

**DECISION**

**2019 NSUARB 3  
M08279, M08280,  
M08281 & M08332**

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE ASSESSMENT ACT**



**- and -**

**IN THE MATTER OF** appeals by **DOBSON YACHT CLUB** from decisions of the Nova Scotia Assessment Appeal Tribunal dated July 2, 2017, for the years 2014, 2015 and 2016, and an appeal of the assessment for the year 2017 respecting property located at 600 Westmount Road - AAN: 01245112, Westmount (Cape Breton Regional Municipality)

**BEFORE:** Roberta J. Clarke, Q.C., Member  
Jennifer L. Nicholson, CPA, CA, Member

**APPLICANT:** **DOBSON YACHT CLUB**  
Frank L. Elman, Q.C.

**RESPONDENT:** **DIRECTOR OF ASSESSMENT**  
Property Valuation Services Corporation  
Robert W. Andrews, LL.B.

**HEARING DATE:** October 24-25, 2018

**FINAL SUBMISSIONS:** November 22, 2018

**DECISION DATE:** **January 4, 2019**

**DECISION:** **Assessments set for 2014, 2015, 2016 and 2017 in paragraph [83].**

## I INTRODUCTION AND BACKGROUND

[1] Dobson Yacht Club (Dobson or Appellant) operates a marina and related facilities with frontage on Sydney Harbour, at 600 Westmount Road, Cape Breton Regional Municipality (CBRM) (subject property). It appealed its assessment under the *Assessment Act*, R.S.N.S. 1989, c. 23, as amended (*Act*), for each of the assessment years 2014, 2015, 2016, and 2017.

[2] Pursuant to s. 68 of the *Act*, the Director of Assessment (Director) conducted a review of the respective assessments, and for 2014, and 2017, amended the assessments. Dobson then served notice of continued appeal for these years.

[3] The appeals for 2014, 2015, and 2016 were heard by the Nova Scotia Assessment Appeal Tribunal (NSAAT) and decisions were rendered on July 2, 2017. At the NSAAT hearings, the Director sought a higher assessment than the amended assessment. The NSAAT reduced the assessment for each year; however, Dobson, still unsatisfied with the assessments, then filed Notices of Appeal for 2014, 2015, and 2016 with the Nova Scotia Utility and Review Board (Board) on August 29, 2017.

[4] In the interim, Dobson had appealed the 2017 assessment, and by letter dated October 6, 2017, Counsel for the Director asked, pursuant to s. 64(2) of the *Act*, that the appeal proceed directly to the Board, instead of holding an NSAAT hearing.

[5] On July 11, 2018, the Director gave notice in accordance with Rule 15(1) of the Board's *Assessment Appeal Rules* of her intention to seek higher assessments for each year at the Board's hearing.

[6] The Board heard all four appeals together in Sydney on October 24 and 25, 2018. Dobson was represented by its agent, Frank Elman, Q.C., and called as its

witnesses, Roger Burns, a local realtor, and Daniel McCarthy, Commodore of Dobson. Mr. Elman also testified on behalf of Dobson.

[7] Robert W. Andrews, LL.B., of Property Valuation Services Corporation (PVSC), appeared on behalf of the Director. David Paton, a Development Officer in the Planning Department of CBRM, and Nancy LeBlanc-Arsenault, a senior commercial assessor with PVSC testified on behalf of the Director.

[8] The Board prepared the following chart showing the assessments of the subject property at various stages:

<i>Year</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>
<i>Original Assessment</i>	\$249,600	\$213,000	\$206,300	\$201,700
<i>S. 68 Review</i>	\$210,800	\$213,000	\$206,300	\$215,200
<i>Director at NSAAT</i>	\$240,400	\$241,800	\$235,200	N/A
<i>NSAAT Decision</i>	\$225,000	\$217,000	\$209,000	N/A
<i>Director on appeal to Board</i>	\$240,800	\$249,700	\$252,800	\$264,100

[9] The Notices of Appeal for each of 2014, 2015, and 2016 indicated the same grounds of the appeal:

1. The assessment is excessive, unfair, not uniform with other assessments and any other grounds that may appear.

2. **The specific component of the assessment being appealed is:**

Land value too high; building value too high; property should be classified as commercial and resource, and not industrial; GLA should be applied...

3. **The specific reason for the appeal:**

Similar land and building sales indicate a lower market value; submitted assessment values based on erroneous calculations...

[10] For 2017, the Notice of Continued Appeal indicated:

**The assessment is excessive, unfair, not uniform with other assessments and any other grounds that may appear.** Currently under appeal.

[11] At the conclusion of the hearing, the parties advised the Board that they did not wish to make either oral or written submissions, as they were satisfied that the Board had all the necessary evidence to allow it to make the necessary findings. However, it was agreed that once the undertaking U-1 was satisfied, the parties could make submissions on the information contained in that response.

## II ISSUES

[12] The first issue for the Board is whether the Appellant has proven, on the balance of probabilities that the assessed value of the subject property for each year is wrong, and in this case, too high. Then, the Board must decide whether the Director has proven that the assessed value should be increased as set out in her notice under Rule 15(1).

[13] For the reasons set out below, the Board finds that the Appellant has not satisfied the Board that the assessed value is wrong or too high. The Board is persuaded on the balance of probabilities that the assessments for each year should be increased as requested by the Director.

[14] Therefore, the Director's request for an increase in the assessment is allowed and the assessments for 2014, 2015, 2016 and 2017 are set at \$240,800; \$249,700; \$252,800; and \$264,100 respectively.

### III EVIDENCE

#### 1. Evidence of the Appellant

##### a) Roger Burns

[15] Roger Burns, a local real estate agent with over 25 years' experience, testified to the value of the subject property based on his involvement with subdivision development of residential lots, and listings and sales of residential and commercial properties. While Mr. Burns had prepared a report, he is not a real estate appraiser. Mr. Burns is, however, very familiar with Dobson, having been a boat owner, previous board member, and Club member for several years.

[16] While the property is not currently listed for sale, Mr. Burns used a Property Condition Disclosure Statement (PCDS) to highlight areas where its value would be reduced if it were to be listed. A PCDS is a three-page list of questions attesting to the condition of a property when it is listed for sale. He said it is required to be completed by a property seller and accepted and signed by a buyer in all property transactions. He highlighted the following areas of concern:

8. ZONING AND PERMITS - Dobson, a MARINA, is an "existing permitted use" in a Residential Zone.... (there before the Zoning By-Laws came into effect). Should Dobson fold, no other Commercial use is permitted as of right.

9. ENVIRONMENTAL - It has been disclosed to me that in 2016, while doing repair work on the "camber" a very large oil tank was uncovered and removed. It is not known when or who installed it. Gasoline and diesel fuel tanks for boats are now above ground and occupy their 3rd location on the property. No Environmental Report has ever been sought.

10.GENERAL. A large encroachment exists on the south end of the water lot where the municipality has Installed 2 large raw sewer outfall pipes.  
A large breakwater is of some help to keep the sewage from entering the "duck pond", where boats are moored.

There are also 4 telephone cables crossing Sydney harbour that make landfall at Dobson.(severely limiting the land use).

The property is low, and thus subject to flooding during very high tides, and storm surges. The water recedes, but the sewer outfall carried in by the water, remains.

**MORTGAGE FINANCING AND THE ENVIRONMENTAL ISSUE**

It is a well known fact, that Banks and other lending institutions, are now refusing to give Mortgage loans on properties, not only where, but NEAR where, operating gas stations, former gas stations, and at other locations where fuels have been stored in underground storage tanks, unless assured that no environmental issues exist. In other words, provide an ENVIRONMENTAL SITE ASSESSMENT. From my experience, Dobson land would be in this category.

[Exhibit M-3, pp. 19-20]

[17] The Board notes, as an aside, that the numbers referred to by Mr. Burns are not consistent with the PCDS attached to Exhibit D-3 at pages 27-29.

[18] Mr. Burns and Mr. Elman worked together to develop a list of halls in the general area which had sold within recent years which was used to demonstrate building value. Mr. Burns described the Dobson building as "nothing more than a standard hall".

[19] The following table shows the data from which the value per square foot was calculated.

DOBSON YACHT CLUB 2014 ASSESSMENT APPEAL - COMPARABLE SALES

Location	sale price	sale date	lot size	assessment	land ass.	build size	Bld. ASS	BUILDING VALUE	other ass	ass/sale ratio
Dobson ADJUSTED	-----	-----	18.6 A 12.92?	249,600 210,800	77,700 46,900	4,596 <del>5072</del> 6420?	171,900 157,800		7,600 6,100	----- -----
									\$ per Sq. foot	
1. 70 JAMES ST	165,000	29-07-10	2.96A	1,343,900	67,000	10,500	1,276,900	98,000		9.33
2. ESPLANADE	50,000	03-04-12	37,650		289,900	land only				
3. TRINITY	90,000	15-02-13	6,280	760,400	15,700	5,500	167,00	74,300		13.50
4 170 GEORGE	250,000	30-05-13	1.98A	687,300	264,000	21,960	423,300	-14,000		0
5. 44 BENTICK	40,000	23-09-13	10,680sf	224,700	33,000	9,050	2,500	7,000		.77
6. 173 GATACRE	50,000	29-10-13	34,000	111,100	11,100	2,880	100,000	38,900		13.50
7. 695 WESTM 2 lots	40,000	29-11-13	3,360 4,000	56,400 71,400	15,000 30,000	2,780	41,000	25,000 10,000		3.59
8. 103 WHITNEY	150,000	15-07-15	34,424	758,700	113,900	13,950	644,800	-62,850		0
9. 101 BENTIN	57,500	10-02-16	6,308?	216,500	26,200?	2,472	190,400	31,300		12.66
10. 28 Mary St.	51,000	11-01-16	30,000	129,500	18,750	5,500	110,750	32,250		5.86
HALLS LISTED BUT NOT AS YET SOLD										
10. SUNNYDALE	119,000 LP		30,000	130,500	23,370	5,600	107,100			

NEW CHART

59.20  
8.45/99.50  
19 = 6.58/99.50  
8

[Exhibit D-3, p. 17]

[20] Mr. Burns and Mr. Elman used the table to reach a value per square foot by subtracting the land value from the total sale price and then dividing by the square footage. Through this analysis, a per square foot range of \$0.77 to \$13.50 and an average of \$9.23 per square foot was determined. Based on this, Mr. Burns estimated the value per square foot of the Dobson building to be \$9.50 and \$61,000 in total.

[21] On cross-examination, Mr. Burns agreed that the buildings in the table were generally church or community halls at the end of their lives and being disposed of for various reasons. He agreed that none of them has waterfrontage, although he said one had a waterview. He had not conducted any research about them, but had examined the Multiple Listing Service cuts.

[22] Mr. Burns said that, of the sales on the table, Sale 1 was vacant for several years and required significant renovations after it was sold. Sale 2 was a land transfer between government entities and therefore was excluded from the analysis. Sale 3 required a new roof after it was sold. Additional details were not provided for the remaining comparable properties.

[23] Mr. Burns testified that property condition most definitely has an impact on the value of the property. Conditions such as mold and leaking roofs and windows will decrease the resale value of a property. He also stated that some of the halls did not have posts, which the Dobson building has. He considered the posts necessary for Dobson but suggested "open concept" spaces, as in some of the halls he noted, were more desirable.

[24] Mr. Burns valued the land at \$25,000. He based this on the NSAAT land above water value of \$21,587 with an additional \$1,000 for land under water and \$2,500

for paving. He concluded that the total value of the property for 2014 was \$86,000, and he saw no reason to change this value for the subsequent assessment years, given the state of the market in the area.

[25] On cross-examination, Mr. Burns acknowledged that he was not aware whether extracting land value from a sale price to reach a building value, and thus a per square foot value of a building is an accepted methodology.

[26] Mr. Burns also acknowledged that he had not reviewed the report prepared by the Respondent in preparation for this hearing, and he was unaware that an overall 30% functional obsolescence adjustment had been made to account for the posts in the banquet hall.

**b) Frank Elman**

[27] Mr. Elman, a retired lawyer and long-time member of Dobson, represented Dobson as its agent in this matter.

[28] Mr. Elman challenged the sales and information used by the Director and commented that it changed throughout the appeal process, as did the values suggested by the Director. He suggested this meant that the values presented in every case were therefore wrong. He also expressed concern that the classification changed from "Residential, Commercial & Non-Profit LD" to "Sydport Industrial Park". He stated that Sydport Industrial Park is located four kilometres from the Dobson Yacht Club and is therefore not in the same neighbourhood. He also said that there has been no "substantial act" to change the use of the property from its original classification, but was uncertain whether, as Counsel for the Director suggested, it had always been classified as commercial.



[29] In Mr. Elman's view, the land under water has no value and should be excluded. He believed this was the assessor's view.

[30] Mr. Elman also took exception to the comment on the cost of remediation for Sale No. 1 used by the assessor at the NSAAT hearing, saying it was much less than the \$50,000 stated.

[31] Mr. Elman confirmed that he and Mr. Burns had prepared the table noted above using information from Property Online, MLS, and his own knowledge. He said it is necessary to isolate the land value. Further, he said that the assessor in examining the sale of the Dundee Marina had divided the square footage of the building into the purchase price to reach a per square foot sale price. He said this was an example he followed in developing the table.

[32] Mr. Elman also questioned the area of land for which Dobson is being assessed, saying that there are only 12 acres, but they are assessed for 18 acres. However, on cross-examination he acknowledged that the issue re acreage had been corrected earlier.

**c) Daniel McCarthy**

[33] Mr. McCarthy is the Commodore of the Dobson Yacht Club and has held this position for at least seven years. He has been a member for many years and has been on the board of directors in the past. He said the membership at the club has been declining over the past number of years. Ten years ago, there were approximately 200 members and 120 boats moored at the club. Now there are about 100 members and 50

boats moored at the club. The marina industry on Cape Breton Island is struggling as boats are sold and leave the area and younger people choose not to purchase boats.

[34] Mr. McCarthy said that the land has not changed much over the last 15 years, but the sea level is rising, and some erosion and storm damage is occurring, which has led to flooding at times. There are two sewer pipes discharging into the harbour about 150 feet outside the club's property line. There is a large lawn overlooking Sydney Harbour where weddings are held throughout the entire summer season.

[35] He stated that the building was initially three different parts which were combined to make one large clubhouse. He said the clubhouse is rented throughout the year for weddings and other events. There is a kitchen on site, but it is not staffed. Caterers are hired by guests for their events. There is a bar that is open year-round which is staffed by two bartenders.

[36] Mr. McCarthy testified that the building needs some repairs. The roof and some windows are leaking, and one part of the building is sinking. It has sunk about three to four inches. A contractor was brought in to provide an estimate for a full renovation, but Dobson determined that it was too expensive. Mr. McCarthy acknowledged on cross-examination, however, that the club facilities served the needs of its members. He said while they can only afford routine maintenance, the club is still able to offer rentals for weddings and other purposes. It operates year-round, seven days a week.

[37] Mr. McCarthy identified an easement on the property that was granted to Maritime Telegraph and Telephone (MT&T) in 1955 granting it the right to "construct, reconstruct, operate and maintain its line of telephone and telegraph; consisting of such

poles, wires, cables, conduits...". There are four underwater cables that travel from Dobson across Sydney Harbour and prevent anchorage in this area.

[38] Mr. McCarthy stated that the camber area which was intended to be a wharf area for the club had deteriorated. During excavation to undertake repairs, a leaking fuel tank was uncovered, and had to be removed along with the soil. Like all marinas in Nova Scotia, he noted that other activities, such as sanding and grinding of parts of boats, and draining of various fluids, meant that the ground is likely contaminated. However, he confirmed that no environmental report has been obtained because the cost is prohibitive.

## **2. Evidence of the Respondent**

### **a) David Paton**

[39] David Paton was called by Mr. Andrews to outline the terms of the Cape Breton Regional Municipality (CBRM) Land Use By-Law as it applies to the Dobson property. He is a Development Officer with the CBRM Planning Department and his role is to ensure compliance with the Land Use By-Law. He has a master's degree in Urban Planning from McGill University and has been in his role with CBRM for three years.

[40] He stated that the property is zoned as Residential Urban C (RUC). This zoning consists primarily of residential single and two-unit dwellings. The Appellant's property is specifically identified as a legal non-conforming use under Part 51 of the Land Use By-Law. If the property was sold and the purchaser wished to change the use, it could be converted into any allowable use under the RUC zone or as stated in Part 51. These include:

### **RUC (as summarized by the Board)**

- Agricultural – except kennels

- Recreational – only exhibition grounds; public indoor and outdoor
- Residential – single-family dwellings and two-unit dwellings
- Service – only-community service; cultural service; day care; educational; inns; protective (Coast Guard, fire, judicial, police)
- Residential care dwelling

[Exhibit D-9]

**Part 51 - Sales and Service Subject to Part 2 – Policy 5 of the Municipal Planning Strategy**

Marina                      600 Westmount Road                      PID# 15203672

- Recreational business establishment indoors
- Cultural service
- Entertainment indoor active and passive uses

[Exhibit D-6, Tab 9, p. 166]

[41]                      Mr. Paton confirmed that how the Director of Assessment classifies a property for taxation purposes does not affect the permitted land use.

[42]                      In response to questions from Mr. Elman, Mr. Paton testified that should there be a fire at Dobson and more than 50% burned, it would be permitted to rebuild because a marina is a permitted use under Part 51. Further, he responded that if Dobson chose to close its operations, the uses for the property would be in accordance with Part 51 or the RUC zone.

[43]                      Mr. Elman further questioned Mr. Paton about accessory uses, and agreed that there would have to be consultation with CBRM to determine what accessory uses might be permissible. In response to Mr. Andrews, he said that the clubhouse, kitchen and other uses would all be considered accessory uses to a permitted marina.

**b)                      Nancy LeBlanc-Arsenault**

[44]                      Ms. LeBlanc-Arsenault is an accredited appraiser (AACI) through the Appraisal Institute of Canada. She obtained her AACI designation in 2004. She has worked with PVSC since 1994. She has been a Commercial Assessor since 2001 and a Senior Commercial Assessor since 2010. She was qualified as an expert witness in this

matter, able to give opinion evidence on the valuation and assessment of real property, including commercial property in the Province of Nova Scotia.

[45] Before Ms. LeBlanc-Arsenault testified, Mr. Andrews stated for the record that this is a difficult property to value because of the neighbourhood in which it is located, and the land-use zone; however, the *Act* requires it to be valued.

[46] Ms. LeBlanc-Arsenault first visited Dobson in 2014. She toured the property with Mr. Elman. She said it is considered good professional practice to meet with property owners whenever there is a dispute about value so that their point of view may be heard.

[47] Ms. LeBlanc-Arsenault said that the reference on the Property Record Card to the year built as 1901, which Mr. Elman had questioned, is a “null field” used when the Director does not know or cannot easily determine the date. She said the system looks to the effective age of the property and it is typical to do this when a building, like the Dobson, has components built at different times. She confirmed that the effective age is based on the assessor’s opinion. She also testified that she had remeasured the buildings and made an adjustment due to the overlapping of two sections.

[48] Ms. LeBlanc-Arsenault explained that the standard process is to use mass appraisal to compare similar properties and determine the appraised value. Once a property assessment is appealed, there is increased scrutiny applied to the valuation process and a more individualized approach is taken, rather than relying on mass appraisal. This was the case in this matter.

[49] Ms. LeBlanc-Arsenault confirmed that there are two potential approaches to estimate market value that an assessor or appraiser can use for this type of property (the Income Approach not being appropriate): the Direct Comparison Approach and the

Cost Approach. The Direct Comparison Approach uses sales of similar properties to determine an estimated property value for the subject property. The Cost Approach is based on the principle that a prudent buyer would not pay more for a property than the cost to acquire a similar site and construct improvements of equal desirability and utility.

[50] Initially, Ms. LeBlanc-Arsenault chose to look for commercial comparables from the closest commercially-zoned neighbourhood to the Dobson Yacht Club. This was the Sydport Industrial Park located four kilometres away.

[51] Ms. LeBlanc-Arsenault reviewed two waterfront sales in the inferior area of Howie Centre. This area is inferior because there is only water access to Sydney Harbour and not the Atlantic Ocean or Bras d'Or Lakes. Both properties differ significantly from the subject property in both allowable and actual commercial use as neither is operating as a marina and both have residential improvements. Based on these factors, she did not consider their use appropriate for the Direct Comparison Approach.

[52] She expanded her search for marina and boatyard sales to the rest of Nova Scotia, exclusive of the Halifax-Bedford Basin area which was not considered comparable, to attempt to find sales of similar properties within the required time frame. She found two possibilities. The first was a sale of a boat-building property in Lower Wedgeport, Nova Scotia. This property contained dated, large buildings and was considered inferior to the subject property. The second was a non-operating marina in Dundee, Richmond County, Nova Scotia. After the sale, the marina property was redeveloped into multiple condominiums. These were not considered to be reliable comparable sales for the purpose of assessing the Dobson property.

[53] She also discussed the condition of the Dobson building and stated that it was assessed as a low-quality hall. A 30% functional obsolescence allowance had been applied to reduce the building value due to the various issues that she found during her inspection. These were the same issues that had been outlined by the Appellant's witnesses.

[54] Ms. LeBlanc-Arsenault chose the Cost Approach to value the Dobson property due to the lack of reasonable comparable sales. To determine land value, she expanded her search by looking for comparable waterfront sales, and due to the lack of sales for commercial waterfrontage, to include residential waterfront sales and other residential sales located near the subject property. She described her findings in her report:

The most similar sales are listed in the Vacant Land Sales Chart (p.41) and described in the following analysis. To the land value is added the market value of any buildings located on the property.

Vacant Land Sales Chart

Sale No.	AAN	Address	Sale Date	Original Sale Price	Adjusted Price	Land Size (acres ±)	Adjusted Sale Price per Acre	Waterfrontage (ft.±)	Zoning	Services/Utilities	Physical Characteristics
Subject	01245112	600 Westmount Road, Westmount	February 3, 1954	\$3,000	N/A	10.62 (2.30 waterfront)	N/A		RUC	water and sewer available	waterfront with water lot
1	09379442	No. 28 Highway, South Bar	March 15, 2011	\$78,000	\$78,000	4.5	\$17,450	179	RCB	no water and sewer available	waterfront; uncleared; steep decline to water
2	02103524	Lot 1AB Williams Drive, Howie Centre	July 16, 2010	\$80,000	\$80,000	1.53	\$52,288	645	RCB-NM	no water and sewer available	waterfront; uncleared; steep decline to water
3	10464463	47 Katrina Drive, Coxheath	August 19, 2013	\$115,000	\$115,000	4.48 (2.24 usable)	\$25,670	210	RCE	no water and sewer available	waterfront; relatively flat at buildable area; partially cleared; portion swamp
4	01913549	554 Esplanade Street, Sydney	February 28, 2011	\$245,000 (+ demolition of \$100,000)	\$345,000	2.33	\$148,100	154	CBD	water and sewer available	waterfront with water lot; gentle slope to water
5	03539369	411 Purves Street, North Sydney	June 15, 2015	\$340,000 (+ demolition of \$45,000)	\$385,000	2.98	\$129,195	365	PSZ NSP	water and sewer available	waterfront; erosion rocks added at waterline

\*Residential Urban C (RUC), also subject to Part 51; Rural CBRM (RCB); Rural CBRM-No Mobile (RCB-NM); Rural County Estate (RCE); Downtown Central Business District (CBD); Purves Street (PSZ); small portion to south is in North Sydney's Port (NSP)

Time Adjustment Chart

	Location	First Sale Date	Second Sale Date	First Sale Price	Second Sale Price	Percent Change per Year
Resale No. 1	687 Westmount Road, Westmount	October 24, 2008	April 22, 2014	\$179,000	\$158,000	<2.135>
Resale No. 2	130 Applecross Drive, Westmount	September 18, 2009	October 9, 2013	\$125,000	\$159,000	1.81
Resale No. 3	14 Dover Street, Westmount	September 30, 2009	August 15, 2013	\$125,000	\$135,000	2.07
Resale No. 4	25 Wendy Street, Westmount	June 5, 2009	October 10, 2014	\$72,000	\$90,000	4.7
Resale No. 5	3 Leeds Street, Westmount	November 14, 2008	September 30, 2015	\$100,000	\$134,500	5.0

Time-Adjustment Map found at p.65

### **Time**

Three of the five land sales sold prior to the base date timeframes of January 1, 2012 to January 1, 2016, and therefore required an adjustment for time.

A traditional re-sales analysis was performed. This analysis produced an average of two percent (2%) per year.

### **Lot Area**

The subject lot area consists of 12.92 acres and has road frontage of 1,400 ft on Westmount Road. There is 1,980 ft of waterfrontage on Sydney Harbour. There is also a water lot associated with this parcel containing 10.62 acres. According to Roger Burns, realtor, "The fact is, the water lot is of no use to Dobson, nor any prospective buyer. Anchorage is prohibited ...". Based on Mr. Burns' assertions, which have been relied upon, the Dobson Yacht Club's water lot has been assigned a value of \$0 in this valuation. In the event that other information emerges, this treatment may change in the future.

The sales range in size from 1.53 acres to 4.48 acres. The waterfrontages range from 179 ft to 645 ft.

### **Utilities/Services**

The subject property has municipal water and sewer available. The two superior lots, Sales 4 and 5 each have municipal water and sewer available. Sales 1, 2 and 3 do not have municipal services currently available.

### **Physical Characteristics**

The subject property is below grade but is mainly flat. The subject property has a 10.62-acre water lot and a large length of waterfrontage on Sydney Harbour. The subject is somewhat triangular in the upland portion of the parcel.

[Exhibit D-5, pp. 40-42]

[55] Ms. LeBlanc-Arsenault reconciled the sales, determining which of them is most comparable to Dobson. She concluded:

The two commercial sales, Sales 4 and 5, although comparable in physical land characteristics are both considered superior to the subject property in that both properties have commercial zoning and both access municipal services, water and sewer. Subject has well and septic\*. The number of allowable uses of each of these properties is greater than those allowed for the subject property. There were no other commercial vacant waterfront properties in the immediate area.

Sales 1 and 2 are considered inferior to the subject property, with a minimal length of waterfrontage. Sales 1, 2 and 3 being zoned residentially, the allowable uses in these three properties, would be more similar to the subject. The values indicated by these three sales range from \$17,450 to \$52,300 per acre.

### **Land Value Conclusion**

The subject property is located in a predominantly residential area. There are no sales of similar commercial properties in the immediate area. To determine an accurate estimate of the market value of the subject land parcel, sales of land in similar locations were analyzed.



Sale 3 is considered inferior to the subject overall, but most comparable to the subject in useable, buildable land area. Although the lot is 4.47 acres, approximately one-half (½) (2.2 acres) of the lot is buildable. Identical in size to the subject. This would equate to approximately \$51,500 per acre of buildable lot area. The remaining portion is wet bog. This lot sold for \$115,000 on August 19, 2013. This would equate to approximately \$111,400 as of January 1, 2012, the base date for the 2014 assessment year. The zoning, although residential, is considered slightly superior to the subject in that this zoning allows for all agricultural uses, all forestry uses, some recreational, single-family detached dwellings and two-unit dwellings. The subject zoning allows for the same uses, except for forestry. The residential neighbourhood near the subject was examined to support conclusions from the vacant parcel data.

Given the constraints of the subject, ie/wet, sewer outlet and current zoning, although inferior, Sale 3 is thought to be the best comparable to the subject.

\*Note that Ms. LeBlanc-Arsenault made this correction to her written report during the hearing.

[Exhibit D-5, pp. 43-44]

[56] Ms. LeBlanc-Arsenault then described how she had valued the building, using the Cost Approach:

#### **Building Valuation**

The valuation of the building begins with a property inspection where information relating to building components, condition, size, etc, are recorded. The building information is entered into the Marshall & Swift Cost Estimator. Adjustments for depreciation are made to replacement cost new.

The property was fully inspected on two occasions. All three sections of the building were considered to be in average condition. Each of the three sections of the building are useful for the members.

Section one was originally a storage building but has been converted to a large banquet hall. The hall has low quality finishes and some functional issues identified. These functional issues include support beams at the center as distinguished from a desired open hall with no posts; as well the exit door at the south end of the building requires repair. Periods of heavy rain and wind has allowed seepage of water under this door. Also, some water seeping from above near bar door. Some damage to paint and door finish resulting from this. Laundry room door to outside has had some moisture damage (located on waterside of building). Windows appear in good working order. Ceiling is free from water staining.

Section two is the main clubhouse building. It has main lounge on first floor and boardrooms on second floor. There were no functional issues identified in this section excepting one window with a seepage issue at one time. Finishes are somewhat better quality than in the banquet hall. Windows and doors appear to be in good working order. There is a small area for lottery machines in lounge. This section is adequate for its purpose.

Section three is the newest section which is the kitchen area. Floor finish is ceramic with a minimum number of cracks in the tiles. Walls are gyproc with paint and some metal kitchen wall finish. There are two utility sinks. There is a small storage space behind the kitchen. This section is adequate for its purpose.

[Exhibit D-5, pp. 44-45]

[57] As a test of the reliability of her conclusion of the market value of the land based on vacant land sales, Ms. LeBlanc-Arsenault examined a number of sales of non-waterfront residential property near Dobson by removing their building values. She concluded that the land value she had used was a conservative estimate, as the value extracted for the most comparable of those sales was higher than the value she attributed to Dobson.

[58] Having valued both the land and building and accounting for physical depreciation and functional depreciation, Ms. LeBlanc-Arsenault concluded:

**Summary of Cost Approach**

It is my opinion that the estimate of market value by the Cost Approach of the subject property, as of:

January 1, 2012 for the 2014 assessment year is: **\$240,800**  
January 1, 2013 for the 2015 assessment year is: **\$249,700**  
January 1, 2014 for the 2016 assessment year is: **\$252,800**  
January 1, 2016 for the 2017 assessment year is: **\$264,100**

[Exhibit D-5, p. 45]

[59] Ms. LeBlanc-Arsenault rejected Mr. Elman's table of comparable properties stating that none have waterfrontage, which is an essential feature for a marina and a desirable feature for many properties. She stated that over the last 10-15 years many halls and churches have come up for sale and have often been vacant for many years. In such situations, pipes often freeze, and mold develops, which reduces the property value. She also noted that there were some errors in the building sizes noted in the table. She noted the Dobson property has undergone routine maintenance and is located on the water and therefore is not comparable to these buildings.

[60] Further, Ms. LeBlanc-Arsenault said, in commenting on the extraction of land value to arrive at building value:

Mr. Andrews: What Mr. Elman explained that...has explained that he has done and felt he needed to do with respect to this data is extract building values by removing the assessment land value. I asked a question yesterday of Mr. Burns whether or not he had provided anything just to suggest that that was an acceptable or generally accepted that valuation methodology, and he indicated that he did not know. But you submitted some narrative that you drafted and also some excerpts from textbooks. Just generally if you just speak generally about this notion of extracting building value by removing land value from a sale that the appellants done. Whether or not that is an accepted or acceptable or reliable methodology to determine a building better, if accepted.

Ms. LeBlanc-Arsenault : So, the land residual is a method to determine a land value and it is an accepted method of land valuation. In this case, it was used sort of in the opposite way. So, the land value was subtracted from the sale price, I believe, in this case. That is not an accepted method to determine a building value. The...what we are valuing is real property, its land and building. And the sale price per square foot is something that purchasers will look to. They will compare one property to another and one may sell at \$50 a square foot and one may sell at \$35. They will look to that, you know, what the sale prices are on different properties and they will use those units of comparison they are called. So, depending on what type of property it is, commercial property it's a square foot value and this is the typical unit that we use to compare property and it is the sale price divided by building area above grade. So, its land and building, its not just...you can't subtract the land value. When you do subtract the land value you are losing the characteristics that make that property itself. So, if it is waterfront and you remove the land value you're losing that part...that feature of the property that makes it unique or desirable to the market. This is not the same as the elements of comparison, the elements of comparison would be those features. So, the features of the property that make it desirable, the waterfrontage or the newness of an improvement or something like that. These are the units of comparison. So it all depends, as I said, depends on the type of property. If this was an apartment, the units are per unit, so you would look at the sale price per unit if it had four units and the property sold for \$20,000...\$200,000, you take the total sale price divide it by the number of units and that gives your unit of comparison so that you can compare it with other properties and look at what the differences are in those.

Mr. Andrews: You've sort of been accused of attempting to fudge numbers sort of in the submissions, both written and oral, and mislead the lower tribunal with respect to the manner of analysis dividing sale into dividing square foot by, or dividing sale price by square foot including the land. In light of your evidence, is that a traditionally accepted valuation methodology as you just described it?

Ms. LeBlanc-Arsenault: Yes.

Mr. Andrews: Your understanding of this?

Ms. LeBlanc-Arsenault: Yes.

Mr. Andrews: And is that used on a regular basis within private appraisal practice and in by assessing authorities.

Ms. LeBlanc-Arsenault: Yes it would be both appraisers and assessors.

Mr. Andrews: And the valuation methodology in terms of the extraction in a reverse way that was performed by the Appellants is...would you ever do that?

Ms. LeBlanc-Arsenault: No, I haven't found anything to say that that was accepted. I know I wouldn't...look I said you are losing the...those features and what makes that property, you know the characteristics of it, what its made of. So you are losing that in that.

[Soundfile, Track 4, 1:42-1:48]

[61] She discussed the environmental issues reported by the Appellant and stated that PVSC policy is only to adjust for environmental contamination that has been documented in a report. As there was no environmental assessment carried out on the Dobson property, she made no adjustment.

[62] Ms. LeBlanc-Arsenault also confirmed that she had investigated Sale No. 1 which had been used at the NSAAT by speaking to both the vendor and purchaser to obtain confirmation of the \$50,000 remediation cost which Mr. Elman had disputed. She agreed on cross-examination that the cost was not related to environmental remediation, but rather to clearing land for the ultimate use the purchaser wanted.

#### **IV SITE VISIT**

[63] After the hearing concluded, the Board attended, along with Mr. Andrews, Ms. LeBlanc-Arsenault, and Mr. Elman (who did not walk the property or all the building areas) at the subject property accompanied by Mr. McCarthy. The Board was able to observe the waterfront areas, the camber area, the approximate location of the sewer outfall, the docks, boat storage areas, boat ramp and travel lift, the boardwalk and front lawn, as well as the interior of the building throughout the three sections. The Board observed nothing that was generally inconsistent with the evidence.

## V ANALYSIS AND FINDINGS

### 1. Burden and Standard of Proof

[64] In assessment appeals, the burden of proof is on the Appellant, in this case, Dobson. The standard of proof is the balance of probabilities. This means that, to be successful, it is up to Dobson to prove, on a balance of probabilities, that each of the assessments should be decreased (See *Nova Scotia (Director of Assessment) v. Wandlyn Inns Ltd.*, 1996 CanLII 5550 (NSCA), for example.)

[65] On a preliminary matter at the outset of the hearing, Mr. Elman cited the decision of the Board in *Re White*, 2013 NSUARB 112, and said that the burden is on the Director to prove the market value of the property because of the request for an increase for each assessment year. Mr. Andrews did not dispute the burden is on the Director with respect to the increases sought.

[66] In the Board's view, initially the burden is on the Appellant; if the Board finds that the Appellant has discharged that burden, that is not the end of the matter. The Board must then address the Director's position, and the burden then shifts to the Director to persuade the Board on the balance of probabilities that the assessed value(s) should increase. The Board rejects Mr. Elman's characterization of what the Board said in *Re White* and does not accept the suggestion that the burden overall in these appeals is on the Director. The Appellant has the first hurdle, and whether the Appellant falls at that hurdle, the Director still must discharge her burden to be successful.

## 2. Market Value

[67] Section 42(1) of the *Act* provides:

Valuation

42 (1) All property shall be assessed at its market value, such value being the amount which in the opinion of the assessor would be paid if it were sold on a date prescribed by the Director in the open market by a willing seller to a willing buyer, but in forming his opinion the assessor shall have regard to the assessment of other properties in the municipality so as to ensure that, subject to Section 45A, taxation falls in a uniform manner upon all residential and resource property and in a uniform manner upon all commercial property in the municipality. [Emphasis added]

[68] The Board agrees with Ms. LeBlanc-Arsenault that the Income Approach is not an appropriate method by which to value the subject property.

[69] It was clear from the evidence of both the Appellant and the Respondent that it was a significant challenge to find properties which were sufficiently comparable to Dobson in order to use the Direct Comparison approach. For example, the properties at Howie Centre identified by Ms. LeBlanc-Arsenault, as well as the Lower Wedgeport and Dundee marina properties cannot, in the Board's view, be compared to Dobson without significant adjustments. This would ultimately eliminate any real comparability; their location and different type of waterfront access are factors contributing to this conclusion.

[70] The Board also considers that the properties identified in the table prepared by Mr. Elman and Mr. Burns are also significantly different. They are for the most part community halls and church facilities, none of which had the same land area, and none of which had any waterfrontage. All the parties appeared to understand that the sales of these properties were under what could almost be described as distress conditions. The Board does not consider them as appropriate comparables.

[71] The Appellant did not offer any other evidence of sales of comparable properties and did not provide any appraisal evidence to support its contention that the

assessed values of the subject for each of the years in dispute was in error. The Board accepts that Mr. Burns, as an experienced realtor, has knowledge of the market in the Sydney area, but attaches no weight to his conclusion that the value of the subject is \$86,000 for each year, without any credible foundation for it.

[72] Ms. LeBlanc-Arsenault determined that the best approach to use to value the subject was the Cost Approach. In order to do this, she looked at vacant land sales, some of which were commercial properties, and some were residential. She also looked at non-waterfront residential properties as a check on her conclusion on the land value. The Board accepts that, in the circumstances, this was an acceptable method to support the land value.

[73] With respect to environmental concerns to which Mr. Burns and Mr. McCarthy had testified, the Board considers that, in the absence of any assessment done by a properly qualified person or firm, this anecdotal evidence should be afforded little weight.

[74] With respect to the value of the Dobson buildings, Ms. LeBlanc-Arsenault gave evidence of her two inspections of the buildings, and her use of the Marshall & Swift Cost Estimator to value the building components, adjusting for the condition. She recognized the kinds of conditions described by Mr. McCarthy in the allowances she made for physical depreciation and functional obsolescence or depreciation.

[75] The Appellant used the table prepared by Mr. Elman and Mr. Burns to reach the building value. The Board accepts Ms. LeBlanc-Arsenault's evidence that this is not an accepted method to determine the value of a building. Its use by the Appellant appears

to be the opposite of the accepted land residual method as described by Ms. LeBlanc-Arsenault.

[76] The use of an estimator such as Marshall & Swift is one which is generally accepted. The Board finds that Ms. LeBlanc-Arsenault's application of it to the subject was appropriate. Further, the Board finds that she made reasonable adjustments for the age and condition of the building that are consistent with Mr. McCarthy's evidence.

[77] Mr. Elman had, at the outset of the hearing, stated that the Appellant accepted a \$0 value for land under the water. Later, he questioned Ms. LeBlanc-Arsenault about this as she had referred to it in her description of the lot area in her report. Ms. LeBlanc-Arsenault testified that what she had done was to value the land as one parcel, and not individual components.

[78] Mr. Andrews, in response to preliminary submissions by Mr. Elman on this issue, stated this was consistent with the decision of the Board in *Re Winters*, [2016] NSUARB 173. The Board notes that much of that decision was centred on the use of mass appraisal by the Director. In the view of the Board, this addresses the allegations made by Mr. Elman about the differences in the value presented by the Director at various stages since the Appellant filed the initial appeals. He suggested that the Director was somehow "fudging" the figures and that the assessor was not being truthful. The Board finds that these allegations are totally without merit.

[79] The Board commented in *Re Winters* about the use of mass appraisal:

[37] The mass appraisal method used by the Director in Nova Scotia is often referred to as the "market adjusted cost approach." It is based primarily on the cost approach, but also uses validation methods based upon market sales.

[38] Further, the Board notes that the cost approach itself (even when used apart from mass appraisal) does not involve cost data alone; necessarily, it also includes sales data relevant to the market value of the land a building stands on.



[39] The Court of Appeal, as well as the Board, has referred to the mass appraisal approach in earlier decisions, and has made no objection to it; indeed, the case law may be seen as expressing approval in principle of mass appraisal in setting assessments.

[40] However, 16 years ago, in *Edcyn Inc. v. Nova Scotia (Director of Assessment)*, 2000 NSUARB 35 (CanLII), the Board stated, in part, that:

¶ 77 ...even if mass appraisal results are supported by satisfactory statistical measures ...the appealed property may well not be necessarily assessed correctly.

¶ 78 ...all that can be expected from a mass appraisal system that is operated efficiently and accurately is that most assessments will be appropriate most of the time. Nevertheless, some, inevitably, will not be.

[41] That view is, in the judgment of the Board, consistent with the direction given by the Court of Appeal in decisions before *Edcyn*, and since.

[42] In short, the Board sees mass appraisal as an efficient tool for determining assessments for hundreds of thousands of properties.

...

[52] In short, the *Act* directs that assessments are to be set at market value, adjusted for uniformity as necessary. Mass appraisal is simply a relatively fast and inexpensive tool to identify, with reasonable accuracy, the assessments of hundreds of thousands of properties.

[53] Mass appraisal is thus a tool that, in practice, determines the final assessments of most properties (i.e., the ones that are not appealed). However, this does not mean that the mass appraisal result itself is, under the Act, the legal, much less the exclusive definition of market value, or of assessment as a whole. [Emphasis added]

[80] The Board accepts Ms. LeBlanc-Arsenault's evidence that, once an assessment appeal moves through the system of appeals, i.e., a s. 68 review, an NSAAT hearing, and ultimately comes to the Board, the level of investigation, and the scrutiny applied to the assessment and the property is increased. The Board is persuaded that this is because the Director is moving away from the concept of mass appraisal, to a specific examination of the market value of a property as defined by s. 42 of the *Act*. That is not to say that mass appraisal is unreliable, however, as it has been accepted by the Court of Appeal, as noted in *Re Winters*.

## VI CONCLUSION

[81] Having considered the evidence of the Appellant, the Board is not persuaded, on a balance of probabilities, that the assessments for 2014, 2015, 2016, and 2017 for the subject property should be reduced as the Appellant asks to \$86,000 for each year. Such an amount fails to take into consideration the market value of the Dobson lands, and does not reflect the value of the building.


[82] The Board finds the approach used by Ms. LeBlanc-Arsenault to value the subject property is appropriate. The Board found her to be a credible witness and observes she was diligent in her work, taking care to support her conclusions. The Board is persuaded, on a balance of probabilities, that the assessed values as she determined them are the market values for the Dobson property, as requested by the Director in her notice under Rule 15(1) of the Board's *Assessment Appeal Rules*.

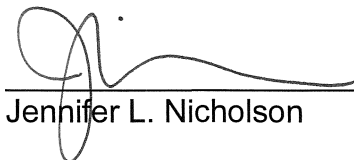
[83] The Board has considered the market value of the subject, and sets the assessments for the Dobson property as follows:

For the 2014 assessment year	\$240,800
For the 2015 assessment year	\$249,700
For the 2016 assessment year	\$252,800
For the 2017 assessment year	\$264,100

[84] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 4<sup>th</sup> day of January, 2019.

  
\_\_\_\_\_  
Roberta J. Clarke

  
\_\_\_\_\_  
Jennifer L. Nicholson