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**REGINA BOARD OF REVISION**

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**APPEAL #2017-28100**  
**Account ID: 10169644**

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**

FEDERATED CO-OPERATIVES LIMITED  
PO BOX 1050 STN MAIN  
SASKATOON SK S7K 3M9

**respecting the assessment of:**

2216 E EMMETT HALL ROAD REGINA SK S4N 3M3

**RESPONDENT**

City of Regina

**for the year 2017;**

**BEFORE**

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

**Appeared for  
the Appellant:**

Archie Fieldgate, Altus Group Limited  
Ryan Simpson, 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 that was the lead appeal in this series of appeals is civically described as 2216 E Emmett Hall Road and is owned by Federated Co-operatives Limited. The primary use of the property is Industrial. The assessed value of \$1,641,400 for 2017 was arrived at by using the Income Approach to Value.

The primary building on the property is a 5,100 square foot manufacturing complex located in the Ross Industrial neighbourhood. It is zoned IB or industrial light manufacturing. This allows for 75% site coverage.

The property has a main floor area (or foot print) of 38,764 square feet and a lot size of 87,015 square feet, resulting in site coverage of 4.4%. 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