

Sandra Cawley makes her case

(Editor's note: The Saxton/Village of Whistler case referenced in this article is currently under appeal.)



When the BC Supreme Court awarded Andrew Saxton Jr. \$1.3 million for the expropriation of his family's land 23 years ago, the judge based her decision largely on evidence provided by appraisers. One of those appraisers was **Sandra Cawley, AACI**, of Burgess Cawley Sullivan & Associates.

"I came in later in the process," notes Cawley, who testified on behalf of the plaintiff, Andrew Saxton Jr. Two other appraisers had been working on the case for several years leading up to the trial date scheduled for 2008. Then, a federal election was called. With Saxton, a Member of Parliament, preparing to run for re-election, the trial was rescheduled for October 2009. Cawley became involved in May of that year.

The case concerned a 108-acre parcel of land on Alta Lake that had been purchased in 1970 by Saxton's mother Joan. In 1987, the Resort Municipality of Whistler (RMOW) expropriated

the land for \$367,000. Joan Saxton subsequently undertook legal action to regain ownership but, despite a lengthy court battle, her bid was unsuccessful. The family decided to sue for greater compensation, arguing that RMOW had not paid market value for the property.

One of the initial arguments by one appraiser working on behalf of the plaintiff was to focus on the commercial value, particularly as it pertained to the waterfront portion. This portion of the property had once housed Rainbow Lodge, a facility that first opened in 1914 as a 'destination resort' and was primarily a fishing and weekend retreat on Alta Lake by the railway line. The Lodge expanded between 1914 and the 1940s and was reportedly known as the most popular resort west of Banff and Jasper. "It was also one of the first places in Whistler to develop," notes Cawley.

However, because the main lodge burned down and was never rebuilt, Whistler's legal team argued that the land was no longer zoned for that purpose. There was considerable evidence from RMOW public documents that this property was deemed to be a primary target for park and recreational uses, given its sandy beach and attractive views of Blackcomb and Whistler in proximity to the Village. The site offers the nicest beach in the Whistler area, the warmest swimming lake, and great views of Whistler and Blackcomb.

Although one of the initial arguments was that a portion of the property had inherent commercial value, given that this type of use had been in place prior to the main lodge burning down, Cawley's report focused on determining

an appropriate value for its zoning in 1987. This zoning, RR-1 (Rural Resource 1), only allowed large acreage single-family properties, in addition to church, institutional, park agricultural, hostel uses, etc.

The challenge in valuing the property was to consider the different topography, soil conditions, environmental considerations, servicing, access, rail crossings and location, together with finding good comparables to reflect these characteristics within a reasonable time frame from date of valuation. Proving the case involved extensive research, including going back in time to dig through legal sale documentation and records. Dealing with a retrospective appraisal that is so dated requires tracking transactions where the legal title has changed over time due to assembly and development. In fact, both the plaintiff and the defense spent considerable time examining historical data. When Cawley became involved in the case, she was able to benefit from what was already a great wealth of information. Nevertheless, there were still significant challenges to researching sales in terms of contacting purchasers involved in the deals at that time.

Cawley adds that putting together data that went back to 1987 was very time consuming. She went to Whistler three times to walk the subject and comparable sites considered to be the best comparables. "When you get into court work, I find you really have to understand the information from a legal perspective," she says.

But, the integrity of the appraisal process is equally important. The challenge in the Saxton/Village of Whistler case was that there were few

100-acre parcels of land that had sold in the area. Some equivalent properties had sold three, five and 10 years before, while others had sold three, five or 10 years after. Consequently, she had to use some comparables that were after the fact to support trends and others that significantly preceded the situation at hand. Many sites that sold around that time were purchased by RMOW for park or other purposes and several were under foreclosure or were non-arm's length. It was challenging to determine the validity of these transactions.

"I would rather use good comparables and adjust for time than comparables that sold around 1987, but were totally irrelevant," explains Cawley, noting that some of the comparables used by the city's defense team were half-acre lots that were expropriated around 1987.

Going back and trying to piece together large properties that had either been assembled or carved from larger properties meant tracking down old archival maps to determine names, legal addresses and titles. She recalls having her team search extensively through the land registry system, sorting through what had happened to the land over the years. Research on one particular property – the north end of Green Lake – proved to be especially challenging. Since 1989, the land had been passed through multiple owners, most of whom Cawley's team was able to locate. Another property involved multiple transactions and land swaps, forming part of what eventually became a golf course community.

If such painstaking work seems extreme, the appraiser insists it is vital. "In court, particularly during cross-examination, lawyers try to challenge the validity of your data," she explains. "It is important that your data be as accurate and relevant as it can be and that you

demonstrate clearly how you arrived at your conclusion. If the data is discredited, then your argument falls apart."

She credits her team for the initial 'digging' to search out sales and confirm data through Land Titles and legal site plans. However, it is critical for the appraiser who is going to court to undertake the inspections, and to speak with the purchasers, agents and all those involved with the sale and the market at that time to ascertain qualitative and quantitative adjustments, in order to provide and support the opinion that is put forth in the appraisal.

This is but one of the many lessons Cawley has learned during her nearly 30 years in the profession. She notes that, generally, litigation is settled just prior to trial. Whether the project involves rental arbitrations or large expropriations, such as the Sea-to-Sky Highway, the parties often settle on the court house steps. Nevertheless, Cawley has to prepare all reports and information as if she were going to court.

Although Cawley now spends more time in the management and consulting side of the appraisal business, she plays a key role in the valuations undertaken by appraisers at Burgess Cawley Sullivan by reviewing reports and maintaining a strong relationship with many key participants in the marketplace. Cawley is active in most sectors of the market for valuation, including shopping centres, office developments, industrial properties, hotels, mixed use properties, major subdivisions, Master Planned Communities, rental apartment buildings and new project development. In her practice, Cawley is also involved in development consulting and has been an expert witness for rental lease arbitrations and other legal matters. Many of her assignments take her to communities throughout BC, and sometimes she has consulted for clients in other parts of Canada.

Currently, she is working on a 400-acre parcel of land on Vancouver Island and a large Vancouver-area multi-phase 7.5 million-square foot project with a 15- to 20-year build-out. "We have had considerable experience with projects that involve a variety of proposed building types for a long-term build-out," says Cawley. "There are so many variables to consider, including historical absorption, pending supply, price point, product type, changing market dynamics, etc., which all contribute to value."

Since starting in the profession in 1981, after graduating from UBC with a degree in Urban Land Economics, Cawley has been exclusively involved in commercial work. She obtained her AACI in 1987 and became a partner shortly thereafter.

Describing herself as analytical and detail-oriented, Cawley has found the appraisal profession to be a good fit for her personality. She enjoys the variety of her work, especially as the scope has continued to evolve over the years. "When I started, there was the opportunity to work in so many different areas that I got a good background in every sector," she notes. "I try to train all the upcoming appraisers here in the office to have a broad scope of experience. If they want to specialize afterwards, that is great. But, I think you have to understand the market from every angle first."

This approach has certainly been a successful one for Cawley. With anywhere from 40 to 50 projects on the go at any one time, she continues to enjoy a broad and prolific portfolio. Of course, she is no longer as actively involved with each project as when she was a junior appraiser. But, when litigation work arises, she gravitates to her roots in digging deep to source the data for a strong argument. After all these years, she still finds the work as interesting and exciting as ever. 🌈