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**REGINA BOARD OF REVISION**

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**APPEAL #2017-28099**  
**Account ID: 10018625**

In the matter of an appeal under Sections 197 and 198 of *The Cities Act*, S.S. 2002, c. C.-11.1, to the City of Regina, Board of Revision by:

**APPELLANT**

3346286 MANITOBA LIMITED  
200-1355 TAYLOR AVENUE  
WINNIPEG MB R3M 3Y9

**respecting the assessment of:**

221 N WINNIPEG STREET REGINA SK S4R 8T6

**RESPONDENT**

City of Regina

**for the year 2017;**

**BEFORE**

Joanne Moser, Panel Chair  
Walter Antonio, Member  
Linda Paidel, Member

**Appeared for  
the Appellant:**

Ryan Simpson, Altus Group Limited  
Archie Fieldgate, Altus Group Limited

**Appeared for  
the Respondent:**

Gerry Krismer, City Assessor  
Scott Miller, Manager, Assessment Research

This appeal was heard at City Hall, 2476 Victoria Avenue, Regina, Saskatchewan on May 15 & 16, 2017.

**INTRODUCTION**

This is an appeal of the assessment of a commercial property in the City of Regina. In this decision, we refer to Mr. Ryan Simpson and Mr. Archie Fieldgate, as the “Appellants”, to Mr. Gerry Krismer and Mr. Scott Miller as the “Assessors” or the “Respondents”, to the Board of Revision Panel as the “Board,” to *The Cities Act* as the “Act”, to the Saskatchewan Assessment Manual as the “Manual”, to the Market Value Assessment in Saskatchewan Handbook as the “Handbook”, and to SAMA’s Cost Guide, as the "Guide".

**PRELIMINARY MATTERS**

There was no objection to the jurisdiction or composition of the Board.

A court reporter was present, transcribing the evidence for this appeal.

Scott Miller was sworn in as an expert for the City in assessment and assessment statistics.

Appendix M in the Appellant 20-day submission was declared confidential.

The Appellant and the Assessor agreed that Appeal 2017-28100 for 2216 E Emmett Hall Road be heard first, and that all evidence and argument related to the grounds from this appeal be carried forward as appropriate:

<b>Appeal #</b>	<b>Appeal Address</b>	<b>Appeal #</b>	<b>Appeal Address</b>
2017-28071	100 MCDONALD STREET	2017-28101	250 HENDERSON DRIVE
2017-28073	1111 MACKAY STREET	2017-28102	310 HENDERSON DRIVE
2017-28074	115 MCDONALD STREET	2017-28103	316 E 1ST AVENUE
2017-28076	1155 PARK STREET	2017-28104	330 4TH AVENUE
2017-28077	12202 EWING AVENUE	2017-28105	363 MAXWELL CRESCENT
2017-28078	130 HODSMAN ROAD	2017-28106	375 N LOGMAN CRESCENT
2017-28079	1301 FLEURY STREET	2017-28107	4000 E VICTORIA AVENUE
2017-28080	135 HENDERSON DRIVE	2017-28108	402 MCDONALD STREET
2017-28081	1400 1ST AVENUE REGINA	2017-28109	415 N LONGMAN CRESCENT
2017-28082	1405 E PETTIGREW AVENUE	2017-28110	4150 E VICTORIA AVENUE
2017-28083	1450 PARK STREET	2017-28111	455 PARK STREET
2017-28084	155 N LEONARD STREET	2017-28112	4600 E VICTORIA AVENUE
2017-28085	1575 ELLIOT STREET	2017-28113	4750 E VICTORIA AVENUE
2017-28086	1600 E ROSS AVENUE	2017-28114	515 1ST AVENUE
2017-28087	1700 PARK STREET	2017-28116	555 HENDERSON DRIVE
2017-28088	1715 ELLIOTT STREET	2017-28117	570 MCDONALD STREET
2017-28089	1735 FRANCIS STREET	2017-28118	580 HENDERSON DRIVE
2017-28090	1802 E STOCK ROAD	2017-28119	580 PARK STREET
2017-28091	1903 E TURVEY ROAD	2017-28121	603 PARK STREET
2017-28092	1964 PARK STREET	2017-28122	610 HENDERSON DRIVE
2017-28093	202 SOLOMON DRIVE	2017-28123	615 N WINNIPEG STREET
2017-28094	2101 FLEMING ROAD	2017-28124	651 HENDERSON DRIVE
2017-28095	2107 E TURVEY ROAD	2017-28125	680 MCLEAOD STREET
2017-28096	2120 1 <sup>ST</sup> AVENUE	2017-28126	745 PARK STREET
2017-28097	2133 1 <sup>ST</sup> AVENUE	2017-28127	855 PARK STREET
2017-28098	2201 1ST AVENUE	2017-28129	921 BROAD STREET
2017-28099	221 N WINNIPEG STREET		

The Assessor brought forward the Appellants' request to amend the Notice of Appeal that was included in the Appellants' 20-day submission under Tab E.

Under section 209(1) of the Cities Act, the Appellant was allowed to apply to amend the Notice of Appeal.

### **ISSUES**

The Board identified the issues to be:

Issue A: Did the Assessor err by adjusting the base capitalization rate for each property based on site coverage?

Issue B: Did the Assessor omit relevant market variables, legal requirements, surplus land utility and other attributing market factors when calculating site coverage?

Issue C: Was equity achieved?

Issue D: Was the Market Valuation Standard achieved?

### **FACTS**

The property is civically described as 221 N Winnipeg Street and is owned by 3346286 Manitoba Limited. The primary use of the property is Industrial. The assessed value of \$ 10,919,900 for 2017 was arrived at by using the Income Approach to Value.

The primary building on the property is a 95,812 square foot distribution warehouse facility, located in the Ross Industrial neighbourhood. It is zoned IB or industrial light manufacturing. This allows for 75% site coverage.

The subject property has a main floor area of 95,812 square feet and a lot size of 564,899 square feet that results in site coverage of 17%. Thus, it received an adjustment for both the total main floor area and for primary site coverage when the capitalization rate was calculated.

**RULES (Legislation, Regulations, Manuals, Handbooks and Guides)**

Assessment in Saskatchewan is governed by legislation enacted by the provincial government. The Assessor in Regina, being in a city, is bound by the Act. The Assessor must follow the provisions of the Act, and the Regulations enacted pursuant to it. Legislation as well as the Manual provides rules, formulas and other technical requirements for the Assessor to follow. The Assessor can only use methods prescribed by legislation.

Assessment is a technique applied on a large-scale called mass appraisal. The Saskatchewan Court of Appeal describes the technique as follows:

The method of valuation remains mass appraisal, the process of valuing a group of properties using standard methods and allowing for statistical testing. Individual appraisals and actual market value of the property being assessed have no place in the process. (*The Cadillac Fairview Corporation Limited et al. v. The City of Saskatoon et al.*, 2000 SKCA 84, June 29, 2000, at paragraph 34.)

There is the over-riding principle of equity. The Act requires that all property be assessed as of the applicable base date. Equity is achieved by following the procedure outlined by the Court of Appeal for Saskatchewan, in precedent case law The Act, in subsection 165(3), provides that the “dominant and controlling factor in the assessment of property is equity”. To achieve equity, the Assessor must apply the directed method of assessment uniformly and fairly throughout the assessment roll. The Assessor does have a degree of discretion, where appropriate, and the Courts have instructed the Board to pay deference to that discretion, when appropriate. The Saskatchewan Court of Appeal explains this issue in *Estevan Coal Corporation v. Rural Municipality of Estevan No. 5 et al.*, 2000 SKCA 82, June 29, 2000, at paragraphs 19 through 23.

The Board of Revision’s role is to review the assessment for error. If, on the evidence, the Appellant cannot demonstrate an error in the assessment, the appeal must be dismissed. However, if the Appellant demonstrates an error, then the Board has the power of correction. When the Assessor has assessed a property and achieved equity as prescribed by legislation, the Board is limited by the Act in altering the assessment by virtue of subsection 210(3), which prevents the Board from altering the assessment if equity has been achieved with similar properties in the city. The Board is also restricted from varying an assessment using single property appraisal techniques.

The Board considers the following legal precedents to be relevant when stratifying grouping of properties.

The committee in *Saskatoon (City) v. Arbor Memorial Inc. and Prairie Funeral Services Ltd.* (SMB 2014-0171; 2015-0049 and 0050) stated:

Grouping properties is the job of the Assessor and he is allowed reasonable discretion in performing the task. [38]

The Court of Appeal for Saskatchewan in *Laing Property Corporation v. Regina (City)* [1994 CanLII 4690 SKCA stated:

...Law and fact aside, the application of the body of appraisal principles and practice found in the Manual entails, in turn, the exercise by the assessor of skill and judgment, even a measure of discretion. What is called for in the exercise of that skill and judgment is the structured formulation of consistent opinions as to fair and equitable value for the purposes of property taxation in the municipality. This is what the Manual suggests, saying that while the systematic application of the principles, rules, and formulas found in the manual is necessary to achieve the ends of tax equalization, its use "cannot replace the personal judgment of the valuator in his work. He is the backbone of local tax administration."

Neither the Manual nor the Act dictate that any particular factor is determinative in valuation, nor do they permit an appellate body to overturn an assessor's discretion merely because the appellate body considers other factors more relevant [24]. The choice amongst the possible groupings [of comparable properties] is clearly left to the discretion of the Assessor [32].

In *Bison Properties Ltd. v. Regina (City)*, 2008 SKCA 158, the Court stated:

The Assessor is entitled to rely on his knowledge of the market and experience as an aid to forming the basis for the exercise of his discretion [16].

In *Sasco Developments Ltd. v. Moose Jaw (City)*, 2012 SKCA 24, (Heritage Inn, Moose Jaw) it was made clear that mass appraisal is grounded in data common to a group of properties, whereas single property appraisal is grounded in data specific to a particular property.

The Board considers the following manuals to be relevant:

International Property and Assessment Administration Handbook  
Saskatchewan Assessment Management Agency Cost Guide  
Saskatchewan Assessment Handbook

**ANALYSIS AND CONCLUSIONS**

During cross-examination, it was determined that the Appellant, Ryan Simpson, is not licensed to practice assessment in Saskatchewan nor is he a member of several recognized assessment related organizations that were listed by the Assessor.

In the Notice of Appeal the Appellant stated that the Assessor made several errors regarding the assessment.

ISSUE A: Did the Assessor err by adjusting the base capitalization rate (cap rate) for each property based on site coverage?

The Appellant stated that Mass Appraisal was offended because the Assessor calculated a capitalization rate for each property. Data specific to the property cannot be used to determine the capitalization rate applied to that property.

However, the Assessor calculated a capitalization rate for each property in order to determine a base capitalization rate of 6.862 to be applied to all properties. The economic capitalization rate analysis was based on 132 sales between January 2011 to December 2014. The base capitalization rate was further adjusted for specific site coverage.

Site coverage is calculated by dividing the main floor area of the building by the lot size. The Assessor pointed out that declining cap rates for sales of properties with less than 30% site coverage is an indication of the desirability of properties with low site coverage. Properties with site coverage less than 30% receive an adjustment to the base cap rate of 6.862. All properties with the same site coverage receive the same adjustment. The Assessor stated that removing the site coverage adjustment drops the base cap rate to 6.526 which would cause the assessment of all properties with a site coverage over 30% to increase.

The City of Regina employed a new methodology using a special site specific coverage adjustment to the base cap rate to reflect excess land on the site. The Appellant alleges that the use of a site coverage adjustment offends mass appraisal principles.

Subsection 163 (f.3) of the Act defines mass appraisal as:

Means the process of preparing assessments for a group of properties as of the base date using standard appraisal methods, employing common data and allowing for statistical testing.

The Board finds that this does not constitute single appraisal because aggregate data was used to determine a base capitalization rate of 6.862 with further adjustments for specific site coverage. Adjustments for site coverage are not uncommon as other jurisdictions use site coverage adjustments.

The Appellant cited *Sasco Developments Ltd, supra*, where it was made clear that mass appraisal is grounded in data common to a group of properties, whereas single property appraisal is grounded in data specific a particular property.

The Assessor indicated that it is up to the Board to determine if the Assessor used mass appraisal techniques.

The Appellant stated that the subject property is a commercial property not industrial. The Assessor countered that this was relevant.

The Income Approach to Value is arrived at by capitalizing the value of the building in the City's model. The value is determined by capitalizing the income earned within a building but not including other income such as that realized from the lease of the land or another structure on the property.

**ISSUE B: Did the Assessor fail to include relevant market variables, legal requirements, surplus land utility and other attributing market factors when calculating site coverage?**

The City's new methodology recognizes extra or excess land on a site by developing a site specific capitalization rate. A site coverage adjustment is applied to the Modeled Base Cap Rate 6.862.

The Assessor considered only the building foot print but excluded canopies, fuel tanks (above and below ground), business signage, garbage bins, etc. These items are not considered in the site specific coverage formula.

The Appellant indicated that the SPSS Report had a value for canopies and tanks, which means they are recognized for valuation purposes but not recognized in the site coverage calculation.

In accordance with the City of Regina Zoning by-law, the site coverage is determined by calculating the land to building ratio by dividing the main floor area of the building by the total lot size. The main floor area of the building does not include underground tanks, above ground tanks, business signage, bins, etc. The Assessor referred to an example where the land to building ratio was 6,250 square feet divided by 20,000 square feet of building for 31% site coverage.

The Appellant stated that surplus land is not worth as much but the Assessor disagreed. Surplus land can be sold, leased or used for expansion and, therefore, must be valued separately. The Appellant during questioning by the Assessor, agreed.

The Appellant questioned whether the City applied rent rate for land leased for storage.

Excess land may or may not add to the value of the parcel. The Assessor questioned the Appellant about any evidence to support the statement that excess land does not add value.

Zoning bylaws do not require loading or storage areas.(page 12)

The Appellant questioned as to what can be done with extra space because of zoning requirements. The Assessor advised that the IB zoning allows outdoor space but it is not required.



The Appellant put forward an additional issue about four properties that were annexed from the Rural Municipality of Sherwood and considered as similar to Ross Industrial properties. The properties are: appeals: 28107, 28112, 28110 and 28113. The Appellant claimed that these properties do not have sewer service, however, the Assessor disagrees. The Assessor stated that not including these properties as industrial results in a higher assessment. Since there was no amendment to the appeals before the Board, this is a non-issue.

ISSUE D: Was Equity achieved?

A number of Court and Saskatchewan Municipal Board decisions recognize that the Assessor, because of his knowledge of the market and experience, has discretion in determining the grouping of properties.

Statistical testing was completed and the grouping of properties for assessment purposes showed that like properties were treated in a similar manner. The Board finds that Assessor did not err and therefore equity was achieved.

ISSUE E: Was the Market Valuation Standard achieved?

The Act states that the market valuation standard means the standard achieved when the assessed value of the property:

- i. is prepared using mass appraisal
- ii. is an estimate of the market value of the estate in fee simple in the property;
- iii. reflects typical market conditions for similar properties; and  
meets quality assurance standards established by order of the agency.

The Act in Section 163(3)(f) states: mass appraisal means the process of preparing assessment for a group of properties as of the base date using standard appraisal methods, employing common data and allowing for statistical testing.

The Assessor used standard appraisal methods in developing models and used data gathered from property owners. The Assessor used multiple regression to test the models to ensure the grouping of properties was appropriate.

The Board finds that the Assessor has not erred and Equity and Market Valuation Standard was achieved.

**DECISION**

The Board after reviewing the written documentation and hearing the oral presentations of both the Assessor and Appellant finds that Assessor has not erred on all issues raised and, therefore, the Appeal is dismissed.

The appeal filing fee shall be retained.

DATED AT REGINA, SASKATCHEWAN THIS 28 DAY OF August, 2017.

CITY OF REGINA, BOARD OF REVISION



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Joanne Moser, Panel Chair



I CONCUR:

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Walter Antonio, Member



I CONCUR:

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Linda Paidel, Member

**62 pages redacted as non-responsive to the request**

Non Responsive

Appeal No. Various  
Various Addresses, REGINA SK  
Various Account Numbers

**SASKATCHEWAN MUNICIPAL BOARD  
ASSESSMENT APPEALS COMMITTEE**

Between:

**VARIOUS PROPERTY OWNERS  
INDUSTRIAL GROUP B**

APPELLANT

and

**THE ASSESSOR OF  
THE CITY OF REGINA**

RESPONDENT

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**WRITTEN SUBMISSION ON BEHALF OF THE CITY OF REGINA**

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**OFFICE OF THE CITY ASSESSOR  
2476 Victoria Avenue  
Regina, Saskatchewan  
S4P 3C8**

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## PART I INTRODUCTION

1. This appeal is about whether the evidence provided to the Board of Revision, by the Appellant, was sufficient to prove that the Assessor had erred in the development of the assessment model for industrial properties and as a result, erred in the assessment of the various properties.
2. The Appellant filed 54 notices of appeal with the 2017 Board of Revision for the City of Regina (The Board). At the Hearing the Appellant asked that the appeal for 2216 E Emmett Hall Road (2017-28100) be heard first and that **ALL** the evidence and argument presented in that appeal be carried forward to the balance of the 53 appeals as it relates.
3. Of the 54 appeals filed, there were common arguments to all 54 and an additional set of common grounds to only 33 appeals. As well, there were 4 appeals that had further common issue.
4. Based on the above, the Assessor grouped the Appeals into two groups to address the common issues. The Assessor identified the groups as Industrial Group A and Industrial Group B.
5. **It must be noted, in the Notice of Appeal to the Board of Revision for the 33 Group B properties, there is no allegation that the site coverage adjustment does not conform to mass appraisal principles.** The lead appeal for Group B is 610 Henderson drive (BOR #2017-28122).
6. This submission is intended to address the allegation of error on the part of the Board as it relates to the appeals noted above and referred to as Group B.

7. The notices of appeals for 33 properties focused on the issue of the site coverage adjustment applied to the Capitalization Rate (CAP Rate) and the size adjustment to the CAP rate. The notices of appeal stated:

- A. The Subject assessment appears to have been developed in error through a misapplication of the capitalization rate adjustment for building size. Moreover, the CAP rate size threshold established by the Assessor is maximized or capped at 50,000 square feet appears notwithstanding 65,000 square feet appears more appropriate.
- B. The subject property is considered by the Assessor to be a non-regulated property pursuant to subsection 163(f.4) of the Cities Act (the Act). As such, the Appellant is alleging that the subject property has been over assessed as a result of the subject's base Cap rate being adjusted downward within the Assessor's assessed value calculation. Subsequently, site coverage has been calculated while failing to account for areas and features that directly limit the availability of extra or excess land.
- C. Equity has not been achieved pursuant to subsection 165(5) of the Act. This legislation speaks to the application of the market valuation standard which in turn speaks to the use of Mass Appraisal. As such, the Appellant is alleging that with the Assessor using site specific Cap Rates, he has moved away from the concept of Mass Appraisal.
- D. The Market Valuation Standard has not been achieved for the subject property. The Appellant is alleging here again that with the Assessor using site specific Cap Rates, he has moved away from the concept of Mass Appraisal.

[14] In support of this ground, the Appellant provides the following material facts:

**A. Size Adjustment**

- The Industrial model applies an adjustment for size in the sales capitalization rate analysis and in the rent analysis.
- The CAP rate size threshold is maximized or capped 50,000 square feet.
- The current maximized capitalization rate adjustment for size is 1.76. An adjustment of 0.044 per every 1000 square feet about 10,000 square feet.
- The rent model applies a size adjustment of -2.53 per square foot greater than or equal to 65,000 square feet.
- The sales with site coverage larger than 30% and net building areas greater than or equal to 65,000 square feet less the -\$2.53 psf adjustment have cap rates that continue to trend upwards.
- There are no industrial sales between 50,462 square feet and 87,760 square feet with site coverage greater than 30%.

**B. Site Coverage**

- The City of Regina has employed a new methodology whereby a special site specific coverage adjustment is being applied to the Assessor's Modeled Base Cap Rate with the intention of reflecting excess land that is on the site.
- In determining the percentage of site coverage, being a major factor within the site specific coverage formula, the Assessor only considers the foot print of the buildings that are located on site. Such areas of the site that are covered with canopy's (sic), fuel tanks (above or below ground), business signage, garbage bins, etc. are not being considered within the site specific coverage formula.
- Nor, what has not been considered within the site specific coverage formula is the fact that there are City Bylaws that require a property owner to provide a certain level of parking areas for both tenants and customers. This also means that a certain area of land would also be required for the movement of automobiles.

### **C. Equity**

- Subsection 165(5) of the Act states that: equity in non-regulated property assessment is achieved by applying the market valuation standard so that the assessments bear a fair and just proportion to the market value of similar properties as of the applicable base date.

### **D. Market Valuation Standard**

- Subsection 136 (f.1) of the Act states: market valuation standard means the standard achieved when the assessed value of property is prepared using mass appraisal.
  - Subsection 163 (f3) (sic) defines the term mass appraisal as: the process of preparing assessments for a group of properties as of the base date using standard appraisal methods, employing common data and allowing for statistical testing.
  - In the Saskatchewan Court of Appeal Case, Sasco Developments Ltd. Vs. The City of Moose Jaw, 2012 SKCA 24, the Court on pg. 5, made it clear of its understanding of mass appraisal vs site specific values when it stated on pg. 5, the techniques associated with mass appraisal are grounded in the data common to a group of properties, whereas the techniques associated with single property appraisal are grounded in the main in data specific to a particular property.
8. The Board, at page 2 of their decision, found that the Appellant had raised a new ground of appeal relating to 1110 E Pettigrew. There was no request to amend the Notice of Appeal and therefore, the Board refused to hear any evidence or argument relating to the sale of 1110 E Pettigrew.



9. The Board rendered two decisions for the 54 appealed properties. The appeal decision for 2018-28100 dealt with the common elements for all 54 appeals. The Board's decision for appeal 2017-28122 dealt solely with the size adjustment. At page 3 of their decision the Board distilled the grounds of appeal down to:

Issue A: Did the Assessor err by applying a size adjustment to the base capitalization rate for warehouses?

Issue B: Has Equity been achieved?

Issue C: Has the Market Valuation Standard achieved?

10. As it relates to moving away from mass appraisal, the Appellant relied solely on the Court of Appeal decision in *Sasco*. The Appellant only presented opinions that the Assessor had erred. The Appellant provided **no evidence** to show how making an adjustment for site coverage is not staying within mass appraisal principles.

11. Under cross examination on this issue the Appellant stated:

- A size adjustment is also applied to the CAP rate in a similar fashion as the site coverage and the size adjustment does conform to mass appraisal (transcript pages 60 and 61 appeal book pages 800 and 801),

Q Then there's an area adjustment of 10,000 from 10,000 square feet higher per 1,000 square feet of a positive .044; is that correct.

A That's correct.

Q So if a property is 40 --or say 39,000 square feet, it will receive a different adjustment than a property that is 40,000 square feet; is that correct?

A Yes.

Q Does that adjustment conform to mass appraisal?

A Based upon *Sasco*--well, with respect to the *Sasco* interpretation it wouldn't, but based upon how the City's done it in various models, **I believe our position is that it is.**

- When pressed on the matter further, the Appellant's Agent then stated (page 61 of the transcript appeal book page 801):

Q So is it your position it does or doesn't conform to mass appraisal?

ARCHIE FIELDGATE: I think, Madam Chair, we'll have to leave this up to the Board to decide on the on this. The Court was quite clear they were talking about groupings of properties and I I know there's a fine line here, so I think we'll have to leave it up to the Board at the end of the day.

CHAIRPERSON: So then can I summarize in a fair way to both sides that, uh, Mr. Simpson's or your answer to Mr. Krismer's question would be that he is not going to directly answer the question but leave it up to the Board as a matter of interpretation?

ARCHIE FIELDGATE: That's correct, Madam Chair.

**Mr. Krismer**

Q And 'just to be clear then, and I want to and on that point, Madam Chair, and I thank you for that just to be clear then, there's no documentation that you have in your submission other than for the Court of Appeal's decision that states that the Assessor's site coverage adjustment doesn't conform to mass appraisal; is that correct?

A Yes.

Q And you would agree in *Sasco* that the issue there was applying the actual vacancy of the property in comparison to the typical vacancy of the group? You'd agree with that? The question was you'd agree that the issue that the Court was dealing in *Sasco* dealing with in *Sasco* was that dealing with applying the actual vacancy of the subject property in comparison to the typical vacancy for the group of properties; is that correct?

A Sure. Yes.

12. The Assessor, on the other hand provided the Board with substantial evidence that:

- adjustments for site coverage are used by other mass appraisal assessment jurisdictions in Canada such as Edmonton and BC (transcript page 289 to 292 appeal book pages 1029 to 1032),
- the adjustment for site coverage was found to be an important factor impacting the CAP rates through the use of MRA,
- the site coverage adjustment was determined based on a common set of information from the sales,
- the site coverage adjustment is applied to every property in a consistent manner,
- the site adjustment is not determined based on the actual performance of the property,
- The size adjustment to the CAP rate is the same type of an adjustment as the site coverage adjustment and the Appellant takes no issue with the size adjustment (transcript page 287 appeal book 1027),
- Other mass appraisal adjustments like the Land Size Multiplier (LSM) make adjustments based on the actual size of the parcel size (similar to the site coverage adjustment) and this is accepted as mass appraisal (transcript 286 appeal book 1026), and
- *Sasco* is not relevant to the case at hand.

13. As it relates the allegation that the Assessor omitted relevant market variables, legal requirements, surplus land utility and other attributing market factors when calculating site coverage, again, the appellant did not present any evidence to support this allegation. The Appellant simply presented his opinion of where he thought the Assessor erred.

- IB zone requires outdoor storage (transcript page 16 appeal book page 756),
- The zoning by-law sets that the land required for the building is more than just the foot print of the building (transcript page 18 appeal book page 758),
- The areas of the “Cost Buildings” (tanks, canopies) should be included in the site coverage calculations (transcript page 21 appeal book page 761),
- The value of the extra land or land that is not needed to support the existing improvement may have a different value than the land required for the improvement (transcript page 24 appeal book page 764),

- Every property needs a minimum amount of land for parking, driveways, etc (transcript page 25 appeal book page 765)
- The assessor will identify the land area needed to support the existing or ideal improvement and any remaining land is either excess or surplus (transcript page 26 appeal book page 766),
- The market valuation handbook includes characteristics used to classify warehouses which includes land / building ratios and expansion possibilities (transcript page 28 and 29 appeal book pages 768 and 769),

18(1)(b)

- The area of the “Cost Buildings” should be removed from the lot size (transcript page 42 and 43 appeal book pages 782 and 783).

14. While being cross examined on his evidence, it was established that:

- The Appellant did not have any evidence to support the allegation that the area of the “Cost Buildings” is to be removed from the lot size (transcript page 42 appeal book page 782),
- The value that is derived through the income approach only capitalizes the income associated with the building and there is no income associated with the land (transcript page 45 appeal book page 785),

18(1)(b)

18(1)(b)

- Due to the amount of opinion evidence and to establish the Agent's knowledge base when he suggested you should capitalize the sale price to get a new value, it was established, the Agent is not a member of and does not hold any appraisal designation from either the Appraisal Institute of Canada, the International Association of Assessing Officers nor the Saskatchewan Assessment Appraisers Association (transcript page 58 appeal book page 798),
- A size adjustment is also applied to the CAP in a similar fashion as the site coverage and the size adjustment does conform to mass appraisal (transcript pages 60 and 61 appeal book pages 800 and 801),
- The size adjustment is using a similar methodology to the CAP rate adjustment for site coverage,

- Properties with the same site coverage would get the same CAP rate applied to them (transcript page 67 appeal book page 807),
- The zoning bylaw does not require outdoor storage space but in fact allows for it (transcript page 69 appeal book page 809),
- Even though the Agent for the Appealing asserted that people would not purchase or lease properties with high site coverage, based on the Appellant's own materials, the sales show properties with a site coverage of up to 88% still sell (transcript page 70 appeal book page 810),
- Properties can have a site coverage of 88% and still conform to the City bylaws (transcript pages 70 and 71 appeal book pages 810 and 811),
- The handbook does suggest that land to building ratios, and expansion capabilities can be used to classify warehouses (transcript pages 71 and 72 appeal book pages 811 and 812),
- Site coverage would be contemplated in the design of the property and the expansion capabilities of the buildings and these are features contemplated in mass appraisal in Saskatchewan (transcript page 72 appeal book page 812),
- Contrary to the Appellant's original belief, when calculating site coverage, dealing with tanks, business signage, garbage bins, etc, the zoning bylaw does not take those items into consideration when calculating the required site coverage (transcript page 74 appeal book page 814),
- The Appellant has no evidence to support the statement that excess land or surplus land (extra land) in the Regina market is worth less than what the Assessor's model is applying (transcript page 76 appeal book page 816),
- The Appellant has no evidence to support the allegation that surplus land in Regina does not add to the value of an improved parcel (transcript page 78 appeal book page 818),

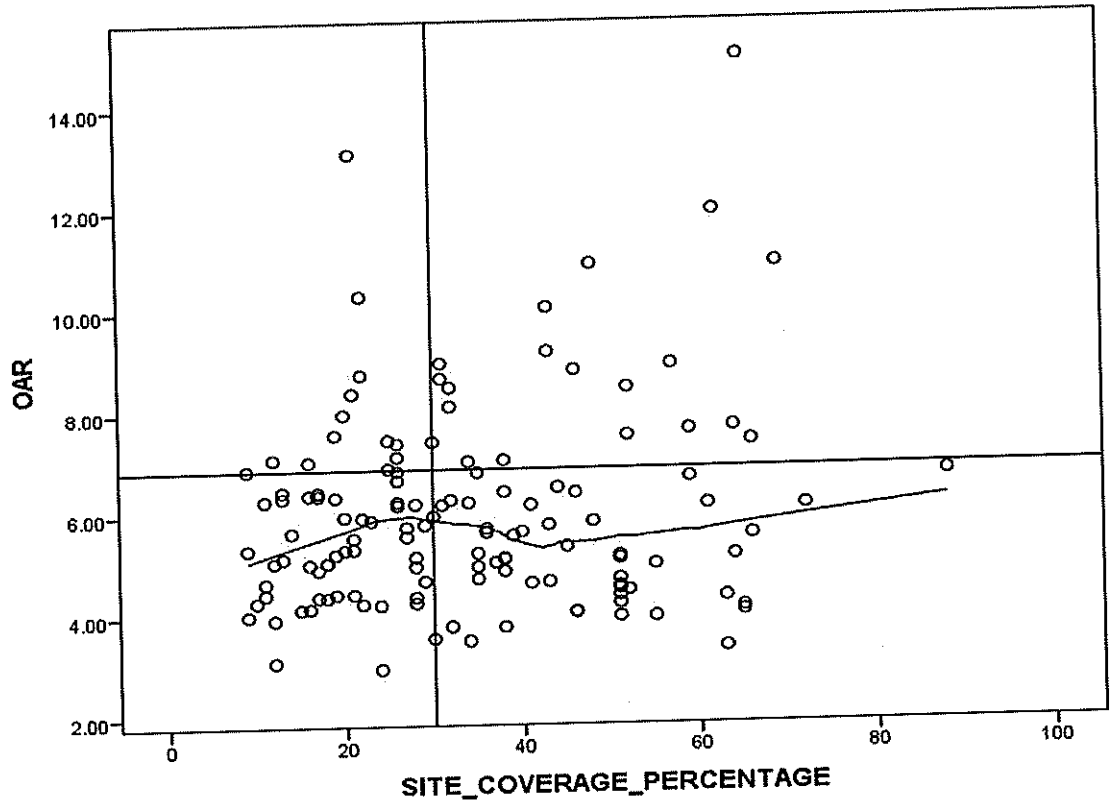
15. The Assessor, on the other hand, provided the Board with substantial evidence through their witness Ben Mario (Senior Planner with the City of Regina) that refuted the Appellant's allegations:

16. The Assessor, on the other hand, provided the Board with substantial evidence through their witness Ben Mario (Senior Planner with the City of Regina) that refuted the Appellant's allegations:

- The City of Regina zoning bylaw does not require industrial properties to have outdoor storage space, rather if you intend to have outdoor storage, only certain industrial zones allow for it (transcript page 248 appeal book page 988),
- The maximum site coverage for a property with IB (transcribed as IV) is 75% (transcript page 249 appeal book page 989),
- Only the foot print of the building is used to calculate the site coverage (when dealing with the zoning bylaw) and features like underground tanks, garbage bins, signage, outdoor storage racks, are not part of the site coverage calculation for zoning purposes (transcript pages 250 and 251 appeal book page 990 and 991),
- The zoning bylaw does not require loading docks (transcript page 252 appeal book page 992),
- As an example, a 1,500 square meter building would require a minimum lot size of 2,085 square meters (72% site coverage) to accommodate parking, loading docks, etc., in order to meet the City of Regina zoning bylaw and any land size beyond 2,085 square meters could be used to expand or develop further (transcript page 257 appeal book page 997),
- The subject property (2216 East Emmett Hall Road) has a site coverage of 4.4 percent and based on high level look, it appears the property could be subdivided into more than one lot without impacting the current use of the property and there appears to be extra land on the property (transcript pages 265 to 268 appeal book page 1005 to 1008).

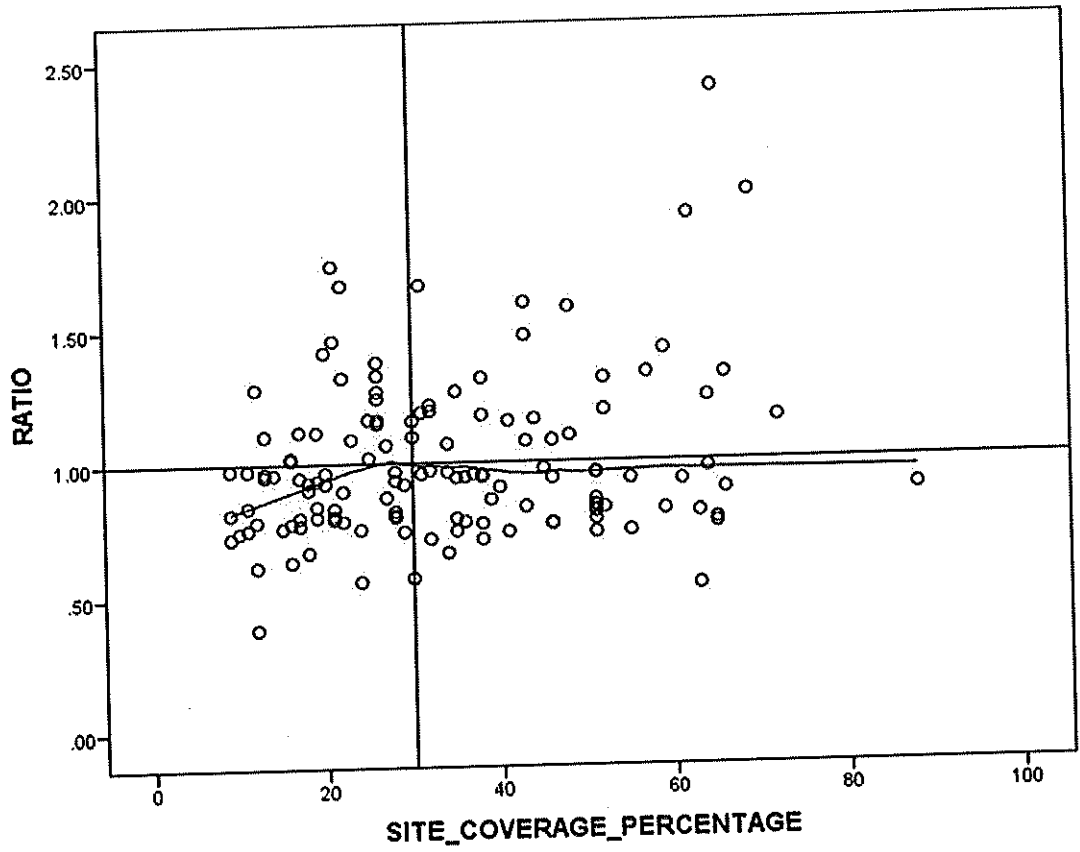
17. The Assessor, through their written submission to the Board also provided evidence to support the adjustment to the CAP rate for site coverage.

- The sales used to establish the CAP rate and CAP rate adjustments show that once the site coverage is less than 30% the calculated CAP rates decline (transcript pages 283 to 284 appeal book page 1023 to 1024),



- If the site coverage adjustment is removed from the analysis, the Assessment to Sales Ratio (ASR) for properties with a site coverage of less than 30% decline showing the values are moving further away from the target level of 1.00 (transcript page 285 appeal book page 1025),





**Case Processing Summary**

	Count	Percent
SITE_LT30 .00	73	53.7%
1.00	63	46.3%
Overall	136	100.0%
Excluded	0	
Total	136	

**Ratio Statistics for ESP\_INCOME / TASP**

Group	Median	95% Confidence Interval for Median			Coefficient of Dispersion
		Lower Bound	Upper Bound	Actual Coverage	
.00	.917	.846	1.016	96.6%	.235
1.00	.969	.884	1.063	95.7%	.202
Overall	.929	.889	1.004	95.2%	.224

The confidence interval for the median is constructed without any distribution assumptions. The actual coverage level may be greater than the specified level.

**Coefficients<sup>a</sup>**

Model: 3

	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
(Constant)	6.526	.242		26.916	.000
CONDO	-.865	.475	-.169	-1.822	.071
NET_AREA_10000	.041	.016	.218	2.523	.013
INDLMFG	-.941	.358	-.234	-2.629	.010

a. Dependent Variable: OAR

**Case Processing Summary**

	Count	Percent
SITE_LT30 .00	73	53.7%
1.00	63	46.3%
Overall	136	100.0%
Excluded	0	
Total	136	

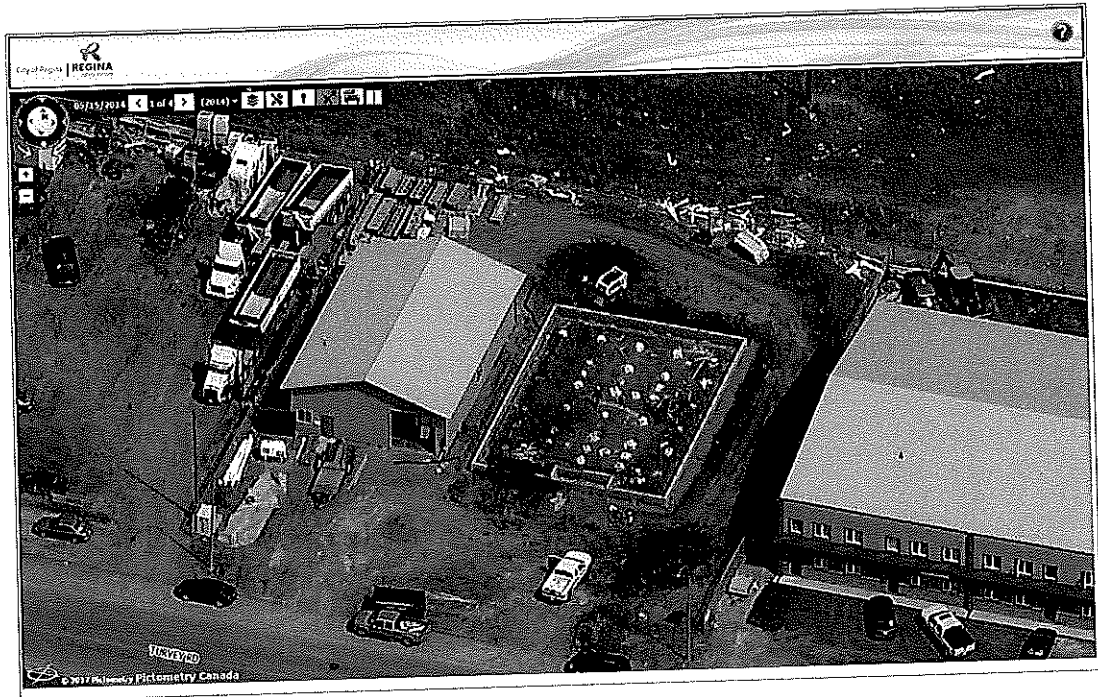
**Ratio Statistics for ESP\_INCOME / TASP**

Group	Median	95% Confidence Interval for Median			Coefficient of Dispersion
		Lower Bound	Upper Bound	Actual Coverage	
.00	.951	.893	1.069	96.6%	.239
1.00	.930	.831	.967	95.7%	.201
Overall	.944	.895	.965	95.2%	.222

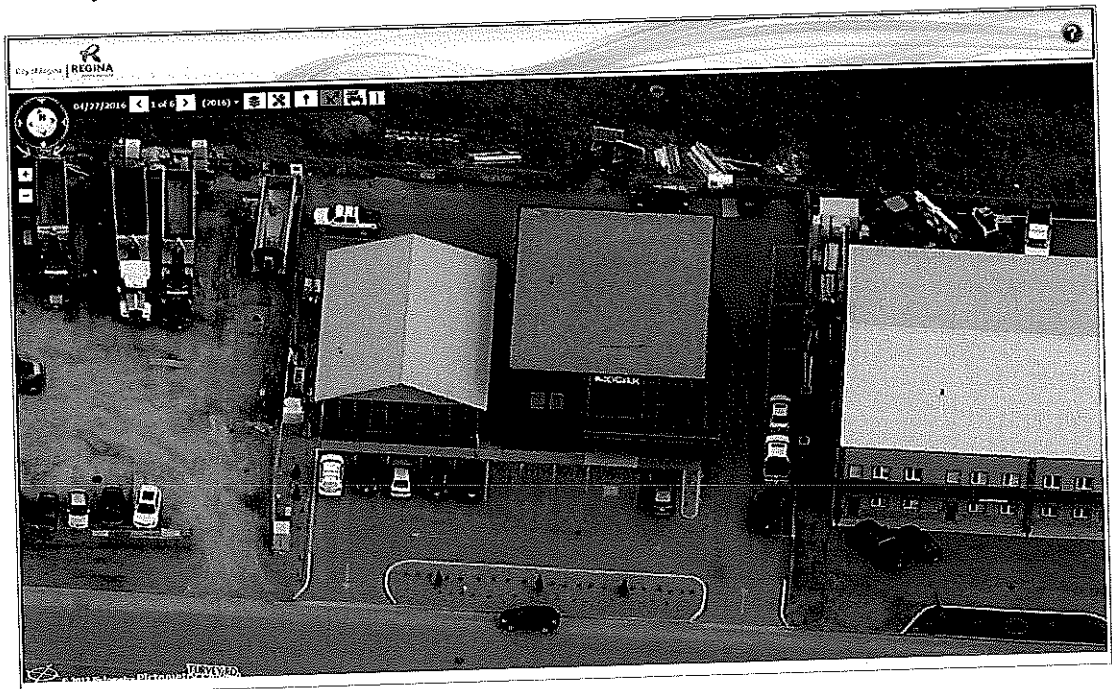
The confidence interval for the median is constructed without any distribution assumptions. The actual coverage level may be greater than the specified level.

- Properties with low site coverage (11% as an example) have expanded their property to at least 27% site coverage and still meet the zoning bylaw requirements (transcript page 297 appeal book page 1027),

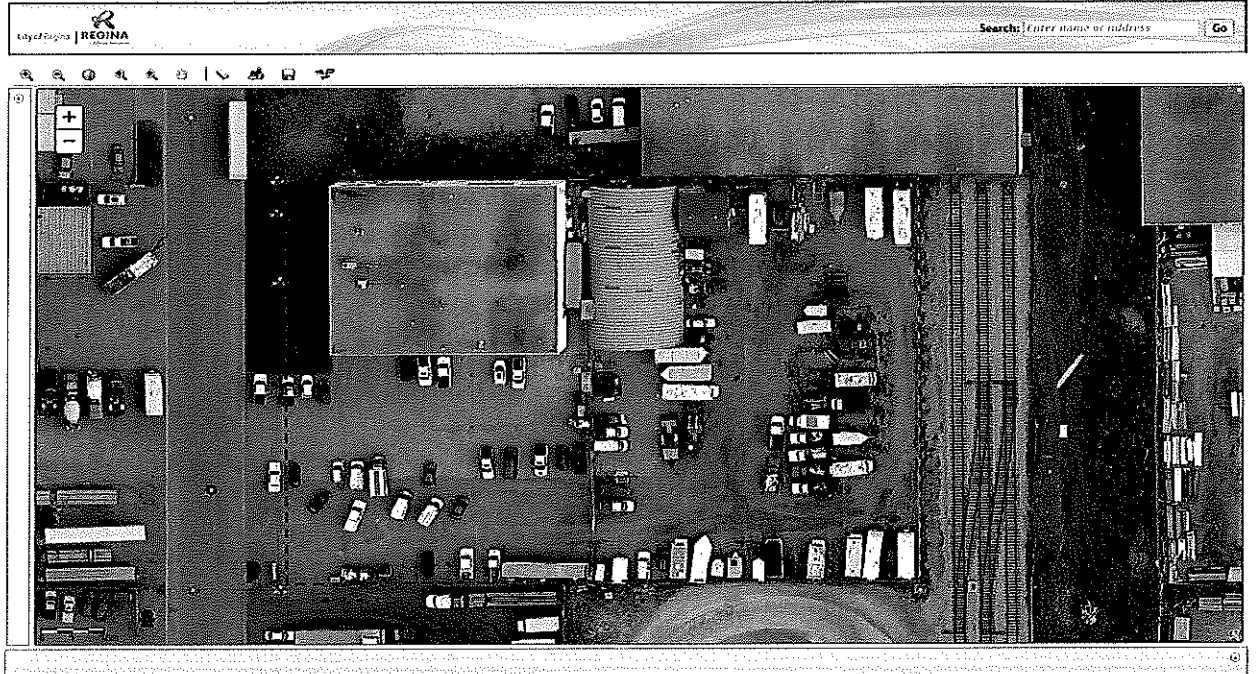
2102 Turvey Road 2014 (11% site coverage) shortly after time of sale



2102 Turvey Road as of 2016 (27.5% site coverage)



- Properties with low site coverage can use the extra land for a second purpose and still meet the requirements of the zoning bylaw (transcript page 294 to 295 appeal book page 1034 to 1035),



- If the site coverage adjustment is removed from the analysis, the base CAP rate changes from 6.862 to 6.526 and the assessment for all the properties with a site coverage of more than 30% would increase (transcript page 298 appeal book page 1038),
- The ASR's would decrease for all the sales with a site coverage of less than 30% (transcript pages 298 to 299 appeal book page 1038 to 1039),
- When calculating site coverage, it is standard appraisal practice to remove cost items from the calculation (transcript page 291 appeal book page 1031),
- The Assessor reviewed the photographs of the sales with a site coverage of less than 30% and the calculated CAP rate for each sale (Appendix C of the Assessor's written submission to the Board and transcript pages 302 to 308 appeal book page 1042 to 1048) and reviewed the site coverage of each sale,
- 1136 St. John Street, since the time of the sale, the new owners have sold the southern half of the land (transcript page 305 appeal book page 1045),
- 705 Henderson Drive has sold a portion of their property after the time of sale (transcript page 306 appeal book page 1046),
- 435 McDonald Street was 17% site coverage at the time of sale and is now 35% site coverage (transcript page 307 appeal book page 1047),
- 1575 Elliot was 21% site coverage at time of sale and is now 34% site coverage (transcript page 308 appeal book page 1048),
- The Appellant took no issue with any of the sales,
- The Appellant took no issue with the site coverage calculation of the sales,
- The Appellant took no issue with the fact that the site coverage variable was shown to be important in the MRA analysis,

18. As it relates the allegation that the Assessor erred by establishing a cut off at 50,000 square feet for the size adjustment. It was the Appellant's belief that the property cut off should be about 72,000 square feet. The Appellant simply presented his opinion of where he thought the Assessor erred and also introduced their witness (Mr. Volodin), to support the allegation that the size cut off should be 72,000 square feet.

19. The Appellant presented his opinion of where he thought the Assessor erred (pages 103 and 104 or the transcript appeal book pages 843 and 844).

- The Assessor has a cut off point of 50,000 square feet for the size adjustment in the CAP rate,
- The Assessor has a cut off point of 65,000 square feet for the adjustment within the rent model,
- If the rent adjustment is backed out of the two largest sales, the CAP rates trend upwards after 50,000 square feet,

20. While being cross examined (transcript 105 to 123 appeal book pages 845 to 863) by the Assessor it was established:

18(1)(b)

18(1)(b)

21. During a lengthy cross examination and as a result of the Appellant not being able to answer the questions, the Board (page 121 of the transcript appeal book page 861) had two observations:

- Mr. Simpson may be at a point where he feels he has answered those questions to the best of his ability and the Assessor may wish to make comment on the weight to be given to that,
- The Board fully understands the difference between the 95% confidence interval and 95% of the sales.

22. The Assessor continued his cross examination of the Appellant and it was found, again, another different data set was being used by the appellant.

- Q. But you didn't pull it out on the second largest sale? You didn't back out –
- A. No.
- Q. --that adjustment. I'm looking at your graph on page 9 of your rebuttal submission. There are two sales beyond 65,000 square feet.
- A. I did, it just wasn't included with this material
- Q. Another set of analysis?
- A. Yes.

23. The Appellant introduce their witness Mr. Volodin, to speak to the Chebyshev theorem. Mr. Volodin's testimony is found at pages 127 to 131 of the transcript (appeal book pages 867 and 871). Mr. Volodin stated:

- The theorem is estimating where a certain percentage of the data points are inside of this interval
- The theorem is not calculating confidence interval. They don't need confidence intervals
- The theorem is simply an interval estimation
- The witness wants 95 percent of their data points to be inside this interval

24. While being cross examined by the Assessor it was established (page 134 of the transcript appeal book page 874):

- When Mr. Volodin is completing his research, he prefers to have 95% of the data in his analysis and relies on the 19 out of 20 rule
- If the data being analyzed is not normally distributed, you would use the Chebyshev theorem to calculate the range in data points to include in your analysis

Q But you get out to saying if I'm going to do an analysis on a set of data and I want 95 percent of my data elements in that analysis, how far do I have to expand my upper threshold --

A Yes.

Q --to get 95 percent of the sales.

A Yes.

Q And that's what you've calculated here?

A Completely correct.

Q That in order to capture 95 percent of the 24 sales -

A Yes.

Q --you have to get out to 72,000 square feet.

A Yes.

Q And then from that you would do your analysis, whatever analysis you were doing?

A Below. Mmhmm.

Q Yeah. Just everything below.

A Yes.

Q But that wouldn't include anything above in that analysis below?

A No. They're both completely different, yeah.

Q Right. So in this case whether you're at 50,000 square feet or 50,400, and you do this theory -

A Mmhmm.



Q --calculate it out, you come out to 72,000 square feet, but you've added no more sales into the analysis 'cause there are no sales.

A Yeah.

- Even if you use the Chebyshev is theorem, there are no sales to analyse as they stop at 50,000 square feet.
- You would not include the two largest sales as they are different.

25. The Assessor presented his evidence as it related to the size adjustment. The Assessor's first witness was Scott Miller who was affirmed as an expert in Assessment and Assessment Statistics. Mr. Miller testified to (pages 144 to 146 of the transcript appeal book page 884 to 886):

- The Chebyshev theorem has nothing to do with calculating confidence intervals
- The Chebyshev theorem does not calculate break points
- Using this theorem, it estimates that 95% of the industrial properties in Regina will fall between 0 and 72,000 square feet but that has nothing to do with CAP rates
- Break points for rents or CAP rates are established by reviewing the data available
- You can not draw the conclusion that the sales are a true representation of the population, they are simply a sample of the population

26. The Assessor's second witness was Robert (Bob) Gloudemans who was affirmed as an expert to give opinion evidence on mass appraisal, model building, ratio studies and computer assisted mass appraisal (transcript page 154 appeal book page 894). Mr. Gloudemans testified to (pages 155 to 163 of the transcript appeal book pages 895 to 903):

- Working on a third mass appraisal text book with the IAAO in about 1978 there was some discussion about the Chebyshev theorem, but it was in the context of ratio studies
- Using the Chebyshev theorem in ratio studies, you could predict the percentage of ratios (Assessment to Sales Ratios) that would fall within various standard deviations of the mean

- This theorem has never been used (to his knowledge) in appraisal
- The Chebyshev theorem is not a tool to stratify sales by
- In his opinion, based on the sales above 50,000 square feet, there is no support to keep increasing the CAP rate adjustment
- It is typical for these the overall rates (CAP rates) to level off at some size
- In his opinion, there is no evidence and no support to extend beyond 50,000 square feet
- In his opinion, the adjustment applied at the 50,000 square foot mark (which is also applied to every property over 50,000 square feet) is pretty deep and is a considerable adjustment
- It is typical to have a different threshold within the rent model and within the CAP rate model

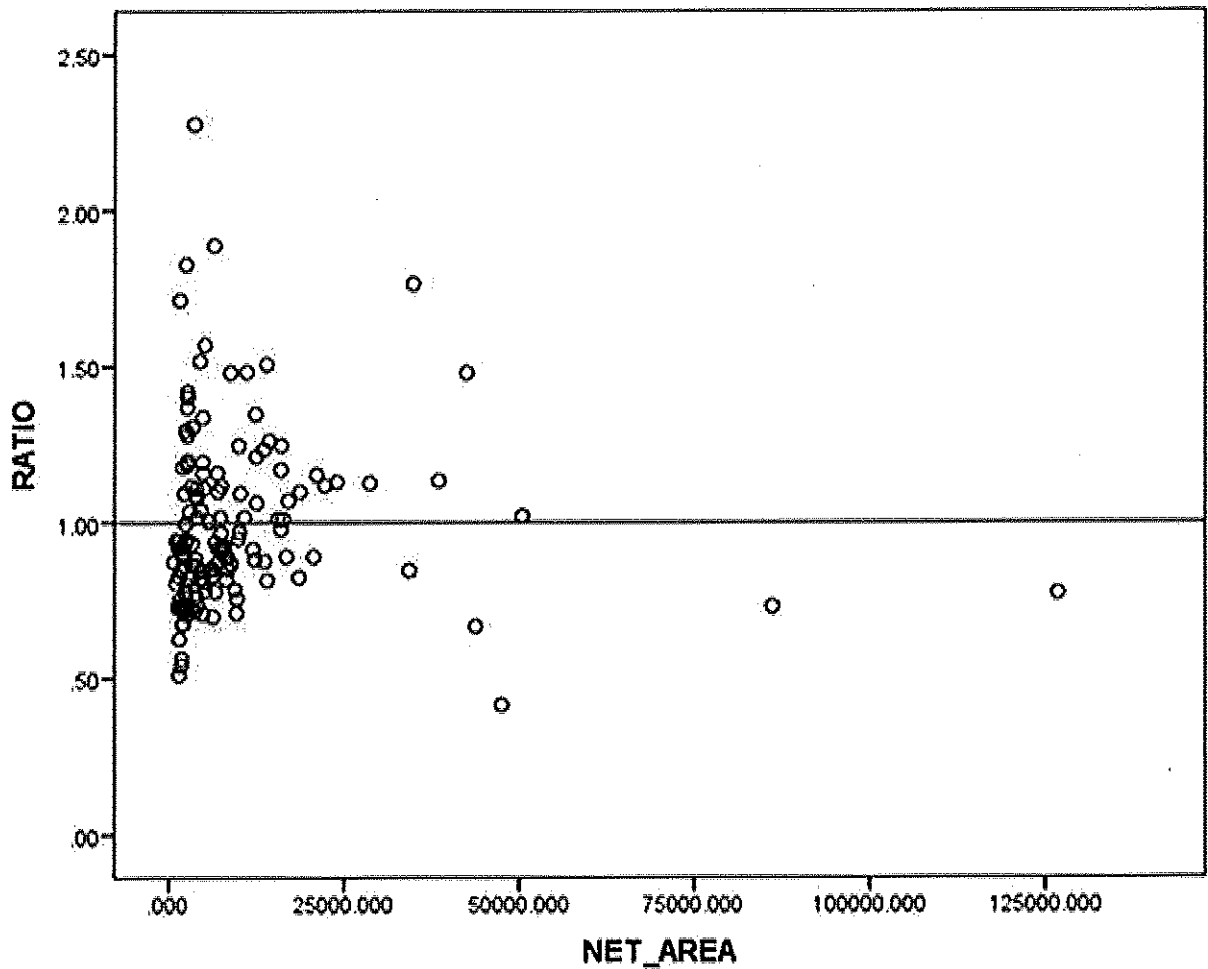
27. Under cross examination by the Appellant, Mr. Gloudemans stated:

- The sales above 50,000 square feet are comparable to the sales less than 50,000 square feet because they are all industrial properties
- The adjustments within the Assessor's CAP rate model are consistent with what you normally find and with appraisal theory
- The only place he has seen the Chebyshev theorem in mass appraisal is in the context of ratio studies and even at that, he has only seen it in a text book
- He has never seen anyone use this theorem in the real world
- By applying MRA to establish CAP rates meets a mass appraisal principle
- The advantage of using MRA over medians in calculating CAP rates or rent model, is that it allows you to recognize the various differences that are relevant to the market and it is objective and the rents and CAP rates are rooted in the data rather than someone's opinion

28. The balance of the Assessor's evidence and argument relating to the size adjustment were contained in the Assessor's written submission to the Board and are contained in the transcript at pages 188 to 207 (appeal book page 928 to 947). The Assessor stated:

- The size adjustment is both a positive and negative adjustment to the CAP rate

- The positive (increasing the CAP rate) is applied to all properties over 10,000 square feet. The maximum adjustment is 1.76 (((base Cap rate +((50,000 – 10,000)/1000 x 0.44))
- The negative (decreasing CAP rate) is applied all properties less than 10,000 square feet. The maximum adjustment is -0.396 (((base Cap rate +((1,000 – 10,000)/1000 x 0.44))
- The formula (just for size) is (((base Cap rate +((building net area – 10,000)/1000 x 0.44))
- The Assessment to sales ratios (ASR) do not support a further adjustment as the two largest sales are actually showing they are below the target level of 1.00 already

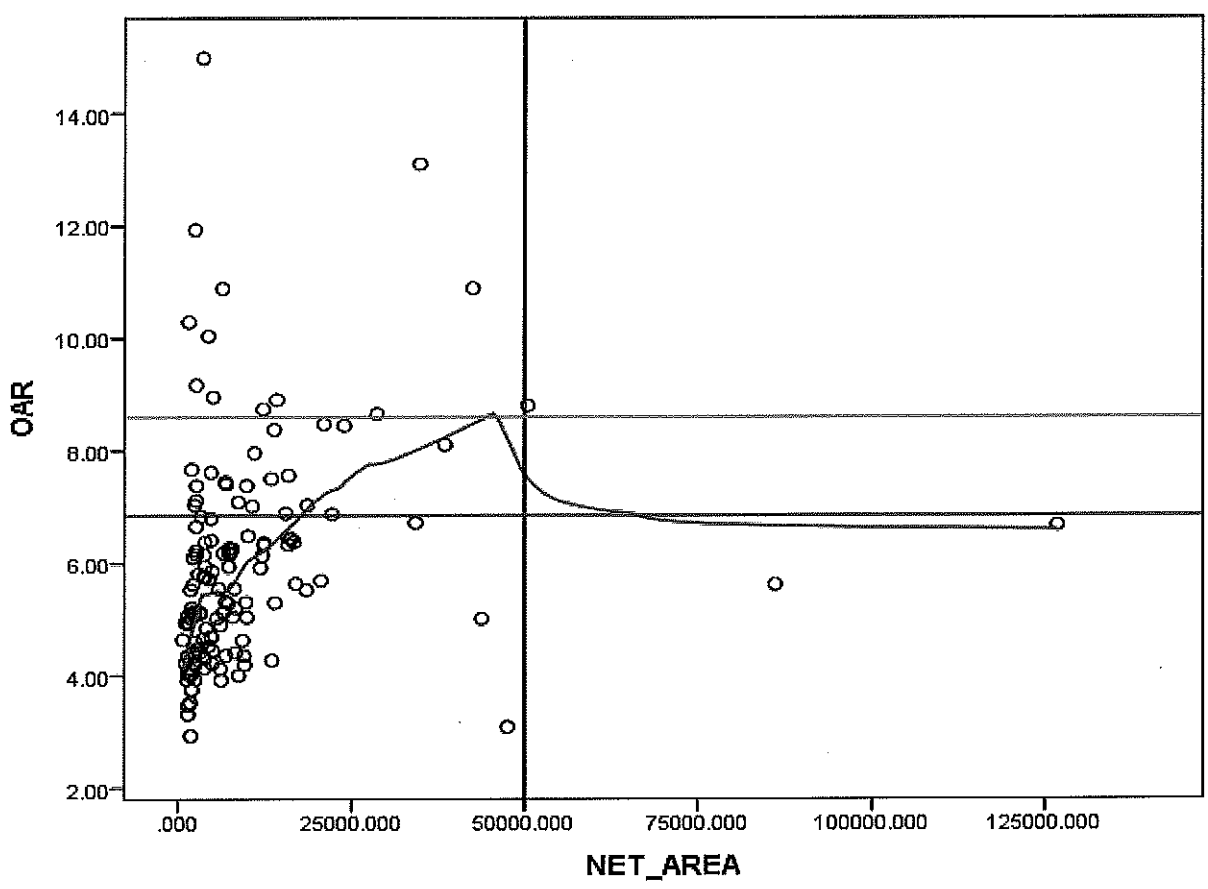


Case Summaries<sup>a</sup>

	ACC_ID	ADDRESS	NET_AREA	OAR	Unstandardized Predicted Value	RATIO
1	10014003	1110 E PETTIGREW AVENUE	126799.992	6.67	8.63090	.77
2	10018633	420 HOFFER DRIVE	50461.999	8.80	8.63090	1.02
3	10018674	580 PARK STREET	86180.006	5.61	7.69077	.73
Total	N	3	3	3	3	3

a. Limited to first 100 cases.

- The calculated CAP rates for the two largest sales do not support the allegation that the CAP rates are still increasing past 50,000 square feet



- In Saskatchewan, the Assessor must use all the sales and not just 95% of the sales and therefore the Chebyshev theorem has, at a minimum, no part to play in Assessment in Saskatchewan when calculating CAP rates

29. The Board, in their 9 page decision for 2017-28122 (lead appeal for size adjustment), walked through the evidence and argument presented by both the Appellant and the Assessor and found that the Appellant had failed to provide any evidence of an error on the Assessor's part. The Board found:

- The Appellant takes no issue with the adjustment for size to the CAP rate and if the size adjustment were changed, the capitalization rate would decrease, and the assessed values would go up
- The Appellant introduced the Chebyshev's theorem
- The Appellant's witness Mr, Volodin was accepted as an expert in mathematics and statistics
- Mr. Volodin does not have any direct knowledge or experience in the practice of assessment
- The Assessor's witness, Mr. Gloudemans, was accepted as an expert witness and he is a former Senior Research Associate for the IAAO who specialized in mass appraisal model building and ratio studies.
- Mr. Gloudemans testified that it would not be appropriate to apply the Chebyshev theorem to assessment methodology
- The Assessor must use all the sales and cannot make decision to simply delete certain size sales in his analysis
- The Assessor's statistical analysis does not support an adjustment beyond 50,000 square feet
- The Appellant failed to prove the Assessor erred

## PART II JURISDICTION AND STANDARD OF REVIEW

30. The following is a list of properties for which this appeal pertains to:

Ppty#	AAC Appeal Number	BOR Appeal Number	Appellant	Civic Address or Legal Description	Roll Number	Original Assessed Value
22	2017-0069	2017-28122 (Lead)	Abcomp Holdings Ltd.	610 Henderson Drive	10018730	\$6,163,100
23	2017-0097	2017-28125	Acklands-Grainger Inc.	680 McLeod Street	10018652	\$4,767,400
24	2017-0079	2017-28089	101161069 Saskatchewan Ltd.	1735 Francis Street	10218234	\$15,304,400
25	2017-0075	2017-28084	Whiterock Crestonere Regina Inc.	155 N Leonard Street	10018732	\$8,638,000
26	2017-0089	2017-28108	Whiterock 402 McDonald Street Regina Inc.	402 McDonald Street	10018639	\$6,762,500
27	2017-0094	2017-28121	Whiterock 603 Park Street Regina Inc.	603 Park Street	10022484	\$10,422,300
28	2017-0096	2017-28124	Whiterock 651 Henderson Drive Regina Inc.	651 Henderson Drive	10018737	\$9,522,400
29	2017-0086	2017-28102	Whiterock 310 Henderson Drive Regina Inc.	310 Henderson Drive	10018701	\$30,715,800
30	2017-0077	2017-28086	Eco Heating Products Ltd.	1600 E Ross Ave	10112642	\$6,738,200
31	2017-0093	2017-28119	Consumers Co-operative Refineries Limited	580 Park Street	10018674	\$5,945,700
32	2017-0095	2017-28123	Sherwood Co-operative Association Limited	615 N Winnipeg Street	10008850	\$7,829,200
33	2017-0099	2017-28127	855 PARK STREET PROPERTIES GP LTD.	855 Park Street	10022488	\$15,132,100
34	2017-0090	2017-28111	JOHN DEERE CANADA LLC	455 Park Street	10018672	\$14,252,800
35	2017-0069	2017-28074	N & T Properties Ltd.	115 McDonald Street	10018734	\$5,658,500
36	2017-0078	2017-28087	Loblaw Properties West Inc.	1700 Park Street	10033930	\$10,107,600
37	2017-0081	2017-28094	101143561 SASKATCHEWAN LTD.	2101 Fleming Road	10247034	\$104,355,400
38	2017-0078	2017-28129	Loblaw Properties West Inc.	921 Broad Street	10151105	\$5,214,600
39	2017-0098	2017-28126	MASTERFEEDS GP INC	745 Park Street	10022485	\$6,405,700
40	2017-0076	2017-28085	1575 ELLIOTT STREET PROPERTIES LTD.	1575 Elliot Street	10033463	\$5,727,300
41	2017-0083	2017-28098	2201 - 1ST AVENUE HOLDINGS LTD.	2201 1st Avenue	10022119	\$6,867,100
42	2017-0071	2017-28077	Hoopp Realty Inc.	12202 Ewing Avenue	10264262	\$22,529,800
43	2017-0087	2017-28103	Tiger Fera Investment Inc.	316 E 1st Avenue	10241453	\$8,648,100
44	2017-0070	2017-28076	605114 Saskatchewan Ltd.	1155 Park Street	10028466	\$7,175,500
45	2017-0080	2017-28092	Postmedia Network Inc.	1964 Park Street	10033929	\$9,834,800
46	2017-0074	2017-28083	101055353 Saskatchewan Ltd	1450 Park Street	10027989	\$11,383,200
47	2017-0072	2017-28078	Ralph McKay (Canada) Limited	130 Hodsman Road	10013949	\$5,421,200
48	2017-0073	2017-28081	WestRock Company of Canada Inc.	1400 1st Avenue	10022143	\$8,064,500
49	2017-0082	2017-28097	Saskatchewan Telecommunications Holding Corporation	2133 1st Avenue	10022117	\$10,152,600
50	2017-0084	2017-28099	3346286 Manitoba Limited	221 N Winnipeg Street	10018625	\$10,919,900
51	2017-0091	2017-28114	Warner Bus Industries Ltd.	515 1st Avenue	10022404	\$9,133,500
52	2017-0092	2017-28116	Western Limited	555 Henderson Drive	10018759	\$9,652,100
53	2017-0088	2017-28107	Sackick Holdings Ltd	4000 E Victoria Avenue	10268997	\$8,921,200
54	2017-0085	2017-28101	CWS logistics Ltd.	250 Henderson Drive	10014005	\$25,977,600

31. Section 216 of *The Cities Act* (the Act) provides that if a party is dissatisfied with a decision of the Board then the aggrieved party may appeal to the Committee. Section 226 of the Act sets out the Committee's authority in rendering its decision after reviewing a Board's decision. The Court of Appeal for Saskatchewan in *Corman Park (Rural Municipality) v 618421 Saskatchewan Ltd., 2018 SKCA 29 (CanLII)* reaffirmed the roll of the Committee and that they are to decide of the Board erred based on the record of the Board. The Court stated:

[57] This Court has previously addressed how the Committee's appellate role affects the exercise of the Saskatchewan Municipal Board general powers under s. 20 of *The Municipal Board Act* and under *The Public Inquiries Act*, RSS 1978, c P-38 [*The Public Inquiries Act, 1978*]. In *Saskatchewan Municipal Board v First City Trust* (1996), 148 Sask R 298 (CA) [*First City Trust*], where a taxpayer submitted that the Committee had not erred by hearing a matter *de novo*, Gerwing J.A. referred to *Regina (City) v Laing Property Corp.*, [1995] 3 WWR 551 (Sask CA) at 559–560 [*Laing*], and wrote:

... If the Board of Revision leaves an inadequate record, the Board may use its powers to make the issues more clear. If the record contains sufficient information, the Board should consider the appeal on that basis, without investigating further. However, parties who intentionally fail to call proper evidence before the Board of Revision should not be allowed to call evidence before the Board. Such an approach would create inefficiencies in the appeal process. Of note is Bill 70 of 1996 where the amended s. 263.1 of *The Urban Municipality Act, 1984*, S.S. 1983-84, c. U-11, sets out a similar procedure. The legislature has indicated its intention as predicted by *Laing*. Accordingly, the Board did exceed its jurisdiction. ...

[58] As Gerwing J.A. stated, although the Legislature has made broad, general powers available to the Saskatchewan Municipal Board under *The Municipal Board Act* and *The Public Inquiries Act, 2013*, the Legislature has also in *The Municipalities Act* narrowly restricted what the *Committee* can do or affect through the exercise of those powers. It has done so by establishing a right of *appeal on the record* to the Committee against the decision of a board of revision, not a right to a hearing *de novo*. A number of provisions of *The Municipalities Act* specifically limit the broad statutory powers of the Saskatchewan Municipal Board when it acts through the Committee.

32. While the Appellant may be dissatisfied with the Board's Decision that does not mean that the Board erred. Without sufficient evidence contradicting the Assessor's evidence, the Board made its Decision based on the evidence before it.

### PART III ARGUMENT

33. The Appellants', in their Notice of Appeal to The Assessment Appeal Committee of the Saskatchewan Municipal Board (the Committee), have alleged the Board erred 7 times in their decision. The allegations are that the Board erred by:

1. Failing to provide written reasons as to how it came to its conclusion in dismissing the appeal. Natural justice dictates that an Appellant has the right to know why an appeal has failed. Further, subsection 210(5) of the Cities Act speaks to Board of Revision decisions being sent to each party together with written reasons for the decision.
2. Under what the Board references as being the Board's Analysis and Conclusions there are also Facts thrown into the mix which creates more confusion as to why the Appellant's appeal failed.
3. In the particular Lead Case #2017-28122, in the last paragraph on page 6 of the Board's decision, it states that the Appellant's witness, Andrei Volodin was qualified by the Board as an expert in mathematics and statistics. Yet in the very next paragraph, top of page 7, it states that the witness admitted that he does not have any direct knowledge or expertise in the practice of assessment or assessment law. Without proper reasoning being set out by the Board, the Appellant has no idea if the Board relied on this latter point to ignore the witness when he spoke about the Chebyshev's Theorem for an example. If so, that would have been an error by the Board as Mr. Volodin was never qualified as a person with expertise in the assessment practice and assessment law in the first place.
4. Put another way, the Board erred by ignoring the rules and principles associated with the application of the Chebyshev Theorem whereby



number of K deviations of the mean will result in a cut off for size greater than 50,000 square feet in the determination of capitalization rate adjustments.

5. In the Lead Case #2017-28100, in the very first paragraph, under Analysis and Conclusions, the Board states that the Appellant, Ryan Simpson (who was really the Agent for the Appellant) is not licensed to practice assessment in Saskatchewan not is he a member of several recognized assessment related organizations that were listed by the Assessor. The fact this was the first comment to be made by the Board under Analysis and Conclusions, it begs the questions if this was the mind set of the Board with respect to all 54 appeals and explains for the lack of written reasons. If that is the case, this is clearly another error made by the Board and is not supported by Legislation. Is the Board putting forth the proposition that an Appellant / Tax Agent in Saskatchewan has to carry a license to practice assessment in Saskatchewan in order to appear before a Board of Revision to conduct an assessment appeal?
  
6. In the first paragraph on page 8 of the Lead case 2017-28100, the Board addressed a separate issue that pertained to four properties that were recently annexed into the City. The applicable appeal numbers were 28107; 28122; 28110; and, 28113. Again the error that here by the Board is not properly stated reasoning. The Board stated that the properties do not have sewer service but the Assessor disagrees. The facts before the Board was that these properties rely on septic Tanks Pump Out Service which is certainly not being serviced by the City's Sewage system.
  
7. The bottom line is that the Board of Revision failed to provide its thought process through properly stated written reasons when addressing the

evidence and argument that was presented by Altus Group for all 54 Appeals.

### **PRELIMINARY MATTERS**

34. At the Board hearing for the present appeal, it was the request of the Appellant to have the evidence and argument for appeal #2017-28100, 2216 East Emmett Hall Road be heard first and that all that evidence and argument be carried forward to the balance of the Appeals as it related (Group A)
35. The Notice of Appeal for the 33 appeals listed previously (Group B) were all the same and included grounds that were not part of the Group A appeals.
36. The Board started out by allowing the Appellant to put forward their evidence and argument relating to the 21 Group A appeals and the lead case of 2017-28100.
37. Both the Appellant and the Assessor had witnesses present to address the additional ground of appeal in the second lead appeal for 2017-28122, 610 Henderson Drive. The witnesses were only available on the first day of the hearings and as such, after the Appellant had presented their case for 2017-28100, the Board adjourned that hearing and opened up the hearing for appeal 2017-28122.
38. Both the Appellant and the Assessor proceeded to call their witnesses relating to the additional issue only. In doing so, the Board made sure that the testimony of the witnesses would be complete on the first day of the hearings.
39. After hearing the evidence for appeal 2017-28122 (additional grounds of appeal), the Board then reconvened the hearing for 2017-28100.

40. The Appellant's have filed the exact same notice of appeal for the 54 properties before the Committee today notwithstanding the notices of appeal before the Board were not the same.

### **Preliminary Issue 1**

41. It is respectfully submitted that the notices of appeal to the Committee have not identified an error in the Board's decision. It appears the allegation is solely that:

- the Board did not provide written reasons,
- the Board did not send their decision to each party with written reasons,
- the Board did not give the required weight to the Appellant's witness, and
- the Board failed to provide its thought process.

42. At no time has the Appellant alleged that the Board erred in dismissing the appeal based on the alleged errors. Those being:

- mass appraisal,
- how to properly calculate site coverage, and
- the 50,000 square foot threshold

43. Recently, the Court of Appeal for Saskatchewan confirmed the requirement for a properly framed notice of Appeal. In *Corman Park (Rural Municipality) v 618421 Saskatchewan Ltd.*, 2018 SKCA 29 (CanLII), (*Corman Park*) stated:

[34] Key to its foundational role is the requirement that every notice of appeal set out the *specific grounds* on which it is alleged an error exists (s. 225(6)(a)). What this means, for taxpayer appellants, is that their notice of appeal *must allege a specific error* either in the valuation or classification of the property (s. 225(1)(b)(i)) or in the preparation of or the content of the relevant assessment roll or assessment notice (s. 225(1)(b)(ii)). This may pose some difficulty for taxpayers, and particularly self-represented taxpayers, but it serves to force all prospective appellants to carefully consider whether there is a basis for their objection to an assessment before launching an appeal. Embarking on a poorly-framed or misguided assessment appeal does not serve the interests of anyone, clogs the

assessment appeals process and, ultimately, undermines the taxpayers' sense of fairness and justice. Indeed, the Legislature has established an assessment appeal regime that, in all its aspects, reinforces the importance of properly framing the allegations of specific error at the outset. **In particular terms, s. 247(5) provides that if an appellant does not serve a notice of appeal "in accordance with this section," the appeal is "deemed to be dismissed."**

44. It is submitted, the Appellant has failed to identify where specifically the Board erred in their decision as it relates to the assessment of the property. Without any specifics, and following the guidance of the Court of Appeal, subsection 217(5) of the Act requires that the appeal be dismissed.
45. Further, since receiving the Appellant's written submission to the Committee, it appears the Appellant has abandoned most if not all the grounds of appeal set out in their notice of Appeal. The Appellant is now alleging:
- The Board erred by not addressing the site coverage issue before them and failing to provide sufficient written reasons in the decision. Further, it appears the Board erred by relying on non-relevant and misconstrued evidence in coming to its conclusion.
  - Essentially, the Board erred by confirming an assessment that does not reflect the market valuation standard.
46. In the Appellant's written submission, the Appellant now raises an issue of comparability and does not address the main focus of appeal before the Board. With respect, the issue of comparability and using a "broad brush" approach were not issues raised before the Board.
47. The issue before the Board was that, based on the Court of Appeal decision in *Sasco*, the Assessor, in his use of a site coverage adjustment to the CAP rate, has moved away from mass appraisal and is applying single property appraisal techniques. At no time did the Appellant ever allege that the sales were not comparable to the subject property.

48. The transcript, on pages 10 to 14 (appeal book pages 750 to 754), includes the basis for the Appellant's allegation of error. It was the Appellant position that the site coverage adjustment was not mass appraisal and relied solely on the *Sasco* case to support this foundation. However, at no time did the Appellant suggest that the sales were not comparable.

49. As mentioned above, this is exactly what the Court of Appeal was trying to address. Grounds of appeal need to be specific. As well, the Court of Appeal in *Corman Park* was clear that the Committee is to decide, based on the record of the Board and the grounds of appeal before the Board, if the Board erred. It is not open to the Committee to decide issues that were not placed before the Board. The Court stated:

[58] As Gerwing J.A. stated, although the Legislature has made broad, general powers available to the Saskatchewan Municipal Board under *The Municipal Board Act* and *The Public Inquiries Act, 2013*, the Legislature has also in *The Municipalities Act* **narrowly restricted what the Committee can do or affect through the exercise of those powers. It has done so by establishing a right of appeal on the record to the Committee against the decision of a board of revision, not a right to a hearing de novo.** A number of provisions of *The Municipalities Act* specifically limit the broad statutory powers of the Saskatchewan Municipal Board when it acts through the Committee. (emphasis added).

50. A search of the transcript reveals that, when dealing with the issue of site coverage adjustment, the word comparability was not used once by the Appellant. This makes it abundantly clear that the issue of comparability was not an issue before the Board.

51. As it relates to the size adjustment, and comparability being raised at the Committee, The Assessor raised his objection at the Board hearing suggesting the issue of comparability is new and was only being raised in the closing arguments by the Appellant (transcript page 224 appeal book page 964).

52. The Notice of Appeal for the subject property does not contain the allegation that the sales were not comparable. Further, a review of the 361 page transcript finds the word comparable (comparability) 26 times. Mostly used by the Assessor quoting a decision from the Court of Appeal. In fact, the word comparable (comparability) was used only 6 times by the Appellant.

53. It is submitted that the Committee find that the issues now being raised by the Appellant are not grounds of appeal that were before the Board. As well, since the Appellant has failed to address the original grounds of appeal in their Notice of Appeal to the Committee, that the Committee dismiss the appeal completely.

### **ISSUE 1a**

Did the Board err by failing to provide written reasons?

54. No.

55. It is clear that the Board did provide a written decision which in fact was 9 pages long (18 pages when both decision are read together). If the Appellant is of the belief that the decision of the Board of Revision did not provide sufficient reasons, again, this can not be supported.

56. As mentioned earlier, the Appellant was of the belief that, based solely the *Sasco* decision of the Court, the Assessor had erred by not using mass appraisal techniques when the site coverage adjustment was determined. However, the Appellant presented no evidence to support this allegation and did not show how the *Sasco* decision related to the subject appeal.

57. It has been long held by the Court of Appeal for Saskatchewan that the Assessment is presumed correct. As well, it has been long held that the onus rests with the

Appellant to provide evidence of an error. It is a requirement of the Appellant to provide more than just an allegation of an error, it is the responsibility to provide evidence of an error. In the case at hand, the Appellant provided no evidence, simply an allegation.

58. On the other hand, even though the Appellant provided no evidence, the Assessor provided substantial evidence that the site coverage adjustment to the CAP rate does conform to mass appraisal principles.

59. The Board, in their decision stated:

However, the Assessor calculated a capitalization rate for each property in order to determine a base capitalization rate of 6.862 to be applied to all properties. The economic capitalization rate analysis was based on 132 sales between January 2011 to December 2014. The base capitalization rate was further adjusted for specific site coverage.

The Board finds that this does not constitute single appraisal because aggregate data was used to determine a base capitalization rate of 6.862 with further adjustments for specific site coverage. Adjustments for site coverage are not uncommon as other jurisdictions use site coverage adjustments.

60. Although short, the Board was convinced based on what the Assessor had provided that the base CAP rate was calculated using 132 sales (mass appraisal). As well, using the 132 sales, the Assessor also calculated an adjustment to the base CAP rate for site coverage (mass appraisal). As well, the Board also found that that other assessment jurisdictions also make adjustments for site coverage and that the base CAP rate and the adjustment for site coverage was determined using aggregate data.

61. This is all the Board needed to do as the Appellant even said it is up to the Board to decide.

CHAIRPERSON: So then can I summarize in a fair way to both sides that, uh, Mr. Simpson's or your answer to Mr. Krismer's question would be that he is not going to

directly answer the question but leave it up to the Board as a matter of interpretation?

ARCHIE FIELDGATE: That's correct, Madam Chair.

62. As argued before the Board, the Assessor relied on 132 sales (not 1 or 2) to develop both the base CAP rate and the site coverage adjustment. It can only be concluded that this is mass appraisal.
63. Further, the Appellant left it to the Board for interpretation and that is what they did. The Board found that the Assessor had not erred and that the Assessor's work did conform to mass appraisal principles. What more does the Board need to say?
64. Based on the lack of evidence by the Appellant and based on the fact the Appellant would not answer the questions of the Assessor, what more does the Appellant expect the Board to say other than they believe the Assessor's adjustment does conform to mass appraisal.
65. As well, in appeal 2017-28173 which was heard by the Board of Revision 8 days after hearing the subject appeals, and was also represented by the same Agent, and on the same issue of applying a site coverage adjustment within the retail model, the Agent changed their opinion and agree that the site coverage adjustment does conform to mass appraisal.:

Q And you would agree that the size adjustment is specific to the size of the parcel as well?

A Yes, that's correct.

Q And you would agree that that model confirms to the mass appraisal principles? You'd agree with that?

A It's -- it's becoming apparent it appears to be, 'cause based on what I heard last week it's just I'm -- I guess the position I'm taking, Mr. Krismer, because I have a lot of clients I could explain a lot of things to about this



particular because they're concerned about it, so I would agree what you're saying today, yes.

Q That that -- that confirms to the mass appraisal practice?

A Appears to be, yeah.

Q -- to the extent -- I'm just asking you that what I'm hearing now, am I correct in hearing that you agree that the site coverage adjustment is in fact a mass appraisal principle?

A It's kind of leaning that way, Mr. Krismer.

66. As it related to the Appellants allegation that the Assessor omitted relevant market factors, again, the Appellant did not provide any evidence of an error. In fact, it was the allegation of the Appellant that the City, through its' zoning bylaw, requires industrial properties to have an abundance of land such that the site coverage would be less than 30%. Through the Assessor's witness, Ben Mario, it was established that:

- the City's zoning bylaw does not require industrial properties to have so much land that their site converge is less than 30%.
- the City of Regina zoning bylaw does not require industrial properties to have outdoor storage space, rather if you intend to have outdoor storage, only certain industrial zones allow for it (transcript page 248 appeal book page 988),
- The maximum site coverage for a property with IB (transcribed as IV) is 75% (transcript page 249 appeal book page 989),
- Only the foot print of the building is used to calculate the site coverage (when dealing with the zoning bylaw) and features like underground tanks, garbage bins, signage, outdoor storage racks, are not part of the site coverage calculation for zoning purposes (transcript pages 250 and 251 appeal book page 990 to 991),
- The zoning bylaw does not require loading docks (transcript page 252 appeal book page 992),

- The subject property (2216 East Emmett Hall Road) has a site coverage of 4.4 percent and based on high level look, it appears the property could be subdivided into more than one lot without impacting the current use of the property and there appears to be extra land on the property (transcript pages 265 to 268 appeal book page 1005 to 1008).

67. The Board, in their decision stated:

In accordance with the City of Regina Zoning by-law, the site coverage is determined by calculating the land to building ratio by dividing the main floor area of the building by the total lot size. The main floor area of the building does not include underground tanks, above ground tanks, business signage, bins, etc. The Assessor referred to an example where the land to building ratio was 6,250 square feet divided by 20,000 square feet of building for 31% site coverage.

The Appellant stated that surplus land is not worth as much but the Assessor disagreed. Surplus land can be sold, leased or used for expansion and, therefore, must be valued separately. **The Appellant during questioning by the Assessor, agreed.**

Excess land may or may not add to the value of the parcel. The Assessor questioned the Appellant about any evidence to support the statement that excess land does not add value.

Zoning bylaws do not require loading or storage areas.

The Appellant questioned as to what can be done with extra space because of zoning requirements. The Assessor advised that the IB zoning allows outdoor space but it is not required.

68. Again, based on the fact the Appellant provided no evidence to support their allegation is begs the question of how the Board erred in their decision.

69. At the end of the Day, the Appellant, in their Notice of Appeal to the Committee have not alleged that the Board erred in dismissing the appeal as it relates to the site coverage calculation or the adjustment. The Appellants have simply alleged that the Board did not provide sufficient reasons.

70. As it relates to the size adjustment, the Appellant, through their witness, provided evidence on what the Chebyshev theorem is about. The Witness testified that it has nothing to do with the 95% confidence interval and that is simply a tool to ensure you have 95% of the sample in your analysis.

71. The Assessor, on the other hand, called a witness who was accepted as an expert in mass appraisal. Mr. Gloude-mans explained to the Board the use of the Chebyshev theorem in mass appraisal. The Board recognized this and at page 7 of their decision stated:

- ...[P]rofessor Volodin admitted he does not have any direct knowledge or experience in the practice of assessment...

And

- ... [Mr]. Gloude-mans testified that it would not be appropriate to apply the Chebyshev theorem to assessment methodology.

72. It is submitted these are not errors in the Board's findings. It is clear the Board placed more weight on the Assessor's witness's testimony than that of the Appellant's. That is not an error on the Board's part, that is in fact what they are charged to do. As referenced earlier, page 121 of the transcript (appeal book page 861) is clear:

- Mr. Simpson may be at a point where he feels he has answered those questions to the **best of his ability and the Assessor may wish to make comment on the weight to be given to that,**
- **The Board fully understands the difference between the 95 confidence interval and 95% of the sales.**

73. It is submitted that this ground of appeal be dismissed.

**ISSUE 1b**

Did the Board err by failing to send the decision to each party?

74. No.

75. Other than this passing comment the Appellant has failed to provide any evidence in their written submission to the Committee that the written decision of the Board was not set to each party. As well, the Appellant does not even address this ground of appeal in their written submission to the Committee.

76. We request this ground of appeal be dismissed.

**ISSUE 2**

Did the Board err by including facts “thrown into the mix”?

77. No.

78. It is unclear what the Appellant is referring to in this ground of appeal. As well, the Appellant does not address this ground of appeal in their written submission to the Committee.

79. We request that this ground of appeal be dismissed.

**ISSUE 3 and 4**

**Did the Board err by placing little weight on the Appellant’s witness over that of the Assessor’s witness?**

80. No.

**ISSUE 1b**

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79. We request that this ground of appeal be dismissed.

**ISSUE 3 and 4**

**Did the Board err by placing little weight on the Appellant’s witness over that of the Assessor’s witness?**

80. No.

81. The Appellant alleges that if the Board did not place any weight on the Appellant's witness this would be an error on the part of the Board. Clearly this can not be supported. The roll of the Board is to hear assessment appeals and based on the evidence and argument presented, the Board must decide an assessment appeal. They are not arbitrators.

82. In completing their responsibility, the Board must decide whose testimony or argument they are going to rely more on. This is not an error. This is their roll. As well, the Committee, in reviewing the decision of the Board, is to decide if the Board made an error. That is, an error of fact, law or jurisdiction. The Committee roll is not to re-do the hearing of the Board.

83. In the present case, as summarized above, the Appellant's witness was accepted as an expert in mathematics and statistics and provided oral evidence relating to the Chebyshev theorem:

- The witness uses this theorem when his data set is not normally distributed to calculate where 95% of his data set lies,
- He wants 95% of the data set in his analysis,
- He does not want 100% as the remaining 5% would be outliers,
- This theorem has nothing to do with 95% confidence intervals,
- Based on the sales used in the Industrial CAP rate analysis, in order to include 95% of the sales, based on size, the range would include all sales from 0 to about 72,000 square feet,
- He would not use the sales beyond 72,000 square feet, and
- Since there are no sales beyond 50,400 square feet, there would be no sales to added.

84. The Assessor's witness was accepted by the Board as an expert in mass appraisal, model building, ration studies and computer assisted mass appraisal. The Board (at

page 154 of the transcript (appeal book page 894) recognized his ability to provide opinion evidence. Mr. Gloudemans stated:

- Working on a third mass appraisal text book with the IAAO in about 1978 there was some discussion about the Chebyshev theorem, but it was in the context of ration studies,
- Using the Chebyshev theorem in ratio studies, you could predict percentage of ratios (Assessment to Sales Ratios) would fall within so many standard deviations of the mean,
- This theorem has never been used (to his knowledge) in appraisal,
- The Chebyshev theorem is not a tool to stratify sales by,
- In his opinion, based on the sales above 50,000 square feet, there is no support to keep increasing the CAP rate adjustment,
- It is typical for these the overall rates to level off at some size,
- In his opinion, there is no evidence and no support to extend beyond 50,000 square feet,
- In his opinion, the adjustment applied at the 50,000 square foot mark (which is also applied to every property over 50,000 square feet) is pretty deep and is a considerable adjustment, and
- It is typical to have a different threshold within the rent model and within the CAP rate model.

85. Contrary to the Appellant's allegation that the Board ignored the testimony of their witness, the Board, in their decision at pages 6 and 7, recognized the Appellant's witness's testimony. The Board also recognized the Assessor's witness's testimony. The fact that the Appellant's witness was not an expert in mass appraisal may have played a big part on the weight the Board gave to the testimony.

86. On the other hand, the Board recognized the Assessor's witness was an expert in mass appraisal and when the Board found that the Assessor's witness stated that the Chebyshev theorem is not appropriate to assessment methodology, it was correct in



placing more weight on the Assessor's witness's testimony as this is an appeal against an assessment that must conform to mass appraisal principles.

87. In the end, the Board did not ignore the testimony of the Appellant's witness, the Board simply gave it less weight than that of the Assessor's witness and this is not an error on the part of the Board. This is their duty.

## **ISSUE 5**

Is the Board proposing that an Appellant or Tax Agent must be licensed?

88. No.

89. Again, the Appellant has not addressed this ground of appeal in their written submission to the Committee. In fact, the Board's finding that the Tax Agent is not licensed is true. This was established as a fact at the hearing of the Board.

90. As mentioned previously, due to the amount of opinion argument and to establish the Agent's knowledge base when he suggested you should capitalize the sale price to get a new value, it was established, the Agent is not a member of and does not hold any appraisal designation from either the Appraisal Institute of Canada, the International Association of Assessing Officers nor the Saskatchewan Assessment Appraisers Association (transcript page 58 appeal book page 798).

91. The fact that the Appellant was relying on his opinion of how to use a capitalization rate, and that a site coverage adjustment does not conform to mass appraisal principles, the Assessor felt it was important to set the foundation for the Appellant's interpretations.

92. The Board has a duty to hear and decide assessment appeals. In the course of their duties, the Board hears evidence and arguments from two parties and in doing so, the

Board is required to weigh the evidence and argument. It would be expected that, when providing an opinion about a subject matter, the person providing their opinion would establish the basis for why their opinion is correct. This is why the Assessor provides the Board with his qualifications.

93. In the case at hand, the Board noted that the Agent for the Appellant is not licensed in Saskatchewan and is not a member of professional appraisal or professional assessment organizations. The Board did not say a person must be licensed or a member in order to be an Appellant or a Tax Agent. The Board simply noted this and it may provide the basis for why the Board placed more weight on the evidence and argument of the Assessor than that what was provided by the Agent.

94. It is requested that this ground of appeal be dismissed.

#### **ISSUE 6**

This issue deals solely with the following Committee appeal numbers and were addressed in in the lead appeal for Group A (2017-0100)

2017-0112 (Group A)

2017-0113 (Group A)

2017-0114 (Group A)

2017-0085 (Group B)

#### **ISSUE 7**

Did the Board err by not providing its complete thought process?

95. No.

96. This issue was addressed under issue 1.

Board is required to weigh the evidence and argument. It would be expected that, when providing an opinion about a subject matter, the person providing their opinion would establish the basis for why their opinion is correct. This is why the Assessor provides the Board with his qualifications.

93. In the case at hand, the Board noted that the Agent for the Appellant is not licensed in Saskatchewan and is not a member of professional appraisal or professional assessment organizations. The Board did not say a person must be licensed or a member in order to be an Appellant or a Tax Agent. The Board simply noted this and it may provide the basis for why the Board placed more weight on the evidence and argument of the Assessor than that what was provided by the Agent.

94. It is requested that this ground of appeal be dismissed.

#### **ISSUE 6**

This issue deals solely with the following Committee appeal numbers and were addressed in in the lead appeal for Group A (2017-0100)

2017-0112 (Group A)

2017-0113 (Group A)

2017-0114 (Group A)

2017-0085 (Group B)

#### **ISSUE 7**

Did the Board err by not providing its complete thought process?

95. No.

96. This issue was addressed under issue 1.

## OVERALL

97. The Appeal before the Board was focused on whether:

- Making a site coverage adjustment based on the specific size of the property conforms to mass appraisal principles?
- The low site coverage is a result of City imposed restrictions within the zoning bylaw?
- The size adjustment should be extended beyond 50,000 square feet to about 72,000 square feet.

98. In *Saskatoon (City) v Walmart Canada Corp.*, 2018 SKCA 2 (CanLII) the Court of Appeal for Saskatchewan was dealing with an issue of a power curve. In this case, the Committee remitted a matter back to the Assessor of Saskatoon to try the use of a “power curve”.

99. A power curve is, for the most part, exactly what the site coverage adjustment is in the current appeal. When using a power curve, for every change in square foot of a building the rental adjustment would change and as a result, the applied rent will be different for every different size building. The use of a power curve has been accepted as mass appraisal. The power curve would be established using the available rents of properties that are dissimilar in size and would reflect typical market conditions for the rents of various size buildings.

100. As well, as argued before the Board, the Land Size Multiplier (LSM) has long been accepted as mass appraisal. In fact, the LSM is still referenced in the current cost guide produced by SAMA and it formed part of the previous assessment manual. The LSM produces adjustments to the base land rate for every change in lot size. As such, a different land rate will be applied to different lot sizes. The LSM would be established using the available land sales of properties that are dissimilar in size and

would reflect typical market conditions for the sales prices of various size parcels of land.

101. In the present case, the site coverage adjustment is an adjustment to the base CAP rate (similar to the base rent rate or base land rate) for properties with a site coverage of less than 30%. The site coverage adjustment was established using the available sales of industrial properties that are dissimilar in site coverage and reflects typical market conditions for the CAP rates of various site coverage industrial properties.

102. The Appellants failed to provide any evidence of an error on the part of the Assessor. Rather, the Appellant simply alleged the error and hoped, based on their opinion, the Board would agree. However, the Board was not convinced by the Appellant's arguments and found that the Appellant failed to provide any evidence of an error.

103. As it relates to the size adjustment, again, the Appellant has failed to provide an evidence of an error on the part of the Assessor. The Appellant has simply proposed a new size threshold of 72,000 square feet without first establishing the Assessor's threshold of 50,000 square feet was in error. Without going into detail, it has long been held that the Assessor's discretion should not be interfered with unless it can be proven there is a material error of fact, law or standard appraisal practice.

104. Further the Appellants have failed to provide where the Board erred in law. The Appellants could not point to any appraisal digest or any evidence that:

- Stated that a site coverage adjustment is not mass appraisal, or
- When calculating the site coverage that the City bylaws required site coverage of less than 30%, and
- When calculating the site coverage, the area of "cost buildings" is to be included.

- The use of the Chebyshev theorem is a tool to be used, in mass appraisal, to establish thresholds.

105. Finally, in accordance with the Market Valuation Standard, the Assessor is required to value properties:

- using **Mass Appraisal**,
- estimate the fee simple value of the property,
- reflect **Typical** market conditions for similar properties, and
- meet the quality assurance standards set by the agency.

106. Although the Appellant suggested the site coverage adjustment is not mass appraisal, the Appellant failed to provide any evidence to support this allegation. As well, the Appellants have simply provided their opinion of where the threshold should be. There is no allegation the value did not reflect the fee simple interest in the property. Nor is there an allegation that the assessment does not reflect typical market condition or that the value did not meet the quality assurance standards set by the agency.

#### **PART IV RELIEF REQUESTED**

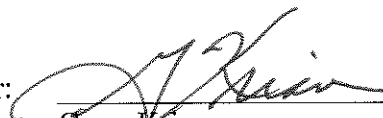
106. The City requests that the Committee dismiss all the grounds of appeal listed in the Appellant's notice of appeal to the Committee. The Appellant's appeal is based on the fact that it did not like the Board's Decision because the Board did not find in favour of the Appellant. The Appellant has not identified in its notice of appeal to the Committee where the Board erred.

107. There is no evidence in the record that the Assessor failed to meet the Market Valuation Standard in assessing the Subject Property or that the Board erred in rendering its Decision.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of May, 2018.

OFFICE OF THE CITY ASSESSOR

Per:



Gerry Krismer

City Assessor for the City of Regina

This document was delivered by:

City of Regina

2476 Victoria Avenue

Regina, SK S4P 3C8

Whose address for service is as above.

Person in charge of file: Gerry Krismer

Telephone: (306) 777-7935





1 increased trend at 50,000 square feet or has  
2 recognized it within the cap adjustment of  
3 the .044, uh, cap rate increase, so it's cut  
4 off at 50,000 square feet.

5 Now, because the properties,  
6 both that 87,760 square feet and 126,800  
7 square feet, are valued currently as single  
8 tenant properties greater than 65,000 square  
9 feet at negative 2.53 per square foot rent  
10 adjustment is applied, which has decreased  
11 their net operating income and resulted in  
12 low capitalization rates.

13 Altus, when it looked at these  
14 sales, didn't consider them to be necessarily  
15 comparable in establishing an upward trend  
16 because of the unique rent adjustment that  
17 was being applied to their specific  
18 circumstances, being single tenant and of  
19 over 65,000 square feet. And to look at if  
20 the trend would increase upwards beyond  
21 50,000 square feet, we looked at pulling out  
22 that negative rent adjustment to estimate  
23 what the cap rates would be if those  
24 properties were not single tenant properties  
25 greater than 65,000 square feet, if they were

SIMPSON

1 RYAN SIMPSON: Fair enough. Thank you, Madam  
2 Chair.

3 GERRY KRISMER: Just a point, it should be  
4 1110, not 110.

5 CHAIRPERSON: Sorry if I misspoke. I have  
6 1110 in my notes.

7 RYAN SIMPSON: So for the purpose of  
8 establishing an upward trend I'll just speak  
9 to the fact that because these larger sales  
10 have a rent adjustment of negative 2.53 put  
11 to them at 65,000 square feet and greater,  
12 what happens is because of this dead zone  
13 from 50,000 to 65, if a property is multi-  
14 tenanted above 50,000 square feet, it just  
15 gets cut off at 50,000, or if it's multi-  
16 tenanted at 80,000 square feet, it gets cut  
17 off at 50,000, and the same can be said with  
18 the single tenant up to 62,000 square feet.  
19 It will have the cut-off of 50,000 applied to  
20 it.

21 And so although the data is  
22 showing an upward trend, based upon the  
23 *Simpson* backing out of this negative adjustment to  
24 make the data comparable for the larger sales  
25 to account for the fact that this dead zone

1 Q So in your rebuttal submission at pages 8 and  
2 9 it appears you're using the entire data  
3 set, but on page 14 of your original  
4 submission you are not?

5 A Correct.

6 Q Now, you make the statement that to make this  
7 data set comparable you eliminated the two  
8 largest sales from your analysis, and just to  
9 be clear, are all your clients' properties  
10 less than 80,000 square feet?

11 A No.

12 Q No. So you eliminated the two sales because  
13 they received this -- this negative  
14 adjustment to the rent, but you're trying to  
15 develop a cap rate to apply to properties  
16 similar in size. So should that then be that  
17 we should remove the negative adjustment to  
18 all properties over 50,000 square feet for  
19 the rent? Is that what you're suggesting?

20 A Do you mean 65,000?

21 Q Sure, over 65,000 square feet.

22 A And I don't believe all our clients are  
23 single tenant, so -- that are of large size  
24 -- so I don't know if that would --

25 Q So I'm asking you of all the large

1 the two 95 percents.

2 GERRY KRISMER: Thank you, Madam Chair.

3 CHAIRPERSON: Okay. So, um, if we could,  
4 uh, continue --

5 GERRY KRISMER: We'll just move on, yeah.

6 CHAIRPERSON: Thank you.

7 Q And I'm going to end near the end. Mr.  
8 Simpson, when you had your rebuttal  
9 submission in and you were trying to make all  
10 *Krismer* the sales comparable by backing out the  
11 negative adjustment to the rent, recognizing  
12 that you have properties that are receive --  
13 properties part of this appeal that are  
14 receiving that negative adjustment, did you  
15 back out all the adjustments within the rent  
16 model for all the properties, or did you just  
17 back out the size adjustment?

18 A Oh. Um, in looking at the data as to whether  
19 or not there was an upward trend I just  
20 focussed on those two larger sales.

21 Q But you would agree they could be receiving  
22 an adjustment for age, location, style of  
23 building, all those other various adjustments  
24 that are within the rent model?

25 A Right, and so the smaller sales and larger

1 *SIMPSON* are comparable given the negative 2.53 per  
2 square foot?

3 A Well, I'm sure -- I don't follow your  
4 *GLAUDEMAN* question. Like, they're all comparable to  
5 some extent because they're all industrial  
6 properties, but, like, I was just saying that  
7 they're all unique and they all require  
8 adjustment, but that's what the model does,  
9 it makes adjustments to the extent that it's  
10 possible to do so, based on the available  
11 data, and the adjustments that are made I  
12 think are consistent with what you'd normally  
13 find and with appraisal theory. So I don't  
14 know if that answers your question, because  
15 that's the reason we're making adjustments is  
16 they're all industrial properties but they're  
17 unique, they require different adjustments.

18 Q Right. Thank you. I just have one more  
19 question, if I may, sir.

20 A Oh sure.

21 Q In testing data with size being the variable  
22 that we're looking at and all other variables  
23 being equal or not taken into consideration,  
24 when we're just looking at size --

25 A Yes.

- 1 Q -- would large single tenant properties being  
2 applied a specific negative adjustment of  
3 2.53 a square foot be comparable to  
4 *SIMPSON* properties that do not receive that  
5 particular adjustment that are smaller in  
6 extrapolation or in trending the data set?  
7 A I don't -- sorry, can you -- could you try  
8 asking the question again?  
9 Q I'll try.  
10 A It's good by me, but I think maybe where  
11 you're coming from is you're saying that the  
12 properties that are under 50,000 square feet  
13 some of them are multi tenant.  
14 Q Yes, sir.  
15 A Okay, there is a -- there's an adjustment in  
16 the model for the larger properties that are  
17 single tenant. Um, as they get larger up to  
18 50 some thousand square feet they get more  
19 and more of an adjustment, but at 50,000  
20 square feet the adjustment is capped off  
21 because beyond 50,000 square feet the little  
22 evidence we had, those two sales, uh, showed  
23 that there's no need for any additional  
24 adjustment.  
25 Q Thank you, sir. So with the limited data and

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*SIMPSON*

adjustments for the cap rate could be applied to sales either greater than 65,000 or less than 65,000 square feet. This, in effect, makes them, in Altus' position, not necessarily comparable for the purposes of establishing a trend line for multi-tenanted or non-single tenant properties. And when that's done, the trend indicates an incline.

The Chebyshev theorem, which is a foundational test, our expert spoke to it, indicates that the upper threshold is at 72,000 square feet. Extrapolation techniques have been used in the past, and we feel the Assessor has not accurately captured the effect on multi-tenanted properties because the sales data it's relying on to establish that downward curve you saw on his page 35 or 36 is based on a single tenant property sale which achieves a unique negative 2.53 per square feet adjustment to its rent rate, thereby dropping the predicted income and lowering the cap rate.

When that large size adjustment to the rent rate is removed, cap rates continue to trend upwards and up into

1 kind of shift the talon every now and again  
2 and make it different. What I've heard now  
3 is that because the two sales greater than  
4 50,000 square feet are single tenant  
5 properties somehow they're not comparable.  
6 *KRISMER* That's what he has said today; yet that  
7 wasn't in the Notice of Appeal. In fact in  
8 the Notice of Appeal they took no issue with  
9 the two largest sales being comparable.  
10 *KRISMER* There's no allegation that they weren't  
11 *KRISMER* comparable. That's not it. Had it been,  
12 there would have been a completely different  
13 set of analysis done by the Assessor to prove  
14 *KRISMER* that they are comparable.  
15 Secondly, he makes no  
16 discussion of his own client properties, and  
17 keeping in mind which properties are under  
18 appeal, and the size of their properties.  
19 There are a number of them greater than  
20 65,000 square feet, and a number of them that  
21 are single tenant. So how does that  
22 statement of his say that because they're  
23 single tenant greater than 65,000 square feet  
24 *KRISMER* they're not comparable. Comparable to what?  
25 His own properties? The properties that are



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City of Saskatoon and Saskatchewan Assessment Agency, docket No. CACV 2734. Um, it's SKCA -- 2017 SKCA 34. And what this whole appeal kind of revolved around was whether or not a group of properties are comparable. And what they were doing were applying a number of statistics to set the comparability of a property, so relying upon statistical testing to set the comparability. And ultimately what the Court came down to -- it starts at, uh, paragraph 23 on page, uh, 6 of the decision. The Court stated:

Comparability in this sense is a factual matter involving consideration of the characteristics of one property versus the characteristics of another.

And it talks about the different features that are -- that are set out in the Handbook. And we then turn to paragraph 24, and it says:

All of this makes it quite clear that statistical testing is not a substitute for comparability and does not trump or displace the need for

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*Keisner*

comparability. It is possible, for example, that an assessor could include a warehouse and a hotel with a group of retail properties and still produce a property grouping that generates statistically-acceptable results. There could be no suggestion, however, that this would be an acceptable stratification.

They go on to state in paragraph 25, it says -- it later on says:

*Keisner*

When this bridge has been successfully crossed, and a group of comparable properties identified, statistical analysis can be used to determine the quality of the stratification in issue.

*Keisner*

*Keisner*

So again, I think that's the point here, Madam Chair, is the attempt by the Appellant here today is to use some sort of statistical test to first set comparability. What they're saying is that if you do this test, comparability goes up to 72,000 square feet. Therefore extend that out to that point and then get your results. Rather than looking

1 everything else changes with it because  
2 you're still explaining that one result.

3 So in the case of  
4 capitalization rates, we're still trying to  
5 explain capitalization rates. So if you  
6 change a variable, extend it, the entire  
7 model changes. Again, nothing put forward by  
8 the Appellant on it. Again, there's no  
9 factual underpinning.

10 So it's our position, Madam  
11 Chair, that as much as you've heard maybe a  
12 different opinion or the like, there's no  
13 evidence of an error and we'd ask that this  
14 appeal be dismissed.

15 CHAIRPERSON: Thank you, Mr. Krismer. Um,  
16 Mr. Simpson and Mr. Fieldgate, anything in  
17 rebuttal to that?

18 RYAN SIMPSON: Just two quick points, Madam  
19 Chair. There was a bit of a misunderstanding  
20 about the issue, so in establishing a trend  
21 the error is that large properties greater  
22 than 65,000 do not accurately reflect or are  
23 *Simpson* not comparable in that respect to those less  
24 than 65,000.

25 And I don't believe Mr.

1 Krismer provided any sort of testimony or  
2 evidence through the argument, um, portion  
3 regarding the .036 instead of .044. And that  
4 would be all. Thank you.

5 GERRY KRISMER: I do have a point, Madam  
6 Chair, and I just want to raise it right now,  
7 is the Appellants have changed it again --  
8 yet again.

9 The issue that they just  
10 stated was that properties greater than  
11 *Krismer* 65,000 square feet aren't comparable to the  
12 ones less. I draw your attention to their  
13 Notice of Appeal, and nowhere -- nowhere in  
14 their Notice of Appeal is there any statement  
15 that properties greater than 65,000 square  
16 *Krismer* feet are not comparable to properties under  
17 65,000 square feet, and I would like that in  
18 the record.

19 CHAIRPERSON: Thank you. Um, and just a  
20 point of clarification so that I understand  
21 because I've had a number of different sizes  
22 of buildings, uh, mentioned throughout the  
23 appeal and -- and throughout the closing  
24 arguments, and I want to make sure that my  
25 understanding of the cut-offs is -- as they

## **PART V TABLE OF AUTHORITIES**

<b>Tab</b>	<b>Document</b>
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- |    |   |
|----|---|
| 1. | <i>Corman Park (Rural Municipality) v 618421 Saskatchewan Ltd., 2018 SKCA 29 (CanLII)</i> |
| 2. | <i>Saskatoon (City) v Walmart Canada Corp., 2018 SKCA 2 (CanLII)</i>                      |

91 pages removed as non-responsive to the request

Non Responsive