

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE ASSESSMENT ACT**

- and -

**IN THE MATTER OF** an appeal by **BEINN BHREAGH HALL CORPORATION** from a decision of the Nova Scotia Assessment Appeal Tribunal dated May 3, 2017, respecting property located at 998 Beinn Bhreagh Road, Beinn Bhreagh, Municipality of the County of Victoria, Nova Scotia

**BEFORE:** Roland A. Deveau, Q.C., Vice Chair  
David J. Almon, LL.B., Member  
Roberta J. Clarke, Q.C., Member

**COUNSEL:** **BEINN BHREAGH HALL CORPORATION**  
Nicole LaFosse, LL.B.  
  
**DIRECTOR OF ASSESSMENT (PROPERTY VALUATION SERVICES CORPORATION)**  
Robert Andrews, LL.B.

**HEARING DATES:** May 8, 2018 and July 5, 2018 (site visit)

**WRITTEN SUBMISSIONS:** July 20, 2018

**DECISION DATE:** **October 18, 2018**

**DECISION:** **Appeal allowed, in part.**  
**Assessment for 2016 is set at \$928,600.**

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## I INTRODUCTION

[1] This is an appeal by the Beinn Bhreagh Hall Corporation (Appellant) from a decision of the Nova Scotia Assessment Appeal Tribunal (NSAAT) dated May 3, 2017, which confirmed the 2016 assessment of the property located at 998 Beinn Bhreagh Road, Beinn Bhreagh, in Municipality of the County of Victoria, Nova Scotia (Subject Property or Beinn Bhreagh or Beinn Bhreagh Hall). The appeal was filed with the Nova Scotia Utility and Review Board (Board) under the *Assessment Act*, R.S.N.S. 1989, c. 23, as amended (*Act*).

[2] The assessment of Beinn Bhreagh for the 2016 assessment year was set by the Property Valuation Services Corporation (PVSC or Director) in the amount of \$885,200. The Appellant appealed the assessment to the NSAAT, which confirmed the assessment in its decision dated May 3, 2017.

[3] On June 16, 2017, the Appellant filed a Notice of Appeal with the Board appealing from the NSAAT decision. The grounds for the appeal were as follows:

**1. The specific matters of appeal are:**

The assessment is too high.

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

Both land and building value is too high as a result of the cost of upkeep of both due to the Conservation Easement and the heritage designation.

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

General level of assessment is incorrect, does not take into account significant costs of maintaining property and building to the standard prescribed by Conservation Easement and heritage designation.

The Appellant includes the 2014 expense reports to demonstrate the upkeep for one year of assessment. Additional annual expense report will be provided in advance of Appeal. The Appellant also includes a valuation of the property, along with upcoming estimated costs. The Appellant further alleges bias on the part of the adjudicator, as evidenced in his personal opinions with respect to Mr. Alexander Graham Bell in the opening three paragraphs of this decision. ...

[Exhibit B-1, p. 1]

[4] The Board issued its Notice of Hearing and Hearing Order on February 6, 2018, which outlined a timeline for the filing of evidence and experts' reports in advance of the hearing.

[5] On April 9, 2018, the PVSC filed Notice under Rule 15(1) of the Board's *Assessment Act Rules* of its intention to seek a higher assessment in the amount of \$1,054,200.

[6] Further, at the beginning of the hearing on the merits, counsel for the Director indicated that a review had confirmed that a guest house (Gardener's Cottage) on the Subject Property was actually contained on a separate assessment account for the 2016 assessment roll. The land related to Gardener's Cottage remained on the assessment account under appeal. He stated that the assessment under appeal should be adjusted accordingly and that Gardener's Cottage should not be part of this appeal. Counsel for the Appellant agreed. As a result, the Director of Assessment stated the 2016 assessed value for the property under appeal should be adjusted to \$992,800. The appeal proceeded on this basis.

[7] The "base date" of the 2016 assessment prescribed by the Director under the *Act* is January 1, 2014, which requires that the assessed value be determined as of that date. The value of the Subject Property is to be determined with respect to the condition of the property as it existed as of December 1, 2015, which is described as the "state date".

[8] The hearing was held on May 8, 2018, at the Royal Canadian Legion, Branch 53, in Baddeck, Nova Scotia. Nicole LaFosse, LL.B., acted as counsel for the Appellant. She called John A. Ingram, AACI, P.App., MRICS, as an expert witness. Sara Anne

Grosvenor and William Hockey also testified on behalf of the Appellant. Robert Andrews, LL.B., appeared as counsel for PVSC and called as expert witnesses Daniel J. McNeil, CRA, Senior Specialist at PVSC, Valuation and Appeals, and Sheila E. Orr, AACI, P.App.

[9] A site visit of the Subject Property, led by family member Gardiner Grosvenor, took place on the afternoon of July 5, 2018, with Counsel and the Board panel. The visit included the grounds surrounding the main house and throughout the interior of the main house, with the exception of the basement. The additional buildings were not viewed.

[10] Written submissions were also filed by the parties, which were completed by July 20, 2018.

[11] In advance of the hearing, the Board was aware that there had been much publicity surrounding this appeal given the ownership history of Beinn Bhreagh, the summer home of Alexander Graham Bell and Mabel Hubbard Bell.

[12] At the commencement of the hearing, the Board noted that this is an appeal under the *Assessment Act*, which requires under s. 87 that, in considering an appeal, the Board must inquire into the matter *de novo*. In plain terms, this means that the Board is to conduct a new hearing into the matter. The Board's role in such an appeal is not to undertake an appellate review of the original decision of the NSAAT, or *obiter* comments made in that decision by the adjudicator. As a result, the Board indicated that this hearing would not be a review of Dr. Bell's achievements as a scientist, as an inventor, and an innovator, including his discovery of the telephone and other advances. The many accomplishments in Dr. Bell's life, and the contributions of Mabel Hubbard Bell, are well-

documented and undisputed, and such issues are not directly relevant to the matters to be considered in the appeal of the Subject Property.

## **II PROPERTY DESCRIPTION**

[13] Beinn Bhreagh Hall is located in the community of Beinn Bhreagh (Gaelic for “beautiful mountain”) on a peninsula jutting into the Bras d’Or, near the community of Baddeck.

[14] There are four buildings situated on the Subject Property, including Beinn Bhreagh Hall, a guest house identified as the Gardener’s Cottage, as well as a maintenance building and a storage barn. As noted earlier in this Decision, the Gardener’s Cottage is assessed on a different account number and is not subject to the present appeal.

[15] Beinn Bhreagh Hall is the most significant building on the property. It is constructed in the Victorian Queen Anne style and provides a panoramic view of the Bras d’Or. It was constructed over an 18-month period in 1892-1893 and was the former summer residence of Alexander Graham Bell and Mabel Hubbard Bell. The house contains 21 rooms. Consistent with large Victorian homes of the era, the house features a great room (i.e., a relatively grand living room) and a formal dining area, but the remainder of the residence is quite modest. The other rooms include 12 bedrooms, a kitchen, pantry, sun porch, library, morning room, study and laundry room, as well as front and rear foyers. It has an unfinished attic storage room. There are five 3-piece and two 2-piece bathrooms, containing many original fixtures. The building boasts 11 fireplaces throughout, but they have no dampers. There are four stone chimneys with multiple flues.

The basement is unfinished, with stone and mortar foundation walls and a poured concrete floor. There are also brick interior support posts.

[16] The exterior walls are a wood frame structure with painted wood shingle siding. The roof has asphalt shingles over the wood structure. The interior walls and ceilings are painted plaster, except in some areas where drywall has replaced cracked plaster. There is also wood lattice finish in most rooms. There is hardwood or softwood flooring in most areas.

[17] There are no municipal water and sewer services in the area. Water is obtained from a reservoir located outside the northerly boundary of the Subject Property, and is gravity fed. The Board learned on its site visit that this system was designed by Dr. Bell himself. The water rights and rights-of-way for the water sources are described in the deed for the subject lands. Water is also obtained from a well on the site. There is an on-site septic system. The property was rewired in 2001 and has oil-fired hot water heat.

[18] The lands containing Beinn Bhreagh Hall and the three other buildings comprise about 23.5 acres. The lot is irregularly shaped and has just over 2,000 feet of frontage on the Bras d'Or. The grade is undulating, but generally slopes steeply downward from north to south toward the water frontage. The dwelling sites are situated on terraced areas. There is a mix of cleared lawn and garden areas, as well as wooded forest areas. The cleared and landscaped areas cover roughly half of the total site area.

[19] The Subject Property is situated about five km northeast from Baddeck, directly across the waters of the Bras d'Or, and can be reached over about 10 km of road from Baddeck. The asphalt paved Beinn Bhreagh Road runs about one km in from

Highway 205, then becomes gravel surfaced for a further two km to the south, to a private lane which runs two km to the Subject Property. Access to the site itself is available from both the Low Level Road and the High Level Road, which are private roadways.

### III CONSERVATION EASEMENT AND HERITAGE DESIGNATIONS

[20] The last person to live in Beinn Bhreagh Hall was Mabel H. Grosvenor, a direct descendant of Dr. Bell and Mabel Hubbard Bell, who resided in the house until her death in 2006. However, to address her concerns about protecting the integrity of the property in future years, before her death she arranged for the execution of a Preservation and Conservation Easement (Easement) creating a trust over the house and lands.

[21] An Order-in-Council made by the Lieutenant-Governor in Council on October 5, 1994, designated lands located at Beinn Bhreagh, Victoria County, as a “natural area pursuant to the *Conservation Easements Act*, and pursuant to the consent of the owner”. The Order-in-Council refers to a legal description shown on two schedules which form part of a Report and Recommendation. The Report and Recommendation were not in evidence before the Board.

[22] The *Conservation Easements Act* in effect at that time (S.N.S. 1992, c. 2) provided that the responsible Minister was to register such an Order at the appropriate Registry of Deeds, and further stated, in s. 4, that “an easement or covenant” could be entered into with the owner of such a natural area, and that easement or covenant “shall be registered in the registry of deeds” for the area where the land is located. Section 4(3) went on to provide that the easement or covenant “...runs with and burdens the title to the land to which it relates...”.

[23] The 1992 *Conservation Easements Act* was repealed and replaced by the *Conservation Easements Act*, S.N.S. 2001, c. 28, as amended, and by s. 3(4) applies to an easement made under the former *Act*. The 2001 legislation, although more detailed, contemplates registration of the easement in s. 11, and provides for the enforcement of obligations in an easement by action in the Supreme Court (s. 15).

[24] In evidence before the Board was the Preservation and Conservation Easement dated July 26, 1994, between Mabel H. Grosvenor and the Bras d'Or Preservation Foundation (Foundation). This document defines "Premises" as property described in an attached annex, including the exterior of the Beinn Bhreagh Hall (Hall), but excluding the interior. The legal description in Annex "A" describes a parcel bordering on the shores of the Bras d'Or lakes and also by a number of roads but containing no measurements or indication of the size of the area.

[25] The Board notes that there was no evidence of registration details of the Easement before it; however, the parties proceeded on the basis that it had been registered as required.

[26] The document also defines the "Facades" as the external nature of Beinn Bhreagh Hall, as shown in Annex "B". Annex "B" was not attached to the document which was before the Board, and apparently includes a set of photographs depicting the exterior surfaces of the Hall and surrounding property. The document also contains a reference to Annex "C", being an affidavit specifying certain technical and location information relative to the photographs, but again Annex "C" was not available to the Board.

[27] In response to Undertaking U-1, Ms. Grosvenor reported she had attempted to find copies of these Annexes, but was unable to do so, despite contacting various possible sources.

[28] In the recitals to the Easement, the parties recognize the significance of the Premises and that the granting of the Easement will “assist in preserving and maintaining Beinn Bhreagh Hall and its architectural, historical, and cultural features”. The document goes on to refer to the fact that the Order-in-Council designating the Premises as a natural area was made on October 5, 1994.

[29] The Preservation and Conservation Easement was granted irrevocably and in perpetuity and intended to run, in accordance with provisions of the *Conservation Easements Act*, with and burden the title to the property and to be enforceable by the Bras d’Or Preservation Foundation against Mabel H. Grosvenor and any subsequent owner or occupier of the Premises.

[30] In 2009, the Subject Property was conveyed from the Estate of Mabel Grosvenor to the Beinn Bhreagh Hall Corporation.

[31] The Easement contains a number of covenants on the part of the Grantor, Dr. Mabel H. Grosvenor (and thus the Appellant as subsequent owner), which prohibit demolition, removal, or razing of the Hall or the Facades except under certain conditions. The written permission of the Foundation is required to make changes in the Facades or interfere with existing views of the Hall or the architectural character of the Premises. Dr. Grosvenor was to maintain the Premises in good repair, and there are various other restrictions regarding the topography of the lands, the trees, shrubs and lawns. Further,

as long as the Hall is standing, the late Dr. Grosvenor was free to dispose of it, as long as there was no subdivision and no conveyance of the lands except as a unit.

[32] Dr. Grosvenor was not to exercise any development rights with respect to the property.

[33] The Easement contains, in Paragraph 3, a hierarchy with respect to the disposition of the property, should Dr. Grosvenor fail to keep it in good repair and the Foundation choose not to assist in that. The property would be offered first to the Province of Nova Scotia, or to Canada, on terms considered appropriate by Dr. Grosvenor for a memorial to Alexander Graham Bell and Mabel Hubbard Bell; if neither the Province nor Canada want the property, Dr. Grosvenor could dispose of it, subject to the terms of the Easement. If Dr. Grosvenor was not able to dispose of the property, or the parties to the Easement agree that further maintenance is "impractical", or if it diminishes to a state where it would be condemned, Dr. Grosvenor was to raze the Hall and offer to donate the Premises to the Bell Grosvenor Family Interests, Inc. on covenants to maintain the property as a suitable natural memorial to Alexander Graham Bell and Mabel Hubbard Bell, but allowing two separate lots for construction of a house of a design acceptable to the Foundation. If the Bell Grosvenor Family Interests, Inc. does not want the property, it is to be donated to the Foundation on terms which would ensure preservation of the natural memorial. The Foundation would then, as owner, be responsible to create new preservation and conservation easements with the same restrictions.

[34] The document also includes provisions regarding the situation if the Premises or the Hall are destroyed "by casualty" and what steps might be taken.

[35] The Easement also contains a provision that public access to the Premises would be granted one day per year as arranged with the Foundation to suitable groups or persons. There is also provision for an annual inspection of the property by the Foundation.

[36] The Easement is binding on the heirs or successors of both parties and it is agreed that it is to be recorded in the appropriate land registration office.

[37] On October 31, 2014, the Nova Scotia Minister responsible for the Administration of the *Heritage Property Act*, R.S.N.S. 1989, c. 199, as amended, made a Recommendation for Registration of the Beinn Bhreagh property in the provincial Registry of Heritage Property. On February 24, 2015, which the Board notes is after the base date, but before the state date, relevant to the assessment year under appeal, the Notice of Registration was made by the Minister, which provided that “the effect of registration... is that no demolition or substantial alteration in exterior appearance of the property may be undertaken from the date of registration without the approval of the Governor in Council”. In that document, the property is described as a parcel of approximately 23.5 acres of land on the shore of Baddeck Bay (a part of the Bras d’Or lake), together with certain easements and rights and excepting out a parcel of land of approximately 1.5 acres. On September 2, 2015, the Minister gave notice of an amendment to correct a portion of the notice of recommendation to register Beinn Bhreagh Hall as a Provincial Heritage Property.

[38] Four years after the base date for the assessment year under appeal, by letter dated January 11, 2018, the Minister of Environment and Climate Change, responsible for the Historic Sites and Monuments Board of Canada, and Parks Canada,

advised Sara Grosvenor, President of the Alexander and Mabel Bell Legacy Foundation, that Beinn Bhreagh Hall had been designated as a national historic site. The letter does not describe any rights or responsibilities flowing from this designation. No evidence of any related statutory provisions was placed on the record. The only evidence before the Board of restrictions on, or directions concerning, the use or maintenance of the Hall, if any, resulting from this designation was from Ms. Grosvenor's testimony.

#### **IV ISSUES**

1. What is the market value of the land component of the Subject Property?
2. What is the market value of Beinn Bhreagh Hall and the other buildings and site improvements on the Subject Property?
3. What is the impact of the Preservation and Conservation Easement and the heritage or historic designations on the market value of the land and Beinn Bhreagh Hall?
4. Should the assessed value of the Subject Property be varied to reflect the level of assessment?

#### **V EVIDENCE**

##### **(i) Evidence of the Appellant**

###### **1. Sara Anne Grosvenor**

[39] Sara Anne Grosvenor resides in Bethesda, Maryland. She is, currently, one of seven Trustees entrusted with the conservation, operation and maintenance of Beinn Bhreagh Hall. Her aunt, Dr. Mabel H. Grosvenor, was the last descendent of Alexander Graham Bell to reside in the house and upon her death, in October 2006, a trust had been established for its care.

[40] She described the impact she felt the property has on the community:

...Beinn Bhreagh Hall is iconic, to our family of course but also to the community of Baddeck and to Nova Scotia and Canada and United States in so many ways because of the endeavours of the Bells.

I think that it's so important to Canada, it's authentic because little has changed in that house. I mean you can envision the Bells still walking around. You can envision their life from 1892 to 1922.

The integrity of the structure is still intact and then there are really few places in the world where you can experience fully the life of a historical figure. I mean that's so unique. There's so many aspects of this building.

And that it's a beacon. It inspires others to be creative and to take on the mantle. And I mean to sailors, to -- you know people in the water. It's like a lighthouse. It's -- it has a lot of sentimental value but also historical and cultural value to Canada and the United States.

[Transcript, p. 163]

[41] Ms. Grosvenor's evidence centered primarily on what is required for the upkeep and maintenance on the house.

[42] Following her aunt's death, the house was closed for several years, but later it hosted a few public and private functions. She described her vision of the use of the house:

I think that there will be more of a visitation aspect by the public of the house. The house is such an important icon of not only Baddeck and of our family but also of Canada, the United States and it really needs to be shared and I think you know we just have to figure out how to do it and there could also in the beginning be shared digitally as well, have a digital presence associated with the museum.

[Transcript, p. 148]

[43] She emphasized that it was not to be a profit-making enterprise, in any way, but rather, simply, to cover costs.

[44] In response to questions from both Counsel and the Board, Ms. Grosvenor testified that, on behalf of the Trustees, it was she who applied for both the Provincial and Federal heritage designations for Beinn Bhreagh Hall.

[45] The Provincial designation or *Notice of Registration of Property as a Provincial Heritage Property*, granted in 2015, relates to the exterior of the premises and

has the effect that no demolition or substantial alteration in exterior appearance of the property may be undertaken.

[46] She testified that the January 2018 Federal designation by the *Historic Sites and Monuments Board of Canada* as a national historic site has more qualifications, requiring the Trustees to use “appropriate materials” and follow “official standards and guidelines for conservation of historic places in Canada by Parks Canada...”

[47] She elaborated further, explaining that both designations required that Beinn Bhreagh Hall be maintained in its original state; any alterations must receive government approval, all with the goal of maintaining the integrity of the house.

[48] Ms. Grosvenor testified that there was also a conservation easement on the property, which was prepared in 1994 by Dr. Grosvenor, and her nephew, Grosvenor Blair, between her as grantor and the Bras d’Or Preservation Foundation, a Provincial non-profit society, as grantee, with the intent of protecting the property from development and ensuring that the property “was maintained and properly conserved” to prevent deterioration.

[49] Ms. Grosvenor’s evidence was that the conservation easement, the Provincial and Federal historical and heritage designations, along with the age of the property, result in significant annual costs “totaling in the hundreds of thousands of dollars.”

[50] With respect to the annual expenses in maintaining the property, she testified that there was a “steep” learning curve about how to stabilize the property, including repairs for cracked foundations, maintaining five chimneys, terraces under the porch and trying to address the ongoing water problems in the basement.

[51] Ms. Grosvenor testified that William Hockey was hired to oversee the conservation and rehabilitation plans for that stabilization. Other work to be carried out on the house included replacing the roof, house shingles, wood trim on the exterior, plastering, exterior and interior painting, and fortification of some of the walls.

[52] Ms. Grosvenor reckoned that the Trustees had spent in the vicinity of \$406,000 for 2015; \$326,000 for 2016 and \$350,000 for 2017, which was just to maintain the property. Added to this is approximately \$90,000 per annum in operating expenses covering such items as staff, professional accounting and taxes, legal, equipment and "historic" bills, which she testified represent a tremendous amount of delayed maintenance on the building.

[53] While she could not speak for the other Trustees, she could not foresee any family members living in the house again, because it is an "incredible investment" which would be very "difficult."

[54] With respect to the lands surrounding the property, some 22 acres, Ms. Grosvenor described it as a "cultural landscape" adding:

It's where Mabel Hubbard Bell had her gardens and did research for the soil service in the agriculture department and David Fairchild planted numerous trees and so it's certainly part of the conservation effort.

It's just right now it's of a lesser priority to maintain it financially. But it's certainly valid because -- particularly because of the Fairchild importance there. And because the Grosvenor importance had the National Geographic summer headquarters there. And the Fairchilds have the Flora and Fauna and it's all very important.

[Transcript, pp. 194-195]

[55] Finally, Ms. Grosvenor testified that the Trustees had not considered a transfer of Beinn Bhreagh Hall to either the Provincial or Federal governments.

## **2. William Hockey**

[56] William Brian Hockey resides in Boutilier's Point, Nova Scotia, and testified *via* telephone conference.

[57] He is an architectural conservator, dealing with the rehabilitation of historic buildings. He holds degrees in architecture, a Master's in Environmental Design and Conservation of the Environment. He is also a member of the Canadian Association of Heritage Professionals. However, Mr. Hockey was not qualified as an expert to provide opinion evidence as he had not filed a report.

[58] He became involved with the property in approximately June 2014. The work involved emergency stabilization and major repairs to the foundation.

[59] Following completion of the work he was asked by the Trustees to project manage the rehabilitation work needed to be carried out at Beinn Bhreagh Hall. He described it as catch-up maintenance, most of which was masonry work and, basically, a total rehabilitation of the exterior of the building, because it had been neglected for a very long time.

[60] He testified that it is an ongoing project and there is probably three more years left of rehabilitative work on the house. Limited funds dictate how quickly the work can be completed. He said that it is deferred maintenance which costs more than it would have had it been done in a timely manner. He testified there was a great deal of work done on the foundation, on the concourse deck and at present, they are dealing with the exterior of the building by replacing the failed shingles. He testified that it will need a new roof and window repairs to be done.

[61] He testified that virtually every element of the building has to be looked at including re-caulking, puttying, painting, repair and replacement, where it needs replacement.

[62] He anticipated that the total cost of the project to completion will probably cost in the vicinity of \$1.5M and that once the project is completed there will be the ongoing costs of maintaining the property.

[63] He testified that the Trustees asked him to develop a maintenance plan, which is one of his specialities. He testified that the maintenance plan looks at an annual average cost of 5% of the value of the resource for ongoing maintenance, suggesting that some years would be less, some years would be more. He stated that if the maintenance had been carried out in a timely manner, it would have kept the costs down.

[64] In response to questions from Counsel and the Board, he testified that the heritage buildings, the types of materials and the way that they perform "makes it comfortable to follow the procedure of repair and replacement when they wear out."

[65] He added:

Once it is -- once it's brought up to snuff which is what we're doing then it's basically the same as any other building. The materials and of typically heritage buildings have a lot going for them compared to say contemporary buildings.

[Transcript, p. 35]

[66] His evidence was that the 5% per annum maintenance cost would be typical for a building of the type of Beinn Bhreagh Hall:

A. Yeah to a trained builder but it's -- what I found is that that seems to be a good average for basically a 20 year amortization of the building in a way. But that seems to work very well to budget that way and plan for it so that in fact you know because obviously if you're -- five percent of the building won't redo the roof but you don't use five percent per year when you get up to the time when a roof needs to be done you have the money in reserve as long as you've maintained that five percent per annum budget in the background.

Q. So that would be enough for example your expectation to cover sort of life cycle replacement of infrastructure and that sort of thing?

A. Yeah, that's correct.

[Transcript, pp. 36-37]

[67] Mr. Hockey also testified that despite being burdened with the conservation easement “you just have to be very careful when you need to do something that’s foreign to a current assembly.” He cited as an example that the mortars are slightly fortified with polymer where the original mortars would have no polymer in them.

[68] He testified that he would anticipate having to perform maintenance to keep the building standing and functional, regardless of whether or not there were (conservation) designations.

### **3. John A. Ingram**

[69] Mr. Ingram was qualified by the Appellant as an expert witness, able to give opinion evidence with respect to property valuation. He is a real estate appraiser with Ingram Varner and Associates Atlantic Realty Advisors. He has been involved in real estate appraisal for approximately 32 years. He is a member of the Royal Institute of Chartered Surveyors with an MRICS designation. He is also a member of the Nova Scotia Real Estate Appraisers Association, the New Brunswick Real Estate Appraisers Association and is currently President of Ingram Varner and Associates.

[70] Mr. Ingram testified that the Subject Property is a very large summer home built by Alexander Graham Bell in 1893. It sits on about 23.5 acres overlooking the Bras d’Or lakes. He called it a “traditional Victorian cottage,” in the sense that it has a great room, a relatively grand living room, dining area and the remainder of the residence is

quite modest. He first became involved with the property when it was used as a summer home by Dr. Mabel Grosvenor until her death.

[71] He prepared an Appraisal Report (Exhibit B-3, Tab 4) in support of his valuation which, it was noted, reflected a valuation date of January 1, 2016, two years past the valuation date required under the *Act* for the subject assessment year.

[72] When he first visited the property he was shown through all the areas of all the buildings on the property. He took photographs of most of the areas. He measured the residence in his initial visit in 2002 and testified that there was no need to re-measure it for subsequent appraisals, but it was re-inspected in detail when he visited the property after Dr. Grosvenor's death.

[73] He testified that he considered two approaches to value: the Direct Comparison Approach and the Cost Approach, adding that because of its uniqueness finding a direct comparison was "a challenge to say the least."

[74] In terms of dwellings that are comparable to the subject under the Direct Comparison Approach, he testified that there are fairly significant adjustments that are required in terms of size and condition and those adjustments were applied to what he found in those relevant comparables at the time.

[75] Mr. Ingram also carried out a Cost Approach in his estimation of the market value of Beinn Bhreagh Hall. He looked at the valuation of the land as if it was free and clear of improvements under its highest and best use and, also, the estimation of the reproduction cost new of the improvements, less any loss in value (depreciation) due to deterioration or obsolescence.

[76] With respect to the Direct Comparison Approach, the following table is derived from Mr. Ingram's Report and outlines the sales of large residences with water frontage in the Cape Breton area:

SCHEDULE OF COMPARABLE SALES - Improved Properties						
#	Property	Sale Date	Sale Price	Building Area (ft <sup>2</sup> )	Price /ft <sup>2</sup>	Remarks
1]	121 Delta Drive Howie Centre  PID 15508534	Apr-15	\$487,500	5,000	\$98	2 level dwelling with attached 2 car garage and in-law suite. Good quality and condition. 40 years old. 7 bedrooms and 4 bathrooms. Water frontage on Spanish River. Lot size = 1.72 acres. Vendor: Antonietta MacNeil Purchaser: Hak Sang Sung and Yun Hee Lee
2]	511 Westmount Road Sydney River  PID 15203227, 15875743 and 15009509	Mar-15	\$341,000	6,600	\$52	2 1/2 storey dwelling with detached 3 car garage. Utilized as a multi-unit residential building. Older home with some recent renovations. Average condition. Lot size = 1.9 acres + 1.8 acre water lot. Vendor: Frederick Leet Purchaser: Troy Leon and Patricia Brennan
3]	54 Ross Street Baddeck  PID 85018463	Nov-14	\$558,000	3,600	\$155	1 1/2 storey dwelling with detached garage with loft apartment. Good quality and condition. Recently renovated. 4 bedrooms and 4 bathrooms. Water frontage on Bras d'Or Lake. Lot size = 0.4 acres. Vendor: Paul and Catherine House Purchaser: Arthur Coakley
4]	11 Margaret Street Baddeck  PID 85084267, 85083749 and 85095560	Sep-14	\$550,000	4,108	\$134	Cape Cod style dwelling with attached garage. Good quality and condition. 24 years old. 5 bedrooms and 5 bathrooms. 1 bedroom loft apartment. Lot size = 0.4 acres + 0.6 acre water lot. Vendor: William and Gwendolyn MacLeod Purchaser: Shaun and Denise MacIntyre
5]	815 Coxheath Road Coxheath  PID 15214943	Jul-11	\$775,000	9,087	\$85	Large 2 level estate with attached garages and indoor swimming pool. Very good quality and condition. 20 years old. 6 bedrooms and 7 bathrooms. Water frontage on Sydney River. Lot size = 5.7 acres. Vendor: Carol Rizzetto Purchaser: Sivakumar Annamalai and Saraswati Sivakur
6]	2085 Hillside Boularderie Road Hillside Boularderie  PID 15305063	Dec-10	\$1,020,000	6,000	\$170	3 level dwelling with timber frame post and beam construction. 19 years old. Very good quality and condition. 4 bedrooms and 6 bathrooms. 1,050 feet of water frontage on Bras d'Or Lake. Lot size = 22.6 acres. Vendor: Angelika Weller Purchaser: Larry and Wendy Andrea

[Exhibit B-3, p. 60]

[77] Mr. Ingram testified that the comparable sales were adjusted for variances in date of sale, location, land size, building size, and other physical considerations as required.

[78] Based on these considerations, adjustments were made to the comparable sales and are outlined in the following table from Mr. Ingram's Report:

Direct Comparison - Adjustment Table						
Sale	1	2	3	4	5	6
Sale Price	\$487,500	\$341,000	\$558,000	\$550,000	\$775,000	\$1,020,000
Date of Sale Adjustment	\$14,828	\$11,250	\$24,195	\$26,721	\$118,535	\$176,742
Time Adjusted Price	\$502,328	\$352,250	\$582,195	\$576,721	\$893,535	\$1,196,742
Land Value	\$74,000	\$54,000	\$4,000	(\$46,000)	\$74,000	(\$72,000)
Building Size	\$174,000	\$94,000	\$244,000	\$218,600	(\$30,350)	\$124,000
Outbuildings and Extras	\$23,000	\$13,000	\$13,000	\$23,000	\$0	\$43,000
Quality/Condition	(\$251,164)	(\$105,675)	(\$291,098)	(\$288,361)	(\$536,121)	(\$837,719)
Net Adjustment	\$19,836	\$55,325	(\$30,098)	(\$92,761)	(\$492,471)	(\$742,719)
Adjusted Sale Price	\$522,164	\$407,575	\$552,098	\$483,961	\$401,064	\$454,023

[Exhibit B-3, p. 62]

[79] Mr. Ingram agreed that, as a general rule, the greater number of adjustments made, the greater amount of any single adjustment, and the greater the total net value of all adjustments, the less reliable the comparable is.

[80] Mr. Ingram testified that adjusted sales prices ranged from \$401,064 to \$552,098, averaging \$470,147, with a median value of \$468,992.

[81] It was his opinion, based on the Direct Comparison Approach, that the value of the property was reasonably estimated to be \$470,000.

[82] Under cross-examination, Mr. Ingram confirmed that he did not physically inspect any of the comparable sales in the above table and offered the following comments with respect to the individual sales.

[83] Sale No. 1, located outside the City of Sydney, bordered a small waterway which leads to Sydney harbour. Sale No. 2 was located on the outskirts of Sydney,

surrounded by a number of lots. Sale No. 3 was located in Baddeck on a narrow parcel of land adjacent to a boatyard. Sale No. 4, in Baddeck, was separated from the water by a public road and was significantly smaller than the Subject Property. Sale No. 5 has no access to the open water of the Bras d'Or lakes and Sale No. 6, located in Hillside Boularderie, does have access to the water.

[84] Under cross-examination, Mr. Ingram admitted that he was unaware that Sale No. 4 had undergone extensive renovations after the sale and he could not say whether knowledge of this would have changed his assessment of the quality and condition of the dwelling. As well, it was pointed out to him that Sale No. 5 actually sold for \$225,000 less than he indicated, to which he acknowledged that this information would change his quality/condition adjustment.

[85] In his application of the Cost Approach, Mr. Ingram first conducted a review of comparable sales for vacant land on the Bras d'Or lakes in order to find a value for the land.

[86] Mr. Ingram listed the following table of vacant land sales in his Report:

SCHEDULE OF COMPARABLE SALES - Vacant Land on Bras d'Or Lake						
#	Property	Sale Date	Sale Price	Site Area (acres)	Price /acre	Remarks
7]	Kempt Head Road South Skie of Boudarlerie	Oct-15	\$185,000	18.20	\$10,165	Wooded land with 500' of water frontage on Bras d'Or Lake. Public road frontage. No municipal services. Brook runs through property.  Vendor: Amy Calkins Purchaser: Lloyd and Natalie Thebault
	PID 85029551					
8]	424 John Neil George Road Estmere	Aug-15	\$122,000	46.00	\$2,652	Wooded land with 2,000' of water frontage on Bras d'Or Lake. Public Road frontage. Sandy beach shoreline. No municipal services.  Vendor: David and Dominique MacKenzie Purchaser: William and Angela MacNeif
	PID 85003937					
9]	Grand Narrows Highway Ironville	Dec-14	\$125,000	9.05	\$13,812	Group of 4 land parcels which are severed by a rail line corridor. 1.65 acres on water side of corridor. 400' of frontage on Bras d'Or Lake. Unserviced wooded land with public road frontage and easement access to lake frontage parcel. Vendor: Brenda MacDonald et al Purchaser: Greg Petite and Nancy Keagan
	PID 15818669, 15818644, 15818636 and 15818651					
10]	Highway 223 Whycocomagh Portage	Dec-14	\$40,000	9.10	\$4,396	Wooded land with partial clearing. 440' of water frontage on Bras d'Or Lake. Driveway in place from public road frontage to shoreline.  Vendor: Theresa and Carl Learning Purchaser: Frank and Sarah Cottingham
	PID 85103513					
11]	2327 Portage Road Estmere	Nov-14	\$59,000	10.86	\$5,433	2 adjacent parcels with water frontage on Bras d'Or Lake. Acquired for assembly with adjoining land. 400' of water frontage. Some wetland at water frontage. Vendor: Gordon and Ingrid Boutilier Purchaser: Gold Point Enterprises Limited
	PID 85097467 and 85107480					
12]	Old Centre Post Wharf Road Boularderie Centre	Sep-14	\$89,000	7.16	\$12,430	Group of 2 land parcels with private road access. 293' of frontage on Bras d'Or Lake. Wooded land with no municipal services.  Vendor: Peter Gillis Purchaser: Josephine and Troy Mulley
	PID 85094209 and 85094217					

[Exhibit B-3, p. 63]

[87] He noted the rates per acre ranged from \$2,652 to \$13,812, averaging \$8,148 per acre, with a median rate of \$7,799 per acre. Parcel sizes ranged from 7.16 to 46 acres, with an average size of 16.73 acres and a median size of 9.9 acres.

[88] His Report indicates that after considering adjustments for date of sale, location, and parcel size, a rate of \$12,500 per acre was adopted as the base value of the subject lands.

[89] Mr. Ingram testified that the preservation and conservation easement has a detrimental impact on the land value. Approximately one-half of the subject lands are impacted by the easement. In his opinion, the utility of the property is restricted by an inability to develop or subdivide the land, because of the easement. He estimated the impairment being at 50% of the market value on half of the lands. He estimated the value of the site, as if vacant, to be \$220,000 [11.75 acres x \$12,500/acre + (11.75 acres x \$12,500/acre ÷ 2)].

[90] In his application of the Cost Approach, Mr. Ingram calculated a reproduction cost new in the analysis for the main house, Gardener's Cottage, maintenance building, storage barn and site improvements. He conceded, under cross-examination, that the costing that he had carried out on these items is actually more akin to a replacement cost, and is based on current construction costs for the local area. Depreciation is estimated and deducted from the replacement cost new.

[91] The following tables are derived from Mr. Ingram's Report:

**8.2 REPRODUCTION COST NEW**

The following costs have been derived from the Marshall & Swift® valuation service and the SwiftEstimator™ online cost estimator:

Component	Area (ft <sup>2</sup> )	\$/ft <sup>2</sup>	Reproduction Cost
Beinn Bhreagh Hall	8,480	\$160.00	\$1,356,800
Gardener's Cottage	1,169	\$105.00	\$122,745
Maintenance Building	803	\$40.00	\$32,120
Storage Barn	1,186	\$25.00	\$29,650
Site improvements			\$70,000
		<b>Total</b>	<b>\$1,611,315</b>

8.3 DEPRECIATION ANALYSIS

The estimated physical depreciation is based on effective age and estimated economic life of the subject structures. Estimated age and life are outlined in the following table:

Building	Actual Age (approximate)	Effective Age	Total Economic Life	Remaining Economic Life	Age/Life Ratio
Beinn Bhreagh Hall	113	45	60	15	75%
Gardener's Cottage	113	45	60	15	75%
Maintenance Building	113	30	40	10	75%
Storage Barn	113	35	40	5	88%

[Exhibit B-3, p. 65]

[92] In addition to physical depreciation on Beinn Bhreagh Hall, which Mr. Ingram set at 75% or \$1,017,600 (to be deducted from the reproduction cost of \$1,356,800), he also applied external obsolescence to the dwelling. Mr. Ingram considered that external obsolescence was comprised of two components.

[93] First, he determined that the Preservation and Conservation Easement would require the facade of Beinn Bhreagh Hall to be maintained in its present state, resulting in "higher maintenance costs where modern cost effective materials and designs are precluded". He estimated this impact at 5% of the reproduction cost of the building, which he capitalized to an amount of \$66,000 for this factor.

[94] Second, Mr. Ingram noted there was a direct cost associated with the pro-rata share of ongoing maintenance related to private roads leading to the main dwelling, for which he capitalized an amount estimated at \$83,000

[95] As result, Mr. Ingram applied a total external obsolescence amount of \$149,000 to the main dwelling (\$66,000 + \$83,000).

[96] The value of the Subject Property, applying the Cost Approach, was calculated in the following table supplied by Mr. Ingram:

Component	Reproduction Cost	Depreciation Rate	Total Depreciation
Beinn Bhreagh Hall	\$1,356,800	75.00%	\$1,017,600
Gardener's Cottage	\$122,745	75.00%	\$92,059
Maintenance Building	\$32,120	75.00%	\$24,090
Storage Barn	\$29,650	88.00%	\$26,092
External Obsolescence			\$149,000
		<b>Total</b>	<b>\$1,308,841</b>

[Exhibit B-3, p. 66]

8.4 SUMMARY AND VALUE CONCLUSION

Based on the foregoing considerations, the value of the subject by the Cost Approach is calculated as follows:

Building and Site Improvements .....	\$1,568,915.00
Total Depreciation .....	\$1,308,841.00
Depreciated Reproduction Cost .....	\$260,074.00
Vacant Land Value .....	\$220,000.00
Value by Cost Approach	\$480,074.00
Rounded	\$480,000.00

[Exhibit B-3, p. 66]

[97] It was Mr. Ingram's evidence that the two indications of value (i.e., Direct Comparison and Cost Approach) differ by approximately 2% and provide a good degree of mutual support. He acknowledged comparable sales data was limited because of the uniqueness of the property and there are significant variations between the properties, requiring large adjustments in the adjustment process. The Cost Approach, on the other hand, also required large adjustments for physical depreciation.

[98] He testified that the two approaches to valuation he applied led to indications of value (including land) which were relatively close together: \$470,000 versus \$480,000.

[99] In his Report, he placed approximately equal weight on the two approaches to market value, determining the market value, as of January 1, 2016, to be \$475,000. As noted earlier in this Decision, both parties agreed that the Gardener’s Cottage (building only) should be removed from the assessment account under appeal. Given Mr. Ingram’s cost valuation for the Gardener’s Cottage at \$30,700 (rounded), that would result in a total market value of \$444,300 for the Subject Property.

**(ii) Evidence of the Director of Assessment**

**1. Daniel McNeil**

[100] Mr. McNeil was qualified by the Director as an expert witness, able to give opinion evidence with respect to the valuation and assessment of residential property.

[101] Mr. McNeil also applied both the Cost Approach and the Direct Comparison Approach to conduct the valuation of the Subject Property.

[102] With respect to the land value, the following table outlines the comparable land sales reviewed by Mr. McNeil:

VACANT LAND SALES					
Item	Subject	Sale No. 1	Sale No. 2*	Sale No. 3*	Sale No. 4
Address	998 Beinn Bhreagh Road, Beinn Bhreagh	Lots 89-3 (85 Eagle Pass and 141 and 144 Old Centre Post Wharf Road) and 89-2 (private road), Boularderie Centre	4399 Kempt Head Road, South Side of Boularderie	4399 Kempt Head Road, South Side of Boularderie	Lot 9, Low Road, Beinn Bhreagh
Sale Date	n/a	September 10, 2014	July 4, 2008	November 2, 2015	August 31, 2010

Sale Price	n/a	\$89,900	\$140,000	\$185,000	\$194,000
Time-Adjusted Sale Price		\$87,700	\$155,400	\$183,300**	\$197,300**
Location	Baddeck	Baddeck	Baddeck	Baddeck	Baddeck
Lot Area (acres ±)	23.5	7.16	18.2	18.2	14.5
Ocean Frontage (ft. ±)	2,020	228	498.14	498.14	510
Sale Price per Acre		\$12,249	\$8,539	\$10,100**	\$13,600**
Sale Price per Front Foot		\$384.65	\$311.96	\$357.73	\$405.69

\* Repeat sale

\*\* Corrected amount provided in Mr. McNeil testimony

[103] Mr. McNeil's vacant land sales ranged in size from 7.16 acres ± to 18.2 acres ±. Sales Nos. 2 and 3 were repeat sales of the same lot. Mr. McNeil also calculated a time adjustment for the sales.

[104] In his Report, Mr. McNeil outlined his conclusion of value for the land as follows:

The best indication of value for the subject lot are Sale Nos. 3 and 4. They show a time-adjusted sale price per acre between \$10,071 and \$13,600; the median being \$11,836 per acre. These sales also show a time-adjusted sale price per water front foot of between \$367.97 and \$386.67, with a median of \$377.32 per water front foot.

Applying the median price per acre to the subject lot gives a value of \$278,100. Applying the median price per water front foot to the subject lot gives a value of \$762,200. The subject parcel is a large, well-shaped 23.5 acre residential estate lot with positive features such as forming a point of land directly across from the Village of Baddeck and also has approximately 2,020 ft of water frontage. In light of these superior features, it is more likely that the market would be influenced by factors such as front feet of water frontage, indicating a higher value. However, in light of principles of equity and fairness based on the methodology in which other land in the area is assessed, it is determined appropriate to adopt the median price per acre of \$11,836.

From this analysis, it is concluded that the subject lot assessment is understated at \$151,500. A conservative estimate of value would be \$278,100. [Emphasis added]

[Exhibit B-9, U-3, p. 24]

[105] As noted elsewhere in this Decision, Mr. McNeil did not make any adjustment or allowance to the market value of the land with respect to the Preservation and Conservation Easement or the heritage/historic designations.

[106] Like Mr. Ingram, Mr. McNeil also performed a Direct Comparison analysis of the Subject Property. He described this commonly accepted approach as follows:

The direct comparison approach is based on the principle of substitution. It involves the comparison of properties similar to the subject property which have recently sold, been offered for sale, been rented or offered for rent. The premise behind this is that a prudent purchaser will pay no more for a property than he would be required to pay for an equally desirable property, provided that there is no unreasonable delay in acquiring such property.

To use this approach the appraiser makes a search of the market to find sales of comparable properties. ...

[Exhibit B-6, p. 21]

[107] Mr. McNeil then compiled the following sales of comparable properties in his Report, which he also adjusted for time of sale:

[Remainder of page intentionally left blank]

Improved Sales Chart

Item	Subject 01818651	Sale 1 02792494	Sale 2 04169824	Sale 3 04930835	Sale 4 07247664	Sale 5 06316239
Address	998 Beinn Bhreagh Road, Beinn Bhreagh	4726 East Bay Highway, Ben Eoin	918 Highway 205, Baddeck Bay	4752 East Bay Highway, Ben Eoin	2085 Hillside Boularderie Road, Hillside Boularderie	8805 Highway 105, Inlet Baddeck
Sale Date	n/a	October 15, 2014	September 28, 2007	October 15, 2014	June 14, 2011	February 15, 2010
Sale Price	n/a	\$900,000	\$800,000	\$1,070,000	\$1,020,000	\$1,200,000
Time-Adjusted Sale Price		\$885,800	\$900,000	\$1,053,100	\$1,071,800	\$1,293,000
Location	Baddeck	Ben Eoin	Baddeck Bay	Ben Eoin	Boularderie	Baddeck
Lot Area (acres ±)	23.5	4.2	7.1	6.2	22.6	6.2
Ocean Frontage (ft ±)	2,020	141.3	590		1,600	380
Year Built	1893	2008	1900 1998	1991	1993	2003
House Style	two storey	two storey	one storey	one storey	two and one-half storey	two storey
Foundation	full	frost wall	frost wall frost wall	full	slab	frost wall
Living Area (sf ±)	8,615	3,990	1,321	2,662	8,025	5,185
Basement Living Area (sf ±)	n/a	n/a	n/a	1,597	n/a	n/a
Services	well/septic	well/septic	well/septic	well/septic	well/septic	well/septic
Site Improvements Other than House	barn - 1,186 sf ±; maintenance building - 803 sf ±; guest house - 1,169 sf ±	attached garage - 700 sf ±; pool added after sale	detached garage - 448 sf ±; guest cottage	attached garage - 480 sf ±; detached garage - 1,080 sf ±; pool	guest house - 1,992 sf ±	attached garage - 624 sf ±; detached garage - 1,520 sf ±
Notes/Comments		approx. 85 km from subject; located on Bras d'Or Lake; newer improvement; less living area; smaller lot	approx. 9 km from subject; located just outside of town; used as a seasonal dwelling; dwelling is located very close to highway; renovated after sale	approx. 85 km from subject; located on Bras d'Or Lake; newer improvement; less living area; smaller lot	approx. 44 km from subject; located on Bras d'Or Lake; newer improvement; close in living area to subject; inferior location	approx. 17 km from subject; located just outside of town; newer improvement; less living area; smaller lot
Photographs/Maps	Photographs - p.5 Map - p.4	Photographs - p.37	Photographs - p.39	Photographs - p.43	Photographs - p.46	Photographs - p.49
Comparable Sales Map found at p.50						

\*Base Date - January 1, 2014/State Date - December 1, 2015

[Exhibit B-6, p. 25]

[108] In his testimony at the hearing, Mr. McNeil corrected the Time-Adjusted Sale Price for Sale No. 4 and Sale No. 5 to \$1,033,000 and \$1,223,300, respectively. The corrections were simply due to a calculation error.

[109] He noted that Sales Nos. 1 and 3, although located on the Bras d'Or lake, were approximately a one hour drive away. He indicated that with very few sales of large improvements, with large building lots, on the Bras d'Or lake, these sales were added for context. He said that Sale No. 2 was located just outside of Baddeck, but the

improvements were very inferior to the subject improvements. The improvements were located very close to the highway and the lot was much smaller.

[110] The Board observes as well that the living area of Beinn Bhreagh Hall at 8,615 square feet is much superior to the living areas of Sales Nos. 1 to 3, with the largest being Sale No. 1 at only at 3,990 square feet.

[111] Mr. McNeil determined that the best indication of value were Sales Nos. 4 and 5. He stated in his Report:

Sale 4 was chosen because the lot is quite similar in size to the subject. The improvement is also close in size to the subject and there is also a guest house located on the property. This sale is located in the Community of Boularderie, which is considered an inferior market area to Baddeck.

Sale 5 is located just west of the Town of Baddeck, approximately 17 km away from the subject. The lot is smaller than the subject and the improvement newer, with approximately half of the living area of the subject.

[Exhibit B-6, p. 27]

[112] Mr. McNeil calculated the median of the corrected Time-Adjusted Sale Prices of Sales Nos. 4 and 5 (\$1,033,000 and \$1,223,300, respectively) at an amount of \$1,127,200. His estimate of market value obtained by the Direct Comparison Approach was \$1,182,400.

[113] Mr. McNeil's application of the Cost Approach yielded the following result in his Assessment Valuation Report:

**SUMMARY OF COST APPROACH  
(rounded to nearest dollar figure)**

Type of Property		Residential
<b>Land</b>		
Residential		\$278,100.00
<b>Dwelling:</b>		
Improvement(s):		
Replacement Cost New	\$1,667,826.00	
Depreciation:		
Physical (50%)	<\$833,913.00>	
Functional (20%)	< <u>\$166,783.00</u> >	
Cost New Less Depreciation		<u>&lt;\$667,130.00</u>
Miscellaneous Improvements		
Well/Septic	\$12,400.00	
Carport	\$1,581.00	
Gardener's Cottage	\$61,400.00	
Maintenance Building	\$8,030.00	
Barn	\$3,558.00	
Deck (terrace)	<u>\$17,420.00</u>	
		<u>\$104,389.00</u>
Total Improvements		<u>\$771,519.00</u>
<b>Total Assessment (rounded)</b>		<u>\$1,049,700.00</u>

[Exhibit B-9, Undertaking U-3]

[114] Mr. McNeil described his costing methodology as follows:

The main house was originally costed using PVSC's iasWorld costing service, but the property had not been examined recently from a depreciation standpoint and in prior years both additional economic and functional obsolescence had been applied to the property. The appropriateness of these historical factors has been examined.

In light of the unique nature of the subject property, costing of the main house has been examined from several perspectives for confirmation purposes. The Marshall Valuation Service Historical Residences calculator method was examined. The Swift Segregated Estimator was also examined, to provide the context of a Replacement Cost New (RCN) estimate more akin to a reproduction cost than a basic replacement cost model. The Swift Segregated Estimator results for quality grades, very good and excellent using the High Value Residence (Residential) provided RCNLD results of \$814,626 and \$902,191 respectively, after depreciation. The detail sheets from this exercise are provided at Schedule H for background and context.

Having regard for recent restoration work on the main house including significant foundation/basement work and other masonry restoration including chimney work, a physical depreciation of 50% was applied. In addition, an additional functional obsolescence of 20% has been applied to the replacement cost new less depreciation (RCNLD) to provide allowance for super adequacy.

After examination of the results of various costing approaches, use of the conservative costing in PVSC's iasWorld CAMA system was chosen (and is therefore reflected in the costing above). This choice was made having regard to the costing methodology applied by PVSC to the universe of residential properties in the remainder of the municipality. The additional material provided at Schedule H indicates that the costing service and methodology employed above are conservative and reflect lower end of a reasonable RCNLD estimate.

The estimate of market value obtained by the Cost approach to value is \$1,049,700.

[Exhibit B-9, Undertaking U-3, pp. 28-29]

[115] In the end, while the two valuations were relatively similar (i.e., \$1,049,700 using the Cost Approach and \$1,128,200 using the Direct Comparison Approach), Mr. McNeil placed greater weight on the Cost Approach to value because of the unique nature of the Subject Property. As a result, his final estimate of market value for the 2016 assessment year was \$1,049,700, which is identical to the figure resulting from the Cost Approach.

## **2. Sheila Orr**

[116] Sheila Orr testified on behalf of the Director. She prepared a report, which was included in the report of Mr. McNeil, and was qualified as an expert to give opinion evidence on the valuation and assessment of real property in Nova Scotia.

[117] Ms. Orr addressed the impact of conservation easements and heritage and historic designations on the market value of property. She opined that such "controls" of development can contribute to value and are not always a negative factor. In her view, this depends on the facts regarding a particular property.

[118] Ms. Orr had reviewed the Preservation and Conservation Easement regarding Beinn Bhreagh Hall and concluded in her report:

This can be viewed as a positive feature of the property given there is no municipal zoning in place. Instead, the subject property is protected from inharmonious future development by this Easement.

[Exhibit B-6, p. 85]

[119] She went on to state:

...it is my opinion that there should not be any reduction in value for the existence of the easement on the subject property. This is supported by the fact that the use of the subject property as an exceptional, private, estate-like, lakefront property is surrounded by similar properties enjoying similar uses on mostly large acreage lakefront sites and that there is no density of development taking place in the area that the subject is located within.

It is therefore my opinion, that the Beinn Bhreagh Preservation and Conservation Easement restricting subdivision will have no or little impact on the value of the property to the market of like-minded buyers or donor recipients. In fact, the existence of the Easement in this case likely serves to protect value.

[Exhibit B-6, p. 86]

[120] Ms. Orr acknowledged that where there is a demand in the market for a higher and better use of a property which is subject to an easement such as the one in place for the subject, "...it might not sell at its highest and best use market value". In the area where the subject is located, she concluded that "...the demand is strongest for the residential waterfront sector of the market", so the easement does not change its highest and best use.

[121] Ms. Orr testified that she had undertaken research to support her conclusions, not only about property subject to conservation easements, but also those which had heritage designations or were historic sites, as is the case with Beinn Bhreagh. In some cases, she said that heritage designations lent a premium to value. She did not see any of these characteristics as having a negative impact on the value of the Subject Property. In response to questions from the Board, she opined that the easement "protects the market value" of the Subject Property. She stated that there is a "common

thread” between the heritage designations and the conservation easement in that “...they are all attempting to preserve and protect a unique special property.”

[122] Ms. Orr’s evidence was that there are many sales of such properties; in some cases, the properties have sold more than once. She acknowledged that while there may be a limited pool of purchasers, there is still a market for them.

[123] She further noted that the heritage designation can be de-registered, and that the conservation easement may be terminated through legislated processes.

[124] On cross-examination, Ms. Orr acknowledged that the terms of the Easement might result in higher costs to maintain the subject.

## **VI SITE VISIT**

[125] On July 5, 2018 the panel drove to the Beinn Bhreagh estate located northeast of the village of Baddeck, on the peninsula, at the end of Beinn Bhreagh Road.

[126] In the company of the respective Counsel, the Board panel members walked the grounds observing the expansive terraced lawns surrounding the house overlooking the Bras d’Or; the exterior of the house, itself, described as a Queen Anne Revival shingle style building which includes the following characteristics: three storeys of wood construction with stone mortar foundation; steeply pitched roof, patterned shingles, a massive central chimney and four smaller chimneys; repairs to the sun porch; and, two turreted towers, one of which was encircled in scaffolding, undergoing repairs. In addition to the work currently undertaken, the Board noted that, clearly, the exterior of the house needs some re-shingling and painting.

[127] During its site visit, the Board also toured the interior of Beinn Bhreagh Hall observing many of its 21 rooms, including the Great Room or living room, dominated by a massive, rebuilt fireplace on one wall and a 1½ storey multi-paned, leaded stained glass window on the opposite wall, above a grand wooden staircase; a well appointed large dining room, library, morning room and the rest of the property including kitchen, pantry, bedrooms, bathrooms, backstairs, an open cage elevator, staff/service quarters and unfinished attic, all of which were best described by Mr. Hockey as “modest”. The Board also observed the quality and condition of many of the walls evidencing damaged plaster and peeling paint, as well as many windows in need of recaulking or replacing.

## **VI ANALYSIS AND FINDINGS**

### **(i) Burden of Proof**

[128] In appeals under the *Assessment Act*, the burden of proof is on the Appellant to show, on a balance of probabilities, that the Director’s assessment is wrong (See *Nova Scotia Director of Assessment v. Wandlyn Inns Ltd.* (1996), 150 N.S.R. (2d) 177 (C.A.); and *Nova Scotia (Director of Assessment) v. Knickle*, [2007] NSCA 104, for example).

### **(ii) Land Value**

[129] Prior to considering the impact of the Preservation and Conservation Easement or the heritage designation, Mr. Ingram valued the land component of the Subject Property at \$293,750, while Mr. McNeil concluded the land’s market value should be set at \$278,100. The Board observes these two amounts do not differ significantly.

[130] Mr. Ingram applied a rate of \$12,500 per acre. Mr. McNeil used a price per acre of \$11,836.

[131] While some factors might have led to a higher valuation for the land, including the superior quality and length of the water frontage, Mr. McNeil concluded that in light of “principles of equity and fairness based on the methodology in which other land in the area is assessed”, he assigned a value of \$11,836 price per acre, for a total of \$278,100. It is noted that this amount is lower than Mr. Ingram’s gross market value before he considered the impact of the Easement and heritage designation.

[132] The Board considers Mr. McNeil’s valuation to be appropriate and sets the market value of the land at \$278,100, subject to its consideration of the Easement and heritage designation, which is addressed elsewhere in this Decision.

**(iii) Value of Main Dwelling**

[133] Mr. Ingram and Mr. McNeil determined that both the Direct Comparison and Cost approaches should be used in the valuation of the Subject Property. Both agreed that the Income Approach was not relevant as the subject is not an income producing property. They also agreed that the highest and best use of the property was its existing use as a single family residential estate property.

[134] Having reviewed the evidence filed by the parties, the testimony at the hearing, and the submissions of both Counsel, the Board considers that greater weight should be placed on the evidence of the Director in relation to the valuation of Beinn Bhreagh Hall. In the Board’s opinion, there were a number of concerns raised in the evidence of the Appellant, particularly in Mr. Ingram’s Report, which make that evidence less reliable and compelling than that presented by the Director. The concerns are outlined, in turn.

[135] Before describing the concerns related to the Appellant's evidence, the Board notes that this section of the Decision relates only to the valuation of the main dwelling, i.e., Beinn Bhreagh Hall, and does not relate to the valuation of other buildings on the property or of the land itself, including any impact from the Preservation and Conservation Easement or the heritage designations upon the land itself.

[136] First, Mr. Ingram's Report relates to a valuation date which is two years after the valuation date required for the 2016 assessment year under appeal. Under the *Assessment Act*, the 2016 assessment year is to be based on a "base date" of valuation of January 1, 2014, as prescribed by the Director, considering the state of the property as of December 1, 2015 (i.e., state date). Rather, Mr. Ingram's valuation was conducted as of January 1, 2016.

[137] Mr. Ingram explained at the hearing that his Report had originally been prepared for the Trustees in relation to the 2016 assessment appeal. While the Board cannot speculate as to the reasons why another report was not prepared with the appropriate valuation date, the present Report in this appeal provides a valuation of the Subject Property by the Appellant with a valuation date two years later than that required by the *Act*. This fact alone does not preclude the use of the Report in this appeal, but it does render it less reliable since it uses data further distant from the relevant base date than should have been used. This deficiency results in Mr. Ingram's Report commanding less weight than Mr. McNeil's Report.

[138] The second concern arising from Mr. Ingram's Report relates to his application of the Direct Comparison Approach to the Subject Property, and to the relative

weighting of the Direct Comparison Approach and the Cost Approach in his final reconciliation on value.

[139] The Board has several concerns with Mr. Ingram's application of the Direct Comparison Approach in this matter. The most significant concern is the inferior quality of the sales of comparable properties used by Mr. Ingram, compared to those used by Mr. McNeil. In regards to the Subject Property, the Board considers that two significant factors to be mirrored in finding comparable properties are the quality and size of the water frontage enjoyed by the subject on the Bras d'Or, as well as the size and nature of the estate-type dwelling represented by Beinn Bhreagh Hall.

[140] Based on the Board's review, Mr. Ingram's selection of comparable properties for the Direct Comparison Approach did not reflect, primarily, the quality and size of the water frontage enjoyed by the subject on the Bras d'Or and, secondarily, the size and nature of the estate-type dwelling represented by Beinn Bhreagh Hall. Sale No. 1 was a lot in a subdivision pattern of development outside Sydney, whose waterfront was a small tributary waterway leading to the waters of Sydney harbour. Sale No. 2 was in an area of denser development surrounded by a number of smaller lots, separated from the water by a public road, in the outskirts of Sydney. Sale No. 3, while in Baddeck, was an extremely small parcel located directly beside a boatyard and in a different development pattern than the subject. Sale No. 4 was also separated from the water by a public road, and only 0.4 of an acre in size, which was significantly smaller than the subject. Finally, while Sale No. 5 was larger in land size and improvement size than the other comparables, there was difficulty with open water access because of an intervening weir.

[141] Further, the Board favours Mr. McNeil's time adjustment process on the comparables. Mr. Ingram's time adjustments were rounded to years rather than being performed on the basis of months, and he did not conduct a time adjustment analysis for the area, but used a figure derived from CMHC's land price index for the province for all areas excluding Metro.

[142] Mr. Ingram acknowledged in cross-examination that he did not personally inspect any of the comparable properties he selected for his Direct Comparison Approach. He was unaware that Sale No. 4 had undergone renovations after the sale and was unable to say how it would affect his assessment of the dwelling. Moreover, one of his six comparable sales contained an error in his Report. Specifically, he identified the sale price for Sale No. 5 as \$775,000, but it actually sold for \$225,000 less. He acknowledged that this information would have changed his adjustments for both quality and condition.

[143] The Board finds as fact, on the balance of probabilities, that the comparable properties selected by Mr. Ingram did not generally reflect either the quality and size of the water frontage enjoyed by the subject or the type of dwelling. Further, the Board finds that Mr. McNeil's comparable properties were very reflective of the subject.

[144] Also, with respect to his application of the Direct Comparison Approach, the Board notes that Mr. Ingram based his valuation on a simple calculation of the average of the adjusted comparable sales, rather than identifying the most comparable properties to the subject. On the other hand, Mr. McNeil placed greater weight on two of the comparable sales he identified in his Report. In identifying Sales Nos. 4 and 5 as the best indicators of value for the subject, Mr. McNeil applied his judgment to identify the most

relevant sales, similar to the methodology commonly used by experts appearing before the Board and Courts. In the view of the Board, the methodology applied by Mr. McNeil provides more compelling evidence as to value.

[145] With respect to the reconciliation of the results from the Direct Comparison Approach and the Cost Approach to determine a value for the Subject Property, the Board finds that Mr. Ingram failed to properly account for the significant weaknesses of the Direct Comparison Approach in this specific appeal. Both Mr. Ingram and Mr. McNeil acknowledged at the hearing that the greater the number of adjustments required for a comparable sale, and the greater the amount of any single adjustment, the less reliable a specific comparable will be in the valuation exercise. Mr. Ingram acknowledged in cross-examination that the unique features of the Subject Property posed a significant challenge in his application of the Direct Comparison Approach.

[146] For his part, Mr. McNeil recognized the difficulties inherent in the application of the Direct Comparison Approach with respect to the Subject Property and, as a result, he placed less weight on that approach than his Cost Approach valuation.

[147] For the foregoing reasons, the Board finds that Mr. McNeil's reconciliation of the two valuation approaches should be given more weight than Mr. Ingram's reconciliation of these two approaches. Further, the Board accepts Mr. McNeil's opinion that greater weight should be placed on the Cost Approach in this appeal.

[148] In the view of the Board, there were also various difficulties with Mr. Ingram's application of the Cost Approach in this matter.

[149] First, Mr. Ingram misapplied the valuation guidelines recommended by the Marshall & Swift costing manual, which is widely accepted in the industry. Mr. Ingram

applied a combination of Good and Average classifications for costing of a class D Victorian (Queen Anne) historical residence. For his part, Mr. McNeil applied the Excellent classification, which carries a significantly higher per square foot cost.

[150] The Board accepts the submissions of Mr. Andrews, counsel for the Director, to the effect that these classifications of Good, Average and Excellent are meant to refer to the description of the dwelling at the time of construction rather than to a reflection of the current condition of the building. In basing his classification on the latter, rather than the former, the Board finds that Mr. Ingram wrongly classified the dwelling in his valuation. In so doing, Mr. Ingram's valuation under the Cost Approach was much lower than it otherwise should have been if he had applied the proper classification. With respect to this factor, the Board concludes that more weight should be given to Mr. McNeil's Report in determining the reproduction cost new of Beinn Bhreagh Hall.

[151] Second, the Board also considers that Mr. Ingram's application of depreciation, including both physical depreciation and external obsolescence, was excessive and not reflective of the state of the property, and its functionality. In this respect, the Board finds Mr. McNeil's treatment of depreciation to be more appropriate and it places more weight on his evidence.

[152] On this point, the Board observes that Mr. Ingram applied physical depreciation at the rate of 75%, while Mr. McNeil applied a rate of 50%. It is also noted that Mr. Ingram applied external obsolescence of \$149,000 (including \$66,000 for ongoing maintenance related to the impact of the Easement on the facade of Beinn Bhreagh Hall), while Mr. McNeil applied, instead, functional depreciation at 20%, for a

further reduction of \$166,783, to provide allowance for what he described as “super adequacy”.

[153] The Board also considers that Mr. Ingram has overstated the impact of the Easement upon the valuation of the dwelling. As noted earlier, he capitalized an amount estimated at 5% of the reproduction cost of the dwelling (i.e., \$66,000) to reflect higher maintenance costs for the dwelling. In his view, higher maintenance costs were required where “modern cost effective materials and designs are precluded” because of the Easement and heritage designations.

[154] With respect to the assignment of an appropriate rate of depreciation, the Board considers that due regard should be taken of the remedial work that has been done on the property, as of the “state date” under the *Assessment Act* (i.e., the condition of the building as it existed as of December 1, 2015). The evidence presented by the Appellant confirmed that significant funds were expended on maintenance and remedial work, starting in earnest in June 2014 when Mr. Hockey and contractors were engaged to conduct emergency stabilization and major repair of the dwelling’s foundation. Mr. Ingram noted in his Report that the electrical was re-wired in 2001, which was confirmed in Mr. McNeil’s inspection. Ms. Grosvenor testified that the Trustees had spent in the vicinity of \$406,000 on the dwelling in 2015 (the Board infers much of that was before December 1st). This amount excluded “operational expenses”, which average about \$90,000 per year, for things like snow removal, supplies, legal, accounting, security, etc. She did not provide a figure for 2014. In his testimony, Mr. Hockey described the nature of the work as catch-up maintenance, most of which was masonry work on the foundation and chimneys, because it had been neglected for a very long time.

[155] The Board notes, as was generally acknowledged by both appraisal experts who testified in this appeal, that any dwelling, including one like the older estate-type Beinn Bhreagh dwelling, requires ongoing maintenance. Such ongoing maintenance is assumed in the Marshall & Swift costing models with respect to the application of depreciation. The judgment of the appraiser is called upon to decide what level of depreciation should be assigned given the state of the building, including its level of deterioration. However, once deferred maintenance has been completed, the Board is satisfied that such work should have a positive impact on the level of depreciation to be assigned to a dwelling or building. Simply put, maintenance or repairs conducted on a dwelling will improve the state of that structure and should be reflected in value. Further, this dwelling, like others, requires ongoing maintenance in future years.

[156] Deferred maintenance can be more costly than if it had been performed in a timely manner. The Board is mindful of the predicament faced by the Trustees of having to expend large amounts of funds on this historic family dwelling. In the view of the Board, the depreciation to be assigned to a dwelling or building should account for the present state of the structure (i.e., in this case as of December 1, 2015), regardless of the failure of present or past owners, for whatever reason, in carrying out such work.

[157] Moreover, the Board observes that the maintenance expenditures on the dwelling after December 1, 2015 (i.e., the state date) are not relevant to the valuation exercise in this appeal. Mr. Hockey anticipated that the total cost of the rehabilitation project for Beinn Bhreagh will probably be about \$1.5M to completion, which is expected to take three more years. In the Board's view, only work performed up to the state date is relevant in this appeal.

[158] Taking into account all the evidence on the point, the Board finds that the application of physical depreciation at 50% is more appropriate than 75%. In the Board's view, a level of depreciation of 75% is too high, considering the extent of repairs and remedial work performed on the property in the past number of years, as well as the current state of the building.

[159] The Board observes, in passing, that if it were to accept Mr. Ingram's valuation, that would leave a residual value for Beinn Bhreagh Hall (excluding the land and other buildings and improvements) at just \$147,800. Viewing the totality of the evidence, that is simply not reasonable.

[160] Based on the foregoing, the Board generally accepts the valuation of Beinn Bhreagh Hall as calculated by Mr. McNeil. More specifically, the Board accepts Mr. McNeil's opinion that greater weight should be placed on the Cost Approach. Also, with one exception noted below, the Board accepts his cost methodology in determining the valuation of Beinn Bhreagh Hall, including the calculation of physical depreciation at 50%, and functional obsolescence at 20%. It concurs with his view that no further allowance should be made on the dwelling with respect to the Preservation and Conservation Easement and the heritage designation.

[161] Accordingly, except for the issue noted below respecting fireplaces, the Board accepts and adopts Mr. McNeil's valuation of Beinn Bhreagh Hall at \$667,130 (excluding the land).

[162] The Board has one concern with the valuation and that relates to the fireplaces in Beinn Bhreagh Hall. Mr. Ingram and Mr. McNeil counted 11 fireplaces located throughout the dwelling, including a large fireplace in the Great Room. While

there was some evidence by the appraisers that the fireplaces are all operational, none of the fireplaces have dampers. Ms. Grosvenor testified there were 17 fireplaces, but only two were operational, including the one in the Great Room. Indeed, in his testimony, Mr. McNeil confirmed that, as of the state date, “not all of the chimneys would have been complete at that time but to date they are. The main fireplace was totally rebuilt.” In effect, except for the main fireplace, the others appear to serve little purpose.

[163] Accordingly, the Board concludes that an appropriate deduction should be made for the remaining fireplaces. Using Mr. McNeil’s costing charts at the end of Undertaking U-3 (Swift Estimator – Very Good/Excellent), the Board has attributed a value of \$11,500 to the fireplace in the Great Room and deducted \$24,900 (average of Very Good and Excellent) for the remaining fireplaces.

**(iv) Impact of Conservation Easement and Heritage Designation**

[164] The Appellant submitted that because the Conservation and Preservation Easement requires the façade of the Hall and the property described in the document to be maintained in its original form, this results in more expensive repairs than those which might ordinarily be required. It relies on Mr. Ingram’s conclusion that a 50% reduction ought to be made in the value of one-half of the land as a result, due to this encumbrance. Further, a capitalized value of the cost of the prescribed means and methods of maintenance should be applied to reduce the building value.

[165] The Appellant said that any purchaser of the property would be bound by the terms of the Easement, and thus, unable to use it as they chose; it would not be able to be sub-divided, and no additions or substantive changes can be made. Ms. LaFosse described this as a “lack of control in ownership”. In her submission, this reduces “the

pool of purchasers...significantly". Thus, this must be reflected in the market value at which it is assessed.

[166] Counsel for the Appellant relied on the statement of Jeffrey, J. at paragraph 20, in *Nature Conservancy of Canada v. Waterton Land Trust Ltd.*, 2014 ABQB 303 which said of conservation easements:

By relinquishing such rights of ownership in support of conservation-minded restrictions, the landowner is in effect donating them in favour of a conservation purpose.

[Appellant's Closing Submissions, p. 4]

[167] With respect to the provincial Heritage Property and the National Historic Site designations, the Appellant pointed to the historical significance of the property to, not only the Bell family descendants, but to the community of Baddeck, the Province and the country. Counsel said that Ms. Grosvenor's evidence demonstrated the importance of protecting the property from development. The Appellant noted that while Ms. Orr had opined that there were sales of properties with historical designations, she acknowledged that restrictions could mean value could be diminished, requiring examination on a case by case basis. Counsel urged the Board to take this approach in considering the restrictions on the subject property.

[168] In contrast, the Respondent had not made any allowance for the existence of the Conservation and Preservation Easement, or the heritage and historic designations. The Director relied on Ms. Orr's opinion. Counsel for the Director noted that Mr. Ingram had not disputed that the current use of the property was its highest and best use, and as a result, submitted that no adjustment is required.

[169] In response to Ms. LaFosse's reliance on the *Waterton* decision, Mr. Andrews submitted that, while in some cases a conservation easement might warrant a

reduction in property value, there was nothing in the facts here which supported any reduction. In particular, the Respondent noted that the Easement was voluntarily imposed, and complemented and protected its highest and best use.

[170] The Board accepts Ms. Orr's evidence that properties which have heritage designations are bought and sold in the market. The fact that there is a market means that there are both willing buyers and sellers which means that a market value or range of values can be established. The National Historic Site designation was not in place as of the "base date". The Heritage Property designation does restrict the ability of the owner to demolish or substantially alter the exterior of the property, which is consistent with the Conservation and Preservation Easement; however, consent from the Province can be sought for such purposes.

[171] The Conservation and Preservation Easement runs with the land, and while it is voluntarily imposed, it binds the owner, and any future owners. The Board concludes that it would undoubtedly have an impact on the value of the property. The impact is positive in protecting the remarkable structure and the special nature of the land, both as a landmark, and a habitat for flora and fauna. The impact of the Easement on the structure is that it is, and will be, more costly to maintain it, due to the need to use original materials, and the like.

[172] There was no dispute among the appraisers that the current use of the property — as a single family estate sized residential property — is its highest and best use.

[173] However, the Board considers that conclusions based on a comparison of sales of similar properties which do not have heritage and/or historic designations and a

similar easement to the subject ought to be tempered. Here, while the highest and best use may be similar, none of the comparables used had the same designations or easements as the Beinn Bhreagh property.

[174] Mr. Ingram compared the impact of the Preservation and Conservation Easement to service or utility easements in his report. He concluded the impairment to be the same, allowing a 50% reduction for about one-half of the land.

[175] The Board is persuaded that the inability to subdivide the property as a result of the Easement's terms impairs the value to a degree. However, the Board also considers that the Easement represents a benefit. The Easement, in particular, serves, to some extent at least, to maintain the current highest and best use of the property.

[176] The Board concludes that the 20% allowance for functional obsolescence for the dwelling accounts for any resulting impact of the Easement and its heritage designation.

[177] With respect to the land value, the Board finds that the 50% reduction used by Mr. Ingram is too high to account for the impairment resulting from the Easement. Unlike a service or utility easement, it is not totally a burden. As noted earlier in this Decision, the Easement is over approximately one-half of the property. The Board considers the benefit must be accounted for, and therefore, finds an adjustment of 25% is to be applied to the value of one-half of the land which is subject to the Easement. Thus, that area will be valued at 75% of the value of the unencumbered lands.

[178] In its review, the Board noted the provisions of the *Conservation Property Tax Exemption Act*, S.N.S. 2008, c. 36, which amend the provisions of the *Assessment Act* by adding a definition of "conservation property" to include land subject to a

conservation easement (s. 2(1)(3)), and include it in the meaning of “resource property” (s. 2(1)(s)(ib)). It also provides in s. 45B of the *Assessment Act* for a tax exemption for certain conservation property and its assessment as resource property. There was no evidence before the Board on the possible application of s. 45B to the Subject Property or any part of it. In any event, the Board has no jurisdiction over exemptions from tax, which pursuant to s. 94 would be a matter for the Supreme Court, if applicable.

**(v) Market Value of Other Buildings**

[179] In addition to Beinn Bhreagh Hall, the assessment under appeal also includes the assessment of two other buildings and other miscellaneous site improvements. As noted earlier in this Decision, the Gardener’s Cottage is excluded from the present appeal.

[180] Both Mr. Ingram and Mr. McNeil were in agreement on the depreciated market value of the Maintenance Building (\$8,030) and the Storage Barn (\$3,558). Neither applied external obsolescence or functional depreciation to these buildings. The Board accepts these amounts as the market value of the respective buildings.

[181] With respect to the other site improvements, Mr. Ingram and Mr. McNeil differed on their total depreciated value. Mr. Ingram calculated this total value at \$70,000, while Mr. McNeil calculated it at \$31,401 (including the well/septic, carport, and deck/terrace). Mr. Ingram did not break out the components of these improvements. The Board recognizes that some of the components he valued might have differed somewhat from those included by Mr. McNeil.

[182] The Board finds that there is no reason to vary the market value of the other site improvements as calculated by Mr. McNeil and sets this total amount at \$31,401, rather than the higher value submitted by Mr. Ingram.

**(vi) Level of Assessment**

[183] A reading of s. 42(1) of the *Act* clearly suggests that a final determination of assessed value is comprised of two major components, namely, market value and uniformity. In relation to uniformity, s. 42(1) provides that the level of assessment of a subject property must be compared to the general level of assessment of all residential and resource properties across the entire municipality.

[184] In the present instance, all of the evidence presented by the parties related to market value. Accordingly, the Board makes no adjustment to the assessment of the property under appeal based upon the general level of assessment.

**VII SUMMARY OF BOARD'S FINDINGS**

[185] Based on the above findings, the Board sets the 2016 assessment as follows:

**Beinn Bhreagh Hall Corporation  
Municipality of the County of Victoria, NS**

Land value	11.75 acres x \$11,836/acre	139,073	
	11.75 acres x \$11,836/acre x 75%	<u>104,305</u>	
		243,378	\$ 243,378
Buildings and Improvements (excluding Gardener's Cottage)			
	Beinn Bhreagh Hall	\$ 667,130	
	Less Board's adjustment for fireplaces	<u>24,900</u>	
		642,230	\$ 642,230
Maintenance Building			8,030
Storage Barn			3,558
Site Improvements (well/septic, carport, deck/terrace)			<u>31,401</u>
<b>TOTAL MARKET VALUE (Rounded)</b>			<b><u>\$ 928,600</u></b>

**VIII SUMMARY**

**(i) Background**

[186] This Decision relates to an appeal by the Beinn Bhreagh Hall Corporation (Appellant) from a decision of the Nova Scotia Assessment Appeal Tribunal (NSAAT) dated May 3, 2017, which confirmed the 2016 assessment of \$885,200 for the property located at 998 Beinn Bhreagh Road, Beinn Bhreagh, in Municipality of the County of Victoria, Nova Scotia (Subject Property or Beinn Bhreagh). The appeal was filed with the Nova Scotia Utility and Review Board under the *Assessment Act*. The Appellant filed a Notice of Appeal with the Board on June 15, 2017.

[187] There are four buildings situated on the Subject Property, including Beinn Bhreagh Hall, a guest house identified as the Gardener's Cottage, as well as a maintenance building and a storage barn. The Gardener's Cottage is assessed on a different account number and is not subject to the present appeal. Beinn Bhreagh is the

most significant building on the property, located on a peninsula jutting into the Bras d'Or, near the community of Baddeck. It is constructed in the Victorian (Queen Anne) style and provides a panoramic view of the Bras d'Or. It was constructed in 1892-1893 and was the former summer residence of Alexander Graham Bell and Mabel Hubbard Bell. The house contains 21 rooms. Consistent with large Victorian homes of the era, the house features a great room (i.e., a relatively grand living room) and a formal dining area, but the remainder of the residence is quite modest. The Subject Property contains 23.5 acres of land, with just over 2,000 feet of frontage on the Bras d'Or.

**(ii) Preservation and Conservation Easement and heritage designation**

[188] In addition to the application of the Direct Comparison and Cost Approaches (accepted approaches to valuation used by appraisal experts), another important issue in this appeal was the impact, if any, of the Preservation and Conservation Easement and the heritage designation on the Subject Property.

[189] The Preservation and Conservation Easement (Easement) is dated July 26, 1994, between Mabel H. Grosvenor and the Bras d'Or Preservation Foundation (Foundation). Ms. Grosvenor, a direct descendant of Dr. Bell and Mabel Hubbard Bell, was the last person to live in Beinn Bhreagh, until her death in 2006.

[190] On October 31, 2014, the Minister responsible for the *Heritage Property Act*, made a Recommendation for Registration of the Beinn Bhreagh property in the provincial Registry of Heritage Property. On February 24, 2015, the Notice of Registration was made by the Minister. The effect of registration is that no demolition or substantial alteration in exterior appearance of the property may be undertaken from the date of registration without the approval of Cabinet.

**(iii) Valuation of the Land**

[191] The valuation of the land did not differ significantly between the appraisers for the respective parties, subject to the impact of the Easement or the heritage designation. Mr. Ingram, the Appellant's appraiser, valued the land component of the Subject Property at \$293,750 (\$12,500 per acre), while Mr. McNeil, the assessor for the Property Valuation Services Corporation (Director), concluded the land's market value should be set at \$278,100 (\$11,836 per acre).

[192] The Board considers Mr. McNeil's valuation to be appropriate and sets the market value of the land at \$278,100, subject to its consideration of the Easement and heritage designation, which is addressed later.

**(iv) Valuation of Main Dwelling**

[193] Having reviewed the evidence and submissions filed by the parties, the Board considers that greater weight should be placed on the evidence of the Director in relation to the valuation of the main dwelling. In the Board's opinion, there were a number of concerns raised in the evidence of the Appellant, particularly in Mr. Ingram's Report, which make that evidence less reliable and compelling than that presented by the Director.

[194] The Board observes, in passing, that if it were to accept Mr. Ingram's valuation, that would leave a residual value for Beinn Bhreagh (excluding the land and other buildings and improvements) at just \$147,800. Viewing the totality of the evidence, that is simply not reasonable.

[195] The Board made one adjustment to Mr. McNeil's Cost Approach valuation. There are at least 11 fireplaces located throughout the main dwelling, including a large

fireplace in the Great Room. Ms. Grosvenor indicated there may be as many as 17 fireplaces. While there was some evidence by the appraisers that the fireplaces are all operational, none of the fireplaces have dampers. Ms. Grosvenor indicated that only two fireplaces are operational, including the one in the Great Room. In effect, except for the main fireplace, the others appear to serve little purpose. The Board concludes that an appropriate deduction should be made and it deducted \$24,900 for the remaining fireplaces.

[196] Accordingly, the Board accepts and adopts Mr. McNeil's valuation of Beinn Bhreagh at \$667,130 (excluding the land), reduced by the above deduction for the fireplaces of \$24,900, for an amount of \$642,239.

**(v) Valuation of the Other Buildings and Improvements**

[197] The parties agreed on the depreciated market value of the Maintenance Building (\$8,030) and the Storage Barn (\$3,558). The Board also accepted the Director's lower valuation of the other improvements on the property in the amount of \$31,401 (including the well/septic, carport, and deck/terrace).

**(vi) Impact of Easement and Heritage Designation on Value**

[198] The Board accepts the Director's evidence that properties which have heritage designations are bought and sold in the market. However, the Board considers that conclusions based on a comparison of sales of similar properties which do not have heritage designations and a similar easement to the subject ought to be tempered. Here, while the highest and best use may be similar, none of the comparables used had the same designation or easement as the Beinn Bhreagh property. The Board is persuaded

that the inability to subdivide the property as a result of the Easement's terms impairs the value to a degree. However, the Board also considers that the Easement represents a benefit. The Easement, in particular, serves, to some extent at least, to maintain the current highest and best use of the property.

[199] With respect to the land value, the Board notes the Easement covers approximately one-half of the property. The Board considers the benefit must be accounted for, and therefore, finds an adjustment of 25% is to be applied to the value of one-half of the land which is subject to the Easement. Thus, that area will be valued at 75% of the value of the unencumbered lands. The Board sets the land value at \$243,378 [(11.75 acres x \$11,836/acre) + (11.75 acres x \$11,836/acre x 75%)].

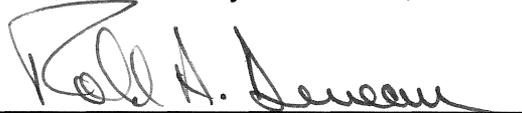
[200] With respect to the main dwelling, the Board concludes that the Director's 20% allowance for functional obsolescence accounts for any resulting impact of the Easement and its heritage designation.

**(vii) Board's Finding on Total 2016 Assessment**

[201] Based on the above findings, the Board sets the 2016 assessment for the Subject Property at \$928,600.

[202] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 18<sup>th</sup> day of October, 2018.



Roland A. Deveau



David J. Almon



Roberta J. Clarke