assessed at \$732,000 for 2023, an increase of 25% from the 2022 assessment. The Numbered Company filed a complaint seeking review. A PARP concluded the original assessment was too low and increased the assessment to \$2.5 million, an increase of 427% from the 2022 assessment.

[16] The Numbered Company appealed to the Board. The sole issue on appeal was the actual value of the Property at the valuation date of July 1, 2022. The Numbered Company argued the Property should be valued at \$544,000 based on actual (market) value. The Assessor argued the Property's actual value should be between \$6 million and \$8.2 million. In the Decision, the Board found the 2023 assessment for the Property to be \$2,347,450.

[17] The Numbered Company initiated the stated case procedure under s. 65 of the *Act* and the Board filed the notice of stated case on August 27, 2024. While s. 65(5) of the *Act* provides that the stated case must be "brought on for hearing" within one month of the date of filing, in practice, matters beyond the control of the parties may prevent a stated case from being heard within a month. As a result, counsel often appear in chambers within the first month to adjourn the matter

generally (usually by consent), so that workable dates can be secured with Supreme Court Scheduling. That is what occurred here. The matter was then adjourned several more times, including due to Court availability.

[18] Similarly, although s. 65(6) of the *Act* appears to require the Court to render its decision on a stated case within two months, this provision has been found to be directory, not mandatory and a failure to render a decision within two months does not result in a loss of the Court's jurisdiction: *British Columbia v. Musqueam Block F Land Ltd.*, 2023 BCSC 157 at para. 9, citing *Seaspan SC* at paras. 10-11.

The questions on the stated case

[19] The notice of stated case sets out the following eight questions:

1. Did the Board err in law in finding that the Appellant did not discount any possibility of an alternative access point on the property to the usable land or prove that only one practical access point to the usable land without evidence or on a view of the facts which could not reasonably be entertained?
2. Did the Board err in law in placing a legal burden of proof upon the appellant to establish that there are no other access points on the property to the usable land?
3. Did the Board err in law in finding that the Development Permit Area restrictions, topography, and lack of access did not render the property suitable for only park or conservancy use without evidence or on a view of the facts which could not reasonably be entertained?
4. Did the Board err in law in selecting fifty percent of the entire property as being suitable for use without evidence or on a view of the facts which could not reasonably be entertained?
5. Did the Board err in law by failing to conduct further inquiries into the area of usable land?
6. Did the Board err in law in determining that the costs for the construction of access to the useable area of the property is not a relevant consideration in determining the actual value of the property, contrary to s.19 of the *Act*?
7. Did the Board err in law in failing to give any, or any due consideration, to the factors set out in s. 19 of the *Act* when assessing the actual value of the property?

8. Did the Board err in law in failing to give any consideration, or any due consideration, to the email of March 23, 2024, and enclosed attachment from the Appellant regarding an agreement of actual value of the Property being \$444,000?

[20] It is common ground that the questions of law are framed by the parties to the appeal, rather than by the Board. While the Board “does not play a gatekeeper’s role in stating the questions”, there is still a threshold issue for the Court about whether the questions put forward are in fact questions of law that give rise to an appeal: *Cheung v. Assessor of Area #01 – Capital*, 2026 BCSC 212 at para. 12.

[21] During the hearing, the Numbered Company conceded that some of the questions it had framed approached the same legal issue from different angles. Accordingly, the Numbered Company grouped certain questions together in making its submissions. The Assessor did not object and followed a similar approach. In my view, this is appropriate. As a result, in my analysis below, I address the questions in the following groups: questions 1-3 (availability of access and highest and best use), questions 4-5 (percentage of useable land), questions 6-7 (methodology for assessing actual value) and question 8 (evidence relevant to value).

The facts on the stated case

[22] The statement of facts in the stated case is designed “to ensure there is sufficient factual material necessary to raise and argue a point of law”: *TELUS* at para. 19, citing *Allard* at para. 114. Part 1 of the notice of stated case sets out the following relevant facts, which must ground my consideration of the stated questions:

1. The appeal to the Property Assessment Appeal Board (the Board) was by the Applicant (the appellant before the Board) from the decision of the Property Assessment Review Panel where the 2023 assessment of 1482 Pacific Rim Highway, Tofino (the Property) was increased from \$732,000 to \$2,500,000.
2. The Property is a vacant 98.84-acre site, located approximately 7.4 kilometres from the centre of Tofino. The holding is bordered by the Pacific Rim Highway on one side (west/southwest) and a right of way for an undeveloped road to the north. The east boundary follows a tidal inlet that creates a variable site depth and very irregular site

boundary which at one point nearly splits the site with approximately 80% of the site in the northern portion and 20% in the southern portion.

3. The Property is located across the highway from the Pacific Rim National Park Reserve.
4. The site has some areas that are technically ocean front and borders the tidal inlet. Internally the site contains several creeks and mudflat areas.
5. The land use controls, in addition to the zoning, include three Development Permit Areas (DPAs). These include the Mudflats Wildlife Management Area (DPA 5), Riparian setbacks (DPA 6) that cover specific areas nearest to the inlet boundary and the creek courses. The Wildlife Habitat (DPA 8) covers most of the balance of the site, although there is also reference to DPA 8 affecting something in the order of 85% of lands within the Tofino area. Additional land use controls include the Official Community Plan (OCP) which designates the Property as "Rural". The OCP describes the intent of the Rural designation as follows:

The Rural and Natural areas of the District consist primarily of large relatively undisturbed green spaces. Values expressed through public consultation and reflected in the OCP Principles support the protection and maintenance of Tofino's natural ecosystems. Future land uses support ecosystem integrity, presentation of the natural environment and maintenance of wildlife corridors. The existing large lots and low residential densities emblematic of Tofino's rural character are largely unchanged. A protective layer between the [Pacific Rim National Park Reserve] and the [Wildlife Management Area] is presented to support the ecological integrity of these important natural areas.

6. The Policies related to the above passage require a list of consultations and development applications before development can be approved in the Rural and Natural areas under the OCP.
7. In addition to the OCP, the zoning designation for the Property is A3 Forest Rural District. This district permits single-family dwellings where the area of the site is 20 acres or more, with not more than two dwellings on a lot. There are also a number of secondary uses that are allowed, including farming, home occupation, one caretaker cabin and secondary suites.
8. Most of the eastern and some of the southeastern boundary of the parcel fronts a tidal water inlet, which includes a setback requirement where building is not permitted.

9. The existing entrance to the site, near the extension of Maltby Road is noted to have some level topography, however, this portion of the site is near creek areas. The level area is relatively small and prior to 2010 a bridge existed near this entrance area to larger areas of the site that are higher in elevation and provides some opportunity for development. The bridge was damaged beyond repair and eventually demolished. At the time of inspection for the 1180268 BC Ltd.'s appraisal, photographs indicate that only a footpath was evident at the former location of the bridge.
10. The area depicted as "dry" and the potential location of a campground, is limited to a portion of the site in the northwest portion of the parcel. The documentation does not provide an estimate of the size of this area.
11. Each DPA includes provisions for setbacks from the natural features of the parcel that, in turn, restrict the developable areas of the site and/or require geotechnical studies before any development would be permitted on the parcel.
12. Appellant Sale 1 is located at 1011 Campbell Street, close to the centre of Tofino. The 33.93-acre vacant site sold in October 2021 for \$3,200,000, or \$94,312 per acre. The largest portion of the site has an A.3 zoning, which is similar to the Property, with the exception of a small portion that is zoned industrial M.1. The M.1 portion of the site extends in a finger-like fashion to front onto Industrial Way. The balance of the site's western flankage is along the Pacific Rim Highway. There is no water frontage associated with the parcel.
13. Appellant Sale 2 is located at 221 Minato Road, close to the town centre in Ucluelet. The 24.71-acre vacant site sold in October 2021 for \$3,100,000, or \$125,455 per acre. The site was zoned RU, Rural Residential with a minimum lot size of 24.7 acres but re-zoned prior to the sale to allow a campground and guest house site. Since the 2021 sale, another rezoning was implemented to allow for a 212-unit neighbourhood. The irregularly shaped parcel borders an inlet.
14. Appellant Sale 3 is located on Native Island on Helen Road, in the south portion of Ucluelet. The 33.92-acre vacant site sold in July 2022 for \$3,980,000, or \$117,355 per acre. The site was zoned RU, Rural Residential and partly P-1, with a minimum lot size of 24.7 acres. The irregularly shaped parcel is mostly waterfront along a peninsula that surrounds the Ucluelet sewage treatment facility.
15. Appellant Sale 4 is located at 1408 Pacific Rim Highway in Tofino. The 11.1-acre vacant site sold in October 2020 for \$1,500,000, or \$135,135 per acre. The site was zoned A3, similar to the Property, with a minimum lot size of 9.98 acres. The irregularly shaped parcel has partial highway frontage but does not have a waterfront location. It is located near some of the major hotel resorts in the Tofino area.

16. Appellant Sale 5 is located at 340 Tonquin Park Road in Tofino. The 5.07-acre vacant site sold in November 2021 for \$1,950,000, or \$384,615 per acre. The site was zoned A2 Rural District, with a minimum lot size of 4.9 acres. Some clearing of the site had occurred with a partial foundation for a cottage in place. The irregularly shaped parcel does not have a waterfront location.
17. Eight sales of properties were purchased for purposes other than development over the period from January 2005 to July 2019. These examples include a variety of properties in terms of size and location, ranging in size from 0.14 acres to 83.5 acres. Most of the examples were not developable for conventional uses and include properties encumbered by floodplain restrictions, non-buildable sites, former transmission lines and/or hydro corridors. The selling prices for these benchmark transactions are compared with the prices of similar sites that were not encumbered for development purposes.
18. One example involves a 48.59-acre site near Langford. In March 2016, this parcel sold for \$240,000 to the District of Highlands. The parcel was encumbered by a restrictive covenant registered in 2003 to the Land Conservancy of British Columbia.
19. The other seven examples indicate discounts between 70% and 97% of the value attributed to the sales if they could be sold for development. Five of the seven examples have discounts at or above 82.5%.
20. In considering the Assessor's evidence regarding highest and best use and influence of value of further subdivision potential, the Board found there was not any influence on value from potential higher density uses over and above the use permitted under existing zoning regulations.
21. Assessor Sales 1 and 3 are improved residential properties, that are adjusted downward by the assessed improvement values of \$581,000 and \$2,755,000 (respectively). The underlying sites are 7.1 and 2.57 acres. The Board found these sales to be irrelevant to the analysis.
22. Of the remaining four sales, Assessor Sales 2, 4 and 5 were also used by the Appellant and appear as Sales 1, 2 and 3 in the Appellant's report.
23. The one new sale the Assessor relies on (Assessor Sale 6) is located on Beaver Creek Road in Port Alberni. This 104.26-acre vacant site sold in May 2022 for \$2,950,000, or \$28,925 per acre. The site was zoned A2 Rural District. This site is located along the Stamp River, with a frontage of 1.1 kilometres.
24. The Board found supporting evidence from 1180268 BC Ltd, including the compilation sketch of the location of culverts, creeks and mudflat areas lack the detail necessary to fully discount the possibility that

there is an acceptable access point, or more than one, along the length of the highway frontage, which the Board found to be approximately one kilometre long.

25. The Board found 1180268 BC Ltd did not provide details that access for this length of the highway frontage is not permitted, nor does the evidence contradict the Assessor's reference to access from the road right of way along the north boundary.
26. In considering the Assessor's submission that 54% of the site has elevations above the 4.7 metre [above sea level or ASL] mark, the Board found the proportion of the property above the 4.7-metre ASL mark, is not definitive of the amount of the site that can accommodate a permanent structure. For example, some of the setback areas required by the DPAs may be above this threshold.
27. The Board found, depending where the access to the site is developed, some portions of the lower-lying portions of the site will be isolated due to creek courses, culverts and mudflats.
28. The Board found that 1180268 BC Ltd.'s position that only one access point is practical and that the DPAs and topographical features render this Property suitable for only park or conservancy use is not supported in the evidence.
29. The existing zoning permits residential use with at least two dwellings permitted. The Board noted one of the vacant land sales used by both parties has the exact same zoning and OCP designation as the Property and was marketed for its potential for development and not for park or conservancy use.
30. The Board found that the Assessor's conclusion of a residential highest and best use is supported by the evidence. As a consequence, the Board found that 1180268 BC Ltd.'s approach to value, where the application of a 90% reduction, due to the most probable future use as park or conservancy use, is inappropriate.
31. The parties agreed on the time adjustment for the period from July 2021 and 2022 at 2.2% per month, which is based on the Housing Price Index. The Board adopted the time adjustment.
32. The Board found size-curve adjustments, as 1180268 BC Ltd applied them, were consistent with the smallest of the parcels receiving the highest downward adjustment for size.
33. Assessor Sale 6 is a parcel of 104.26 acres that sold, without adjustment, for \$2,950,000, which produces a value of \$28,295 per acre. This value is notably significantly lower than the next lowest price per acre (Sale 1 has a time-adjusted value of \$117,308 per acre). The comparatively small difference in size between these parcels does not require use of the size curve formula.

34. Noting that the size adjustments reflect the available market data, the Board accepted 1180268 BC Ltd.'s size adjustments.
35. In respect of the Assessor's location adjustments, the Board rejected this analysis on the basis that it involved only a single example comparing the features.
36. The Board found Sale 6 is the only sale that is similar in size to the Property, whereas the next closest comparable sale is only one-third of its size. This property, although located in Port Alberni, sold for the time adjusted equivalent of \$29,540 per acre. This parcel has zoning that favors residential development but significantly, appears to be almost fully developable, compared to the constraints of topography and setbacks for riparian, mudflat and ocean frontage that affect the Property.
37. While the Assessor suggests a 59.6% upward adjustment for location, which would increase the indicated price per acre for this comparable to \$47,195, the Board did not accept the basis of the adjustment. The Board found the adjustment was over-stated; however, the Board did accept that values in Port Alberni are, generally, lower than in Tofino.
38. With emphasis on Appellant Sale 1 / Assessor Sale 2 together with Assessor Sale 6, the Board found that the applicable range in value to be \$45,000 to \$55,000 per acre. Taking guidance from these two sales, with most emphasis to Assessor Sale 6, the Board concluded a value of \$47,500 per acre for the Property.
39. The Board found the constraints on the Property are more restrictive than any of the comparable sales including the best two indicators. The Board accepted that not all areas above the 4.7 metre ASL elevation are equally accessible and that some expenses may be required such as environmental studies and the cost of establish[ing] access that will impact the Property more than other comparable properties. In determining the influence of the constraints on the Property, the Board found some areas of the Property will be isolated from the "dry" and buildable portions of the site. The Board suspected that the 54% figure does not include all the areas that are contained within the setbacks from the creeks and mudflats and/or the highwater mark as well as areas subject to seasonal flooding. The Board found 50% of the site area as the effective, useable area of the Property.
40. The Board found the actual (market) value to be \$47,500 per acre and the useable area of the Property to be 50% or 49.42 acres. The Board concluded an actual (market) value of \$2,347,450 (\$47,500 by 49.42 acres).
41. Attached as Schedule "A" to this Stated Case is a copy of the Board's decision dated July 18, 2024 in respect of appeal 2023-04-00136.

[23] I adopt the defined terms from the above stated facts.

Analysis

[24] The key dispute in this matter is the 2023 assessment of the actual value of the Property. All eight stated questions ultimately go to that issue. If the Court answers one or more of the stated questions in the affirmative, the Court may allow the appeal and remit the matter to the Board for reconsideration in accordance with the Court’s reasons.

[25] It is common ground that an assessment under the *Act* requires a determination of the actual value of the Property: *Act*, s. 19(2). Under s. 19(1) of the *Act*, “actual value” is defined as “the market value of the fee simple interest in land and improvements”. As the Board noted at para. 11 of the Decision, the date for determining actual value for the 2023 assessment is July 1, 2022, with the Property valued in its physical condition and in consideration of its permitted uses as of October 31, 2022.

[26] To determine “actual value”, s. 19(3) of the *Act* provides that, except where the *Act* has a different requirement, consideration may be given to the following:

- a) present use;
- b) location;
- c) original cost;
- d) replacement cost;
- e) revenue or rental value;
- f) selling price of the land and improvements and comparable land and improvements;
- g) economic and functional obsolescence; and
- h) any other circumstances affecting the value of the land and improvements.

[27] The starting point for the determination of actual value under s. 19 of the *Act* is a determination of the “highest and best use” of the property in question: *Seaspan SC* at para. 38, citing *British Columbia (Assessor of Area #10 – Burnaby/New Westminster) v. Sears Canada Inc.*, 1992 CarswellBC 2700; [1993] B.C.W.L.D. 228, aff’d 1995 CanLII 2179 (B.C.C.A.), 10 WAC 288. The determination of a property’s “highest and best use” directs the selection of appropriate market evidence to help

establish actual value. The concept of “highest and best use” is defined by the Appraisal Institute of Canada to include the interaction of four criteria as follows:

That reasonably probable and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible, and that results in the highest value...

See CLEBC’s *B.C. Real Property Assessment Manual*, looseleaf (Vancouver: The Continuing Legal Education Society of British Columbia, 2014) §6.3 (p. 6-6)

[28] As noted, I address the eight stated questions in four groups based on the core issues they concern. I do not repeat the wording of the specific questions; it is set out above. However, to ground the specific analyses and put the stated questions in context, I first provide some brief background.

The appeal before the Board and the Decision

[29] Before the Board, the main point of departure between the parties was the question of the appropriate “highest and best use” of the Property (Decision at paras. 43, 67), which in turn informed their submissions respecting actual value.

[30] The Numbered Company submitted the highest and best use of the Property was conservation or park use because of two significant constraints on future development. The first constraint is the topographical features and the DPA-related setback requirements, which reduce both the amount of useable land and the portions of the Property that could be developed contiguously. The second is the lack of existing vehicular access to the area most likely to be developable and the high anticipated cost of establishing access.

[31] The Numbered Company submitted the only practical access point was the site of the previous bridge; it provided a 2016 quote of more than \$1.5 million to rebuild the bridge, and evidence that costs would have increased since that time. Given these constraints, the Numbered Company submitted the Property was only suitable as conservancy or park land, and a 90% discount should be applied to the unrestricted market value of the Property, resulting in an actual value of \$544,000.

[32] The Assessor submitted the highest and best use was residential use, consistent with the existing zoning for the Property, which permits two single family dwellings. The Assessor submitted there were no legal limitations that would restrict the Property to conservation or park use only. The Assessor further asserted that access to the Property could be established via five or more potential access points along the Pacific Rim Highway, or alternatively, via the unbuilt right-of-way along the northern boundary of the Property, eliminating the need for a bridge. While recognizing that the DPA setbacks would require further environmental study, the Assessor submitted those areas only constituted a small portion of the site. Overall, the Assessor suggested 54% of the Property met the minimum sea level elevations to be considered buildable. Based on its proposed comparables with adjustments, the Assessor submitted the actual value of the Property was between \$6 million and \$8.2 million.

[33] The Board rejected both parties' proposed actual values, and instead, arrived at its own actual value figure of \$2,347,450, based on a price per acre multiplied by what the Board determined was the useable area of the Property.

[34] The Board rejected the Numbered Company's position that the highest and best use of the Property is limited to conservation or park use. The Board found the assertions that there is only one practical access point and that the DPA setbacks and topographical features would limit the use of the Property were "not supported in the evidence" (Decision at para. 85). Noting the existing zoning permitted residential dwellings, and that the one common comparable with the same zoning as the Property had been marketed for its development potential (rather than park or conservancy use), the Board concluded that the Property's highest and best use was residential use (Decision at paras. 86-87).

[35] Turning to actual value, the Board rejected the Assessor's direct comparison analysis finding aspects of the Assessor's adjustments to be too limited, unconventional and not supported by the evidence, and based on unreliable metrics (Decision at paras. 105, 113, 116-117). However, the Board found one of the

Assessor's comparables, which was not part of the Numbered Company's comparables, to be helpful. Relying on two comparables (the common one zoned like the Property and the Assessor's additional comparable), and applying the Numbered Company's approach to time and size adjustments, the Board concluded the Property should be valued at \$47,500 per acre.

[36] Lastly, the Board acknowledged the constraints on the Property were "more restrictive than any of the comparable sales", but still appeared to adopt as its starting point the Assessor's estimate that 54% of the Property is "considered buildable" based on elevations above sea level. However, for several reasons, including that there would likely be "some expenses" associated with environmental studies and "the cost of establishing access", the Board found the useable area of the Property to be 50% of the site (Decision at para. 122).

Questions 1-3: Alleged errors regarding availability of access and highest and best use

[37] The first question essentially asks if there was any evidence regarding an alternative access point to the Property or if the Board held a view of the facts about the possibility of alternative access points that could not reasonably be entertained. This question purports to engage the third and fourth recognized categories of legal error. The Assessor says this is not question of a law, but an attempt to have this Court reweigh the evidence before the Board to arrive at a different result.

[38] The Numbered Company submits the second and third questions are corollaries of the first. The second question addresses whether the Board erred by placing the burden on the Numbered Company to "fully discount" any possibility of alternative access points. The third question focuses on whether the Board erred in determining "highest and best use" because it failed to grapple with the significant cost of creating access to the Property as a barrier to future residential use.

[39] The Numbered Company says the second question alleges a legal error because the Board misapplied the persuasive burden and, in any event, imposed too high a standard. The third question is framed as an evidentiary issue. However,

in submissions, counsel for the Numbered Company framed it more as a misapplication of the principles governing highest and best use, which informs actual value. Again, the Assessor says both questions raise issues of fact, not law, and in any event, the Board did not err.

[40] To begin, there is no dispute the existing access to the Property is off the Pacific Rim Highway near Maltby Road and allows vehicular access for a short distance into the Property. There is also no dispute that because the previous bridge over a particular creek was destroyed in August 2010, there is no current vehicular access to the northern section of the Property that lies east of that creek. Paragraph 9 of the facts in the notice of stated case confirms the bridge was demolished and there is only a footpath over the creek. The Numbered Company met its burden to prove a present lack of vehicular access by providing reports from an appraiser and an engineer. The dispute, and the first three questions, focus on the evidence about *possible alternative access points* and the conclusions the Board drew about highest and best use as a result.

[41] The Numbered Company says that because the Assessor asserted the possibility of alternative access points, the Assessor had the persuasive burden to provide evidence in support of that proposition. The Assessor relied solely on maps showing topography, elevation and the location of DPAs in stating that it was *possible* for alternative access points to be constructed or built along the Pacific Rim Highway or from the northwest corner of the Property at the highway, using an unbuilt right-of-way along the northern boundary. The Numbered Company says the Board found, at para. 71 of the Decision, that the Assessor's statements were not supported by evidence:

[71] The Assessor also disagrees with the Applicant's view that there is only one access to the Property. The Assessor counters this view and says there are five or more potential access points to the Property from the Pacific Rim Highway. This statement is **not supported** through the identification of any specific locations **nor any documentation supporting that this is possible.**

[Emphasis added.]

The Board similarly notes the Assessor's failure to identify specific locations or provide supporting documentation at para. 46 of the Decision.

[42] Further, the Numbered Company says it provided evidence that alternative access points, including along the length of the Pacific Rim Highway and specifically from the northwest corner of the Property, had previously been rejected or were not possible due to seasonal flooding or because the watercourses are fish spawning areas. Despite this, and what the Numbered Company characterizes as the speculative nature of the Assessor's evidence about alternatives, the Board held the Numbered Company failed to "fully discount" the possibility of alternative access points (Decision at para. 81). On the speculative basis that alternative access *could* be possible, the Board then determined a highest and best use of the Property (as residential) that depends on establishing vehicular access without accounting for the costs of creating the necessary access.

[43] The Numbered Company says these are errors of law. First, there was no evidence or no reasonable view of the evidence that could support the Board's finding of a *possibility* of alternative access points. Second, the Board improperly imposed the persuasive burden on the Numbered Company and required it to "fully" disprove the Assessor's speculative statements about alternatives. Finally, the Board failed to consider the evidence about the cost of establishing some form of vehicular access in deciding the Property's highest and best use. For the following reasons, I agree.

[44] In *Delsom Estates Ltd. v. Assessor of Area #11 – Richmond/Delta*, 2000 BCSC 289, Justice Hood articulated when an error of law will arise because of a lack of evidence supporting the findings made:

[18] In the case at Bar in order for the Appellant to succeed on any of the questions stated, it must establish that the Board's view or interpretation of the facts leading to the question could not reasonably be entertained; that is to say, that there is no evidence before the Board which supports the finding made, in the sense that it is inconsistent with and contradictory to the evidence. In other words, the evidence does not provide any rational basis for the finding. It is perverse or inexplicable. Put still another way, in terms analogous to jury trials, the Appellant will succeed only if it establishes that no reasonable person, acting judicially and properly instructed as to the relevant

law, could have come to the determination, the emphasis being on the word “could”.

[Emphasis added.]

Justice Hood went on to say at para. 19 that “[i]f there is some evidence on which the Board could come to that finding, the Court has no jurisdiction to intervene.”

[45] Regarding the evidence of possible alternative access points to the Property, the Board expressly finds at para. 71 of its Decision that the Assessor’s “statement” that there are five or more potential access points is “not supported” by either specifically identified locations or “*any documentation supporting that this is possible*” (emphasis added). In my view, this represents a clear rejection of both the Assessor’s assertion of possible alternative access points along the highway and the evidence on which the Assessor relied in making that assertion (i.e. the maps showing topography, elevations and DPAs). Having rejected that evidence, and absent any other evidence supporting that the alleged five or more access points along the highway are “possible”, the evidence before the Board does not provide a rational basis for the Board’s finding that there remains a possibility of such access.

[46] I accept that the Board appears to have separated out the question of possible access from the right-of-way for the unbuilt road along the northern boundary of the Property. The Board summarizes the Assessor’s submission in this regard at para. 72 of the Decision. At para. 82, the Board concludes the Numbered Company’s evidence does not “contradict the Assessor’s reference to access from the road right of way along the north boundary.” In reaching this conclusion, I find the Board acted on a view of the facts that cannot reasonably be entertained.

[47] First, the only evidence the Assessor relied on in asserting access could be established at the northwest corner of the Property along the unbuilt road was the maps previously referenced. The Assessor did not offer other evidence and, as noted above, the Board itself concluded at para. 71 that there was no other documentation supporting that access was possible. I fail to see how the Board could reject the maps as evidence supporting the possibility of access along the

highway but accept them as evidence supporting the possibility of access along the unbuilt road.

[48] Second, there was direct evidence before the Board from the principal of the Numbered Company that, in 2010, he had explored the possibility of access from the northwest corner of the Property with the Tofino Fisheries Officer (whom he named in his affidavit), including examining “this location and the entire area along the property line and the highway”, and because of the spawning areas and flooding, “DFO refused to allow a road access in this location.” The Board acknowledged this evidence at para. 78 of the Decision:

The Appellant also disagrees with the Assessor’s position that access is available in the northwest corner of the site. Specifically, the Appellant indicates that Federal Fisheries personnel indicated that no practical access is available between the existing access point, at the extension of Maltby Road and the north limit of the Property along the Pacific Highway frontage...

[Emphasis added.]

[49] Having expressly acknowledged this evidence, it was inconsistent for the Board to find the Numbered Company failed to contradict the Assessor’s reference to access from the unbuilt road. I find the Board erred in law in reaching its conclusions about the possibility of alternative access on a view of the facts that could not reasonably be entertained.

[50] I also agree the Board erred in law by imposing the persuasive burden on the Numbered Company and requiring it to meet too high a standard. While there is no legal burden of proof in an assessment appeal, the Court of Appeal has confirmed there is an evidentiary or persuasive burden that requires the party asserting a fact to lead evidence supporting it: *Trafalgar Lands Ltd. v. British Columbia (Assessor of Area #09)*, 2022 BCCA 211 at para. 36. I agree with the Numbered Company that as the Assessor asserted the possibility of five or more potential access points along the highway, it was for the Assessor to lead evidence supporting those potential access points.

[51] Despite finding the Assessor’s statements were “not supported”, the Board nonetheless concluded at para. 81 that the Numbered Company’s evidence “lack[ed]

the detail necessary to fully discount the possibility that there is an acceptable access point, or more than one, along the length of the highway frontage” (emphasis added). In my view, the Board’s conclusion not only improperly shifted the persuasive burden to the Numbered Company, but purported to require the Numbered Company to fully discount *all* possibilities of alternative access. It is unclear how the Numbered Company could be legally required, in this context, to prove a negative to the Board’s articulated standard of perfection or near-perfection.

[52] The imposition of this burden becomes even more problematic when one considers that the Board found the Assessor failed to identify specific locations for the potential access points. The Numbered Company was effectively required to *fully* disprove the possibility of *unknown* access points. I am unaware of any support for the imposition of that high of a legal standard in similar circumstances.

[53] Having accepted the Board erred in law in respect of the first two questions regarding access, I agree the third question also evinces a legal error in respect of how the Board addressed, or more accurately failed to address, the evidence of the cost of creating access in determining highest and best use.

[54] It is uncontroversial that the *Act* defines “actual value” by reference to “market value”. At para. 18 of *Southam Inc. v. Assessor of Area #14 – Surrey/White Rock*, 2003 BCSC 676, *aff’d* 2004 BCCA 245, Justice Gray accepted the following definition of market value from the Appraisal Institute of Canada:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

A similar definition was used by the appraisers for both parties.

[55] As set out above, there is no dispute that before assessing actual value, it is necessary to determine the “highest and best use” of a property by reference to four criteria: uses that are physically possible, legally permissible, financially feasible and will achieve the highest value. To be clear, the Numbered Company accepts it is not for this Court to determine the Property’s highest and best use. Instead, the third

question alleges it was an error of law for the Board to determine the highest and best use of the Property without considering the cost of creating access to its developable areas.

[56] The Board’s analysis of “highest and best use” in the Decision implicitly accepts that establishing vehicular access to the Property would be required to support a conclusion that the Property’s “highest and best use” is residential use (see, for example, para. 84). As the Decision itself makes clear, there is no question that, at present, there is no vehicular access to the areas of the Property that are most likely to be developable; there are likewise no existing residential dwellings. Despite this, the Board does not in any way address the cost of establishing access before reaching its conclusion about highest and best use. With reference to the four criteria to be considered, the Numbered Company accepts it would be physically possible to create access (whether through a new bridge or otherwise), but says the Board erred in law by not addressing the costs of establishing access, given the characteristics of the Property it was assessing and the evidence it had about those likely costs.

[57] In the unique circumstances of this case, I accept that it was an error for the Board not to address the evidence of the costs of creating access before determining the highest and best use. Regardless of which access point might ultimately be considered, there can be no question that there would be some cost to creating access. While the Board references “some expenses” at para. 122 in deciding how much of the Property is useable area, there is no such reference in the highest and best use determination. There is no indication the Board turned its mind to the evidence about one of the requisite criteria for determining “highest and best use” and I find the Board’s failure to do so amounts to an error of law.

[58] Accordingly, I answer the first three questions on the stated case in the affirmative.

Questions 4-5: Alleged errors regarding percentage of useable land

[59] Questions 4 and 5 address alleged errors of a lack of evidentiary foundation for the Board's calculation of the percentage of useable land that forms parts of the Property and the Board's corresponding failure to conduct further inquiries about useable land.

[60] As summarized above, at para. 122 of the Decision, the Board concluded that based on various factors, including the topography, DPA setbacks, potential isolation of certain portions of the site due to watercourses and the high-water mark and the likelihood of "some expenses", it was appropriate to use 50% of the Property as the useable area. The Numbered Company asserts, and the Assessor accepts, that the Board appeared to use the Assessor's 54% estimate as its starting point and then determined a further 4% reduction was warranted.

[61] At its core, the Numbered Company's complaint is that it does not understand the basis for the 54% estimate provided by the Assessor, which was subsequently relied on by the Board. The Numbered Company says the Assessor only provided two bald assertions, each without sufficient explanation or support. First, that the 54% figure was "estimated by measuring off the aerial mapping" for the Property. And second, that the estimate was based on 4.7 metres above sea level being the minimum elevation for land to be considered developable. The Numbered Company asserts there was no evidentiary foundation for either assertion, which made it impossible for the Numbered Company to assess and respond to the accuracy of the 54% figure and the alleged minimum elevation for land to be considered developable.

[62] The Numbered Company says it raised these concerns in its reply submissions, but the Board did not address them. Further, the Numbered Company says, absent proper evidentiary support for the Assessor's submissions, the Board ought to have conducted its own inquiries or requested the parties to adduce further evidence, and it erred by not doing so.

[63] The Assessor says question 4 challenges the Board’s finding of fact about the useable area, and does not raise a legal error. Alternatively, the Assessor submits, there was some evidence on which the Board could reach its conclusion that 50% of the Property was useable area: namely, the DPA maps, the contour map from the District of Tofino website showing topography and the opinion of the Assessor’s appraiser estimating, based on the aerial mapping, that 54% of the Property was at sufficient elevation to be deemed developable. The Assessor agrees the Board has discretion to require further evidence but says the decision about when and whether to exercise that discretion, as set out in question 5, also does not raise a legal error.

[64] I agree with the Assessor that questions 4 and 5 engage issues about the sufficiency of the evidence before the Board, and do not raise questions of law that can form the subject of the stated case. I accept that the Numbered Company strongly believes the Board should hold the Assessor to a “higher standard” than simply providing contour and DPA maps to support an appraiser’s estimate about the percentage of useable land. But that is different than saying there was “no evidentiary foundation” or even that the finding is contrary to the evidentiary foundation presented.

[65] Even if questions 4 and 5 could be considered to raise questions of law, in my view, the Assessor advanced an evidentiary foundation for the appraiser’s estimate of 54% (i.e. the maps and the information obtained from the District of Tofino website). The Assessor’s appraiser could have been clearer that she obtained the minimum 4.7 metres above sea level requirement from the District’s website, but on my reading of the appraiser’s reports, it remains apparent that the elevation requirement originated with the District. Further, the Numbered Company raised its objections before the Board, giving the Board an opportunity to consider if it required additional information or clarification. The Board chose not to obtain further information or seek clarification.

[66] It is properly for the Board to decide whether or not to accept the evidence before it, and what weight to give any evidence it accepts. Where there is some

evidence before the Board, and provided the Board's finding is not inconsistent with or contrary to that evidence, the case authorities are clear the Court does not have jurisdiction to intervene: *Delsom Estates Ltd.* at paras. 19 and 36; see also *Kuhn* at para. 17. It is likewise for the Board to determine what evidence it requires to make a determination: *British Columbia (Assessor of Area #09 – Vancouver) v. Lord Realty Holdings Ltd.*, 82 BCAC 291, 1996 CanLII 1444 (B.C.C.A.) at para. 35.

[67] I conclude questions 4 and 5 should either not be answered or should be answered in the negative.

Questions 6-7: Alleged errors regarding methodology for assessing actual value

[68] The Numbered Company addressed the sixth and seventh questions together on the basis that both questions alleged errors of law in respect of what the Board considered or failed to consider in assessing the actual value of the Property. The Numbered Company submits the Board was required, by s. 19(3) of the *Act*, to consider the listed factors of revenue and of economic and functional obsolescence, given the lack of access to the Property.

[69] While question 7 alleges the Board erred by failing to give “any or any due consideration” to the statutory factors, in oral submissions counsel for the Numbered Company conceded there was some consideration of the costs of establishing access in para. 122 of the Decision. However, counsel maintained it was an error of law not to give more consideration to the costs, given the evidence that the cost to rebuild the bridge would exceed \$1.5 million, representing more than half of the value of the Property as determined by the Board. The Numbered Company notes that, in arriving at its price per acre for the Property based on the two comparables the Board deemed helpful, there is no indication the Board considered if either comparable lacked access or would require a significant financial investment just to establish access to developable portions of the land.

[70] The Assessor agrees these two questions are properly considered together but says the considerations listed in s. 19(3) of the *Act* are not mandatory, and in

any event, the case authorities clearly establish that the choice of factors to be considered in determining actual value, and the assessment of what other circumstances might affect value, are all questions of fact that are beyond the Court's jurisdiction on a stated case under s. 65 of the *Act*. I agree on both fronts.

[71] In *Cheung*, Justice Jackson quoted para. 36 of *Delsom Estates Ltd.* in full, before concluding as follows:

[19] It is for the Board to decide what factors should be included or excluded in a method of arriving at value and what circumstances affect value, as those are all questions of fact, *British Columbia (Assessor of Area #09 – Vancouver) v. Lord Realty Holdings Ltd.*, 1996 CanLII 1444 (B.C.C.A.) at para. 35. See also *Gemex* at para. 9; and *Assessor of Area #6, Courtenay v. Quinsam Coal Corp.*, 2002 BCCA 68 at para. 39.

[Emphasis added.]

[72] I decline to answer questions 6 and 7 on the basis they do not raise questions of law.

Question 8: Alleged error regarding evidence about actual value

[73] The final question alleges the Board erred in its treatment or consideration of a particular piece of evidence, namely, an email dated March 23, 2024, and its attachment, addressing an agreement from 2016 that the actual value of the Property was \$444,000. Relying on *Shato Holdings SC*, the Numbered Company submits the Board erred in law by not accepting the 2016 agreement of the parties as “demonstrative of the assessed value of the Property”. The Assessor contends *Shato Holdings SC* is distinguishable as the agreement at issue in that case concerned the assessment roll year under appeal, whereas the agreement referred to in the email and attachment here was from 2016, six or seven years prior. The Assessor also notes the *Act* requires the Assessor to determine the actual value of each property each year, and the Assessor is not bound by previous assessments.

[74] In my view, counsel for the Numbered Company appropriately acknowledged in both his written and oral submissions the difficulties both with this question as stated and its underlying premise. Counsel acknowledged the email did not demonstrate the offer that was said to have been accepted in 2016 and agreed that

previous assessments are not necessarily the best indicator of actual (market) value and, in any event, are not binding.

[75] In my view, question 8 is not a question of law and should not be answered. It focuses squarely on the weight the Board gave, or did not give, to a particular piece of evidence. As set out above, the Court’s jurisdiction on a stated case is limited to questions of law; the sufficiency of or weight to be given to specific evidence relates to “matters of discretion and of fact”: *Delsom Estates Ltd.* at para. 35, see also paras. 4, 36 and 39; *Kuhn* at paras. 16-17. I decline to answer this question.

Conclusion and summary of orders

[76] In conclusion, I answer questions 1, 2 and 3 in the stated case in the affirmative. I decline to answer questions 4 and 5, or alternatively, answer them in the negative. I also decline to answer questions 6, 7 and 8 as they do not raise questions of law. I agree with counsel for the Numbered Company that this is not a case where the Court should determine the effect of its answers and correct the decision of the Board; the assessment of value for the Property is too nuanced. The matter of the 2023 assessment of the Property is therefore remitted to the Board for reconsideration in light of these reasons.

[77] With respect to costs, s. 65(8) of the *Act* provides that costs of, and incidental to, a stated case are at the Court’s discretion. Under R. 14-1(9) of the *SCCR*, the successful party on a stated case is entitled to its costs unless the Court otherwise orders: *TELUS* at para. 64.

[78] My preliminary view is that the Numbered Company has been successful on the stated case. While I did not answer all the stated questions in the affirmative, the Numbered Company succeeded in demonstrating multiple errors by the Board that require remittal of the value assessment. The Numbered Company is therefore presumptively entitled to its costs.

[79] At the hearing, the Numbered Company sought leave to address costs after receipt of this decision. If either the Numbered Company or the Assessor wish to

make further submissions on costs, they may provide further brief written submissions of a maximum of five pages each. The parties must, within 15 days of the date of this decision, advise the Court, via correspondence to Supreme Court Scheduling, if they wish to make written costs submissions and if so, must set out the agreed upon schedule for the exchange of costs submissions, with the first of such submissions to be filed within 30 days of the date of this decision.

“K. Wolfe J.”