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**REGINA BOARD OF REVISION**

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**APPEAL #2017-28122**  
**Account ID: 10018730**

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**

ABCOMP HOLDINGS LTD  
1755 DUGALD ROAD WINNIPEG MB R2J 0H3

**respecting the assessment of:**

610 HENDERSON DRIVE REGINA SK S4N 5X3

**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 Ltd.  
Ryan Simpson, Altus Group Ltd.

**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 and 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, Altus Group Limited, 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 the Saskatchewan Assessment Management Agency'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.

The Appellant and the Board agreed to recognize Scott Miller as an expert witness. The Assessor stated his intention to introduce a second expert witnesses during the hearing. The Appellant stated that he will also have an expert witness.

The Assessor took exception to what he contended were new grounds contained in the Appellant's 5-day submission. The 5-day submission states: “The Assessor took exception to what he contended were new grounds contained in the Appellant's 5-day submission. The 5-day submission states: Increasing the size adjustment threshold above 50,000 square feet will increase the maximum capitalization rate and therefore address the problem of an ASR above 1.00 by reducing the assessment value. The Board panel chair agreed with the Assessor that this is an issue that did not appear in the Notice of Appeal and ruled that evidence for this issue will not be heard.

The Appellant requested that Appendix B in the 5-day submission be treated as confidential. The Assessor and Board agreed.

The Appellant and the Board agreed that Scott Miller is qualified as an expert witness in tax assessment research and model development and statistical testing.

The Appellant and the Assessor agreed that Appeal 2017-28122 would be heard first, and that all evidence and argument from this appeal would be carried forward to:

<b>Appeal#</b>	<b>Appeal Address</b>	<b>Appeal#</b>	<b>Appeal Address</b>
2017-28125	680 MCLEOD STREET	2017-28126	745 PARK STREET
2017-28289	1735 FRANCIS STREET	2017-28085	1575 ELLIOT STREET
2017-28084	155 N LEONARD STREET	2017-28098	2201 1 <sup>ST</sup> AVENUE
2017-28108	402 MCDONALD STREET	2017-28077	12202 EWING AVENUE
2017-28121	603 PARK STREET	2017-28103	316 E 1 <sup>ST</sup> AVENUE
2017-28124	651 HENDERSON DRIVE	2017-28092	1964 PARK STREET
2017-28102	310 HENDERSON DRIVE	2017-28083	1450 PARK STREET
2017-28086	166 E ROSS AVENUE	2017-28078	130 HODSMAN ROAD
2017-28119	580 PARK STREET	2017-28081	1400 1 <sup>ST</sup> AVENUE
2017-28123	615 N WINNIPEG STREET	2017-28097	2133 1 <sup>ST</sup> AVENUE
2017-28127	855 PARK STREET	2017-28114	515 1 <sup>ST</sup> AVENUE
2017-28111	455 PARK STREET	2017-28116	555 HENDERSON DRIVE
2017-28087	1700 PARK STREET	2017-28107	4000 E VICTORIA AVENUE
2017-28129	921 BROAD STREET	2017-28101	250 HENDERSON DRIVE

## **ISSUES**

The Board identified the issues to be:

- A) Did the Assessor err by applying a size adjustment to the base capitalization rate for warehouses?
- B) Has Equity been achieved?
- C) Has the Market Valuation Standard been achieved?

## **FACTS**

The property that is subject to the lead appeal in this series of appeals is owned by Abcomp Holdings Ltd., which is the assessed owner of the property in the Ross Industrial area of the city at 610 Henderson Drive.

The property is considered a non-regulated property pursuant to subsection 163.4 of the Act.

The total assessed value of the property is \$6,163,100 for 2017. The primary use of the property is Industrial and the assessed value was arrived at using the Income Approach to Value.

The application of the Income Approach to Value for the group of properties (which includes the subject property) resulted in the development of the Industrial Model. Therefore, the Industrial Model was applied to the subject property.

The primary building on the property is valued pursuant to the Market Valuation Standard. It is an industrial manufacturing facility that was constructed in 1977.

The zoning of the subject property is 1B medium industrial which allows for 75 per cent site coverage.

The subject property has a main floor area of 53,000 square feet and a lot size of 329,474 square feet that results in site coverage of 16.1%. Because the subject property has a total of 74,000 square feet, it received an adjustment for size. The applied capitalization rate is 7.78740.

The base date is January 1, 2015.

## **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:

*Sasco Developments Ltd. v. Moose Jaw (City)*, 2012 SKCA 24,  
*Agrevo Canada Inc. v. Regina (City)*, 2008 SKCA 129 (CANLII)  
*Various c/o Altus Group Limited v. Regina (City)* (SMB 2011-0022 et al)

The Board considers the following manuals to be relevant:

Saskatchewan Assessment Manual  
Saskatchewan Assessment Appraisers' Association Code of Ethics  
Market Value Assessment in Saskatchewan Handbook  
The 2015 Cost Guide  
International Association of Assessing Officers Fundamentals of Mass Appraisal  
Marshall Valuation service and Residential Cost Handbook  
Canadian Uniform Standards of Professional Appraisal Practice  
Uniform Standards of Professional Appraisal Practice

## **ANALYSIS AND CONCLUSIONS**

In the Notice of Appeal the Appellant stated that the Assessor made several errors regarding the assessment of 610 Henderson Drive. Specifically, an incorrect assessment methodology was applied by the Assessor when capitalization rates for warehouses were adjusted based on the size of the building.

The Appellant stated that the subject property was over-assessed because the base cap rate was adjusted downward within the Assessor's calculations. This increased the assessment.

The Appellant attempted to show that the Assessor's size adjustment is not in keeping with the principle of mass appraisal. On page 11 of their 20-day submission, the Appellant stated that by deriving a size specific cap rate, the Assessor has moved away from Mass Appraisal. Thus, the City of Regina had failed to satisfy mass appraisal principles.

The City of Regina applies the Market Valuation Standard to value non-regulated property. According to clause 163(1) of the Act, the Standard is “achieved when the assessed value of the property:

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

There are three standard appraisal methods included in the definition of Mass Appraisal. The property was appraised using the Income Approach to Value. This Approach is used to estimate market value-based assessments by analyzing the future benefits of income from a property and converting this income into an estimate of present value.

In the case of the property, the Assessor collected pertinent data to determine market rents and market capitalization rates or Gross Income Multipliers (GIM) to estimate the assessed value of a property.

The Assessor requested the rent rolls and income and expense statements for all commercial, industrial and multi-family properties for the years 2013, 2014 and 2015. The final rent model was developed from 2015 rent rolls and is consistent with the base date of January 1, 2015.

To develop the rent model, the Assessor collected and analyzed by Multiple Regression Analysis (MRA) a total of 882 net and effective rents. The model predicts rents based on lease area size, building and space classification, location, and effective building age.

The Assessor reviewed all transfers of titles for commercial properties from Information Services Corporation. Once the sales are determined to be arms-length, the Assessor compares the income and the sales prices to determine a capitalization rate. The economic capitalization rate analysis involved 132 sales. These sales are listed on pages 28, 29, 30 and 31 of the Assessor's 10-day submission.

The Assessor capitalized the net income into an estimate of value by dividing the potential net income by the capitalization rate.

The City of Regina has, since 2005, employed the Multiple Regression Analysis (MRA) to test all assessment models including the Income Model that was used for appraisal of the subject property. Multiple Regression Analysis is recognized by the International Association of Assessing Officers.

In the case of the rental income, MRA is applied to determine what features add or detract from a property's ability to generate income. When using sales analysis, MRA is used to determine a capitalization rate and test other features such as size, rental area size, location, age, building quality and site coverage.

The Assessor established a rent model by analyzing the reported net and effective net rents of 882 industrial properties. He then determined the common features (such as lease area size, building and site classification, location and effective age of the building) that were impacting capitalization rates. The result indicated a base capitalization rate of 6.862 and demonstrated a downward capitalization rate as building size increases.

The capitalization rate is adjusted for building type and size. The Assessor noted in his written materials that the Appellant does not question the adjustment for size as being site-specific because, in the case of the subject property, were size adjustments removed, the capitalization rate would decrease and the assessed value would increase.

The Appellant stated that the Assessor made an error in his calculations by misapplying a capitalization rate adjustment for building size that resulted in a maximized or capped size of 50,000 square feet. He contended that in the Assessor's scenario properties of over 50,000 square feet received no additional capitalization adjustment but remained at a constant of the base capitalization rate (6.862) plus 1.76. The Appellant suggested that adjustments should continue to increase beyond 50,000 square feet and, therefore, result in a lower assessment.

The Appellant suggested that the extension of the Assessor's graph to include warehouses that were larger than 50,000 square feet would provide an upward curve in the graph and a new cap cut-off or break point of 70,000 square feet that would improve the accuracy. He also deleted two large sales of 87,760 square feet and 126,800 square feet from his analysis because they had already received a rental size adjustment.

To determine a new break point, the Appellant introduced The Empirical Rule, also known as the 68-95-99.7 rule, and the Chebyshev's Theorem. By not including the aforementioned larger properties, starting the analysis at more than 10,000 square feet, and applying the Chebyshev's Theorem, the Appellant produced graphs that show continued upward trends in capitalization rates beyond the Assessor's break point of 50,000 square feet. The Appellant's graph indicated a new break point of 71,258 square feet for cap rate size adjustments. He also stated that a default significance of +/- 5 per cent and a 95 per cent confidence level had been realized.

The Appellant introduced Andrei Volodin, Professor, Department of Mathematics and Statistics, University of Regina, and asked the Board and the Assessor to accept him as an expert witness in mathematics and statistics. He was qualified as such.

During cross-examination Professor Volodin admitted that he does not have any direct knowledge or expertise in the practice of assessment or assessment law.

The Assessor stated in his written material that his methodology established an adjustment of 0.044 to the capitalization rate for every 1,000 square feet of building size above 10,000 square feet. The adjustment is capped at 6.862 that is equal to 50,000 square feet. His statistical work does not support the continuation of an adjustment after 50,000 square but states that a building greater than 50,000 will still receive an adjustment of plus 1.76.

An Assessment to Sales Ratios (ASR) test by the Assessor for all sold properties indicates an ASR of 1. This supports the accuracy of the assessment model used by the Assessor.

During the hearing, the Assessor introduced Robert Gloudemans as an expert witness. Mr. Gloudemans is a former Senior Research Associate for the International Association of Assessing Officers who specializes in mass appraisal model building and ratio studies. Mr. Gloudemans was affirmed and testified by speaker phone. Mr. Gloudemans testified that it would not be appropriate to apply the Chebyshev Theorem to assessment methodology.

The Assessor argued against the Appellant's suggestion to remove the two largest sales from the analysis and that only sales using the base rent should be used in the cap rate adjustment by size. He reminded the Board that an Assessor is required to use all sales to determine a capitalization rate. He cannot make decisions to delete certain size properties in his analysis. He quoted a Saskatchewan Municipal Board (SMB) decision *Various c/o Altus Group v Regina (City) (SMB 2011-2022 et al)*.

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

The Appellant states that by applying site specific cap rates the Assessor has moved away from mass appraisal.

The Assessor arrived at the economic cap rate by dividing the predicted base date net operating income (generated by the net rent model) by the adjusted sale prices for all qualified industrial sales.

This capitalization rate analysis involved 132 sales.

After applying Multiple Regression Analysis for building type, effective age, site coverage and total building size, the Assessor arrived at a base cap rate of 6.862. After reviewing notes from the hearing and all written materials by the Assessor and the Appellant, the Board finds that the Appellant has not proven that the Assessor erred with regard to the capitalization rate adjustments for size and, therefore, Issue A must fail.

The Board agrees with the capitalization rate adjustment of 0.044 applied per 1,000 square feet of the subject property.

**Issue B) Has Equity been achieved?**

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 a base date.

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 the Appellant has not proven that the Assessor erred in his application of accepted principles of assessment. All warehouses properties were treated consistently and fairly and equity was achieved.

**Issue C) Has the Market Valuation Standard been achieved?**

According to clause 163(1) of the Act, the Standard is “achieved when the assessed value of the property:

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

The Act in Section 163(3) 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 Assessor has achieved the Market Valuation Standard as detailed in clause 163(1) of the Act. Therefore, this issue must fail.

In conclusion, the Board finds that the Appellant has not provided evidence of an error by the Assessor in fact, in law or in the application of standard appraisal practice.



**DECISION**

The Board dismisses this appeal with respect to the all issues.

The filing fee will 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