

No. H091522 Vancouver Registry

### IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE RECEIVERSHIP OF THE SYMPHONY DEVELOPMENT CORPORATION (Referred to as "Symphony" or the "Company")

RECEIVER MANAGER'S FIFTH REPORT TO COURT (Prepared for the hearing regarding the sale of Spencer's Ridge lots)

August 23, 2010

## **AUGUST 23, 2010**

## TABLE OF CONTENTS

1

INTRODUCTION......1

2	SALE OF SPENCER'S RIDGE LOTS1				
APP	ENDICES				
Α.	Offer to Purchase from Allen Mah and Ling Fang dated August 5, 2010 re: Spencer's Ridge lot 22				
В.	Offer to Purchase from GMG Homes Ltd. dated August 9, 2010 re: Spencer's Ridge lot 34				
C.	Marketing report on lots 22 and 34 at Spencer's Ridge from Mr. Ray Casavant of Prudential Power Play Realty				

#### **AUGUST 23, 2010**

### 1 INTRODUCTION

- On January 12, 2010, by order of the Supreme Court of British Columbia (the "Court") on application of Malkit Johal ("Johal") and Gurmel Singh Kainth ("Kainth"), PricewaterhouseCoopers Inc. was appointed Receiver Manager (the "Receiver") of Symphony.
- 1.2 The Receiver has previously filed the following reports with the Court:
  - 1.2.1 March 4, 2010 Receiver's First Report;
  - 1.2.2 March 24, 2010 Supplemental Report to the Receiver's First Report;
  - 1.2.3 April 26, 2010 Receiver's Second Report;
  - 1.2.4 May 25, 2010 Receiver's Third Report; and,
  - 1.2.5 June 16, 2010 Receiver's Fourth Report.
- 1.3 This is the Receiver's Fifth Report to the Court and is filed to seek the approval of offers received for the purchase of lot 22 and lot 34 at Spencer's Ridge.

### 2 SALE OF SPENCER'S RIDGE LOTS

- 2.1 The Receiver has accepted offers of \$170,000 for lot 22 and \$180,000 for lot 34 at Spencer's Ridge, subject to the Court's approval. Copies of these offers are attached as Appendix A (lot 22) and Appendix B (lot 34).
- 2.2 In order to sell lots 22 and 34 at Spencer's Ridge, the Receiver listed the lots with Mr. Casavant of Prudential Power Play Realty in April 2010 for \$189,900 and \$199,900, respectively. Mr. Casavant placed a "for sale" sign on each lot and the listings were added to the real estate Multiple Listing Service. The listing prices were determined through discussions with three realtors but no appraisal was conducted for these lots.
- 2.3 The sale prices for lots 22 and 34 are less than the prices obtained for lots 29 and 30 (\$190,500 each) previously sold by the Receiver for the following reasons:
  - 2.3.1 Lot 34 is less desirable than lots 29 & 30 due to a quantity of fill that must be removed which was not required for lots 29 and 30;

### **AUGUST 23, 2010**

- 2.3.2 Lot 22 is considered to be less desirable than lot 34 as a retaining wall must be built, excess fill must be removed to lower the height of the lot and there is some uncertainty about whether a basement can be built; and
- 2.3.3 The residential real estate market has softened during the three month sale period. The table below details the total value of construction starts measured by the District of Maple Ridge over the period January 2010 to July 2010 inclusive. The drop in activity over the period is indicative of softer market conditions.

Month	Construction	Monthly
Monui	Value (\$)	Change
January	23,409,000	1
February	19,685,000	-16%
March	15,309,000	-22%
April	19,904,000	30%
May	16,943,000	-15%
June	12,917,000	-24%
July	7,137,000	-45%
Average	16,472,000	

### **AUGUST 23, 2010**

2.4 The table below details the offers received on lots 22 and 34 during the sales process and the action taken in respect of each offer.

Lot #	Initial Offer (\$)	Counter by Receiver (\$)	Result of Negotiations
34	180,000	Τιστοινοί (ψ)	Purchaser's interest lapsed while the Receiver investigated the interest of the shareholders in purchasing the Spencer's Ridge lots.
22	150,000	180,000	Purchaser countered back to \$160,000. Receiver declined to accept the counter offer.
22	165,000	170,000	Purchaser did not accept Receiver's counter offer and no further interest was received by him.
34	165,000	180,000	Purchaser did not accept Receiver's counter offer and no further interest was received by him.
34	180,000		Offer accepted August 10, 2010. Offer accepted August 13, 2010.
	# 34 22 22 34	# Offer (\$) 34 180,000  22 150,000  22 165,000  34 180,000	# Offer (\$) Receiver (\$)  34 180,000  22 150,000 180,000  22 165,000 170,000  34 180,000  34 180,000

- 2.5 A marketing report from Mr. Ray Casavant from Prudential Powerplay Realty detailing efforts undertaken, interest received and issues encountered with respect to the sale of lots 22 and 34 is attached as Appendix C.
- 2.6 The Receiver recommends that the Court approve the sale of lot 22 to Allen Mah and Ling Fang for \$170,000 and lot 34 to GMG Homes Ltd. for \$180,000.

This report is respectfully submitted this 23<sup>rd</sup> day of August, 2010.

PricewaterhouseCoopers Inc.
Court Appointed Receiver Manager of
The Symphony Development Corporation

Michael J. Vermette Senior Vice President Neil P. Bunker Vice President

# APPENDIX A

Offer to Purchase from Allen Mah and Ling Fang dated August 5, 2010 re: Spencer's Ridge lot 22

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Ray Casavant

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#### CONTRACT OF PURCHASE AND SALE

THIS AGREEMENT made this on day of July, 2010.

BETWEEN.

ALLEN MAH AND LING PANG

(hereinafter referred to as the "Purchaser")

AND

PRICEWATERHOUSECOOPERS INC.

RECEIVER MANAGER OF THE SYMPHONY DEVELOPMENT CORPORATION

(hereinalter referred to as the "Vendor")

RECEIVED from the Purchaser the sum of \$70,000 being the deposit (the "Deposit") paid to Bull, Housser & Tupper LLP (upon acceptance of the offer by the Vendor) on account of the proposed purchase of

LEGAL DESCRIPTION:

Lot 22, Section 3 Township 12, NWD Plan BCP 35192

10,000

District PID 027 424 065

STREET ADDRESS:

24171 103A Avenue

CITY/MUNICIPALITY/REGION: Maple Ridge, BC

FOR THE PRICE OF

\$170,000.00

(of which the deposit will form part) PAYABLE ON THE FOLLOWING TERMS AND SUBJECT TO THE FOLLOWING CONDITIONS:

The Acceptance of this Offer by the Vendor is in its capacity as Receiver and Menager of The Symphony Development Corporation, pursuant to an Order of the Supreme Court of British Columbia (the "Court") in Vancouver Registry Action No. H091329 (the "Proceedings"), and not as owner of the Property. The acceptance of this Offer is subject to the approval of the Court and will become effective from the time an Order is made approving this Offer (the "Vesting Order") The Vendor hereby advises the Offeror that the Vendor's obligations in connection with this Offer, until it is approved by the Court, are limited to putting this Offer before the Court, subject to the discretion referred to in paragraph 2 hereof.

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2. The acceptance of this Offer by the Vendor and any obligation by the Vendor to put this Offer before the Court may be terminated at any time before the Court makes a Vesting Order, including in the event that the Vendor determines in its sole discretion that it is inadvisable or improvident to present the Offer to the Court. This condition is for the sole benefit of the Vendor

ADDENDUM(S) attached [ ] Yes [ X ] No

ANY CONDITION(S) TO THIS OFFER IS, IF SO INDICATED, FOR THE SOLE BENEFIT OF THE PARTY INDICATED UNLESS EACH CONDITION IS WAIVED OR DECLARED FULFILLED BY WRITTEN NOTICE GIVEN BY THE BENEFITING PARTY TO THE OTHER PARTY ON OR BEFORE THE DATE SPECIFIED FOR EACH CONDITION, THIS CONTRACT WILL, BE THEREUPON TERMINATED AND THE DEPOSIT RETURNED TO THE PURCHASER.

# THE PURCHASER OFFERS TO PURCHASE THE PROPERTY FOR THE PRICE AND ON THE TERMS AND SUBJECT TO THE CONDITIONS HEREIN SET FORTH:

1 TITLE: Free and clear of all encumbrances of the parties to the Proceedings in accordance with a Vesting Order of the Court, except subsisting conditions, provisions, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way, in favour of utilities and public authorities, existing tenancies set out below, if any and except as otherwise set out herein.

#### OTHER EXCEPTIONS.

- 2. **COMPLETION:** The sale will be completed on the 14<sup>th</sup> day following the granting of the Vesting Order, or such other date as may be fixed by the Court in the Vesting Order (the "Completion Date"), or so soon thereafter as the parties may agree at the appropriate Land Title Office, subject to the following express terms and conditions.
  - (a) Tender or payment of monies by the Purchaser to the Vendor will be by certified cheque, bank draft, cash or lawyer's/notary's trust cheque;
  - (b) All documents required to give effect to this Contract will be delivered in registerable form where necessary and shall be lodged for registration in the appropriate Land Title Office on or before Completion Date;
  - (c) Time shall be of the essence hereof, and unless the balance of the cash payment is paid and such formal agreement to pay the balance as may be necessary is entered into on or before the Completion Date, the Vendor may at the Vendor's option terminate this Contract and in such event the amount paid by the

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Purchaser will be absolutely forfeited to the Vendor on account of damages without prejudice to the Vendor's other remedies, whether arising at law or in equity.

# NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH 2(c) ABOVE, THE VENDOR AND PURCHASER AGREE THAT:

- (d) If there are existing registered financial charges to be paid under the terms of the Order, the Vendor may wait to pay and discharge such existing financial charges until immediately after receipt of the purchase price, but in this event, the Purchaser may pay the purchase price to the Vendor's lawyer in trust, on undertakings to pay those financial charges in accordance with the Order.
- (e) The Purchaser may pay all funds, including any increase in the deposit, to his solicitor, but all funds so paid shall be held in trust until registration of the Vesting Order;
- (f) If the Purchaser is relying upon a new mortgage to finance the purchase price, the Purchaser, while still required to pay the purchase price on Completion Date, may wait to pay the purchase price to the Vendor until after the Vesting Order and new mortgage documents have been lodged for registration in the appropriate Land Title Office, but only if, before such lodging, the Purchaser has:
  - (i) made available for tender to the Vendor that portion of the purchase price not secured by the new mortgage; and
  - (ii) fulfilled all the new mortgagee's conditions for funding except lodging the mortgage for registration; and
  - (iii) made available to the Vendor a lawyer's or notary's undertaking to pay the purchase price upon the lodging of the Vesting Order and new mortgage documents and the advance by the mortgagee of the mortgage proceeds.
- 3. COSTS: The Purchaser shall bear all costs of the conveyance and, if applicable, any costs related to arranging a mortgage, and the Vendors shall bear all costs of obtaining Court approval of the sale and clearing title in accordance with Article 1 hereof.
- 4. **POSSESSION:** The Purchaser will have vacant possession of the Property by operation of and pursuant to the terms of the Vesting Order. The Purchaser will assume all tenancies as may exist on the Completion Date, and no adjustments, including but not limited to adjustments for rents or security deposits, will be made to the purchase price on account of such tenancies.
- 5. ADJUSTMENTS: The Purchaser will assume and pay all taxes, rates, local improvement assessments, fuel, utilities and other charges from and including the date set for adjustments and all adjustments both incoming and outgoing of whatsoever nature will be made as of the Completion Date.

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- REPRESENTATIONS AND WARRANTIES: The Purchaser is buying the lands and premises on an "as is - where is" basis as at the Completion Date. No Representations concerning the condition of the Property shall form part of this Contract of Purchase and Sale, and the Purchaser acknowledges and agrees that it is not relying on any Representations made by or on behalf of the Vendor, and not expressly contained in this Contract, in entering into this Contract. No Property Condition Disclosure Statement shall form part of this Contract of Purchase and Sale, whether or not such Statement is attached hereto.
- RISK: All buildings on the Property and all other items included in the purchase and sale will be and remain at the risk of the Vendor until 12:01 a.m. on the Completion Date. After that time, the Property and all included items will be at the risk of the Purchaser.
- INCLUDED ITEMS: The Purchaser acknowledges that the purchased assets do not include any chattels/personal property and that the Purchaser will have to make separate arrangements with the owner of the Property if chattels/personal property are to be purchased
- In this Contract any reference to a party includes that party's heirs, executors, administrators, successors and assigns; singular includes plural and masculine includes feminine

THIS OFFER, IF ACCEPTED, IS A LEGAL AND BINDING CONTRACT. READ IT ALL

BEFORE YOU SIGN

Dated at

blumbia this bday of , British C

(WITNESS)

(PURCHASER/OCCUPATION/PHONE)

(WITNESS)

#### **VENDOR ACCEPTANCE**

PricewaterhouseCoopers Inc.

Receiver Manager of The Symphony Development Corporation

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# APPENDIX B

Offer to Purchase from GMG Homes Ltd. dated August 9, 2010 re: Spencer's Ridge lot 34

#### CONTRACT OF PURCHASE AND SALE

THIS AGREEMENT made this 9th day of August, 2010.

BETWEEN:

GMG HOMES LTD.

(hereinafter referred to as the "Purchaser")

AND:

PRICEWATERHOUSECOOPERS INC.

RECEIVER MANAGER OF THE SYMPHONY DEVELOPMENT CORPORATION

(hereinafter referred to as the "Vendor")

RECEIVED from the Purchaser the sum of \$10,000 being the deposit (the "Deposit") paid to Bull, Housser & Tupper LLP (upon acceptance of the offer by the Vendor) on account of the proposed purchase of:

LEGAL DESCRIPTION:

Lot 34, Section 3 Township 12, NWD Plan BCP 35192

District PID 027 424 189

STREET ADDRESS:

24238 103A Avenue

CITY/MUNICIPALITY/REGION: Maple Ridge, BC

FOR THE PRICE OF

\$180,000.00

(of which the deposit will form part) PAYABLE ON THE FOLLOWING TERMS AND SUBJECT TO THE FOLLOWING CONDITIONS:

The Acceptance of this Offer by the Vendor is in its capacity as Receiver and Manager of The Symphony Development Corporation, pursuant to an Order of the Supreme Court of British Columbia (the "Court") in Vancouver Registry Action No. H091329 (the "Proceedings"), and not as owner of the Property. The acceptance of this Offer is subject to the approval of the Court and will become effective from the time an Order is made approving this Offer (the "Vesting Order"). The Vendor hereby advises the Offeror that the Vendor's obligations in connection with this Offer, until it is approved by the Court, are limited to putting this Offer before the Court, subject to the discretion referred to in paragraph 2 hereof.

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2. The acceptance of this Offer by the Vendor and any obligation by the Vendor to put this Offer before the Court may be terminated at any time before the Court makes a **Vesting Order**, including in the event that the Vendor determines in its sole discretion that it is inadvisable or improvident to present the Offer to the Court. This condition is for the sole benefit of the Vendor.

ADDENDUM(S) attached [ ] Yes [  $\sqrt{\ }$ ] No

ANY CONDITION(S) TO THIS OFFER IS, IF SO INDICATED, FOR THE SOLE BENEFIT OF THE PARTY INDICATED UNLESS EACH CONDITION IS WAIVED OR DECLARED FULFILLED BY WRITTEN NOTICE GIVEN BY THE BENEFITING PARTY TO THE OTHER PARTY ON OR BEFORE THE DATE SPECIFIED FOR EACH CONDITION, THIS CONTRACT WILL BE THEREUPON TERMINATED AND THE DEPOSIT RETURNED TO THE PURCHASER.

# THE PURCHASER OFFERS TO PURCHASE THE PROPERTY FOR THE PRICE AND ON THE TERMS AND SUBJECT TO THE CONDITIONS HEREIN SET FORTH:

1. TITLE: Free and clear of all encumbrances of the parties to the Proceedings in accordance with a Vesting Order of the Court, except subsisting conditions, provisions, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way, in favour of utilities and public authorities, existing tenancies set out below, if any and except as otherwise set out herein:

#### OTHER EXCEPTIONS:

- 2. **COMPLETION:** The sale will be completed on the 14<sup>th</sup> day following the granting of the Vesting Order, or such other date as may be fixed by the Court in the Vesting Order (the "Completion Date"), or so soon thereafter as the parties may agree at the appropriate Land Title Office, subject to the following express terms and conditions:
  - (a) Tender or payment of monies by the Purchaser to the Vendor will be by certified cheque, bank draft, cash or lawyer's/notary's trust cheque;
  - (b) All documents required to give effect to this Contract will be delivered in registerable form where necessary and shall be lodged for registration in the appropriate Land Title Office on or before Completion Date;
  - (c) Time shall be of the essence hereof, and unless the balance of the cash payment is paid and such formal agreement to pay the balance as may be necessary is entered into on or before the Completion Date, the Vendor may at the Vendor's option terminate this Contract and in such event the amount paid by the

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Purchaser will be absolutely forfeited to the Vendor on account of damages without prejudice to the Vendor's other remedies, whether arising at law or in equity.

### NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH 2(c) ABOVE, THE VENDOR AND **PURCHASER AGREE THAT:**

- If there are existing registered financial charges to be paid under the terms of the (d) Order, the Vendor may wait to pay and discharge such existing financial charges until immediately after receipt of the purchase price, but in this event, the Purchaser may pay the purchase price to the Vendor's lawyer in trust, on undertakings to pay those financial charges in accordance with the Order.
- The Purchaser may pay all funds, including any increase in the deposit, to his (e) solicitor, but all funds so paid shall be held in trust until registration of the Vesting Order;
- (f) If the Purchaser is relying upon a new mortgage to finance the purchase price, the Purchaser, while still required to pay the purchase price on Completion Date, may wait to pay the purchase price to the Vendor until after the Vesting Order and new mortgage documents have been lodged for registration in the appropriate Land Title Office, but only if, before such lodging, the Purchaser has:
  - (i) made available for tender to the Vendor that portion of the purchase price not secured by the new mortgage; and
  - fulfilled all the new mortgagee's conditions for funding except lodging the (ii) mortgage for registration; and
  - made available to the Vendor a lawyer's or notary's undertaking to pay (iii) the purchase price upon the lodging of the Vesting Order and new mortgage documents and the advance by the mortgagee of the mortgage proceeds.
- COSTS: The Purchaser shall bear all costs of the conveyance and, if applicable, any costs related to arranging a mortgage, and the Vendors shall bear all costs of obtaining Court approval of the sale and clearing title in accordance with Article 1 hereof.
- 4. POSSESSION: The Purchaser will have vacant possession of the Property by operation of and pursuant to the terms of the Vesting Order. The Purchaser will assume all tenancies as may exist on the Completion Date, and no adjustments, including but not limited to adjustments for rents or security deposits, will be made to the purchase price on account of such tenancies.
- ADJUSTMENTS: The Purchaser will assume and pay all taxes, rates, local improvement assessments, fuel, utilities and other charges from and including the date set for adjustments and all adjustments both incoming and outgoing of whatsoever nature will be made as of the Completion Date.

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- 6. **REPRESENTATIONS AND WARRANTIES:** The Purchaser is buying the lands and premises on an "as is where is" basis as at the Completion Date. No Representations concerning the condition of the Property shall form part of this Contract of Purchase and Sale, and the Purchaser acknowledges and agrees that it is not relying on any Representations made by or on behalf of the Vendor, and not expressly contained in this Contract, in entering into this Contract. No Property Condition Disclosure Statement shall form part of this Contract of Purchase and Sale, whether or not such Statement is attached hereto.
- 7. **RISK:** All buildings on the Property and all other items included in the purchase and sale will be and remain at the risk of the Vendor until 12:01 a.m. on the Completion Date. After that time, the Property and all included items will be at the risk of the Purchaser.
- 8. **INCLUDED ITEMS:** The Purchaser acknowledges that the purchased assets do not include any chattels/personal property and that the Purchaser will have to make separate arrangements with the owner of the Property if chattels/personal property are to be purchased.
- 9. In this Contract any reference to a party includes that party's heirs, executors, administrators, successors and assigns; singular includes plural and masculine includes feminine.

THIS OFFER, IF ACCEPTED, IS A LEGAL AND BINDING CONTRACT. READ IT ALL BEFORE YOU SIGN.

Dated at Vancouver, British Columbia, this 9th day of August 2010.

(WITNESS)

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(PURCHASER/OCCUPATION/PHONE)

(PURCHASER/OCCUPATION/PHONE)

#### **VENDOR ACCEPTANCE**

PricewaterhouseCoopers Inc.

Receiver Manager of The Symphony Development Corporation

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# APPENDIX C

Marketing report on lots 22 and 34 at Spencer's Ridge from Mr. Ray Casavant of Prudential Power Play Realty



20585 Fraser Highway Langley, B.C. V3A 4G4
Phone: 604.533.3231 Fax: 604.533.7288

Date: August 18th, 2010

To: PricewaterhouseCoopers Inc

Attention: Brad Ristivojevic

Re: Lot 22, at 24171 103a Avenue in Maple Ridge, B.C.

This lot was listed for \$189,900 On April 20<sup>th</sup>, 2010. It was placed on the multiple listing service and a Realtor sign was provided for the property. By June 18<sup>th</sup>, 2010, I had received one call from a private individual and 3 calls from Realtors. An offer was presented on May 6<sup>th</sup>, for \$150,000, but it did not come together. On June 18<sup>th</sup>, it was reduced to \$174,900. Between then and August 10<sup>th</sup>, 2010, I received an additional 2 calls from private parties and 4 from Realtors. An other offer was presented on July 2<sup>nd</sup>, 2010. This time, for \$165,000 [ through the same Realtor] but still did not come together. Again, on August 5<sup>th</sup>, 2010, a third offer was presented[ through the same Realtor], for \$170,000 and this time it was accepted, subject to court approval.

The issues with the property were as follows: It had been raised, with backfill, much higher than all neighbouring properties and would require a retaining wall, and also, it was not certain that an in ground basement could be built on this site, while every other lot in the subdivision had been able to do so.

The issues with the market conditions were as follows: The property was listed just at the time when the market had begun to soften. The H.S.T. had been announced as coming in for July 1<sup>st</sup>, 2010 and this created a lot of uncertainty for builders as to how a softening market might react to this new added cost. Therefore those builders who were willing to take a chance on building had to buy at a discounted price for the land, so they could have a cushion if needed.

Lots 29 and 30 had recently sold for more but were also ahead of some of the above conditions and were dream lots to build on, allowing in ground, walk out basements with very little, if any excavating required.

Regards

Ray Casavant 604-319-1193



20585 Fraser Highway Langley, B.C. V3A 4G4
Phone: 604.533.3231 Fax: 604.533.7288

Date: August 18th, 2010

To: PricewaterhouseCoopers Inc

Attention: Brad Ristivojevic

Re: Lot 34, at 24238 103a Avenue in Maple Ridge, B.C.

This lot was listed for \$199,900 On April 20<sup>th</sup>, 2010. It was placed on the multiple listing service and a Realtor sign was provided for the property. By June 18<sup>th</sup>, 2010, I had received one call from a private individual and 2 calls from Realtors. No offers were presented. On June 18<sup>th</sup>, it was reduced to \$184,900. Between then and August 10<sup>th</sup>, 2010, I received an additional 4 calls from private parties and 6 from Realtors. An offer was presented on July 2<sup>nd</sup>, 2010, for \$165,000, but did not come together. Again, on August 5<sup>th</sup>, 2010, an other offer was presented, for \$180,000 and this time it was accepted, subject to court approval.

The issues with the property were as follows: It was ideal for a home built with an in ground walk out basement but required a reasonable amount of dirt removed in order to do so.

The issues with the market conditions were as follows: The property was listed just at the time when the market had begun to soften. The H.S.T. had been announced as coming in for July 1<sup>st</sup>, 2010 and this created a lot of uncertainty for builders as to how a softening market might react to this new added cost. Therefore those builders who were willing to take a chance on building had to buy at a discounted price for the land, so they could have a cushion if needed.

Lots 29 and 30 had recently sold for more but were also ahead of some of the above conditions and were dream lots to build on, allowing in ground, walk out basements with very little, if any excavating required.

Ray Kasavant 604-319-1193

Regards