Ontario

Assessment Review Board

Commission de révision de l'évaluation foncière

File No: WR 92165

Region Number:	14
Municipality:	Town of Whitchurch-Stouffville
Roll Number:	1944-000-111-74200-0000
Hearing Number:	238181
Appeal Numbers:	See Schedule "A" attached

In the matter of Section 40 of the *Assessment Act*, R.S.O. 1990, c. A.31, as amended, and in the matter of appeals with respect to taxation years 2005 through 2008 on premises known municipally as Ninth Line W/S (Plan 65M3356 Block 8).

BETWEEN: Schickedanz Bros. Limited

Assessed Person/
Appellant

- and -

The Municipal Property Assessment Corporation, Region No. 14 and the Town of Whitchurch-Stouffville

Respondents

APPEARING:	J. Walker (Walker Poole Nixon LLP)	- Counsel for the Assessed Person/ Appellant
	D. Mitchell (Conway Davis Gryski)	- Counsel for the Municipal Property Assessment Corporation
	No one appeared	- for the Municipality

DECISION OF THE ASSESSMENT REVIEW BOARD delivered by:

J.M. Wyger

These appeals came before the Assessment Review Board on July 13, 2010 in the City of Toronto.

ISSUE

The Ballantrae Golf and Country Club is an adult only, gated land condominium community, consisting of 900 homes on a golf course along with a sewage plant and a recreation centre. The homes are organized as five separate condominium corporations. The golf course is a separate parcel owned by the developer. Due to the phased-in nature of the development, the Recreation Center (RC) is not part of the common elements, but is a separate parcel to be transferred to the condominium corporations in due course. The Municipal Property Assessment Corporation (MPAC) submits that the RC property is liable for taxation, has a value in exchange for which there is a market and should be assessed for its full value. The appellant contends that any value in exchange is minimal due to zoning and other restrictions on use, leaving no market for the property. Alternatively, that the right to exclusive use by the residents renders the RC a "servient tenement" or subject to an easement, and pursuant to section 9 of the *Assessment Act*, it is already assessed to the "dominant tenement", namely the individual condominium homes. The appellant's view is that this results in double taxation.

DECISION

The assessments for all taxation years is reduced to the nominal amount of $1.00.

REASONS FOR DECISION

Facts

The subject property is a 15,722 square foot, one-storey RC, built in 2004 and situated on a 4.18 acre parcel, embedded among the residences of four condominium corporations and the Ballantrae Golf Club. There are 736 residential units built, with a

fifth condominium plan under development. The RC was constructed by the appellant Schickedanz Bros. Limited and is intended for the sole use of the residents of the community formed by the five condominium corporations. It features an indoor salt water pool, whirlpool, sauna, games rooms, fitness room and party rooms for social activities. Outside are a patio and tennis courts. The subject address is known municipally as 1 Final Round. The assessment as returned for the 2005 taxation year is $1,460,000 and for the 2006 and 2007 tax years the returned assessment is $1,740,000.

The Legislation

Subsection 19.(1) of the *Assessment Act* states:

> ***19.(1) Assessment based on current value.*** *- The assessment of land shall be based on its current value or average current value, as determined under section 19.1.*

Subsection 44.(2) states:

> ***44.(2) Reference to similar lands in the vicinity.*** *– For taxation years before 2009, in determining the value at which any land shall be assessed, reference shall be had to the value at which similar lands in the vicinity are assessed.*

"Current value" defines as:

> ***"current value"*** *means, in relation to land, the amount of money the fee simple, if unencumbered, would realize if sold at arm's length by a willing seller to a willing buyer.*

Subsection 9.(1) of the *Assessment Act* states:

> ***9.(1) Assessment of easements.*** *– Where an easement is appurtenant to any land, it shall be assessed in connection with and as part of the land at the added value it gives to the land as the dominant tenement, and the assessment of the land that, as the servient tenement, is subject to the easement shall be reduced accordingly.*

Subsection 12.(1) of the *Condominium Act*, 1998 states:

> ***12.*** *(1)* ***Easements.*** *– The following easements are appurtenant to each unit and shall be for the benefit of the owner of the unit and the corporation:*
>
> 1. *An easement for the provision of a service through the common elements or any other unit.*
> 2. *An easement for support by all buildings and structures necessary for providing support to the unit.*
> 3. *If a building or a part of a building moves after registration of the declaration and description or after having been damaged and repaired but has not been restored to the position occupied at the time of registration of the declaration and description, an easement for exclusive use and occupation over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration.*
> 4. *If a corporation is entitled to use a service or facility in common with another corporation, an easement for access to and for the installation and maintenance of the service or facility over the land of the other corporation, described in accordance with the regulations made under this Act.*

Section 15 of the *Condominium Act* states:

> ***15.*** *(1)* ***Assessment.*** *– Each unit, together with its appurtenant common interest, constitutes a parcel for the purpose of municipal assessment and taxation.*
> *(2)* ***Common elements.*** *– Subject to subsection (3), the common elements of a corporation that is not a common elements condominium corporation do not constitute a parcel for the purpose of municipal assessment and taxation.*
> *(3)* ***Exception.*** *– A part of the common elements of a corporation that is not a common elements condominium corporation constitutes a separate parcel for the purpose of municipal assessment and taxation if it is leased for business purposes under section 21, the lessee carries on an undertaking for gain on it and it is in the commercial property class prescribed under the Assessment Act.*
> *(4)* ***Common elements condominium corporation.*** *– The common elements of a common elements condominium corporation constitute a parcel for the purpose of municipal assessment and taxation within each municipality in which the common elements or a part of them are located and the municipal taxes levied on the parcel or parcels shall form part of the common expenses of the corporation.*

Subsection 45.(1) of the *Assessment Act* states:

> ***45(1) Powers and functions of Assessment Review Board, O.M.B.*** *– Upon a complaint or appeal with respect to an assessment, the Assessment Review Board may review the assessment and, for the purpose of the review, has all the powers and functions of the assessor in making an assessment, determination or decision under this Act, and any assessment, determination or decision made on review by the Assessment Review Board shall, except as provided in subsection 2, be deemed to be an assessment, determination or decision of the assessor and has the same force and effect.*

The Appellant's Position

Mr. Jack Walker represented Shickedanz Bros. Limited ("Shickedanz") as counsel, and offered its theory that the current value of the RC should be a nominal $1.00 for two reasons:

1. The property has no value in exchange, but only value in use due to its location, zoning and restrictions in the Condominium Declaration, causing it to have no potential income to give it any market value. These same limitations lead to total economic obsolescence if one employs the cost approach to value the property.
2. The rights to the exclusive use of the RC in the condominium documents, in conjunction with limitations in the zoning by-law constitutes an easement either under section 12 of the *Condominium Act*, or the common law. If it is such an easement, pursuant to section 9 of the *Assessment Act*, any added value this servient tenement gives to the land as dominant tenement should be assessed to the dominant tenement. The appellant's position is that the cost and/or current value of the RC is already accounted for in the sale and assessed values of the dominant tenement, being the residential units, and to separately assess it will result in double taxation.

MPAC's Position

Mr. Donald Mitchell, counsel for MPAC, advanced the position that the RC was a separate freehold parcel and its full value should be liable to taxation pursuant to section 3 of the *Assessment Act*. He contends that the highest and best use of this property is its current use as a recreation centre and that the zoning and Declaration are not so restrictive so as to prevent a sale to other potential buyers, and thus an exchange value is feasible. Mr. Mitchell asserts that it is not clear that any easement exists, but if it does, the value of the servient tenement must still be determined. He

takes the position that there is no evidence that the RC increases the unit values of the dominant tenement, namely the residential condominium units.

The Appellant's Evidence

Mr. Walker called Mr. Hugh Macklin, who has been the manager of developments for Schickedanz for 38 years. He described the Ballantrae development as the first vacant land condominium development in Ontario. He referred to the RC as the "heart of the project" from the start, and had no doubt that it enhanced the values of the homes. It was his experience that the RC affects value because purchasers will pay more for a lifestyle element such as a recreation centre. It was marketed to buyers in the sales office and promised in the purchase agreements.

He explained that the RC was built on time and in compliance with the purchase agreements. The golf course was always intended to stay in the ownership of Schickedanz, while the RC was to be conveyed to the five condominium corporations at no cost. The estimated $4,500,000 construction cost was apportioned among the 900 units at $5,000 per unit and included in the purchase prices, and buyers were well aware of this.

Mr. Macklin pointed out Article 6.1 of the Condominium Declaration which imposes restrictions on any condominium corporation transferring or encumbering the RC without the consent of all five condominium corporations, together with a majority of the owners and mortgagees. Article 4.5 of the Disclosure Statement restricts the use of the RC to the "residents of the Project and their guests..." The site-specific zoning is Residential Recreation Zone which permits "Residential Amenity Space" defined as "a private building or structure or use for the recreational or social needs of the residents..." Mr. Macklin explained that the owners wanted the RC for their own use exclusively, together with the ability to rent some space from time to time to non-

residents for the benefit of all the owners.

Mr. Walker's second witness was Mr. Robert Davies, a chartered accountant and real estate broker who purchased a unit in the first phase of the development. Mr. Davies took a serious interest in the condominium documents and agreements, and made himself well-informed on every aspect of the growing development. His evidence was that it "was made known to us", the buyers, that the apportioned cost of the RC in the amount of $5,000 was included in their purchase prices. Mr. Davies understood that the RC would increase the value of the residential units. He would not have bought his home without the promise of a recreation centre, and thought it very important that the residents would be the owners, would have full control over it, and that its use was restricted by both zoning and condominium documents to residents of the five condominium corporations. Mr. Davies characterized the RC as the "hub of the community" with most residents using it at least once a week for a variety of activities.

For his expert valuation witness, Mr. Walker called Mr. Tristan Bock, who advised that a facility like the RC provided valuation challenges because the cost to build is inherently valued and re-captured in the unit sales. While it is not considered a common element, it shares many of the similar restrictions on use as if it was a common element appurtenant to the condominium corporations.

Mr. Bock considered alternative scenarios for the highest and best use for the property without the RC. He considered the value as if more residential units were built and sold, and found it not feasible or profitable. The other scenario involved a sale to a private operator of the RC. Based on an income analysis, Mr. Bock's *pro forma* projected a net operating loss, and he concluded that there would be insufficient return to interest any investor or owner/user, and thus there would be no economic value in either the rental or sale of the centre. Mr. Bock concluded that the current RC use is the highest and best use of the land and that it must be viewed and valued within the context of the

entire development. He submits that it is so integrated into the community that it gives value to the overall community, while retaining no real exchange value for itself.

Mr. Bock indicated the income and sales comparison approaches were not applicable. He testified that in using a cost approach for the subject property, an analysis of utility and functionality cannot be separated from the uses allowed and the ability of those uses to generate a positive return to a potential purchaser. Mr. Bock concluded that given the unique situation and restrictions, the RC has no value as a stand alone entity and he suggested a zero value.

MPAC's Evidence

Mr. Christopher Wright was called by Mr. Mitchell to be his expert valuation witness. Mr. Wright employed the cost approach to value the RC since unique properties like this do not commonly transact in the market. He applied land rates to determine land values of $191,000 and $280,000 for the 2003 and 2005 base years respectively. The structure values derived from the automated cost system (ACS), added to the land values resulted in total values of $1,460,000 and $1,740,000 respectively for the 2003 and 2005 base years.

Mr. Wright was of the opinion that you cannot assign a valuation to the increased value that the RC might bestow upon the residential units. He referred to Exhibit #8, which displayed a list of numerous sales in the development, pointing to the wide range in prices and his inability to express if, how, or to what extent the RC affects any of those sale values. The Board reviewed these resale values, and can see how it may be difficult in the context of multiple regression to quantify any value that buyers might impute to the recreation centre. However, the Board accepts Mr. Davies and Mr. Macklin's testimony that original buyers were happy to pay $5,000 each in order to have this facility. Further, the Board considers it a reasonable supposition that future buyers

would pay more for homes in a development with an exclusive use recreation centre than one lacking such a facility.

Mr. Wright testified that he did not think the restrictions on the property would rule out potential buyers such as the municipality, the golf course or some other group from pursuing the purchase of the RC. He suggested minimal modifications could provide for alternative uses. The Board has considered this issue and prefers Mr. Bock's analysis and conclusion that a facility whose market is limited to the residents of one neighbourhood, would attract little if any interest from potential purchasers of such facilities.

Analysis – Easement

In submissions, Mr. Walker contended that restrictions in the zoning and Declaration giving exclusive rights and control to the residents of the five condominium corporations constitutes a right to use, that equates to an easement as per subsection 12.(1) of the *Condominium Act*. He invited the Board to read subsection 12.(1) in light of Canadian and U.S. case-law that examines the right to use *vis-a-vis* easements. Mr. Mitchell countered that it is not clear at all that the subject arrangement creates an easement, and even if it does you cannot assume all of its value is in the dominant tenement, and it needs to be properly valued if section 9 of the *Assessment Act* is to apply.

Mr. Walker relied on case law to support his proposition that an easement exists over the RC in favour of the unit owners. *Metropolitan Toronto Condominium Corp. No 1250 v. Mastercraft Group Inc.* [2009] O.N.C.A. 584; 82 R.P.R. (4th) 1 (C.A.) is a recent Court of Appeal decision involving a residential condominium building conversion, where the Disclosure Statement provided that each owner "shall be entitled to lease a parking unit from declarant at market rates". When a dispute arose, the Declarant cancelled the parking spaces. The Court quoted approvingly from the decision of the trial judge who

stated with respect to the reference to parking in the Disclosure Statement: "that representation meant something". The Court of Appeal held that the "right to lease a parking space was part of the consideration in return for the payment of the purchase price of each condominium unit" and was intended to be "an appurtenance to each residential unit". The Court of Appeal then went beyond the trial judge's findings to conclude that in fact, "the right to rent a parking spot is an **easement** appurtenant to each residential unit..."

Mr. Walker asserted that the *Mastercraft* case is right on point, while Mr. Mitchell argued that section 9 of the *Assessment Act* was not considered in that case. The Board takes the view that the application of section 9 is the second step in the process, which comes into play only if it is first determined that an easement exists. The *Mastercraft* case appears to be directly on point on the issue of what constitutes an easement. In that case, the Court cited the various factors surrounding the purchase as demonstrating that it was intended that the right would be an appurtenance to each unit, rather than a mere personal benefit to the original owner. It is clear that the Court of Appeal declared this right to constitute an easement that runs with the land. In the subject case, the Board finds that the factors and circumstances including the zoning, Disclosure Statement, Declaration, purchase agreements and representations made point to an easement and are even more persuasive than in the *Mastercraft* case. The Board notes also that the Court of Appeal appears to have come to its conclusion without a reference to section 12 of the *Condominium Act*, but found a stand-alone easement based on those factors and circumstances.

An ARB decision in *Sunset Lake Owners Association v. Municipal Property Assessment Corporation*, (2002) CarswellOnt 8481 (ARB), involved a former sand pit divided into 141 residential lots, with six common areas for rights-of-way over park routes, sports areas, docking facilities and parking which MPAC had assessed separately. The Board in that case was satisfied that the intent was to use the common areas for the shared

use of the owners of the lots, and that the assessment should be distributed amongst the owners and not assessed separately. The Board found the common areas to be easements and that pursuant to section 9 these servient tenements should be assessed to the dominant tenements, and their value reduced to a nominal amount.

A number of U.S. cases were presented by Mr. Walker to support the existence of an easement. Generally speaking, where there existed rights to exclusive use over common areas, the U.S. courts held that easements were created in favour of the dominant tenement, the individual owners. These cases support the conclusion found by our own Court of Appeal in the *Mastercraft* decision. The Board finds on the facts of this case, that there is clearly an easement created in favour of the Ballantrae unit owners over the RC. The more difficult issue is to determine the values of the servient and dominant tenements. The U.S. cases are of some assistance in that regard as well.

Analysis – Valuation of Easement

Section 9 of the *Assessment Act* requires that the "added value" that the easement/servient tenement (RC) gives to the dominant tenement (the residential units) is to be assessed "in connection with and as part of the land" meaning the dominant tenement. The assessment of the servient tenement over which the easement exists (the Recreation Centre) "shall be reduced accordingly", presumably by the same amount.

The Board reviewed several U.S. cases advanced by Mr. Walker in support of a nominal value for the RC.

Lake Monticello Owners' Association v. Walter Ritter et al. (1985), 327 S.E. (2d) 117. (VA Sup. Ct.) is a similar fact case of a residential community laid out around a golf course, with recreational facilities as common areas/easements under joint ownership. The assessor in that case admitted that the existence of the common areas enhanced the value of the individual lots. To avoid double taxation, the assessor reduced the values of the lots, while maintaining a substantial value for the common area. The Supreme Court of Virginia held that this was backwards, since it was the easement which added value to the lots, and ordered the case "remanded for the assessment of the common areas at a nominal amount".

Locke Lake Colony Association v. Town of Barnstead, (1985), 126 N.H. 136, 489 A.(2d) 120 (NH Sup. Ct.) was another case where common property consisted of recreational facilities including a lodge, golf course, pools, tennis courts, etc. All parties admitted that the common property was an integral part of the community and "enhances the value of the individual lots". The Supreme Court of New Hampshire held that the "homeowners interests were in the nature of easements" and "the property was so encumbered with easements that it had no taxable value".

Twin Lakes Golf and Country Club v. King County, (1976) 548 P.(2d) 538 (WA Sup. Ct.), was a residential development where the golf course was the common area that was assessed for "fair market value". The property was encumbered with both zoning restrictions regarding use reserved for the lot owners, and conveyancing restrictions covering non-alienation of the realty. The trial judge found that the restrictions encumbered the property and "substantially and adversely affected the value of the golf course" The Supreme Court of Washington agreed, concluding that "when the use of land is so restricted that its ownership is of no benefit or value, the assessment for tax purposes should be nothing".

Supervisor of Assessments of Anne Anudel County v. Bay Ridge Properties Inc., (1973) 270 Md.216, 310 A.(2d) 773 (MD, C.A.) was a case of residential lots having deeded access and the right to use a ten acre beach area. The Court of Appeals of Maryland held that easements existed over even the unsold lots which had not yet been deeded beach access: "by implication easements were intended to attach as soon as the plats were recorded and the first lot sold". On valuation, the Court went on to hold that "The combination of the grant of easements for the recreational use of the beach and the imposition of restrictions against disposition and improvements deprived the beach, as servient estate, of whatever value it might otherwise have had".

Counsel provided no Canadian court cases with similar facts. The Board discerns many parallels between the U.S. jurisprudence, and the case before it. The Board is not bound by these cases, but has found the reasoning in those judgements to be both reasonable and instructive. The Board is satisfied that there are similarly restrictive covenants and zoning encumbering the RC, such that its value is entirely reflected in the assessed values of the dominant tenement. The difficulty at this point is in determining whether a quantum of "added value" is included in the assessed values of the condominium units. Mr. Mitchell insists that one cannot simply assume that the added value is already in the assessments of the individual units. He submitted that there is an evidentiary threshold that has not been met, on whether the value is included in those units.

For illumination on this issue, he provided the recent decision of this Board on a review motion, a case in which he made similar representations: *Rockaway Beach Cottage Assn. v. Municipal Property Assessment Corp., Region 16,* [2009] O.A.R.B.D. No. 10, 61 O.M.B.R. 498 (ARB File No. DM 73414).

The facts were that the owners of 70 lots had rights of user and access to Lake Simcoe over two vacant parcels of land. Among other findings, the Member being reviewed

found that section 9 of the *Assessment Act* applies because the rights were similar to easements; and that the value of the user rights was reflected in the value of the dominant tenements so the subject servient tenement had no value. The Member reduced the assessments of the servient tenements to zero.

The grounds for the motion were that the Member did not properly determine the added value of the easements, so it was impossible for the Member to reduce the value of the servient tenements accordingly. Evidently, the Member calculated an "added value" to each of the dominant tenements that was just enough to reduce the value of the subject servient tenement to zero, judging the added value so calculated, to be "highly reasonable". The review panel found this to be an error of law as there was no evidence to indicate what the added value to the dominant tenements should be, or to show that the added value calculated was reasonable.

Mr. Mitchell submitted that a dearth of evidence on what the "added value" may be, is fatal to this appellant's case. The Board discerns two key differences between this appeal and the *Rockaway Beach* review motion decision. In the *Rockaway Beach* case, MPAC recognized that the rights of user constituted an easement which increased the value of the dominant tenement, and that the servient tenement had to be decreased accordingly. Secondly, MPAC "reduced the CVA's of the subject lands to a fraction of what they would be, but for the right of user..." In that scenario, there would be no double taxation, because the added value determined by MPAC had been apportioned to the dominant tenement (the other lots) in accordance with section 9 of the *Assessment Act*. This is not the case for the Ballantrae RC, where MPAC does not recognize an easement and has put a full cost approach value on the RC, with no allowance made under section 9 of the *Assessment Act* for any adjustment to either the servient or dominant tenements. The error of law as the review panel saw it was that the Member in *Rockaway Beach*, *supra*, made a further reduction to MPAC's reduced value, to take the assessment to zero without any apparent evidence to enable such a

determination.

Where there is an easement appurtenant to any land, section 9 of the *Assessment Act* is mandatory in its direction to reduce the assessment of the servient tenement by the added value it gives to the land. The section does not refer to "added value, if any" but refers to "the added value", reading as if one should indeed assume that any easement gives some value to the dominant tenement. Since MPAC has failed to determine this added value, the Board will assume the power and function of the assessment corporation to make that determination pursuant to section 45 of the *Assessment Act*.

Some evidence that the RC value is within the residential unit values is the simple fact that Schickedanz is transferring the RC to the five condominium corporations for zero consideration. Having no evidence that Schickedaz is a charitable corporation, the Board deduces only two possibilities. One is that the RC is being given away because it has no market value; or second that the RC has already been paid for through the sale of the residential units. Either one leads to the conclusion that the assessment of the RC should be zero.

Mr. Mitchell contends that it is an error to assume that all of the value in the RC is subsumed in the assessed values of the residential units; yet this is the premise that appears to underlie the U.S. decisions, where the servient tenement has been reduced to a nominal amount. The Board finds such a conclusion seems intuitively defensible, largely on the basis that if the servient tenement has no value to anyone else, whatever value that it has to the owners of the dominant tenement, will of necessity be valued in the marketplace within the sale values of the individual parts of the dominant tenement. This appears to be an accepted principle of valuation in the American jurisprudence that would seem reasonable for the Board to adopt in dealing with section 9 issues. The alternative, requiring each unit owner to prove a quantum of added value to his/her unit as a result of having the RC, sets an unattainable standard of proof that would render

the intent of section 9 nugatory.

Alternatively, the Board has evidence of an added value to the units of the dominant tenement. The evidence for an added value of the RC as provided by Messrs. Macklin, Davies and Bock is the approximately $5,000 per unit cost to build it that was apportioned to every residential unit. In accordance with subsection 19.(1) of the *Assessment Act*, the original current value assessments of each residential unit would have been based in part on these sales which included the cost of the RC. The assessor, Mr. Wright, conceded as much when asked "if the value of the home included an apportionment for the recreation centre, which would be the assessment". He responded that "There may be something in the value according to testimony, yes."

It is clear at the outset, and the Board concludes that these amounts in the aggregate constituted the "added value" that the RC gave to the residential units and covered the entire actual cost of the RC. It is not as clear that these amounts could be extrapolated to future re-sales of the residential units, upon which future assessments would be based. It is difficult to envision, however, that future purchasers would impute no value to the existence of the RC, or that the RC would commence to accrue its own exchange value, independent of the residential units. It seems reasonable to project that, if the original purchasers were happy to pay $5,000 each for having the use of a recreation centre, as sellers they would expect to be compensated on re-sale, or that future buyers would impute a similar value to it. This is no different from the example where the premium paid to a builder for a ravine lot, is reflected in future re-sale values, and recognized by MPAC with an upward adjustment to the assessment of those ravine properties in subsequent years.

Mr. Wright calculated that the 2005 base year assessment as returned equates to approximately $2,300 per home which is only 0.6% of the total assessed values for all of the residential units. Mr. Mitchell argued that these figures suggest the matter is *de*

minimus non curat lex, a legal principle that stands for the proposition that the law does not care for, or take notice of very small or trifling matters. The Board takes the view that the prevailing principle is that there should be no double taxation, no matter how small.

The *de minimus* argument can cut the other way as well, in that it may not be unreasonable to infer that such a small percentage is already included in the total assessed values of the residential units; that buyers would gladly pay such a minimal amount for the ownership and use of a recreation center. Another way to view it is to consider what is more likely on a balance of probabilities. That the $2,300 per home, multiplied by the number of homes, is a price that a third party purchaser would pay for the RC, or that the $2,300 per home is an amount included in each unit value that a willing buyer would pay for the privilege of having the RC. The Board accepts Mr. Bock's expert opinion that it is the latter.

Conclusion

The Board finds that the Ballantrae Recreation Center is subject to an easement that makes it a servient tenement for the purposes of section 9 of the *Assessment Act*. This easement is appurtenant to the 736 residential units of the development, which together constitute the dominant tenement for the purpose of section 9 of the *Assessment Act*. The Board interprets section 9 as a mandatory direction to assess both tenements in accordance with its provisions. The Board accepts that the servient tenement has a cost approach current value and assessment of $1,526,000 and $1,740,000, respectively for the 2003 and 2005 valuation years. The Board concludes that the added value the easement over the RC gives to the dominant tenement is in a range from $2,300 per unit to $5,000 per residential unit, for the reasons set out herein. Any value selected from within that range of values would reduce the assessment of the servient tenement to zero. In accordance with section 9 of the *Assessment Act*, the

Board reduces the value of the servient tenement by the added value, resulting in an assessment of zero. For each of the taxation years under appeal, the assessment of RC is therefore reduced to the nominal amount of one dollar ($1.00).

"J.M. Wyger"
J.M. Wyger
Member

/ci
DECISION RELEASED ON: November 5, 2010

SCHEDULE A

Written Reason No	Request Type	Release Date	Hearing No
92165	Reserved	November 5, 2010	238181

Appeal No	Roll Number	Property Address	Region	Assessed Person	Unit	Year	Decision
1729075	1944 000 111 74200 0000	0 NINTH LINE	14	SCHICKEDANZ BROS LIMIT	W/S	2005	CHANGE TOTAL VALUE FROM $191,000 TO $1
1813988	1944 000 111 74200 0000	0 NINTH LINE	14	SCHICKEDANZ BROS LIMIT	W/S	2006	CHANGE TOTAL VALUE FROM $280,000 TO $1
1932785	1944 000 111 74200 0000	0 NINTH LINE	14	SCHICKEDANZ BROS LIMIT	W/S	2007	CHANGE TOTAL VALUE FROM $280,000 TO $1
1976000	1944 000 111 74200 0000	0 to 0 NINTH LINE	14	SCHICKEDANZ BROS LIMIT	W/S	2005	CHANGE TOTAL VALUE FROM $1,335,000 TO $1
1976001	1944 000 111 74200 0000	0 to 0 NINTH LINE	14	SCHICKEDANZ BROS LIMIT	W/S	2006	CHANGE TOTAL VALUE FROM $1,460,000 TO $1
1976002	1944 000 111 74200 0000	0 to 0 NINTH LINE	14	SCHICKEDANZ BROS LIMIT	W/S	2007	CHANGE TOTAL VALUE FROM $1,460,000 TO $1
1980890	1944 000 111 74200 0000	0 to 0 NINTH LINE	14	SCHICKEDANZ BROS LIMIT	W/S	2008	CHANGE TOTAL VALUE FROM $1,740,000 TO $1
1980910	1944 000 111 74200 0000	0 to 0 NINTH LINE	14	SCHICKEDANZ BROS LIMIT	W/S	2008	CHANGE TOTAL VALUE FROM $1,740,000 TO $1