

DETERMINATION OF AN APPEAL UNDER
Section 16 of *The Municipal Board Act* and Section 216 of *The Cities Act*

Appeal Number: AAC 2017-0068 (Lead) to AAC 2017-0115
Date and Location: June 7, 2018 – Regina, SK

Various
(as represented by Altus Group Limited)

Appellant

- and -

City of Regina

Respondent

APPEARED FOR:

The Appellant: Archie Fieldgate, Senior Consultant
Ryan Simpson, Consultant

The Respondent: Gerry Krismer, City Assessor

HEARD BEFORE: John Eberl, Panel Chair
Lee Fuller, Member
Don Molesky, Member

INTRODUCTION:

[1] The 2017 assessments for the properties under appeal are as follows:

Group A

AAC Appeal Number	BOR Appeal Number	Appellant	Civic Address	Roll Number	Assessed Value
2017-0082	2017-28106	Saskatchewan Telecommunications Holding Corporation	375 N Longman Crescent	10076954	\$7,062,100
2017-0082	2017-28118	Saskatchewan Telecommunications Holding Corporation	580 Henderson Drive	10018739	\$4,122,800
2017-0085	2017-28082	CWS Logistics Ltd.	1405 E Pettigrew Avenue	10018693	\$3,022,300
2017-0100	2017-28095	Federated Co-operatives Limited	2107 E Turvey Road	10201133	\$6,783,400
2017-0100 (Lead)	2017-28100 (Lead)	Federated Co-operatives Limited	2216 E Emmett Hall Road	10169644	\$1,641,400
2017-0101	2017-28071	Halliburton Partners Canada ULC	100 McDonald Street	10013951	\$4,712,500
2017-0102	2017-28073	Hazelaar Construction Limited	1111 Mackay Street	10027949	\$1,189,000
2017-0103	2017-28079	Saskatchewan Association of Rehabilitation Centres	1301 Fleury Street	10027983	\$4,712,500
2017-0104	2017-28080	SCR Holdings Inc.	135 Henderson Drive	10013959	\$2,668,800
2017-0105	2017-28088	Cougar Property Management Inc.	1715 Elliott Street	10033440	\$5,018,300
2017-0106	2017-28090	Dream Saskatchewan Portfolio Inc.	1802 E Stock Road	10226524	\$5,958,900
2017-0106	2017-28105	Dream Saskatchewan Portfolio Inc.	363 Maxwell Crescent	10018725	\$3,325,100
2017-0107	2017-28091	AG SK Turvey Ltd.	1903 E Turvey Road	10018790	\$6,623,000
2017-0108	2017-28093	MADELANA HOLDINGS LTD.	202 Solomon Drive	10226517	\$3,045,000
2017-0109	2017-28096	Boquist Developments Inc.	2120 1st Avenue	10250374	\$674,500
2017-0110	2017-28104	Warner Truck Industries	330 E 4th Avenue	10178193	\$3,607,500
2017-0111	2017-28109	Warner Property Holdings Ltd.	415 N Longman Crescent	10013963	\$2,562,400
2017-0115	2017-28117	ProCrane Inc.	570 McDonald Street	10022438	\$2,153,800
2017-0112*	2017-28110	Village Financial Limited	4150 E Victoria Avenue	10268975	\$5,562,800

2017-0113*	2017-28112	Huber Enterprises Ltd.	4600 E Victoria Avenue	10268140	\$1,807,500
2017-0114*	2017-28113	Maznur Realty Ltd.	4750 E Victoria Avenue	10268143	\$3,854,200

*Indicates properties with partial services (Ground D)

Group B

AAC Appeal Number	BOR Appeal Number	Appellant	Civic Address	Roll Number	Original Assessed Value
2017-0068 (Lead)	2017-28122 (Lead)	Abcomp Holdings Ltd.	610 Henderson Drive	10018730	\$6,163,100
2017-0069	2017-28074	N & T Properties Ltd.	115 McDonald Street	10018734	\$5,658,500
2017-0070	2017-28076	605114 Saskatchewan Ltd.	1155 Park Street	10028466	\$7,175,500
2017-0071	2017-28077	Hoopp Realty Inc.	12202 Ewing Avenue	10264262	\$22,529,800
2017-0072	2017-28078	Ralph McKay (Canada) Limited	130 Hodsman Road	10013949	\$5,421,200
2017-0073	2017-28081	WestRock Company of Canada Inc.	1400 1st Avenue	10022143	\$8,064,500
2017-0074	2017-28083	101055353 Saskatchewan Ltd.	1450 Park Street	10027989	\$11,383,200
2017-0075	2017-28084	Whiterock Chestemere Regina Inc.	155 N Leonard Street	10018732	\$8,638,000
2017-0076	2017-28085	1575 ELLIOTT STREET PROPERTIES LTD.	1575 Elliott Street	10033463	\$5,727,300
2017-0077	2017-28086	Ecco Heating Products Ltd.	1600 E Ross Ave	10112642	\$6,738,200
2017-0078	2017-28087	Loblaw Properties West Inc.	1700 Park Street	10033930	\$10,107,600
2017-0078	2017-28129	Loblaw Properties West Inc.	921 Broad Street	10151105	\$5,214,600
2017-0079	2017-28089	101161069 Saskatchewan Ltd.	1735 Francis Street	10218234	\$15,304,400
2017-0080	2017-28092	Postmedia Network Inc.	1964 Park Street	10033929	\$9,834,800
2017-0081	2017-28094	101143561 SASKATCHEWAN LTD.	2101 Fleming Road	10247034	\$104,355,400
2017-0082	2017-28097	Saskatchewan Telecommunications Holding Corporation	2133 1st Avenue	10022117	\$10,152,600
2017-0083	2017-28098	2201 - 1ST AVENUE HOLDINGS LTD.	2201 1st Avenue	10022119	\$6,867,100
2017-0084	2017-28099	3346286 Manitoba Limited	221 N Winnipeg Street	10018625	\$10,919,900
2017-0085	2017-28101	CWS Logistics Ltd.	250 Henderson Drive	10014005	\$25,977,600

2017-0086	2017-28102	Whiterock 310 Henderson Drive Regina Inc.	310 Henderson Drive	10018701	\$30,715,800
2017-0087	2017-28103	Tiger Fera Investment Inc.	316 E 1st Avenue	10241453	\$8,648,100
2017-0088*	2017-28107	Sachick Holdings Ltd.	4000 E Victoria Avenue	10268997	\$8,921,200
2017-0089	2017-28108	Whiterock 402 McDonald Street Regina Inc.	402 McDonald Street	10018639	\$6,762,500
2017-0090	2017-28111	JOHN DEERE CANADA ULC	455 Park Street	10018672	\$14,252,800
2017-0091	2017-28114	Warner Bus Industries Ltd.	515 1st Avenue	10022404	\$9,133,500
2017-0092	2017-28116	Western Limited	555 Henderson Drive	10018759	\$9,652,100
2017-0093	2017-28119	Consumers Co-operative Refineries Limited	580 Park Street	10018674	\$5,945,700
2017-0094	2017-28121	Whiterock 603 Park Street Regina Inc.	603 Park Street	10022484	\$10,422,300
2017-0095	2017-28123	Sherwood Co-operative Association Limited	615 N Winnipeg Street	10008850	\$7,829,200
2017-0096	2017-28124	Whiterock 651 Henderson Drive Regina Inc.	651 Henderson Drive	10018737	\$9,522,400
2017-0097	2017-28125	Acklands-Grainger Inc.	680 McLeod Street	10018652	\$4,767,400
2017-0098	2017-28126	MASTERFEEDS GP INC	745 Park Street	10022485	\$6,405,700
2017-0099	2017-28127	855 PARK STREET PROPERTIES GP LTD.	855 Park Street	10022488	\$15,132,100

*Indicates properties with partial services (Ground D)

- [2] The property assessments are non-regulated, classified as commercial, and valued using the income approach. The City of Regina (City) described the 54 properties as “Industrial.” These properties are situated in Regina’s industrial neighbourhoods and have a variety of zoning designations.
- [3] Altus Group Limited (Altus) appealed to the Board of Revision (Board) in three groupings. The Board issued individual decisions for each property. Groups A and B properties each have four grounds although the grounds are not identical. Another group of four properties has five grounds with an additional ground relating to limited water and sewer services. Three of these properties are included in the Group A properties, and the fourth is in Group B. An abridged version of the grounds to the Board and the Board’s stated issues are as follows:

Group A

Grounds to Board	Board’s Stated Issues
The assessment does not account for needed exterior storage. The extra land Cap Rate and lump sum land value should be removed.	Did the Assessor make a mistake by adjusting the base Capitalization (Cap) Rate for each property based on site coverage?
The site cover calculation does not consider canopies, fuel tanks, signage, docking zones, parking, etc.	Did the Assessor omit relevant variables, legal requirements, surplus land, utility, and other attributing factors when calculating site coverage?
The use of site-specific Cap Rates is not mass appraisal.	Was equity achieved?
The use of site-specific Cap Rates does not meet the Market Valuation Standard (MVS).	Was the MVS achieved?

Group B

Grounds to Board	Board’s Stated Issues
The Cap Rate size threshold capped at 50,000 sq. ft. of building size is incorrect. The adjustment should be extended beyond 50,000 sq. ft.	Did the Assessor make a mistake by applying a size adjustment to the base Cap Rate for warehouses?
The site coverage measurement does not consider features that limit the availability of extra or excess land. This influences the Cap Rate adjustment.	Has equity been achieved?
The use of site-specific Cap Rates is not mass appraisal.	Has the MVS been achieved?
The use of site-specific Cap Rates does not meet the MVS.	

Group B – Added Ground (four properties)

Grounds to Board	Board’s Stated Issues
The properties have limited water and sewer services. The valuation model being applied is Ross Industrial, which has full city services. An adjustment is required.	

- [4] The Board did not address the servicing ground as a specific issue in its decisions. In three of the four rulings the Board stated: “Since there was no amendment to the appeals before the Board, this is a non-issue.” This is a mistake of the Board since in all cases Altus filed a reasonably clear Board ground. Because of this omission, we will address the servicing ground.
- [5] The Board ultimately dismissed all grounds on each of the properties and upheld the original assessments.

[6] Altus appealed all 54 property assessments to the Assessment Appeals Committee (Committee) on seven grounds. These grounds can be summarized as below:

Ground #	Committee Grounds	Applies to Group
1	The Board failed to provide sufficient written reasons.	A and B
2	Facts were included in Board’s “Analysis and Conclusions” – this creates confusion as to why the appeal failed.	A and B
3	The Board made a mistake by not giving adequate consideration to Dr. Volodin’s testimony.	B
4	The Board made a mistake in ignoring the applicability of the Chebyshev Theorem.	B
5	The Board made a mistake in outlining Mr. Simpson’s qualifications when no specific qualifications are required of appellants. This may have prejudiced the Board’s decisions.	A
6	The Board stated that four properties do not have sewer service – the evidence was they have septic tanks.	A and B
7	The Board failed to provide its rationale for denying the appeals.	A and B

[7] The grounds to the Committee are somewhat repetitious and are difficult to express as questions to be investigated. The early part of the hearing involved reviewing the seven grounds, determining the material issues, and matching the issues to the two property groups. This process is outlined under “Preliminary Matter” in this decision. The issues agreed to by the parties are stated below.

ISSUES:

- [8] a) Did the Board fail to provide adequate reasons in its decisions (Grounds 1, 2 and 7)?
 b) Did the Board make a mistake when it discounted Dr. Volodin’s testimony and the Chebyshev Theorem (Grounds 3 and 4)? (This issue only applies to Group B properties.)
 c) Are the Board’s Group A decisions prejudiced by outlining Mr. Simpson’s qualifications (Ground 5)?
 d) Did the Board fail to rule on the servicing issue on four properties? If so, was there evidence presented that supported an adjustment to their assessments (Ground 6)?

DECISIONS:

- [9] The Board did not provide sufficient reasons in its Group B decisions.
- [10] The Board was presented with conflicting testimony from qualified experts. The Board's decisions demonstrate greater weight was given to the City's witnesses. This is not a mistake as it is within the Board's authority to weigh evidence.
- [11] The Board should not have stated Mr. Simpson's qualifications in the first paragraph of its Group A decisions under "Analysis and Conclusions." However, given the evidence presented, there is no basis to find the Board was prejudiced in its decision making.
- [12] The Board failed to rule on the servicing issue; however, no evidence was presented to support an adjustment to the assessments on the four properties.

PROCEDURAL MATTER:**Lead Appeals**

- [13] The parties agreed the lead appeals were AAC 2017-0068 (Group B) and AAC 2017-0100 (Group A). The record and argument from the lead appeals will be carried forward to the remaining properties. A single decision will be issued.

PRELIMINARY MATTER:**Grounds of Appeal**

- [14] Prior to our hearing, the panel discussed preliminary issues including the seven grounds. We developed a spreadsheet that summarized the Board's grounds and issues as well as Altus's grounds and issues to us. This spreadsheet was given to the parties to help define the questions the Committee could decide. After some discussion, Altus agreed to combine Grounds 1, 2 and 7 into one issue and Grounds 3 and 4 into a second issue. The remaining grounds (Grounds 5 and 6) were treated individually. The City concurred with this approach.
- [15] All properties had identical Committee grounds, but the Board's grounds differed between Groups A and B. A discussion occurred to determine which of the four previously-outlined issues related to each of the two groups. The parties agreed that Issue a) as stated above related to Groups A and B. Issue b) only applied to Group B, and Issue c) related to Group A. The servicing issue (Issue d)) applied to four properties – three in Group A and one in Group B.

ANALYSIS:**Issue a): Did the Board fail to provide adequate reasons in its decisions?**

- [16] The Board issued individual decisions for each appeal. With the agreement of the parties, the Board's rulings on the lead appeals for Group B (AAC 2017-0068) and Group A (AAC 2017-0100) will be the focus of our analysis.
- [17] Altus's written submissions to us largely consisted of a review of the evidence that was before the Board. Page 5 of Altus's submission for the Group B properties identified "the crux of the issue" was the Cap Rate cut-off at 50,000 sq. ft. of building size. Altus stated the Board did not give sufficient reasons for finding this size threshold was correct nor was there any rationale for not removing the two largest sales (87,760 and 126,800 sq. ft.) in consideration of the size cut-off. Similarly, for Group A properties, Altus's concern was the site coverage calculation. Their position was the City took a "broad brush approach in applying the 30% site coverage ... regardless of property type ..." (at page 4 of Altus's Group B submission). The Board made a mistake by not considering the requirements of mass appraisal or, alternatively, the need to include property type when deciding on site coverage requirements.
- [18] The City pointed out that each of the Board's decisions were nine pages long and contained a comprehensive description of the evidence. The Board was at a disadvantage in providing reasons as Altus offered little evidence showing a mistake while the City responded to each allegation.
- [19] The Board, in its decision on Group A, stated that using a site coverage adjustment was mass appraisal because aggregate data was used to determine the adjustment. Other assessment jurisdictions use site coverage adjustments.
- [20] The Group B decision provides a comprehensive summary of the evidence and testimony, but it does not explain why the Board discounted Altus's evidence. The Board did not describe its reasoning on the issue of the size threshold.
- [21] Altus did not point out specifically where, in the Board's decisions, the rationale for the decisions was deficient. After a careful review of the rulings, we find the Board provided sufficient reasons for its decision on the Group A appeals but did not provide adequate rationale for the Group B appeals. With respect to Group B, the Board could have explained the weight given to the witnesses and evidence prior to stating their conclusion on the Chebyshev Theorem and the size threshold.

[22] However, the lack of reasons does not lead us to dismiss the Group B appeals nor to hear again the evidence and argument presented to the Board as if this were an appeal in the first instance. Rather, we find it necessary to expand our review of the evidence on record for the following Group B issue.

Issue b): Did the Board make a mistake when it discounted Dr. Volodin's testimony and the Chebyshev Theorem?

[23] Altus's position was the two largest sales should either not be considered in the size threshold or have the single tenant rental discount removed before investigating the effect of building size on Cap Rates. Dr. Volodin was accepted by the Board as an expert in statistics. His testimony largely involved the Chebyshev Theorem. It is a valid statistical method, and when applied to the data showed a Cap Rate upper limit at 71,258 sq. ft. of building size.

[24] The City argued their evidence and witnesses proved that the Chebyshev Theorem was not an appropriate assessment methodology, and it could not be used to demonstrate a threshold. The City's witnesses, Mr. Miller and Mr. Gloudemans, were accepted as experts in assessment statistics. The Board agreed with the City because of the qualifications and experience of the City's witnesses.

[25] Altus provided one short excerpt on the theorem from published materials. Donald H. Sanders et al, *Statistics: A First Course*, 2d Can ed (Toronto: McGraw-Hill Ryerson, 2005) at 80 stated:

Chebyshev's theorem shows us how the standard deviation is related to the scatter of data items. But it tells us only the minimum percentage of items that must fall within given intervals in any data set.

[26] Dr. Volodin stated "we want 95 percent of our data points to be inside this interval ..." (Transcript at 128, lines 10-12). He went on to criticize the use of a graph to determine a threshold. In cross-examination, Dr. Volodin agreed that if you want to include 95% of the data points in an analysis, the theorem calculates an upper limit of 72,000 sq. ft. The theorem is properly used to determine the data interval when a certain percentage of the data is to be included. In this instance, in order to have a 95% sample, you need to go 4.47 standard deviations each way from the mean. This creates an upper limit value of 71,258 sq. ft.

[27] Mr. Gloudemans stated the theorem is only used in ratio studies and not to establish a threshold. When questioned about the threshold established by the City, Mr. Gloudemans stated there is "no evidence or no support for extending [the threshold] beyond 50,000 square feet" (Transcript at 160, lines 24-25).

- [28] We find Altus and Dr. Volodin made use of the Chebyshev Theorem for an inappropriate purpose. The theorem is used to determine the percentage of items that fall within a certain interval. It could be 75% (one standard deviation) or 88.9% (three standard deviations). It does not show a trend in Cap Rates.
- [29] As used by Altus, the theorem excluded the two sales with the largest buildings. Altus believed the sales should be removed or adjusted because of the single tenant rental modification. Altus did not question the validity of the sales nor did they provide evidence questioning the legitimacy of the rent adjustment. We find the sales must remain in the consideration of the effect of building size on Cap Rates. When graphed, the two sales do not show that Cap Rates continue to increase beyond 50,000 sq. ft. (City's written submission – Industrial Group B Lead Appeal at 35-36). Analysis of the graphed data was the basis of the City's choice of the 50,000 sq. ft. threshold. We find the Board had a good basis for discounting Dr. Volodin's testimony and the Chebyshev Theorem. The City's 50,000 sq. ft. size threshold is supported by market evidence.

Issue c): Are the Board's Group A decisions prejudiced by outlining Mr. Simpson's qualifications?

- [30] At page 4 of its written submission to the Committee, Altus stated Mr. Simpson's qualifications have no bearing on the correctness of the assessment:

It is an abuse of process to hold ... [the] agent to the same standard as an Assessor when legislation does not direct a Board of Revision to make it an issue

Mr. Simpson pointed out that in a City of Yorkton appeal Altus presented statistical evidence the Committee found convincing. He went on to say Altus was capable of properly using statistics to show an assessment mistake regardless of the qualifications of the agent.

- [31] The City wrote the Board stated a fact when it noted the agent was not a member of any recognized appraisal or assessment organization. The Board did not say that agents were required to have any specific qualifications. The training and experience of any party comes into play when opinion evidence is being presented. In this case, Altus was expressing opinions on Cap Rates and the site coverage adjustment.
- [32] The Board should not have stated Mr. Simpson's qualifications in the first paragraph of its Group A decisions under "Analysis and Conclusions." This placement gives the impression that the Board's reasoning on all issues may be tainted. Qualifications become relevant when any party is providing expert testimony as education and experience come into play in weighing evidence. In this instance, the Board could have outlined the various witnesses' qualifications when addressing the site coverage issue, its measurement, and how it is addressed in mass appraisal.

[33] There is no evidence that shows the Board was prejudiced when it outlined Mr. Simpson's qualifications. Altus focused its presentation to the Board on the following: an allegation the adjustment to Cap Rates based on site coverage was not mass appraisal, zoning should be considered in determining site coverage, other factors should be included in site coverage calculations, and excess land has limited value. The City countered each one of Altus's concerns with evidence and testimony. The Board found that the City's evidence was more convincing than Altus's. There is ample material in the record to support the Board's conclusions. We find that there is no indication the Board, in stating Mr. Simpson's qualifications, was prejudiced in its decision making.

Issue d): Did the Board fail to rule on the servicing issue on four properties? If so, was there evidence presented that supported an adjustment to their assessments?

[34] As mentioned in paragraph 4, the Board did not address the servicing ground as a specific issue in the decisions. Because of this omission, we will address the servicing ground.

[35] Altus stated that the four properties (4000 block of Victoria Avenue East) were recently annexed into the City from the Rural Municipality of Sherwood No. 159. There is a single water line coming from an adjacent field and no fire hydrants. Septic tanks are used for sewage management. The assessments for these properties are based on the model from Ross Industrial, which has a full array of City services. Altus stated the Assessor should make an allowance for the lack of services to these properties.

[36] The City agreed Altus had correctly stated the level of services to the sites. The Ross Industrial model produced the lowest possible assessments for these properties. Altus has not provided evidence to show that the four properties suffered a loss in value relative to similar Ross Industrial developments.

[37] It is possible that the industrial properties on the 4000 block of Victoria Avenue East suffer from a loss in value due to minimal water and sewer services. Without evidence that both demonstrates and quantifies a discount, there is no basis to adjust the assessment. We find Altus has not demonstrated a loss in value. Therefore, the current assessments stand.

CONCLUSION:

[38] The Committee dismisses the appeals for Issues b) and c). We find the Board did not provide sufficient reasons for the Group B properties (Issue a)), but our analysis of the record leads to dismissal of these appeals as noted. The Board failed to rule on Issue d), but this had no effect on the four properties' assessments. Overall, the original 2017 assessments for the properties shall remain.

Dated at REGINA, Saskatchewan this 24th day of July, 2018.

Per: 
John Eberl, Panel Chair

Per: 
Kris Penhete, Director