

# Time after Time

A review of the use of comparable evidence subsequent to the date of valuation in an expropriation context

# Presentation Overview

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- ▶ Time adjustment methodology
- ▶ Case law review
- ▶ Legal tips for appraisers acting as experts
- ▶ Appraisal notes

# The Black Art of Time Adjustment

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- ▶ Qualitative Time Adjustments
- ▶ Quantitative Time Adjusts
  - ▶ Averages and Means
  - ▶ Regression Analysis
  - ▶ Statistical Indices and Hedonic Models (ie. Housing Price Index)
  - ▶ Paired Sales

# For the Appraisers in the Room

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## ▶ Hypothetical Case Study:

- ▶ You have been asked to complete a retrospective appraisal with a valuation date from 20 years ago.
- ▶ The available evidence is limited.
- ▶ You have 6 Comparables available:
  - ▶ Two comparables prior to the date of valuation
  - ▶ One 6 months after the date of valuation
  - ▶ One 2 Years after the date of valuation
  - ▶ One 4 Years after the date of valuation
  - ▶ One 8 Years after the date of valuation

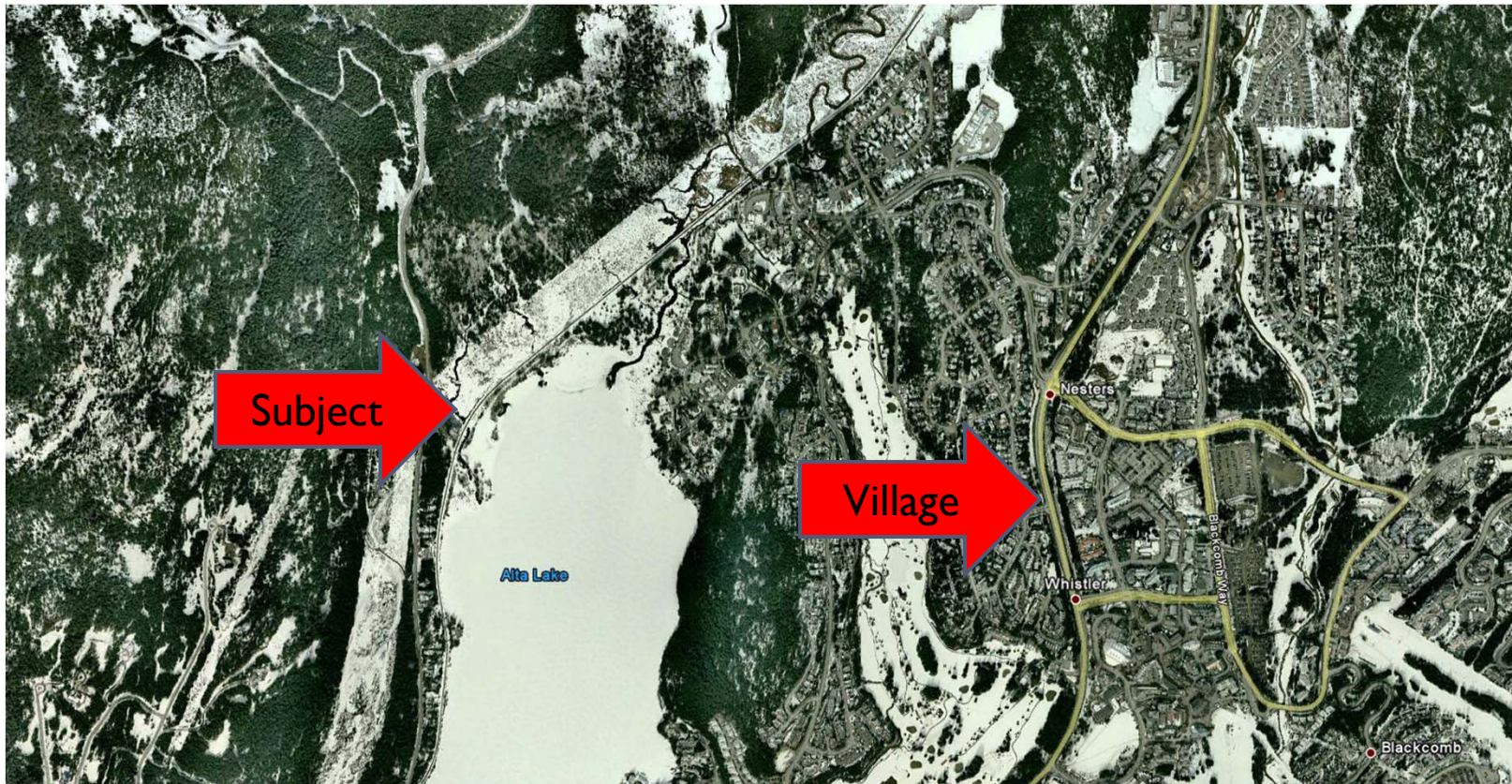
# Points of Reference for Appraisers

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- ▶ **CUSPAP:** “Data subsequent to the effective date may be considered as confirmation of trends evident at that date. It is up to the appraiser to determine an appropriate cut-off date. In the absence of such data, the effective date is the cut-off date.”
  
- ▶ Case-Law: Supreme Court and ECB Decisions

# Rainbow v. Whistler

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# Rainbow v. Whistler

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- ▶ Section 32 of the BC Expropriation Act:
- ▶ “The market value of an estate or interest in land is the amount that would have been paid for it if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer”

# Rainbow v. Whistler

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- ▶ Whistler expropriated 108 acres from Rainbow in 1987, but the matter didn't go to trial until late 2009.
- ▶ The Advance Payment was for \$367,000, and additional compensation was sought on basis of appraisal report that estimated value at \$3.1 million.
- ▶ Whistler's appraisal report for trial estimated value at \$315,000 (less than the Advance Payment).
- ▶ Rainbow's appraisal relied, in part, on comparables sales that occurred after the valuation date.
- ▶ The Honourable Madam Justice Adair held that there was no rule that subsequent sales cannot be used, and determined that subsequent sales are admissible evidence where the place, time and circumstance of those sales make them "logically probative of the fact to be found".

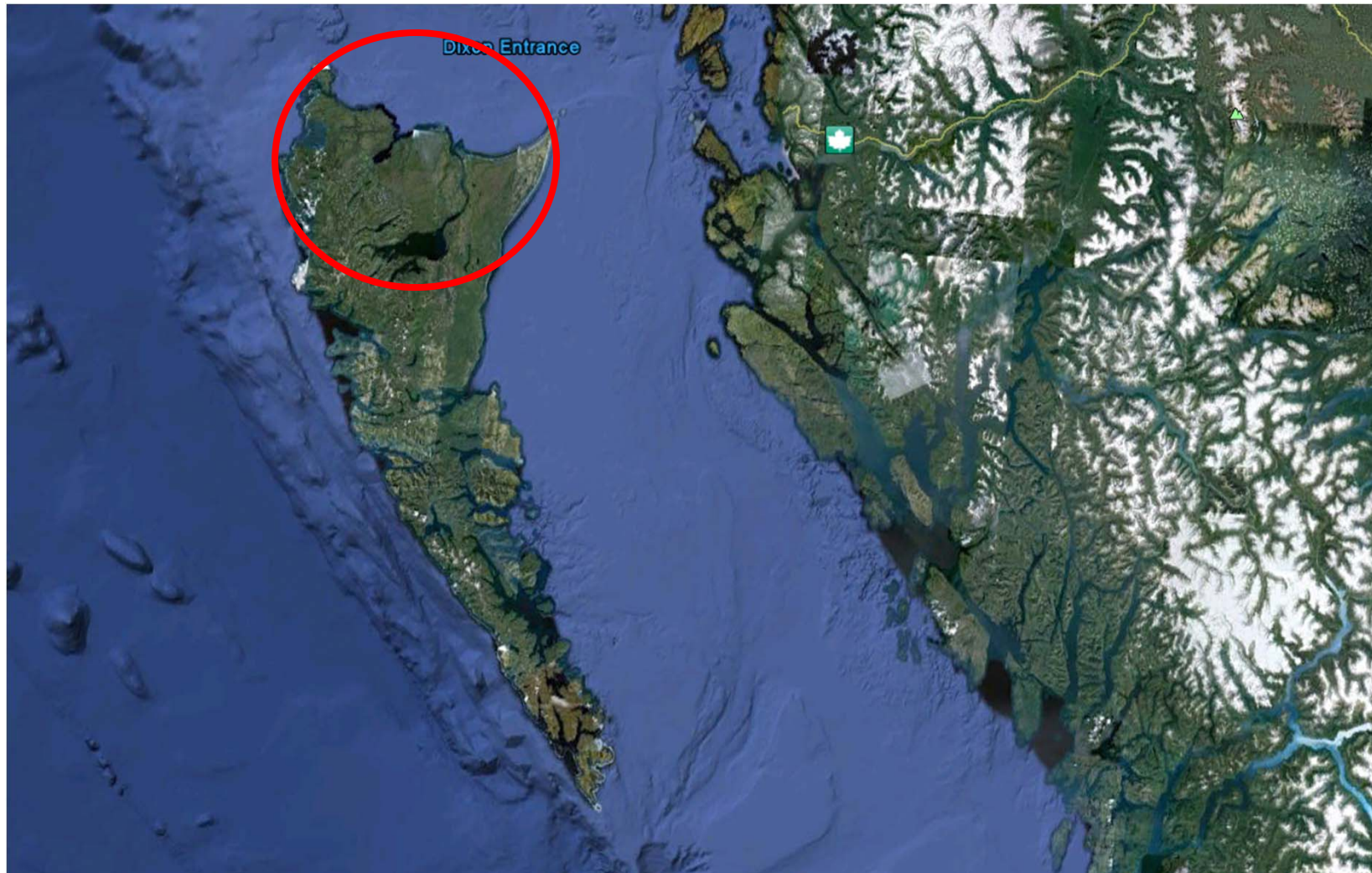


## Rainbow v. Whistler (Cont.)

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- ▶ Whether something is "logically probative" will hinge on whether the "subsequent sale has taken place within a reasonable period after the expropriation".
- ▶ In ordering compensation based on a value of \$1.3 million, Madam Justice Adair was relying on the 1971 Supreme Court of Canada case *Tabco Timber Ltd. v. The Queen*, a decision that had previously been largely ignored.
- ▶ The BC Court of Appeal dismissed an appeal by Whistler, without addressing the "subsequent sale".

# Tabco v. The Queen



# Tabco v. The Queen

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- ▶ Land on Graham Island (the most northerly of the Queen Charlottes) was expropriated under the 1952 federal *Expropriation Act*.
- ▶ The matter was argued in the (now defunct) Exchequer Court of Canada, and was appealed to the Supreme Court of Canada due to the judge having refused to rely on certain comparables because they were subsequent sales.
- ▶ The Supreme Court found the previous judge should have considered those sales in determining land value, and made an order for greater compensation to be paid.
- ▶ Prior to *Rainbow v. Whistler*, the case had generally been ignored.

# Legal Notes

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- ▶ Use maps or other visual materials that will put aspects of your opinion into the judge's hands;
- ▶ Demonstrate good knowledge of comparable properties (consider attending at each property);
- ▶ Be alert to the possibility that the opinion in your litigation report is inconsistent with prior opinions in other litigation matters, articles or textbooks. If it is inconsistent, ensure the lawyer representing your client is aware of the inconsistency (i.e. tell them well in advance of trial); and
- ▶ Be sure to identify non arms-length sales, sales by insolvent vendors and sales to expropriating authorities.

# Appraisal Notes

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- ▶ Comparable sale dates in Rainbow ranged from 1980 to 1995.
- ▶ Judge was willing to consider comparables up to 2 years after the date of valuation.
- ▶ Rainbow indicates that there is flexibility in the use of sales subsequent to the date of valuation.
- ▶ Appraisers may want to highlight that a sale took place after the date of valuation.

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▶ Thank You Very Much