10 DAY SUBMISSION: RECEIVED MARCH 12, 2015

Appeal No.: 27703/2015
680 MCLEOD STREET REGINA SK
10018652

CITY OF REGINA
BOARD OF REVISION

Between:

ACKLANDS-GRAINGER INC.

APPELLANT

- and -

THE ASSESSOR OF THE CITY OF REGINA

RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF THE CITY OF REGINA

ARGUMENT DOCUMENT

OFFICE OF THE CITY ASSESSOR
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Regina, Saskatchewan
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This purpose of this argument document is to respond, in accordance with subsection 200(4) of *The Cities Act (*the "Act"*)*, to allegations of error raised in the Appellant's Notice of Appeal to the Regina Board of Revision (the "Board") relating to the assessment of the subject property located at 680 MCLEOD STREET in Regina, Saskatchewan (the "Property"). This document is to be read in conjunction with the Assessor's written EVIDENCE DOCUMENT, which identifies the subject property under appeal, provides the legislative and valuation background against which properties are assessed in Saskatchewan, and contains all of the factual and evidentiary information required to explain how the subject property was assessed.

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FACTS

Appellant

[1] The Appellant, ACKLANDS-GRAINGER INC., represented by ALTUS GROUP LIMITED, is the owner of the Property. The Appellant filed a Notice of Appeal with the Board of Revision (the "Board") on December 8, 2014.

Assessed Value

[2] The total assessed value of the Property is $4,424,200 for 2015. The primary land use code (LUC) is 3720 (Storage and Warehousing) and the assessed value was arrived at using the Income Approach to Value.

[3] The primary building on the property is DISTWHSE (Distribution Warehouse) and the valuation model used to value the property is the Warehouse model. The building is a one-storey distribution warehouse constructed in 1977. The quality of the building is average.

Regulated or Non-Regulated Property

[4] The property that is the subject of this appeal is a non-regulated property that is valued pursuant to the Market Valuation Standard.

[5] In the valuation of properties for assessment purposes, the Assessor is required by legislation to achieve the Market Valuation Standard as detailed in paragraphs [18] through [23] of this submission. In doing so, the Assessor must use one of the three standardized approaches to property valuation as noted in paragraphs [26] through [30] of this submission. The subject property under appeal is a warehouse property and was valued using the Income Approach to Value.

Valuation Model

[6] The application of the Income Approach to Value for this group of properties resulted in the development of the Warehouse Model, which was applied to the subject property. This model is summarised as follows:

Appraisal Cycle Date – January 1, 2013 to December 31, 2016

Effective Date of Valuation – January 1, 2011

Date of Report – October 16, 2014

Rent Model

Description:	Rate ($/sqft)
Base Rent	$6.28
Additional Adjustments to Base Rent:	
Single-tenant Warehouse lease space >= 100,000 sqft	-$2.52
Bldgs built in 1990 or newer	$1.25

Additional Adjustments to Net Rent:	
Shell warehouse space (unheated, uninsulated)	-50%
Upper floor space (above main floor)	-17%

Vacancy and Shortfall:

Vacancy = 0.43%
Shortfall = 0.12%

Overall Capitalization Rates

Strata	Cap Rate
Buildings < 25,000 sqft with eff year built 1970 or newer	6.77%
Buildings < 25,000 sqft with eff year built pre1970	10.18%
Buildings >= 25,000 sqft	9.43%

Additional Adjustments:

Strata	Adjustment (%)
Loft Warehouse	-28%
Unheated Adj (25% of area or more must be unheatable)	-16%

Assessment to Sales Summary Results

Number of Sales	21
Median Assessment-to-Sales Ratio (ASR)	1.00
Coefficient of Dispersion (COD)	9.60%

[7] Please refer to Appendix B of the Evidence Document for the Income (SPSS) Detail Report for the application of this valuation model to the subject property.

ISSUES UNDER APPEAL

[8] The Appellant makes this appeal on the following grounds:

A. The applied CAP Rate of 9.43% for Warehouse properties greater than or equal to 25,000 square feet is too low.

B. Equity has not been maintained as the assessment does not bear a fair and just proportion to the market value of similar properties.

C. The Market Valuation Standard has not been achieved for the subject property.

[9] The Appellant provides the following material facts in support of the above grounds:

A. Cap Rate Issue

- The Warehouse Model is an income model that values the majority of warehouse and industrial properties in Regina. The Warehouse model is a city-wide model in application. There are several distinct warehouse neighbourhoods located within the City of Regina boundaries.

- The sale of 144 Henderson Drive has to be further adjusted. The City calculated 4000 building square feet of the property as heated warehouse instead of valuing it correctly as unheated warehouse. The property having gone under renovation since 2001 should no longer be valued with an Effective Age of 1988 and instead should account for the change in condition through an Effective Age of 1990 or greater. Lastly, the City has erred in the application of the Effective Age of the 1977 original building, 1988 addition and 1992 addition; once corrected the building will show an effective Age greater than 1990.

- The City of Regina has not accounted for the office mezzanine in the time of sale net operating income for 1135 8th Avenue, Regina.

- The City of Regina has incorrectly applied a 16% obsolescence factor for unheated warehouse area through the improper application of the 290 Henderson Drive sales. The unheated warehouse at 290 Henderson Drive was not Estate in Fee Simple.

- In developing the -16% obsolescence factor for unheated warehouse; the City removed three sales from the large warehouse sales array. Two sales being 290 Henderson Drive and the third being 1500 5th Avenue. Since there is insufficient

evidence to support a -16% obsolescence factor. 1500 5th Avenue should be returned to the large warehouse sales array.

B. Equity

- Section 165 states that equity is maintained by applying the market valuation standard so that the assessments bear a fair and just proportion to the market value of similar properties. Section 163 also states that the assessment must also reflect typical market conditions for similar properties in order to achieve the market valuation standard. The current assessment value, which is based on a significantly lower cap rate, does not reflect the typical market conditions for similar warehouse properties.

C. Market Valuation Standard

- Using a higher cap rate for the subject results in an assessment that reflects typical conditions for warehouse properties that are 25,000 square feet or greater on the base date. The Assessor has not achieved the market value of the subject with the current assessment.

DISCUSSION and SUPPORTING REASONING

Issues in this Appeal

[10] In summary, the following are the issues raised in this appeal:

1. Sale of 1135 8th Avenue:
   - The Mezzanine space was not included in the area used by the Assessor to calculate the potential Net Operating Income (NOI) for this sale. With the correction to the NOI, the calculated Capitalization Rate (CAP rate) will change.
2. Sale of 144 Henderson Drive:
   - The area used by the Assessor to calculate the potential NOI for this sale included 4,000 sq.ft. of unheated space. The Assessor treated this area as heated space; as a result, the potential NOI is incorrect. With the correction to the NOI, the calculated CAP rate will change.
   - This property has undergone many renovations over the years and the sale should be treated as a property built in 1990 or newer. If this is the case, the potential NOI of the property would change and in turn the CAP rate would change.
3. Sales of 290 Henderson Drive:
   - At the time of both the 2008 and 2010 sales, the purchaser did not purchase the 100% fee simple interest in the property; one of the buildings on the site – a 7,600 sq.ft. unheated warehouse – was not part of the sale.
   - Both sales were used by the Assessor to calculate a -16% adjustment for properties with more than 25% of their space being unheated.
   - Since the 100% fee simple interest did not sell, both sales should be removed from the analysis.
4. Sale of 1500 5th Avenue:
   - This sale, along with the two sales of 290 Henderson, was used by the Assessor to calculate the -16% adjustment for properties with more than 25% of their space being unheated.
   - With the removal of the two sales of 290 Henderson, this would be the only sale of a property with unheated warehouse space. With only one sale, the Assessor cannot calculate the -16% adjustment; this adjustment should be removed (this would increase the assessments of some properties not under appeal).
   - Since the Assessor cannot use one sale to set an adjustment, this sale should be

returned to the stratification used to calculate the CAP rate and, as a result, the median economic CAP rate for this stratification would change.

Issue #1 – Sale of 1135 8th Avenue (Missing Mezzanine Space)

[11] The allegation is that the Assessor failed to include the mezzanine space in the CAP rate analysis. As noted in the Assessor's Evidence Document in paragraphs [72] through [78], this is not completely accurate. The Assessor did include the space but mistakenly listed the space as main floor space, not mezzanine space. When this area is corrected to mezzanine space, the following rent and CAP rate are established:

Space	Size		Rate		Value
Main Floor	15,476	x	6.28	=	97,189
Main Floor	22,297	x	6.28	=	140,025
Mezzanine	3,050	x	5.21	=	15,890
Total	40,823				253,104
Vacancy			-0.43%	=	-1,088
Shortfall			-0.12%	=	-302
Total Rent					251,714
CAP Rate					10.27%

[12] With the correction to the space details, the economic CAP rate produced by the sale drops from 10.41% to 10.27%. However, this change has no impact on the median CAP rate as demonstrated below:

Address	Adj Sale Price	Predicted NOI	CAP
1735 Francis Street	$2,474,939	$222,600	8.99%
144 Henderson Drive	$4,399,891	$415,000	9.43%
1135 8th Avenue	$2,449,939	$251,714	10.27%

Issue #2(a) – Sale of 144 Henderson Drive (Unheated Warehouse Area)

[13] The Appellant correctly alleges that the Assessor failed to reduce the rent for the 4,000 square feet of unheated warehouse. As noted in the Assessor's Evidence Document in paragraph [81], when the space is corrected to unheated, the following rent and CAP rate are established:

Space	Size		Rate		Value
Main Floor	62,446	x	6.28	=	392,161
Main Floor (unheated)	4,000	x	3.14	=	12,560
Total	66,446				404,721
Vacancy			-0.43%	=	-1,740
Shortfall			-0.12%	=	-484
Total Rent					402,497
CAP Rate					9.15%

[14] With the correction to the space details, the economic CAP rate produced by the sale drops from 9.43% to 9.15%. This change also impacts the median CAP rate, which should be corrected to 9.15% as demonstrated below:

Address	Adj Sale Price	Predicted NOI	CAP
1735 Francis Street	$2,474,939	$222,600	8.99%
144 Henderson Drive	$4,399,891	$402,497	9.15%
1135 8th Avenue	$2,449,939	$251,714	10.27%

Issue #2(b) – Sale of 144 Henderson Drive (Effective Age Calculation)

[15] It is alleged that, due to recent renovations, the sale of 144 Henderson drive should not be considered as 1988 effective year built, but rather something newer than 1990.

[16] If the effective year built of the subject improvements were newer than 1990, a different rent rate from the Warehouse model would apply to 144 Henderson Drive, which would drive the NOI of this property higher and result in a calculated economic CAP rate of 10.97% compared to the Assessor's currently calculated 9.15%. This would change the median CAP rate to 10.27% and result in a lower assessment for the subject property under appeal.

[17] The subject property was originally built in 1977 and has had many additions over the years. The Assessor reflects these improvements on the property assessment record by changing the effective year built of the main warehouse plant to 1988. The Appellant opines that the effective year built should be something newer than 1990.

[18] As noted in the Assessor's Evidence Document in paragraphs [85] through [89] the

Assessor looked to the *Market Value Assessment in Saskatchewan Handbook* (The Handbook) to determine the appropriate method for calculating an effective year built for an older warehouse plant that has been added to and renovated over the years. The Handbook suggests using a weighted average based on either size or value (please refer to Appendix G of the Assessor's Evidence Document for excerpts from the Handbook).

[19] The Assessor completed calculations using the Handbook's suggested methods of weighting based first on size and then value. These two methods were applied first to the all of the subject property's improvements; then to all of the improvements less a detached warehouse on site, because it is incidental to the effective age of the main warehouse plant; then finally by also removing the mezzanine area from the main plant, because it also is incidental to the main plant's effective age. These six separate calculations yielded one effective year built of 1989 and five of 1988.

[20] Using a weighting of all the various building ages, the effective year built ranges from 1988 to 1989; the Assessor currently reflects an effective year built of 1988 on the assessment record for this property.

[21] This method is also supported by the American Society of Appraisers (see Appendix H of the Assessor's Evidence Document), where it is suggested that when trying to establish the effective age of a commercial or industrial property where various sections are younger than other parts of the facility, an effective age can be based on the *effective gross floor area usage*. As noted in the Assessor's Evidence Document in paragraphs [91] through [94], following this calculation method, using the three property improvement scenarios noted above, also results in an effective year built for the subject property of 1988.

[22] As demonstrated above, the Assessor has established the effective year built of 1988.

[23] The Assessor has followed standard mass appraisal practices in establishing the effective year built of 1988 for the property addressed at 144 Henderson Drive; as such, the economic Cap rate developed from this sale remains at 9.15% as noted above.

[24] The Appellant's contention that the effective year built of 144 Henderson Drive should be newer than 1990 is without merit.

Issue #3 – Sales of 290 Henderson Drive

290 Henderson

[25] The Appellant alleges that both the 2008 sale and 2010 sale of 290 Henderson Drive did not include the 100% fee simple interest. This property contains two warehouses: a masonry frame warehouse 20,000 sq.ft. in size and an unheated shell warehouse 7,600 sq.ft. in size. It is alleged that the 7,600 sq.ft. warehouse was not owned by either vendor in these two transactions, but was owned by a tenant who was leasing space on the property. This building was not included in either sale; as such, the sale was not a sale of 100% of the fee simple interest. The Appellant is asking that these two sales be removed from the Assessor's analysis.

[26] As a result of this appeal, the Assessor followed up with the purchaser involved in the 2010 sale and determined that the unheated 7,600 sq.ft. warehouse was not included in the sale of the property. The validity of the arm's-length nature of these sales has not been challenged and is not in question.

[27] As noted in the Evidence Document, the Assessor determined the two sales of 290 Henderson Drive to fully represent 100% of the fee simple interest of the property. However, if

the Board finds otherwise, standard appraisal practice includes adjusting a sale to reflect what the sale price would have been had the entire fee simple interest been included. In the present case, if the Board determines that the two sale prices of 290 Henderson Drive should have included the 7,600 sq.ft. warehouse, then the value of the unheated warehouse must be added to the sale prices. The Assessor did this, estimating the value of the unheated warehouse, as of the base date of valuation, at $72,600. This figure is then added to the sale prices (time-adjusted to the base date of valuation) of $974,976 (2008 sale) and $1,499,963 (2010 sale) to arrive at adjusted sale prices that reflect 100% of the fee simple interest of $1,047,576 and $1,572,563 respectively.

[28] The subsequent recalculated CAP rates and obsolescence calculation result in a higher obsolescence figure of 18% to be applied to atypical warehouses reflecting unheated portions greater than 25% of their total warehouse space. The Appellant's requested remedy under this issue is to remove the two sales of 290 Henderson Drive and move the remaining atypical sale indictor, 1500 5th Avenue, back into the typical warehouse sales array. This proposed remedy by the Appellant would result in the elimination of the atypical (unheated) warehouse adjustment of -16% altogether.

Case Law

[29] The Court of Appeal in HDL Investments Inc. et al v. City of Regina (2009 SKCA 138) (see Appendix 1) dealt with the appeal of a property where 50% of the fee simple interest of the property sold from seller to buyer. The Appellant argued that the Assessor improperly adjusted this sale to a 100% fee simple interest by doubling the purchase price of the 50% interest to arrive at an estimate of sale price of the 100% interest. The Court disagreed with the Appellant's allegation, stating in paragraphs [27], [28] and p29]:

> [27] …the [Appellant] says the Committee erred in law in failing to give effect to the fact the City Assessor did not "determine the sale price" of the interest in the Southland Mall as required by the Assessment Manual. Instead, the Assessor merely substituted for the sale price the vendor and purchaser's allocation of $19,000,000 to the purchase of this interest, in effect abdicating his responsibilities. Moreover, this allocation was a mere estimate of the value of the property, according to the argument, and an unreliable estimate at that….
>
> [28] To the extent this submission raises a question of law we do not agree with it. The City Assessor, acting on the authority of sections 171 and 172 of The Cities Act, sought and obtained information from the parties to the transaction for the three-fold purpose of putting him in a position to determine: (i) whether the $19,000,000 sworn to in the affidavits of value and recorded on the certificates of title constituted the "sale price"; (ii) whether the sale price resulted from an "arm's length sale"; and (iii) whether and to what

extent the sale price warranted adjustment.

> [29] On the basis of the information he obtained, the Assessor concluded that the $19,000,000 constituted the sale price of the property. In other words he "determined … the sale price" having regard for the information at this command, including the information supplied to him by the parties to the transaction.

[30] In the current appeal, the Assessor followed the same process in estimating the sale prices of the 100% fee simple interests of the two sales of 290 Henderson Drive as he did in estimating the sale price of the 100% fee simple interest of the Southland Mall sale noted in the HDL decision by the Court of Appeal.

Issue #4 – Sale of 1500 5th Avenue

1500 5th

[31] Unheated warehouse space is considered to be an atypical building characteristic in Regina's current market. A typical warehouse building in Regina, at the date of valuation, comprises mostly heated space (75% or more of space). The Assessor analyses market data that contain atypical characteristics, in this instance sales that produce capitalization rates, by

following a five-step process:

1. remove sales from the analysis that feature the atypical characteristic;
2. calculate capitalization rates from the sales of properties reflecting typical characteristics and test the results;
3. apply the capitalization rates developed under step 2 to the atypical sales and test the results;
4. develop an appropriate obsolescence factor, if indicated, for the atypical group and apply to all properties in that group; and
5. bring the sales from the atypical group (with obsolescence applied) back into the typical group and test the results in aggregate.

[32] In the current assessment cycle, the Assessor completed this type of analysis and applied obsolescence adjustments to residential properties (severely cracked basements) and bare land (corner influence, non-exposure). The Assessor, as a result of a appeal 2014-27620, analysed the atypical factor of unheated warehouse space (raised as an issue by the Appellant in appeal 2014-27620) in the same manner and established an obsolescence adjustment of -16%.

Analysis of Atypical Factor – Unheated Warehouse Space

[33] Pursuant to the issue raised by the Appellant in appeal 2014-27620, the Assessor completed a review of the sales available for the Warehouse model. Twenty-seven sales were qualified and verified as being valid arm's-length sales, five of which were initially filtered from the analysis because they provided calculated capitalization rates of less than 5.00% and greater than 16.00%. The remaining 22 sales were analysed in the Warehouse model and produced the capitalization rates currently applied by the model for all warehouse assessments. Upon review, the Assessor discovered three more of the 27 available sales that warranted the application of unheated warehouse space rents. Once these rents were corrected, the resulting capitalization rate calculations brought the capitalization rates of two of these three sales within the allowable range of 5.00% to 16.00%.

[34] At this point, the five-step, atypical factor process is undertaken to remove the effect of the atypical properties containing unheated warehouse space to determine the appropriate capitalization rates for typical heated warehouse properties, and then to determine if an obsolescence factor should be applied to the atypical properties.

[35] As noted above, four of the available warehouse sales are identified as reflecting unheated warehouse space. These sales are:

Address	% Unheated	Calculated Capitalization Rate Reflecting % Unheated	ASR
335 E Dewdney Avenue	13.50%	6.68%	0.99
290 Henderson Drive	27.53%	9.75%	1.07
1500 5th Avenue	81.78%	11.20%	1.22
290 Henderson Drive	27.53%	15.73%	1.60

[36] One sale – 335 E Dewdney Avenue – has a calculated assessment-to-sale ratio (ASR) of 0.99, showing that the applied capitalization rate developed from the typical (heated) warehouse sales is appropriate, and indicating that a small amount unheated space (13.50%) is not seen as atypical in the current market place. The remaining three sales in the above table show significantly higher ASRs, indicating that these properties are over-assessed using the applied capitalization rate developed from the typical (heated) warehouse sales, indicating that an amount of unheated space greater than 25% is considered to be significant. Therefore, these three remaining sales are removed from the list of 24 warehouse sales because they are considered atypical (unheated) warehouse properties. This leaves 21 sales of only typical (heated) warehouse properties which, when re-analysed, produced the following results:

Strata (Grouping)	Capitalization Rate Using 21 Sales
Buildings <25,000 sqft with eff. year built 1970 or newer	6.77%
Buildings <25,000 sqft with eff. year built pre-1970	10.18%
Buildings >25,000 sqft	9.15%

[37] The three remaining sales that reflect atypical warehouse space containing significant amounts of unheated warehouse space are now compared against the capitalization rates for

typical (heated) warehouse space to determine if an adjustment is warranted for the atypical characteristics of unheated warehouse space. If the resulting median assessment-to-sale ratio (ASR) of the three atypical (unheated) warehouse sales is close to 1.00, then no adjustment for their atypical feature is warranted; if the median result is not close to 1.00, then an adjustment for unheated warehouse space may be required. The results of this analysis are presented in the following table:

Group	Median ASR
Heated	1.00
Unheated	1.22
Overall	1.004

[38] The first row of the above table provides the results for the 21 typical (heated) sales, showing a median ASR of 1.00 (2nd column). These results indicate that the capitalization rates applied by the Warehouse model to the typical (heated) sales are very accurate.

[39] The second row of the above table shows the results for the three atypical (unheated) sales, showing a median ASR of 1.22 (2nd column). These results indicate that the capitalization rate applied to the atypical (unheated) sales results in an over-assessment of these atypical properties which, in turn, indicates that an adjustment for this atypical feature is warranted. This adjustment is determined to be 18%.

[40] The Appellant, in the present appeal, alleges that two of the sales (both 290 Henderson Drive), which had previously been found to be atypical, did not include the unheated warehouse building in the sales. It is accepted that the property does have unheated warehouse space.

[41] If it is determined by the Board that the sales of 290 Henderson did not reflect 100% of the fee simple interest, this does not preclude them from being used as long as the sale prices can be adjusted to reflect the 100% fee simple interest. The Assessor has demonstrated how the sale prices can be adjusted and, as such, the sales should be used to establish the -18% adjustment.

[42] If the Board is of the opinion the two sales of 290 Henderson cannot be adjusted to reflect sales of 100% fee simple interests, the two sales must be removed from the analysis.

[43] The two sales of 290 Henderson were not used in establishing the current CAP rate of 9.15%. These two sales were used in conjunction with the sale of 1500 5th Avenue to calculate an abnormal obsolescence for atypical warehouses that have more than 25% of their space as unheated warehouse space. As such, if the sales are removed, this would have no impact on the current CAP rate of 9.15%.

[44] Since the two sales of 290 Henderson were used in the calculation of the -18% adjustment, if they are removed from the entire analysis the Assessor is left with only one sale of an atypical property (1500 5th Avenue – 85.8% unheated). Based on mass appraisal principles, one sale is insufficient to calculate an adjustment. Therefore, for 2015, unless further sales evidence is discovered, the -18% obsolescence for atypical warehouse properties with more than 25% unheated space must be removed.

[45] If this allegation is accepted and there are insufficient sales to calculate an adjustment, this leaves the property sale of 1500 5th Avenue as the single remaining atypical sale, which by itself cannot support an adjustment under mass appraisal. Under this premise, this sale must be discarded because it is a sale of an atypical property and cannot be used to establish a "typical" CAP rate. The Assessor is required to follow the market valuation standard, which requires both mass appraisal and "typical" market conditions.

[46] The following are the statistics of all the properties in Regina that are valued using warehouse income:

Group	Count	Percent
All Warehouse Income Approach	519	100%
100% heated space	471	91%
90% or more heated space	483	93%
75% or more heated space	492	95%
25% or more unheated space	27	5%
80% or more unheated space	10	2%
100% unheated space	6	1%

[47] As noted in the above table, 95% of the warehouses in Regina have 75% or more of their total warehouse space as heated; these are the typical warehouses in Regina. A warehouse that has less than 25% of its space as heated is considered atypical. The property sale at 1500 5th Avenue has 14.2% of its space as heated; making it an atypical warehouse.

[48] The following are the statistics of only the warehouses that are greater than or equal to 25,000 sq.ft., which matches the stratification used by the Assessor to establish the typical CAP rate of 9.15%.

Group	Count	Percent
All Warehouses greater than 25,000 sqft	126	100%
100% heated space	108	86%
90% or more heated space	116	92%
75% or more heated space	119	94%
25% or more unheated space	7	6%
80% or more unheated space	3	2%
100% unheated space	1	1%

[49] The IAAO's publication, *Fundamentals of Mass Appraisal*, at pages 75, 266 and 267 (see Appendix I of Assessor's Evidence Document) discusses standard appraisal practice and supports the idea of removing sales that are not representative of the population when establishing typical market conditions, noting that:

- Some outliers are physically dissimilar from most properties in their stratum (p.75)
- Including outliers in the sample of sales used in mass appraisal modelling … can distort the results, especially when the sample is small (p.75)
- It is desirable to exclude outliers from analysis when they provide misleading indicators … (p.75)
- It can also be prudent to flag or remove properties with extreme or unrepresentative data (p.266)
- It is good practice to develop a base model using those property characteristics of prime importance (p.267)

[50] The only sales available to calculate a "typical" cap rate are the three sales used by the Assessor. As well, with the changes identified previously in paragraph [82], the revised CAP is 9.15% based on the following sales:

Address	Adj Sale Price	Predicted NOI	CAP
1735 FRANCIS STREET	$2,474,939	$222,600	8.99%
144 HENDERSON DRIVE	$4,399,891	$402,497	9.15%
1135 8TH AVENUE	$2,449,939	$251,714	10.27%

[51] The following are the statistical results of this analysis:

Ratio Statistics for MED_VALUE / TASP			
Group	Applied Cap	Median ASR	Coefficient of Dispersion
GE25K	.0915	1.000	.047
LT25K_GE1970	.0677	1.000	.116
LT25K_LT1970	.1018	1.000	.006
Overall		1.000	.096

[52] The following are the statistical results of using the Appellant's proposed grouping by including the sale of the atypical warehouse property at 1500 5th Avenue:

Ratio Statistics for MED_VALUE / TASP			
Group	Applied Cap	Median ASR	Coefficient of Dispersion
GE25K	.0971	1.000	.086
LT25K_GE1970	.0677	1.000	.116
LT25K_LT1970	.1018	1.000	.006
Overall		1.000	.100

[53] By including a sale that is atypical, the resulting statistics get worse and demonstrates how the inclusion of an atypical property distorts the resulting CAP rates.

[54] It is respectfully submitted that the sale of 1500 5th Avenue cannot be used to establish a typical CAP rate. Therefore, by including this sale with the two sales of 290 Henderson, the Assessor has correctly established an adjustment of -18% for warehouses that have more than

25% of the total space as unheated.

[55] In the alternative, if the Board is of the opinion that the two sales of 290 Henderson can not be adjusted to reflect 100% fee simple interest, the two sales would be removed from any analysis even though they are arm's length sales.

[56] This would leave one sale of an atypical property (1500 5th Avenue). As much as the Assessor cannot determine an adjustment based on one sale (under mass appraisal principles), this would not make the sale of 1500 5th Avenue representative of the typical warehouse in Regina. As such, the sale of 1500 5th Avenue cannot be used in the CAP rate analysis; therefore, this sale would have no impact on the revised CAP rate of 9.15%.

Legislation

[57] The Appellant proposes by applying unheated warehouse space rents to one sale property and recalculating the capitalization rate for the subject property's stratification group. The Assessor disagrees, in that this calculation does not go far enough, because it leaves similar errors in the Warehouse model untouched and because it is an inequitable result in relation to how all other valuation models treat atypical property characteristics.

[58] The following provisions of *The Cities Act* are pertinent:

> **Preparing annual assessments**
> 165(3) The dominant and controlling factor in the assessment of property is equity.
> ...
> (5) Equity in non-regulated property assessments 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.
>
> **Fraudulent assessment**
> 181(3) No assessor shall wilfully:
> (a) make a fraudulent assessment;
>
> **Decisions**
> 226(1) After hearing an appeal, the appeal board may:
> (a) confirm the decision of the board of revision;
> (b) modify the decision of the board of revision to ensure that:
> (i) errors in and omissions from the assessment roll are corrected; and
> (ii) an accurate, fair and equitable assessment for the property is placed on the assessment roll; or
> (c) set aside the assessment and remit the matter to the assessor to ensure that:
> (i) errors in and omissions from the assessment roll are corrected; and

> (ii) an accurate, fair and equitable assessment for the property is placed on the assessment roll.
>
> (2) If the appeal board decides to modify the decision of the board of revision pursuant to subsection (1), the appeal board may adjust, either up or down, the assessment or change the classification of the property.

[59] Legislation instructs that the dominant and controlling factor in assessment is equity, that equity is achieved by applying the market valuation standard uniformly and fairly, and that no assessor shall wilfully make a fraudulent assessment. Since the Appellant's remedy does not correct all of the errors found in the Warehouse model, and fails to account for atypical property characteristics in a similar manner as all other similar atypical situations in other valuation models, it is the Assessor's position that the Appellant's proposed remedy does not satisfy the requirement of the fair and uniform application of the market valuation standard. Since equity is not being achieved through the Appellant's proposed remedy, the Assessor cannot accept that remedy because it would result in the Assessor knowingly placing an incorrect assessment on the roll for 2014, contrary to the dictates of clause 181(3)(a) of *The Cities Act*.

Case Law

[60] The Saskatchewan Municipal Board's Assessment Appeals Committee (the "Committee") stated in *Patricia and Earl Warwick v. RM of Mervin No. 499 (2009-0061)*, at paragraph [21] (see Appendix 2), that:

> Neither the Board nor the Committee can allow an assessment to stand that does not meet the requirements of the law.

[61] The Appellant's proposed remedy does not satisfy the requirements of *The Cities Act*; therefore, it cannot be allowed to stand.

[62] Another Committee decision that is relevant to the issue at hand is *610539 Saskatchewan Ltd. v. City of Saskatoon (2011-0079)* (see Appendix 3). The Committee stated at [32] that:

> …the Committee accepts that to achieve the market valuation standard, the assessed value is required to reflect typical market conditions for similar properties and inclusion of an outlier would negatively affect the confidence interval; in turn, diminish the reliability of the statistics which served as benchmarks to reflect typical market conditions.

[63] The three sales in the subject property's stratification group that contain more than 25% unheated warehouse space indicate three of the four highest capitalization rates in this grouping.

This amount of unheated warehouse space is an identifiable physical characteristic that distinguishes these three sales from the other 21 sales composing the Warehouse model. These three properties do not reflect the typical warehouse property valued by this model; as such, using the Committee's words, "*they serve to diminish the reliability of the statistics which [serve] as benchmarks to reflect typical market conditions.*" As such, these three sales should be removed from the capitalization rate analysis because they are not representative of a typical heated warehouse valued by this model, and because their inclusion in the analysis serves to diminish the accuracy and reliability of the analysis.

[64] This conclusion is borne out by statistical testing, as shown in the following two tables:

Assessor's Remedy

Ratio Statistics for MED_VALUE / TASP

Group	Applied Cap	Median ASR	Coefficient of Dispersion
GE25K	.0915	1.000	.047
LT25K_GE1970	.0677	1.000	.116
LT25K_LT1970	.1018	1.000	.006
Overall		1.000	.096

Appellant's Remedy

Ratio Statistics for MED_VALUE / TASP

Group	Applied Cap	Median ASR	Coefficient of Dispersion
GE25K	0.0971	1.000	.086
LT25K_GE1970	.0677	1.000	.116
LT25K_LT1970	.1018	1.000	.006
Overall		1.000	.100

[65] Looking at the last rows in each table, the Assessor's remedy results in an overall median ASR of 1.00 and a COD of 0.096 (9.6%), whereas the Appellant's remedy results in a median ASR of 1.00 and a COD of 0.100 (10%). The goal of assessment modelling is to achieve an ASR of 1.00 coupled with a low COD. By including a sale that is atypical, as requested by the Appellant, the resulting statistics worsen and demonstrate how the inclusion of an atypical property distorts the resulting CAP rates.

[66] The Appellant's issue uncovered error in the Assessor's model. Once discovered, the correction of this error must be continued through to fruition to properly observe the dictates of

section 165 of *The Cities Act* and achieve equity as required by law. This is supported by a decision of the Committee in *City of Saskatoon v. 612984 Saskatchewan Ltd. (0008/2006)* (see Appendix 4). In this appeal, the Appellant argued that the land rate was too high but objected when the resulting carry-through of the lower land calculation resulted in a higher market adjustment factor being applied to the property. The committee noted at paragraph [66]:

> If the land fair value of the subject were corrected without a corresponding adjustment to the MAF, then the total fair value of the subject would still be in error, because this property would continue to enjoy the reduction in the MAF that had been caused by the land valuation errors, now corrected.

[67] The Appellant further argued that the Board did not have jurisdiction to change the applied MAF because the only ground of appeal alleged error in the land valuation. The Committee disagreed, stating at paragraph [73]:

> Equity, however, results from applying the prescribed method to determine fair value in a fair and uniform manner throughout the assessment roll .... By adjusting the fair value of improvements when these are influenced by an error in the land valuation, or vice versa, the Board ensures that the total assessment of the property accords with the ... requirement of subsection 165(3) of the Act that the dominant and controlling factor in the assessment of property is equity.

[68] Finally, as noted in paragraph [21], the calculated obsolescence of -16% is only warranted and applied under the Assessor's proposed remedy reflecting the capitalization rates noted in the left-most table in paragraph [29]. This obsolescence factor is not applicable to the assessor's currently applied model or the Appellant's requested remedy.

Summary

[69] In summary, the following are the Appellant's issues and the Assessor's responses:

Issue #1 – Sale of 1135 8th Avenue (Mezzanine Area)

- The correction of the mezzanine area results in a drop in the CAP rate calculated from this sale; however, this revised CAP rate does not affect the median CAP rate for the group of properties it affects.

Issue #2(a) – Sale of 144 Henderson Drive (Unheated Warehouse Area)

- The correction of the space details to reflect the unheated area in this warehouse

results in a drop in the CAP rate calculated from this sale; this revised CAP rate lowers the median CAP rate from 9.43% to 9.15% for the group of properties it affects.

Issue #2(b) – Sale of 144 Henderson Drive (Effective Age Calculation)

- The Appellant's contention that the effective year built of 144 Henderson Drive should be newer than 1990 is without merit.

Issue #3 – Sales of 290 Henderson Drive

- The Appellant's contention that the two sales of 290 Henderson Drive should be removed from the Warehouse analysis is without merit.

Issue #4 – Sale of 1500 5th Avenue

- The Appellant's contention that the sale of 1500 5th Avenue should be retained in the Warehouse analysis is without merit.

[70] The Assessor's proposed remedy to correct the errors in the Warehouse model respecting unheated warehouse space is the appropriate remedy to undertake because it addresses all of the errors present, results in better statistical results than the Appellant's proposed remedy, and meets all of the requirements of the market valuation standard, especially concerning equity.

[71] The Assessor's remedy, however, will result in the increase of the subject property's assessment because the correction will reduce the capitalization rate applicable to the subject property from 9.43% to 9.15%. The Committee has ruled in several appeal decisions that a Board of Revision cannot raise the assessment of a property from an appeal to lower the value. The Committee stated in *Sasco Developments Ltd. v. City of Moose Jaw (2011-0091 and -0100)* (see Appendix 5), at paragraph [16]:

> … [the] recalculated value would be higher than the initial value and could therefore not be considered in an appeal that asks for the value to be decreased.

[72] As well, the Court of Appeal in *The City of Prince Albert v. 101027831 Saskatchewan Ltd. [2009 SKCA 59]* (see Appendix 6) cited and supported a prior Court decision in *The City of Regina v. East Landing Plaza Ltd. [2000 SKCA 141]* in concluding that the Committee was correct in finding that the Board had no jurisdiction to raise an assessment in an appeal where the sole issue was that the assessment was too high. The Court stated at paragraphs [5] and [6]:

[5] The decision in East Landing Plaza concluded that the only matter raised by the parties had been that the assessment was too high and this was the only issue which could be dealt with. Here, similarly, the tax payer has sought a reduction and the City at no point gave any indication by filing an appeal or a cross-appeal that it was seeking an increase.

[6] Accordingly, as in *East Landing Plaza* the only issue that could be before the Board was that raised in the notice of appeal before it.

[73] The Assessor will make the necessary changes to the Warehouse model and the subject property's assessment for the 2016 assessment year. The Assessor respectfully requests that the Appellant's requested remedy be denied.

SAMA's Quality Assurance Standards

[74] In order to address the requirements of clause 163(f.1)(iv) of the Act, SAMA established the following quality assurance standards on September 12, 2012:

1. The acceptable range for the median assessed value to adjusted sale price ratio for all residential property in a municipality shall be 0.950 – 1.050, provided that the municipality shall strive to achieve a median assessed value to adjusted sale price ratio of 1.000; and

2. The acceptable range for the median assessed value to adjusted sale price ratio for all other property valued using the market valuation standard in a municipality shall be 0.950 – 1.050, provided that the municipality shall strive to achieve a median assessed value to adjusted sale price ratio of 1.000.

[75] The median assessed value to adjusted sale price ratios for both residential and non-residential properties for the 2014 assessment is 1.000, as identified through the following statistical output:

Year	Improved Residential and Commercial Properties Median ASR
2014	1.000

[76] Please see Appendix 10 for a copy of SAMA's Quality Assurance Standard Report.

[77] The Assessor has met the quality assurance standards set by the agency and has satisfied all of the requirements of the Market Valuation Standard as mandated by the Act. These are the only standards that the Assessor is legislatively required to meet; the Assessor is not required to

meet nor bound by IAAO standards.

CONCLUSION

We submit that although the Appellant has provided evidence of an error by the Assessor in fact, in law or in the application of standard appraisal practice, the Appellant's proposed remedy is both incorrectly calculated and inadequate. The Assessor's remedy will result in an increase in the assessment of the subject property and cannot be applied at this time. Therefore, the Assessor respectfully requests that the Appellant's requested remedy be denied and the current assessment of the subject property maintained.

All of which is respectfully submitted this 6th day of March 2014.

Office of the City Assessor

Per: Gerry Krismer
Assistant City Assessor

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Tab 1

THE COURT OF APPEAL FOR SASKATCHEWAN

Citation: 2009 SKCA 138 Date: 20091216

Between: Docket: 1219

HDL Investments Inc. et al

Appellants

- and -

City of Regina and
Saskatchewan Assessment Management Agency

Respondents

Coram:
Cameron, Hunter and Wilkinson JJ.A.

Counsel:
Leonard D. Andrychuk, Q.C for the Appellants
Byron Werry for the Respondents

Appeal:
From: The Saskatchewan Municipal Board Assessment Appeals Committee
Heard: October 30, 2008
Disposition: Appeal Dismissed
Written Reasons: December 16, 2009
Written Reasons: The Court

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CAMERON J.A

[1] This appeal concerns the assessment for municipal tax purposes of a building located in the City of Regina and used commercially as an enclosed shopping mall, known as the "Normanview Mall". The building, which is owned by the appellant company, HDL Investments Inc., was assessed in each of the years 2003 and 2004 on the basis of its "fair value" as determined by the City Assessor. The company was dissatisfied with the Assessor's determination of fair value and appealed the assessment to the local Board of Revision, then to the Assessment Appeals Committee of the Saskatchewan Municipal Board. The appeals were allowed in part, but the company remained dissatisfied. So it applied for leave to appeal to this Court under section 33.1 of *The Municipal Board Act*, S.S. 1988-89 c. M-23.2. It obtained leave to appeal on several grounds alleging error of law on the part of the Committee. All relate to the determination of the fair value of the building and, more particularly, to the market adjustment factor used in that determination.

[2] The City Assessor determined the fair value of the building by the replacement cost method prescribed by *The Saskatchewan Assessment Manual*. This method was described as follows by Sherstobitoff J.A. in *Cadillac Fairview Corp. v. Saskatoon (City)*, 2000 SKCA 84, [2000] 11 W.W.R. 89:

> **9** Under the manual, an assessor is required to value improvements at their replacement cost according to the classifications and schedules of costs set out in the manual. From the replacement cost, the assessor is required to deduct depreciation, which includes any physical deterioration and any abnormal functional or economic obsolescence, calculated from formulas prescribed in the manual. The assessor is then to calculate and apply a market adjustment factor in accordance with the manual. The result is the "fair value" at which the improvements must be assessed.

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> **10** The market adjustment factor, or MAF, is intended to modify what would otherwise be a "fair value" derived alone from replacement cost, less depreciation. It introduces an element of market value in the interests of achieving comparative "fair value" that is closer to market value than it would otherwise be, bearing in mind that the dominant consideration in valuing improvements for municipal taxation purposes is equity in the nature of comparative fairness.
>
> **11** According to the manual, the MAF is calculated from sales of comparable properties in the same or similar neighbourhoods. The assessor is required to analyse arms-length sales to arrive at a median ratio of market value, as reflected by sales, to depreciated replacement cost, calculated in accordance with the manual. The ratio established for a group of properties is the MAF. The object is to bring the fair value of improvements close to market value in the interest of achieving greater equity.

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[3] With this method in mind, the City Assessor calculated the replacement cost of the building, deducted depreciation, and multiplied the resulting figure by a market adjustment factor, or MAF, of 1.31. He derived this MAF from the sales of four other enclosed shopping malls located in the City of Regina: Sherwood Village Mall, Northgate Mall, Southland Mall, and Victoria Square Mall. More specifically he derived this MAF from the sale price of each as determined by him on application of the governing provisions of Documents 4.1.6, 1.1.6, and 1.1.2(c) of the Assessment Manual.

[4] Document 4.1.6 requires an assessor, when determining market adjustment factors by the sales comparison method, to "determine...the sale price" pertaining to the sale of comparable properties. Document 1.1.6 states that "each sale price" used to this end must:

> 1) result from an arm's length sale;
>
> AND EITHER
>
> 2) satisfy each of the following criteria;

a) represent the fee simple interest in the property;

b) not include atypical financing terms and conditions;

c) not include non-realty items such as personal property, business concerns and other items that are not considered real property;

d) not include atypical conditions of sale; and

e) represent market conditions as of the base date; .

OR

3) with respect to each of the criteria listed in point 2 that is not satisfied, be capable of being adjusted, if warranted, and in fact be adjusted, if warranted, in accordance with the applicable rules and calculation procedures relating to "Sale Price Adjustments".

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Document 1.1.2 (c) defines the term "arm's length sale" to mean:

(i) a transfer of real property for cash or cash equivalents in an open market between a willing, unrestricted, unrelated, knowledgeable, seller and buyer who are both seeking to maximize their position; and

(ii) registered in accordance with *The Land Titles Act* on or before December 31, 1998;

[5] With these requirements in mind the City Assessor sought and obtained information relating to the sales of each of the malls he relied upon to calculate the MAF. He did so by means of a sale verification questionnaire he forwarded to the parties following the sales, asking them about the price paid, the relationship between them, the terms of the sale, and so on. Based on the responses he came up with the MAF in issue.

[6] Thus the assessment of the Normanview Mall came to rest on the City Assessor's determination of its fair value, which in turn came to rest on his determination and application of a MAF of 1.31 derived from the sales of four

other enclosed shopping malls, including the Northgate, Southland, and Victoria Square Malls.

[7] The appellant company thought the City Assessor had erred in including the sale of these three malls in the array of sales he used to calculate the MAF and had therefore erred in determining the fair value of the building. It also thought that, even if the Assessor had correctly included the three sales, he erred in failing to fully adjust the sale price of the Northgate and Southland Mall sales to reflect typical market value transactions as required by the adjustment provisions of Document 1.1.6 of the Manual. Hence the company appealed its 2003 assessment to the Board of Revision. The Board dismissed the appeal, and the company then appealed to the Assessment Appeals Committee.

[8] While the appeal to the Assessment Appeals Committee was pending, the 2004 assessment came down. It drew the same objections from the company and spawned a similar appeal to the Board of Revision. This time the Board partially allowed the appeal. Based on new information that had come to light regarding the sale of the Northgate Mall, the Board held that the Assessor could not use this sale in calculating the MAF. It went on to hold, as it had before, that he could use the sales of the Southland and Victoria Square Malls for this purpose. In addition, it held that he need not adjust the sale price of the Southland Mall any further but thought he should make a further adjustment, however slight, to the sale price of the Victoria Square Mall. In the result, the Board ordered the Assessor to rework the assessment, especially in light of the removal of the sale the Northgate Mall from the array of sales from which the MAF was to be derived. The company remained dissatisfied and again appealed to the Assessment Appeals Committee.

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[9] The Committee heard the two appeals together. It, too, thought the sale of the Northgate Mall did not qualify for inclusion in the array of sales from which the MAF was derived. As for the sales pertaining to the Southland and Victoria Square Malls, the Committee was not convinced the Board of Revision had erred in approving the Assessor's use of these sales in calculating the MAF. Nor was the Committee convinced the sale prices warranted further adjustment. In the result, the Committee reduced the MAF from 1.31 to 1.06 and directed the Assessor to re-determine the fair value of the building for the purposes of the 2003 and 2004 assessments.

[10] The reduction in the MAF had a significant impact on the assessments, but still the company remained dissatisfied. Hence it initiated the appeal to this Court. It obtained leave to appeal on the grounds the Committee erred in law as follows:

1. It misinterpreted or misapplied Documents 1.1.2(c) and 1.1.6 of the manual in using the sale of the Southland Mall to determine the MAF.
2. It failed to decide an issue on appeal before it, namely whether the transfer of the Victoria Square Mall was an "arm's length sale" within the meaning of that term as defied in Document 1.1.2(c).
3. It misinterpreted or misapplied section 171 of *The Cities Act* and Document 1.1.6 of the Manual in finding that the City Assessor could rely as he did on the sales verification questionnaires to determine whether the sale prices of the Southland and Victoria Square Mall sales required adjustment.
4. It ignored evidence in deciding that the sale price pertaining to the sale of the Southland Mall did not require adjustment pursuant to Document 1.1.6.

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5. It misconstrued the decisions of the Board of Revision, or ignored evidence, in deciding that the sale of the Victoria Square Mall did not require adjustment pursuant to Document 1.1.6.

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[11] The grounds take issue one way or another with the inclusion of the sales of the Southland and Victoria Square Malls in the array of sales from which the MAF was derived or, alternatively, with the adjustment of the sale price of these properties. The grounds are perhaps most efficiently addressed having regard, first, for the sale of the Southland Mall and the issues to which this sale gave rise on appeal, and then to the sale of the Victoria Square Mall and the issues associated with that sale.

I. The Southland Mall Sale

[12] On July 31, 1991 Ontrea Inc., the investment arm of the Ontario Teachers Pension Fund, purchased a 50% interest from Cadillac Fairview Corporation Limited in three shopping malls, one located in Toronto (the Hillcrest Mall), one in Winnipeg (the Polo Park Mall), and one in Regina (the Southland Mall). The sale was made by way of a single agreement featuring a single purchase price of $177,500,000. Such sales are commonly referred to as "portfolio sales." While the sale featured a single sale price, the Agreement of Purchase and Sale allocated a portion of the price to the acquisition of the interest in each of the Malls. It allocated $19,000,000 to the acquisition of the 50% interest in the Southland Mall.

[13] Following the completion of the sale, Cadillac Fairview transferred an undivided one half interest in the Southland Mall to Ontrea. The affidavit of value accompanying the registration of the transfer stated that the value of the

property was $19,000,000 in aggregate, as did the certificates of title that issued.

[14] Upon being notified of the transfer by the Land Titles Office, the City Assessor asked Ontrea to complete a questionnaire, commonly known as a Sale Verification Form. He did so in reliance upon sections 171 and 172 of *The Cities Act*, S.S. 2002, c.C-11.1. These sections enable municipal tax assessors to gather the information they need to perform their assessment duties.

[15] Thus section 171 empowers assessors to request certain information or documents from persons expected to be in possession thereof. For example, subsection 171(1) empowers an assessor to request "any information or document that relates to or might relate to the value of any property from any person who owns, uses, occupies, manages, or disposes of the property." The section then goes on to impose a correlative duty upon these persons to supply the assessor with the requested information or documents. Subsection 171(4), for instance, requires these persons, within a prescribed time, to provide the assessor with all of the requested information and documents that are in the possession or control of that person.

[16] Then there is section 172, the object of which is to buttress this power of the assessor and secure the performance of this duty of the person. Section 172 renders it an offence, under subsections (1) and (2), to fail to furnish the assessor with relevant information or documents, or to willfully furnish the assessor with false information. In addition subsection 172(5) bars

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consideration, on the appeal of an assessment, of any information that is substantially at variance with information provided by the appellant pursuant to section 171.

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[17] It was in reliance on these provisions, then, that the Assessor requested completion of the Sale Verification Form. He did so for the purpose, among others, of allowing him to determine an appropriate market adjustment factor for use in assessing enclosed shopping malls. And he did so with an eye to the requirements of Documents 4.1.6, 1.1.6, and 1.1.2(c) of the Assessment Manual. In the light of these requirements the Sale Verification Form requested disclosure of the price paid for the property, the relationship between the parties, the nature of the financing associated with the sale, the relationship between the price paid and the market value, and so on. In response, Cadillac Fairview, on behalf of itself and Ontrea, wrote the Assessor, saying this:

- The parties apportioned the sale price of $177,500,000 among the three Malls, allocating $19,000,000 to the sale of the interest in the Southland Mall.
- The sale was recorded as "a cash transaction" with no external financing involved.
- The sale price was believed to represent "the fair market value" of the properties and had been apportioned among the properties on the basis of their 1991 "net operating income capitalized at an appropriate rate."

[18] In reliance on this information, and the affidavit of value accompanying the transfer of title, the Assessor concluded that the "sale price" of the 50% interest in the Southland Mall was $19,000,000 and resulted from an "arm's length sale". He also concluded that the sale price represented half the fee simple interest in the property, did not include any atypical financing or other conditions of sale, and did not include any non-realty items. So he was satisfied no adjustment of the sale price was required, except for adjustments to reflect the fact, first, that about seven years had elapsed between the date of the sale (July 31, 1991) and the base date for the calculations envisioned by the Manual (June 30, 1998); and, second, that the sale involved only a 50% interest, making it necessary to double the sale price for the purpose of working with it in the calculation of the MAF.

[19] Thus, the Assessor relied upon the sale pertaining to the Southland Mall in calculating the MAF applicable to enclosed shopping malls, and decided the sale price did not require any but the two adjustments referred to above. In the result, and having regard for the three other sales he relied upon, he came up with a MAF of 1.31. He applied this MAF in each of the following years up to and including the years 2003 and 2004.

[20] The Board of Revision, in its review of the 2003 and 2004 assessments for error on the part of the Assessor, could see nothing requiring him to either exclude this sale from consideration in calculating the MAF or to adjust the sale price beyond the adjustments he had already made. Nor did the Assessment Appeals Committee find any material error on the part of the Board of Revision regarding the sale.

[21] That, then, brings us to the company's dissatisfaction with the decision of the

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Committee regarding this sale. The company contends the Committee erred in law in upholding the Board's conclusions to the effect (a) that the sale qualified for inclusion in the array of sales from which the MAF was derived or, alternatively, (b) that the sale price did not require further adjustment. Let us consider these in turn.

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(a) The inclusion of the sale

[22] In the submission of the appellant company, the Committee erred in law in several respects in upholding the Board's decision that the sale of the Southland Mall qualified for inclusion in the determination of an appropriate MAF.

[23] First, the company says the Committee erred in law in failing to recognize that this sale, contrary to what the Board made of it, did not amount to an "an arm's length sale" because Ontrea was not a "willing" buyer. In the submission of the company, Ontrea was not a willing buyer inasmuch it was under duress in the sense it could not have purchased an interest in the Toronto and Winnipeg malls (an interest it wanted), without at the same time agreeing to purchase an interest in the Regina mall (an interest it did not want). In addressing the matter the Committee said this:

> The Board gave little weight to the notion that the Ontario Teachers Pension Fund (Ontrea) was under some duress, and were required to take the Southland Mall as part of the "package" and further to retain the services of the former owner as managers. The Committee agrees with the Board on this point, it may well have been part of the agreement but there was no evidence to indicate that the buyer could not walk away from the deal

[24] Even assuming the Committee's decision in this regard gives rise to a question of law and not of fact, we are by no means persuaded to the view the

Committee erred. Although Ontrea, a sophisticated corporate investor, may have preferred not to acquire the interest in the Regina mall, preferring instead to acquire an interest in only the Toronto and Winnipeg malls, the company could hardly have been found to be under duress. And in our opinion the company cannot be said on the facts of the case to have been anything but a "willing, unrestricted, unrelated, and knowledgeable" buyer within the meaning of the definition of the term "arm's length sale" found in Document 1.1.2 (c) of the Assessment Manual.

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[25] Second, the company says the Committee erred in law by failing to appreciate that the sale pertaining to the Southland Mall was part of a portfolio sale that included properties located outside Saskatchewan and could not, therefore, be used for the purpose of calculating the MAF. It could not be used because Document 1.1.6 of the Manual only allows for the use of "sales of property located in the Province of Saskatchewan."

[26] This submission undoubtedly raises a question of law, but the idea that such portfolio sales cannot be used for this purpose was laid to rest by this Court in *HDL Investments Inc. et al* v. *City of Regina* and *Saskatchewan Assessment Management Agency*, 2008 SKCA 47, 310 Sask. R. 44. The reasons for judgment of Jackson J.A. on behalf of the Court in that case (paras. [50] to [60]) make it clear that an assessor may have regard for the sale of a property located within the municipality even though the sale be part of a portfolio sale that includes other properties located outside the Province. The case stands for the general proposition that if the sale price of such a property can be ascertained and verified by an assessor then the sale price can be used for the purposes of determining an appropriate market adjustment factor by the sales comparison method.

[27] Third, the company says the Committee erred in law in failing to give effect to the fact the City Assessor did not "determine the sale price" of the interest in the Southland Mall as required by the Assessment Manual. Instead the Assessor merely substituted for the sale price the vendor and purchaser's allocation of $19,000,000 to the purchase of this interest, in effect abdicating his responsibilities. Moreover, this allocation was a mere estimate of the value of the property, according to the argument, and an unreliable estimate at that, for the parties to the transaction used an unrealistic capitalization rate of 9% for the purpose of the allocation, rather than the realistic rate of 12.75%. Had they used the latter the value would have amounted to $12,900,000, not $19,000,000.

[28] To the extent this submission raises a question of law we do not agree with it. The City Assessor, acting on the authority of sections 171 and 172 of *The Cities Act,* sought and obtained information from the parties to the transaction for the three-fold purpose of putting him in a position to determine: (i) whether the $19,000,000 sworn to in the affidavits of value and recorded on the certificates of title constituted the "sale price"; (ii) whether the sale price resulted from an "arm's length sale"; and (iii) whether and to what extent the sale price warranted adjustment.

[29] On the basis of the information he obtained, the Assessor concluded that the $19,000,000 constituted the sale price of the property. In other words he "determined…the sale price" having regard for the information at his command, including the information supplied to him by the parties to the transaction. Hence the Board of Revision was not satisfied that the Assessor had erred in relation to the determination of the sale price. Nor was the Committee convinced the Board had

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erred. In arriving at its decision the Committee noted that the very purpose of the sale verification step taken by the Assessor, and the information it yielded, was to enable him make such determination in accordance with the provisions of the Assessment Manual.

[30] Picking up on the Committee's reliance of the sale verification information in arriving at its conclusion, the appellant company submitted that as a matter of law the Committee relied excessively on the sale verification and the information it yielded, ascribing more importance to this information than is warranted by the Assessment Manual or section 171 of *The Cities Act*. For the reasons that follow we do not agree.

[31] To begin with, the Committee did not misapprehend the importance, generally, of the sale verification process and the information it yields. The importance lies in the fact municipal assessors are highly dependent on this information in the performance of their assessment duties and are called upon to make a number of decisions largely on the basis of fact that emerges through this process, a process provided for by sections 171 and 172 of *The Cities Act.* The import of these sections was considered by this Court in *City of Saskatoon* v. *Boardwalk Property Holdings Ltd* and *Saskatchewan Assessment Management Agency*, 2008 SKCA 174, 314 Sask. R. 290. Speaking on behalf of the Court in that case I said this:

> [11] These provisions are vital to the assessment regime. It could not function without them, given the need for municipal tax assessors to determine the fair value of improvements in accordance with the principles, rules and formulas of the Saskatchewan Assessment Manual…

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> [12] An assessor's duty to determine and apply an appropriate market adjustment factor in arriving at the fair value of an improvement illustrates, as well as any, the purpose of sections 171 and 172 of the *Act* and their importance to the assessment regime. The proper performance of this duty is wholly dependent upon the assessor having access to information regarding property sales. Hence, owners and others in possession of information relating to the value of any property, including information and documents pertaining to the purchase and sale of property, must furnish the assessor with that information pursuant to section 171. An owner who fails to do so, or who wilfully furnishes the assessor with false information, is guilty of an offence under section 172. Not only that, should an assessment appeal be taken, section 172 bars boards of revision, as well as the Assessment Appeals Committee, from considering evidence of information that is substantially at variance with the information provided to the assessor.

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[32] Hence, the sale verification information obtained by the Assessor in relation to the sale of the Southland Mall was of considerable importance and merited considerable weight. This is not to say it was open to either the Board of Revision or the Committee to have regard for the sale verification information to the exclusion of such other information before the Board as was relevant and not excluded from consideration by subsection 172(5) of *The Cities Act*. However, it must be born in mind that weighing evidence in the context of fact-finding is primarily the province of the fact-finder and, in the absence of the unreasonable, does not generally open the door to interference. It must also be born in mind that there exists a presumption in favour of the correctness of an assessment and therefore an onus on the appellant to establish that the Assessor erred: *Estevan Coal Corporation* v. *R.M. of Estevan No. 5*, 2000 SKCA 82, [2000] 8 W.W.R. 474.

[33] With this mind, we note that, while the Committee relied heavily on the sale verification information in upholding the decision of the Board of Revision regarding the sale price of the Southland Mall, the Committee did not reach this conclusion on the basis of the sale verification information to

the exclusion of other relevant information open to consideration. This is clear from the reasons for its decision. It said this:

> Unlike the Northgate sale, no evidence was brought forward to the Board or Committee concerning the Southland sale that would render the information provided in the verification form invalid.

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[34] It also said that the way in which Cadillac Fairview and Ontrea had allocated the overall purchase price among the various properties included in the portfolio sale was consistent with the evidence as to how this ought to be done, saying:

> An expert witness for the appellant testified that the proper way to establish a value of the portfolio is to value the individual parts and then sum them to arrive at the total. The evidence presented in the form of the sales agreement for the portfolio indicates this is exactly what happened in this case. The sales agreement indicates that indeed each of the malls in the portfolio was valued separately using its own net operating income multiplied by a capitalization rate that reflects the economic conditions for each mall. This would indicate to the committee the conditions that affected the value of the Southland Mall were taken into consideration at the time....

[35] Finally, to suggest that Cadillac Fairview and Ontrea used an unrealistic capitalization rate in allocating $19,000,000 of the portfolio sale price to the Southland Mall sale (and overvalued the property in consequence), is largely beside the point. The point is not whether Ontrea paid more for the property relative to what someone else, over a decade later, thought it was worth. The point is how much Ontrea in fact paid for its share of the fee simple interest in the property, assuming it acquired its interest on an arm's length sale. Beyond that the point is whether and to what extent the amount paid required adjustment pursuant to Document 1.1.6.

[36] That, then, brings us to the issue of whether the Committee erred in law in upholding the decision of the Board of Revision regarding the adjustment of the sale

price of the Southland Mall.

(b) The adjustment of the sale price

[37] As noted above, the Assessor made two adjustments to the sale price, one to account for the time that had elapsed between the date of the sale and the base date, and the other to account for the fact the sale involved a 50% interest in the property. Beyond this he concluded that no further adjustment was required. In other words he concluded, based largely upon the affidavit of value accompanying the transfer and upon the sale verification information he obtained from Cadillac Fairview and Ontrea, that the sale price satisfied the remaining criteria of Document 1.1.6, namely that: (a) it represented the fee simple interest in the property, (b) did not include atypical financing terms and conditions; (c) did not include any non-realty items; and (d) did not include atypical conditions of sale.

[38] Let us consider in greater detail the basis upon which the Assessor reached this conclusion. The affidavit of value expressly stated that "the value of the parcel of land together with all buildings and other improvements" was $19,000,000 in aggregate. And the certificates of title that issued following the sale expressly linked the $19,000,000 to the "fee simple interest" in the property. In addition, the sale verification information supplied by Cadillac Fairview and Ontrea on the heels of the sale expressly disclosed that the sale price reflected the fair market value of the property; that the sale was not accompanied by any atypical financing terms or conditions; and that the sale was recorded as a cash transaction. There is nothing whatever in any of this to suggest the price included any non-realty item or that the sale was accompanied by any atypical conditions. Indeed, the clear

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implication is to the contrary. And the person who supplied the sale verification information on behalf of Cadillac Fairview and Ontrea, both sophisticated corporations, was identified as the "Manager, Assessment Valuations" of Cadillac Fairview, a fact that served to lend an added measure of reliability and weight to the sale verification information.

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[39] Again, the appellant company contended that the Committee made too much of the sale verification information in deciding that the Board had not erred in upholding the Assessor's conclusion that the sale price did not require further adjustment. And again it was said that the Assessor in effect abdicated his responsibilities by effectively leaving it to the parties to the transaction to determine if any further adjustments were required. For reasons already expressed, we do not generally agree with these propositions.

[40] Indeed, we, too, are of the opinion it was open to the Assessor, based on the affidavit of value, the certificates of title, and the sale verification information he obtained on the heels of the sale, to reasonably conclude that no further adjustments to the sale price were required. This is not to say his conclusion was beyond effective challenge on appeal to the Board of Revision, subject to the presumption in favour of the correctness of an assessment and the resulting onus on the appellant to show it was made in error. However, based on the evidence adduced before the Board, the company failed to satisfy the Board that the sale price warranted any adjustment beyond that already made by the Assessor, and failed to convince the Committee that the Board had erred in this regard.

[41] That is all very well, according to the company, but having regard for the

whole of the evidence before the Board, both the Board and the Committee fell into error. The Committee is said to have erred in law in two respects. First, it failed to appreciate that the sale price included a "non-realty item". Second, it failed to decide whether the Board erred in finding that the sale price was unaffected by any "atypical financing terms" or any "atypical condition of sale".

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[42] As for the first, the company says that on the whole of the evidence the sale price clearly included a mark-up or premium that amounted to a "non-realty item". The argument in support of this proposition unfolded along these lines: Ontrea agreed to pay Cadillac Fairview $19,000,000 for a 50% interest it the Mall on the undertaking by Cadillac Fairview to continue to manage the Mall. This undertaking was of significant value because of Cadillac Fairview's expertise and muscle in the market place, and was rolled into the purchase price, constituted a premium, and called for adjustment of the sale price to account for this "non-realty item".

[43] Whether Ontrea paid such a premium is essentially a matter of fact. The Board of Revision found that no such premium had been paid, and the Committee upheld this finding. In our judgment this finding cannot be said to have been so devoid of evidentiary support as to expose it to interference.

[44] True, there was some opinion evidence that the price of $19,000,000 included a premium attributable to the continued management of the Mall by Cadillac Fairview, though no one would venture an opinion about whether and to what extent this might be quantified. Some of the opinion evidence was of questionable admissibility, some of questionable reliability, and some of questionable weight, though it is unnecessary to elaborate in light of the fact the appeal to this Court is

limited to questions of law or jurisdiction, and in light of what follows.

[45] The Agreement of Purchase and Sale makes no mention of any such premium even though the terms used in the Agreement are defined at length and with precision. Nor does the allocation of the purchase price, recorded in the Agreement and made on the basis of the capitalized net income generated by the Mall, make mention of the payment of such premium. Nor does the affidavit of value accompanying the transfer (and the expert opinion evidence of its import), suggest that a non-realty item of this nature found its way into the sale price. Indeed, the implication is to the contrary. Nor does the sale verification information supplied by Cadillac Fairview and Ontrea shortly after the completion of the sale suggest the payment of any such premium. Moreover, the evidence disclosed that a separate management agreement was entered into on the closing of the sale (as anticipated at the time of the sale), wherein it was agreed that Cadillac Fairview would manage the Mall in return for 4% of the gross revenue derived from the Mall, plus expenses.

[46] The point is threefold: Having regard for the whole of the evidence, together with the presumption in favour of the correctness of the assessment and the resulting onus upon the appellant to demonstrate error, we are of the opinion it was open to the Board of Revision to find that no such premium had in fact been paid; that it was not open to the Committee, in reviewing the Board's decision for error, to interfere with this finding of fact; and that it is not open to us, in reviewing the Committee's decision for error of law, to reverse the Committee's decision in this respect.

[47] With that, we may turn to the second of the errors the Committee is said to have made in relation to the adjustment of the sale price of the Southland Mall,

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namely that it failed to decide whether the Board erred in finding that the sale price was unaffected by any "atypical financing" or "atypical condition of sale".

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[48] The submission in support of this proposition is founded on evidence before the Board demonstrating that on the closing of the sale Cadillac Fairview and Ontrea entered into a "Co-owners Agreement", as well as a number of supplementary agreements to implement the terms of that Agreement. Under the Co-owners Agreement, the two corporations, as co-owners of the Mall and the leases pertaining to the Mall, agreed upon their respective rights, obligations, entitlements, and benefits, including the means to secure performance as against one another, namely by means of charge, pledge, debenture, buy-sell, and so on covering their respective 50% interests. They also agreed to lease the Mall to an operating tenant, Southland Leaseholds, a subsidiary of the two corporations, and to cause Southland Leaseholds to enter into a management agreement with Cadillac Fairview providing for the management of the Mall by the latter for the prescribed fee of 4% of gross revenue, plus out-of-pocket expenses.

[49] Based upon the foregoing, the appellant company contended that, notwithstanding the indications to the contrary in the sale verification information obtained by the Assessor soon after the sale, it is apparent the sale featured a number of atypical financing terms or atypical conditions of sale. The Assessor did not think so, having been furnished several years later with the Co-owners Agreement and those associated with it, nor did the Board of Revision. Having regard for the way in which this issue was presumably put to the Board, it saw nothing in the Agreement of Purchase and Sale, the Co-owners Agreement, and the agreements arising out of the latter, to warrant further adjustment of the sale price. It said this:

> The agent also asserts that the sale price should be adjusted for atypical financing. Clause 6.14 of the agreement provides that the Agreement for Sale constitutes the entire contract with respect to the transaction. The fact that the parties entered into subsequent dealings of a complex nature to conduct their business is irrelevant for assessment purposes to the transfer of an ownership interest and the leasehold interests obtained under the Agreement for Sale. The transaction as provided for in the Agreement for Sale was a cash purchase. The agent argued that a cash purchase in itself was not a market norm. In determining what is typical, the Board must consider the marketplace for shopping malls not the marketplace in general. Large corporations and pension funds purchase shopping malls. Pension funds have enough money to be able to make cash purchases and a cash purchase of a shopping mall by a pension fund is not atypical. No adjustment to the sale price needs to be made for a cash purchase.

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[50] These findings were not expressly addressed by the Committee, though it is not clear why. Perhaps the matter was not argued or, if argued, was thought to be obviously lacking in merit. Or perhaps it was overlooked. Whatever the explanation, this much is clear: The matter was raised as a ground of appeal and, on the assumption it was argued and not abandoned, the Committee was obliged to determine it. And not having done so, the Committee erred in law: *Cairns Developers Ltd.* v. *City of Regina and Saskatchewan Assessment Management Agency*, 2000 SKCA 89; 199 Sask. R. 51.

[51] The question, then, is one of remedy. Must this branch of the case be remitted to the Committee for decision, or can we decide it? There seems no good reason to suppose we cannot do so, bearing in mind the nature of the issue and what was said of our jurisdiction in *Cairns Developers Ltd.* v. *City of Regina and Saskatchewan Assessment Management Agency.* Since the Board found that the Assessor had not erred in concluding that the sale price did not warrant further adjustment pursuant to the governing provisions of Document 1.1.6 of the Manual, the issue is whether this

finding is unreasonable or unsupported by the evidence, or is grounded in a misapprehension of these provisions. This amounts to a question of law, so it is within our jurisdiction to decide it.

[52] This said, one might quibble with the Board's reasoning at a turn or two, but in our opinion there exists no tenable basis to interfere with its decision in this respect. It was open to the Board, having regard for the sale verification information, the Agreement of Purchase and Sale, and the Co-owner's Agreement, to reasonably conclude that the Appellant company had failed to demonstrate error on the part of the Assessor in deciding that no adjustment for atypical financing or atypical conditions of sale was required.

[53] As noted by the Board, what is typical or atypical depends on the context in which the issue arises. In this instance, the issue arose in the context of a cash sale of a 50% interest in a shopping mall in operation at the time of the sale. Since the mall was then in operation, naturally there were leases in existence, leases which in the ordinary course fell to be assigned to and assumed by the purchaser (to the extent of its interest), on completion of the sale. And naturally it became necessary in the ordinary course for the two owners to agree upon the allocation of the benefits and burdens of equal ownership of the mall, including the means to secure, as between one another, the realization of the benefits and the assumption of the burdens. Likewise, it became necessary in the ordinary course for the two owners to agree upon the management of the mall. To this end they agreed, first, to incorporate a company and lease the land and building to that company as operating tenant and, second, to cause that company to engage the vendor to manage the property.

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[54] On the face of it, there is nothing apparently atypical in any of this if one adopts the notion, as the Board correctly did, that what is or is not atypical has to be determined in context. Just as importantly, there is nothing in any of this to sustain the notion the Board erred in finding that these post-sale agreements were not shown to have *affected the sale price* of the 50% interest in the land and building purchased by Ontrea pursuant to the Agreement of Purchase and Sale. There is, of course a distinction between, on the one hand, the sale of the 50% interest in the land and building and, on the other, the business concerns that followed in the wake of that sale. The Co-owners Agreement and the steps taken to implement it had to do with the latter and did not serve apparently to affect the sale price of the land and building. So we are of the opinion there is no tenable basis to interfere with the decision of the Board in this regard.

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[55] For these reasons we are of the view that, while the Committee may have erred in failing to decide the ground of appeal taking issue with the adjustment of the sale price, the error is immaterial.

[56] On the whole, then, we can see no basis for interfering with the Committee's conclusions that (a) the sale pertaining to the Southland Mall qualified for inclusion in the array of sales from which the MAF was to be derived and (b) that the sale price did not warrant adjustment beyond the two adjustments made by the Assessor.

2. The Sale of the Victoria Square Mall

[57] On January 22, 1992 Edgefund Realty Investment Corporation transferred title to the Victoria Square Mall to Bellfund Realty 420 Corporation. The certificate

of title that issued on registration of the transfer stated the value of the property to be $18,950,000. On being informed of the transfer, the City Assessor asked Bellfund Realty 420 to complete the usual Sale Verification Form. Harry John Riva, as agent for the corporation, completed the Form and returned it to the Assessor, informing him that:

- The sale price was $18,985,000 as agreed upon between the parties on April 4, 1991.
- Payment of the price was financed in the amounts, first, of $11,761,000 at the rate of 11% for a term of approximately one and a half years and, second, of $7,224,000 at the rate 3% for a term of approximately twelve years.
- The price was attributed to the land and building in the respective amounts of $4,321,000 and $14,664,000.
- The sale was not made between related businesses and neither the seller nor the buyer was compelled to act.
- The total sale price represented the fair market value of the property.

[58] Having been supplied with this information, the Assessor concluded that the sale price was $18,985,000, that it resulted from an arm's length sale, and that it required no adjustment except to account for the time that had elapsed between the date of the sale (January 22, 1992) and the base date (June 30, 1998). In the result, the Assessor thereafter included this sale in determining the MAF he used in assessing enclosed shopping malls.

[59] Some eleven years later, when the MAF was being challenged as incorrect,

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Mr Riva addressed this sale in an affidavit sworn on June 5th, 2003 "for submission to the Assessment Appeal Committee of the Saskatchewan Municipal Board." He did so as vice-president and corporate counsel for Bimcor Inc., a company engaged in the business of providing advice and management to pension fund corporations such as Bellfund Realty. He said he was involved in the Victoria Square Mall transaction (presumably as an advisor to Bellfund Realty, since he did not purport to have any connection to Edgefund Realty).

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[60] He then went on to describe how Edgefund Realty had come to own the Mall in the first place. He did not say how he had come by this knowledge. But he said Edgefund Realty had bought the land and building from Cairns Homes Limited (in 1984 it seems) on a cash-to-mortgage basis, saying Edgefund Realty assumed an existing mortgage on the property (presumably a 1983 mortgage by Cairns Homes in favour of Investors Syndicate in the original amount of $12,100,000) and paid the balance of the purchase price with cash raised though the sale of bonds to three pension funds, Northern Telecom Pension Trust Fund, Bell Canada Pension Fund, and CBC Pension Fund. The obligation under the bonds were secured by a trust company (National Trust Company) which took a second mortgage on the property (in the amount of $7,500,000 it seems) to secure its potential liability on the bonds. At the time Edgefund Realty bought the Mall from Cairns Homes, according to Mr Riva, pension funds were prohibited by law from buying real estate encumbered by a third-party mortgage, so companies such as Edgefund Realty would buy properties such as this on financing terms such as these, making it possible for pension funds to participate in the real estate market in this way.

[61] Mr Riva continued, saying that by 1991 the law had changed, so when

Edgefund Realty decided in 1991 to sell the Mall, Bellfund Realty purchased it. It purchased it subject to the two mortgages, and paid a fee to Edgefund Realty in connection with the transaction. He did not specify the amount of the fee or the rationale for its payment. However, he did say that Bellfund Realty, which was wholly owned by the three pension funds, bought the Mall on their behalf. He also said that after the completion of the sale the three pension funds forgave the outstanding indebtedness on the bonds.

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[62] Mr Riva went on in his affidavit to venture the opinion (or advance the argument) that the transaction between Edgefund Realty and Bellfund Realty was not an arm's length sale for the reason, among others, that the property had not been exposed to the open market and that the sale constituted a conversion of the bond holder's interest in the property to an ownership interest.

[63] He also went on, in justification of the nature of his response to the Sale Verification Form he had completed some eleven years earlier, to say that the information was true but incomplete because the Sale Verification Form did not require him to address such matters as the relationship between the parties, the exposure of the property to the market, the method by which the parties arrived at the sale price, and the basis upon which they arrived at the value of the property. They arrived at the value, he added, by means primarily of an income based appraisal, though other methods of valuing the property were also employed.

[64] Mr Riva's affidavit made its way before the Board of Revision on the appeal of the 2004 assessment. However, the agent representing the appellant company did not call him to testify. Nor did the agent produce the Agreement of Purchase and

Sale between Edgefund Realty and Bellfund Realty. So based largely on the affidavit the agent contended that the transaction did not constitute a "sale" but a "bond redemption" and that, even if it were otherwise, the sale was not made "at arm's length". The Assessor thought otherwise. And the Board was not satisfied the Assessor was wrong about this.

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[65] In arriving at its conclusion, the Board noted in its 2004 decision that the transaction relating to the Victoria Square Mall clearly entailed a change of ownership and (even though the Agreement of Purchase and Sale had not been produced) it was evident that Edgefund sold the property to Bellfund and Bellfund paid for it. How Bellfund paid for it, the Board said, "should not cloud the essence of the transaction." And how Bellfund choose to handle the financing of the purchase *after the fact* "does not affect the transfer of the property between unrelated businesses (as was verified by Bellfund)—between willing, knowledgeable, and unrestricted parties for fair market value."

[66] Hence, the Board found that the Assessor had not erred in treating the sale of the Victoria Mall as an arms length sale, concluding in consequence that he had not erred in relying upon this sale in calculating the MAF.

[67] The Board then went on of its own motion to order the Assessor to adjust the sale price, however slightly, by increasing it to account for the fact the two mortgages assumed by the purchaser carried, in the first instance, a higher than market-rate of interest and, in the second, a lower than market-rate. The Board did so in light of the Assessor's testimony, and in doing so it suggested that such adjustment, while unlikely to substantially affect the MAF, was nevertheless

required in light of the mandatory nature of the adjustment provisions of Document 1.1.6 of the Manual. In response, the Assessor increased the sale price and, in turn, increased the MAF specifically attributable to this property (the "target MAF" as it is called). He increased the target MAF from 1.06 to 1.07.

[68] Dissatisfied with the Board's treatment of the sale of the Victoria Square Mall, the appellant company appealed to the Committee. It did so on the grounds in aggregate that the Board erred in finding (in 2003 or 2004 as the case may be) that: (i) the transaction constituted a sale; (ii) the sale was made at arm's length; and (iii) the sale price warranted adjustment, however slight. The first was apparently abandoned, leaving only the second and third to be dealt with by the Committee.

[69] In the reasons for its decision the Committee said nothing of the second, having to do with whether or not the sale constituted an arm's length sale. Instead, it concentrated on whether the sale price required adjustment, not by reason of the rates of interest on the mortgages (as thought by the Board of Revision), but by reason of the bond redemption associated with the sale (as contended for by the appellant). The Committee said this:

> ...the appellant has alleged that there needs to be an adjustment made because the sale [featured] redemption of bonds as part of the financing arrangement in the sale of the mall. The purchaser did not think it significant enough to note in the sale verification questionnaire. There was no "red flag" raised by the answers given that there was a need for any further adjustments. The Board found it hard to believe that the filling out of the forms would be taken lightly by the purchaser and found that the assessor had used due diligence in determining that the sale price needed no adjustment for redemption of the bonds.
>
> The Committee finds that the Board did not err on this point and the sale of the Victoria Square should remain as part of the sales analysis in the determination of the MAF....

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[70] This is all the Committee had to say about the subject of adjustments. In other words it said nothing, at least expressly, about the Board's order requiring the Assessor to adjust the sale price, however slightly, to account for the fact the two mortgages against the title to the property carried, on the one hand, a higher than market-rate of interest and, on the other, a lower than market-rate. While the Committee did not expressly mention the matter, it appears to have given effect to the ground of appeal placing the matter in issue, for the Committee directed the Assessor to use a target MAF of 1.06, not 1.07.

[71] It concluded by saying three sales were to be used to determine the median MAF, namely the sale of the Sherwood Village Mall (about which there was no dispute) and the sales of the Southland and Victoria Square Malls. These sales, it said, yielded a median MAF of 1.06, saying this is the MAF that was to be used by the Assessor in determining the fair value of enclosed shopping centres such as the Normanview Mall.

[72] The grounds of appeal upon which the appellant company obtained leave to appeal the Committee's decision regarding the sale of the Victoria Square Mall relate one way or another as did those regarding the sale of the Southland Mall, to: (a) the inclusion of the sale of the Victoria Square Mall in the array of sales from which the MAF was derived and (b) the adjustment of the sale price.

(a) The inclusion of the sale

[73] As remarked upon earlier, the Board of Revision was not satisfied the

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Assessor erred in treating the sale as an "arm's length sale", within the meaning of the definition of that term in Document 1.1.2(c). In other words the Board was not satisfied that the sale fell to be excluded from the array of sales relied upon by the Assessor in determining the MAF.

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[74] In reviewing the decisions of the Board, the Committee did not address the question of whether it might have erred in this regard. Again, it is not clear from the record why the Committee did not do so. Assuming the ground of appeal pertaining to the matter was not abandoned and was argued, it was incumbent upon the Committee to decide the question. And on that assumption its failure to do so constitutes error: *Cairns Developers Ltd.* v. *City of Regina and Saskatchewan Assessment Management Agency.*

[75] Once again, bearing in mind the nature of the matter there is no reason to suppose we should remit this branch of the case to the Committee for decision. Since the Board found that the Assessor did not err in treating this sale as an "arm's length sale" within the meaning of Document 1.1.2(c) of the Manual, the issue is whether this finding is unreasonable or unsupported by the evidence, or is based on a misinterpretation or misapplication of the requisites of Document 1.1.2(c). As before, this amounts to a question of law and is therefore within the jurisdiction of the Court to determine.

[76] Turning to the determination of the question, we observe that the evidence before the Board consisted of the sale verification information supplied to the Assessor by Bellfund Realty in response to the Sale Verification Form, together with the affidavit of Mr Riva. Leaving aside the affidavit for the moment, the sale

verification information certainly provided the Board with an ample evidentiary basis for concluding that the Assessor had not erred in treating the sale as an arm's length sale. The issue, then, is whether the affidavit served to shed a decidedly different light upon the question of whether the sale amounted to an arm's length transaction.

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[77] In considering the issue, it must be remembered that it was open to the Board, in weighing the evidence before it, to ascribe greater weight to the sale verification information than to the information contained in Mr Riva's affidavit. After all, he was not called to testify; nor did he or any one else produce the Agreement of Sale and Purchase between Edgefund Realty and Bellfund Realty even though that Agreement constituted the very foundation for the sale. Nor did he identify the source of his purported knowledge of the 1984 sale of the property by Cairns Homes to Edgefund Realty. And his affidavit amounts on the whole to an amalgam of factual assertion, opinion, assumption, argument, and justification. Justification, that is, for his earlier failure to provide the Assessor with more information about whether the sale price resulted from an arm's length sale.

[78] His justification, it may be noted, was not entirely accurate. Moreover it was somewhat disingenuous. He said the Sale Verification Form he completed did not require him to address such matters as the relationship between the parties. That is not so. The Sale Verification Form asked whether the parties were related and whether either was compelled to buy or sell the property as the case may be. And in response, he stated that the parties were not related and not compelled to act. He also said in his affidavit that the Sale Verification Form did not require him to address such matters as the method by which the parties arrived at the sale price, and the

basis upon which they arrived at the value of the property. At the least this borders on the disingenuous, because in response to the Sale Verification Form he stated that the sale price amounted to the outstanding indebtedness on the property; suggested that the sale was unattended by any creative financing; and broke the price down between the land, on the one hand, and the building, on the other. In addition, he stated that the sale price represented the fair market value of the property.

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[79] Having regard for the foregoing, we cannot say that the decision of the Board in the respect under consideration is unsupported by the evidence. Nor can we say the decision is unreasonable in the sense the Board could not reasonably have concluded, based on the evidence and the weight ascribed to it, that the appellant company failed to demonstrate that the sale was not an arm's length sale.

[80] What remains, then, is to consider whether the Board misconstrued or misapplied the term "arm's length sale" as defined in Document 1.1.2(c). Let us consider this having regard for the several indicia or elements of the definition.

[81] To begin with, the term is defined in large part to mean "a transfer of real property for cash or cash equivalents…between a willing, unrestricted, unrelated, knowledgeable" buyer and seller. There is little if anything to suggest the Board misconstrued or misapplied these indicia. The sale obviously featured a transfer for cash or cash equivalent, and it was quite clearly made between willing and knowledgeable corporations. According to the completed Sale Verification Form, the buyer and seller were unrelated and free of compulsion.

[82] Still, the appellant company contended that Edgefund Realty and Bellfund

Realty were neither unrelated nor unrestricted. The pension funds, it was said, were in effect the beneficial owners of the Mall and in effect sold it to Bellfund Realty, an entity owned by them. We do not agree. Edgefund Realty was an independent corporation, independent that is of the pension funds and Bellfund Realty. Neither owned shares in Edgefund Realty and it owned the Mall in its own right. True it owned it subject to the two mortgages, one of which secured the obligation under the bonds. The fact the pension funds held the bonds is meaningless in the context of whether Edgefund Realty and Bellfund Realty were related. It is also meaningless in the context of whether either corporation was restricted. The appellant contended otherwise, suggesting it was not open to Edgefund Realty to sell the property without first obtaining the approval of the pension funds. It is not clear why Edgefund might have needed such approval, and this amounts to a questionable matter of fact in light of the evidence. To suggest we might reverse the decision of the Board on this basis is untenable. Moreover, there is no evidence to the effect Edgefund Realty was not free to sell the property to anyone else on the same terms upon which it sold the property to Bellfund Realty.

[83] Moving the analysis along, then, the definition of "arm's length sale" also stipulates that both buyer and seller must be "seeking to maximize their position." The appellant contended that the Board misapplied this element of the definition, for Edgefund Realty could not be seen to have been intent on maximizing its position, not in light of the fact it derived nothing from the sale. This contention can go nowhere in light of the evidence, including the evidence that the corporation obtained relief from the liabilities associated with its ownership of the property, received a fee in connection with the sale, and sold the property for fair market value.

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[84] Thus far into the analysis, it is clear that we do not subscribe to the notion the Board misconstrued or misapplied those elements of the definition of "arm's length sale" requiring that the sale feature a "transfer of real property for cash or cash equivalents…between a willing, unrestricted, unrelated, knowledgeable, seller and buyer who are both seeking to maximize their position". And since, the sale was accompanied by a transfer "registered in accordance with *The Land Titles Act* on or before December 31, 2002", in the words of the second part of the definition, there remains only one conceivable basis for supposing the Board might have erred as alleged: That it misinterpreted or misapplied the first of the indicia of an "arm's length sale", namely that the sale feature a transfer of real property for cash or its equivalents "in an open market."

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[85] Hence the analysis reduces to whether the Board, faced with Mr Riva's statement in his affidavit that the Victoria Square Mall was not exposed to the open market, erred in finding that the sale amounted to a transfer "in an open market". In saying the property was not *exposed* to the open market, Mr Riva presumably meant that it had not been listed for sale or advertised for sale. Assuming this to be the fact (notwithstanding the frailties associated with the affidavit), the question is whether the sale, not having been preceded by a listing of the property for sale, or by advertisement, or by some other means of bringing the prospective sale to the attention of other potential buyers, satisfies the requirement of the phrase "in an open market".

[86] What this phrase was intended to add to the heavily laden definition of "arm's length sale" is not entirely clear. The definition otherwise speaks to a transfer for cash or its equivalents between a willing, unrestricted, unrelated, and knowledgeable

buyer and seller, both seeking to maximize their position. A sale that meets these criteria goes a long way toward constituting an arm's length sale in the classical sense. Yet, the phrase "in an open market" must have been intended to add something to the definition.

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[87] What it was intended to add, or not add, is perhaps best considered in light of the purpose of the provisions of Documents 1.1.2(c) and 1.1.6. Their purpose lies in ensuring the appropriate determination of a neighbourhood MAF by the sales comparison method, a MAF that reflects the *market value* of the properties comprising the array of sales used to determine the MAF. As noted in *Cadillac Fairview Corp* v. *Saskatoon (City)* (cited earlier), the object of determining and applying a market adjustment factor is "to bring the fair value of improvements close to the market value in the interests of greater equity" in assessment. "Market value", in the context of the scheme of the Manual, is most reliably reflected in the sale prices of comparable properties, provided the prices derive from arm's length sales, as contemplated by Document 1.1.2(c), and reflect typical market value transactions, as contemplated by Document 1.1.6. So the purpose of the provisions of these Documents is to ensure that the sale price of a comparable property is reasonably reflective of the market value of that property before being used in determining an appropriate median MAF.

[88] Viewed in this context, the phrase "in an open market" may be seen to have been intended in significant part to ensure that a sale "in a restricted market" is not used for MAF calculation purposes. Why? Because the sale price of a property sold in a restricted market, in contradistinction to an open market, is not apt to be sufficiently indicative of the market value of that property to be relied upon for the

purpose of determining a market adjustment factor by the sales comparison method. A restricted market, it might be noted, would include one confined to a limited class of potential purchaser, as for example a market confined to members of a certain sect, let us say, or of a certain fraternal organization or family or some such limited class of potential purchasers.

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[89] The Committee seems to be of similar mind. In *City of Regina* v. *Continental Saxon Holdings Ltd* (Appeal 0305/2001and 0326/2001), the Committee said this:

> 37 The owners argued that in order to meet the definition of arm's length sale the property has to be advertised on the open market. In the arguments, however, two concepts [open market and exposure to the market] were somehow married by referring to "open exposure".
>
> 38 But the two are separate features of an arm's length sale.
>
> 39 For the Southland or the Northgate sales, the owners did not show that either sale was in any way limited to this purchaser or that the vendor was not "open" to receive or decline offers from any potential purchaser.
>
> 40 As to the second requirement of reasonable exposure, lack of exposure is not fatal to the use of a sale in the calculation of a MAF. If the lack of exposure has an effect that can be measured, then the sale is to be adjusted by that amount, as noted above.

[90] It is more difficult at times to identify what a statutory phrase or its equivalent means, than what it does not mean. And it is often unwise to remark upon what a phrase encompasses, as opposed to what it does not encompass, when there is no need to do so. That is the case here, where the question is whether the phrase in issue operates to exclude from consideration an otherwise arm's length sale made in the absence of advertising the property for sale, or listing it for sale, or otherwise bringing the prospective sale to the attention of other potential buyers. It will suffice, then, for us to express the opinion the phrase was not intended to operate to exclude

such sales. Why? Because that would serve to remove from consideration many otherwise arm's length sales, sales that are just as indicative of market value as those made following listing, advertisement or whatever. In other words, and in many instances, this would serve to defeat the purpose of the provisions of Documents 1.1.2(c) and 1.1.6.

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[91] The appellant cited two cases to support its position that the phrase "in an open market" ought be construed to require exposure to the market by advertisement or listing or the equivalent, namely: *Canadian Pacific Railway* v. *Windebank* [1917] 1W.W.R. 447 (Man. C.A.); and *Wallace* v. *New Brunswick (Minister of Transportation)* (1984), 31 L.C.R 39, (N.B.Q.B.). Given the factual and legal context in which each of those cases played out, we did not find either particularly helpful. This is especially so of the former, but even the latter is distinguishable on the basis of its factual and legislative underlay.

[92] On the whole, then, we do not think the decision of the Board, to the extent it sanctioned the Assessor's use of the Victoria Square Mall in calculating the MAF, is unreasonable or unsupported by the evidence, or is grounded in a misinterpretation or misapplication of the governing provisions of the Manual. It follows that such error as the Committee may have made in failing to address the matter is immaterial.

(b) <u>The adjustment of the sale price</u>

[93] According to the appellant's fifth and last ground of appeal, the Committee misconstrued the decisions of the Board of Revision, or ignored evidence, in

deciding that the sale of the Victoria Square Mall did not require adjustment pursuant to Document 1.1.6. In considering this, it is important to note that this ground of appeal, as advanced on argument before the Court, takes issue with the Committee's decision in relation only to the order of the Board requiring the Assessor to adjust the sale price to account for the atypical rates of interest on the mortgages.

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[94] Recall that the Board, in its 2004 decision, ordered the Assessor to adjust the sale price of the Victoria Square Mall, however slightly, to account for the rates of interest on the two mortgages. In doing so, the Board observed that the Assessor had testified to thinking the sale price should have been adjusted to reflect the fact the first mortgage carried a higher than market-rate of interest, whereas the second carried a lower than market-rate. The Board also observed that the Assessor had testified to thinking such adjustment would serve to slightly increase the sale price but would not significantly affect the MAF. In the light of this testimony, and the mandatory nature of the language of the adjustment provisions of Document 1.1.6, the Board thought it had no choice but to order him to adjust the sale price, "however slight the adjustment will be, for the atypical interest rates on the mortgages".

[95] The Board thought it had no choice in the matter even though, according to the Assessor's testimony, such adjustment would serve to *increase* the sale price of the Victoria Square Mall. An increase in the sale price was predestined to increase the MAF specifically pertaining to the sale of the Victoria Square Mall (the "target MAF" as it is called) and therefore the median MAF derived from this and the other sales used by the Assessor in calculating the median MAF. Indeed, the Assessor, acting on the order of the Board, apparently increased the target MAF from 1.06 to

1.07.

[96] The implications of making this order seem to have been overlooked by the Board. The order was inevitably bound to lead to an *increase* in the sale price and, in turn, an *increase* in the target MAF and the median MAF, the fair value of the subject property, and the assessment. The significance of this lies in the fact the appeal to the Board was taken by the taxpayer, not the City, meaning it was not open to the Board in the absence of a cross-appeal by the City to increase the assessment.

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[97] Presumably, this is what the appellant company had in mind in appealing to the Committee on the ground the Board erred in ordering the Assessor to make this adjustment. And it would seem the Committee thought the Board should not have done so. While the Committee did not specifically address the matter, it found that the sale was to be used on the basis of a target MAF of 1.06, not 1.07. Thus, it appears to have concluded, for whatever reason, that the Board ought not to have made the order. If this be right—and it appears to be so—the appellant succeeded in convincing the Committee not to act on the adjustment ordered by the Board.

[98] Yet, the appellant, in advancing the ground of appeal under consideration, complained about the Committee's decision in this regard. The Committee, it said, should have recognized that an adjustment of this nature was required, not one that would serve to *increase* the sale price as the Board thought, but one that would serve to *decrease* it, and decrease it substantially. So, the matter morphed into something else by the time it reached the Court.

[99] In the circumstances, we are of the opinion it is not open to the appellant,

having succeeded in convincing the Committee to disallow the increase in the sale price ordered by the Board, to now claim that the Committee misunderstood the Board's decision, or overlooked evidence, and that the sale price should be decreased, and decreased substantially, to account for the atypical rates of interest on the mortgages. This would entail opening up the case on this issue, requiring the issue to be remitted to the Board for rehearing and determination, despite the fact the appellant did not appeal to the Board on this basis. Even if it were otherwise, we are not convinced the Committee erred in law by misconstruing the decision of the Board, as alleged in the ground of appeal under consideration, or overlooked evidence. Indeed, it is difficult to credit the premises of this ground of appeal.

[100] For these reasons then, we are the opinion this ground of appeal, as argued before the Court, cannot succeed.

[101] It follows that the appeal in relation to the treatment of the sale of the Victoria Square Mall fails, as does the appeal concerning the sale of the Southland Mall. There will be judgment accordingly, dismissing the appeal in its entirety, with costs to the respondent, such costs to be taxed in the usual way.

[102] In leaving the case, we observe that other companies, owning or operating similar malls, also took issue with their 2003 and 2004 assessments. They, too, appealed to the Board of Revision and then to the Assessment Appeals Committee. And they, too, were granted leave to appeal to this Court. They were granted leave to appeal on the same grounds as those raised by HDL Investments. Counsel for the companies agreed to treat the appeal by HDL Investments as representative of the

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other appeals and to be bound by the result of this appeal. So the other appeals are also dismissed, with costs in favour of the respondent, such costs to be taxed by the Registrar in accordance with the usual practice.

Dated this 16th day of December 2009.

"Cameron J.A."
Cameron J.A

I concur:

"Hunter J.A."
Hunter J.A

"Cameron J.A." for
Wilkinson J.A.

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Tab 2

Saskatchewan Municipal Board
Assessment Appeals Committee

Appeal: 2009-0061

RESPONDENT: Rural Municipality of Mervin No. 499

In the matter of an appeal to the Assessment Appeals Committee, Saskatchewan Municipal Board, by:

Patricia and Earl Warwick

respecting the assessment of:

Part SE 17-53-20 W3rd, Parcel A, Plan 94B18561
Alternate Number: SU001317301-01

for the year 2009;

BEFORE:

David Wilkin, Chairman
Robert L. Edwards, Member
Leslie Sullivan, Member
Cynthia J. Schwindt, Secretary

APPEARED FOR THE APPELLANT: Patricia and Earl Warwick

APPEARED FOR THE RESPONDENT: No one appeared

APPEARED FOR THE SASKATCHEWAN ASSESSMENT MANAGEMENT AGENCY: Darwyn Pidwerbesky

This appeal was heard in Room 4, 1146 - 102nd Street, in North Battleford, Saskatchewan, on January 19, 2010.

This appeal is against the decision of the Board of Revision (the Board) for the Rural Municipality of Mervin No. 499 pursuant to section 246 of *The Municipalities Act* (the Act).

ISSUES:

Did the Board err in its decision by:

(i) Incorrectly applying the factor of equity as the land used for comparable assessment is distinguishable from the subject land?

(ii) Failing to provide the requisite time for the presentation of documents by the appellant?

FACTS:

(1) The subject property consists of a parcel of land with an area of 15.44 acres or 672,566 square feet currently valued at approximately $0.45 per square foot. The site is improved with a 848 square foot seasonal residential dwelling, a covered porch of 84 square feet, a deck of 464 square feet and a 120 square foot shed with year built of 1950, 1994 and 1996 (shed). The improvements are not under appeal.

(2) According to the assessor, the land rate was determined using the sale of a 20.3 acre parcel from Turtle Lake dated May 24, 2006 for $309,000, a standard parcel size of 11,234 square feet and a land size multiplier curve of 191%

(3) The assessed values (assessment) and taxable assessment for the subject property were amended by the Board as:

	Assessed Value	Taxable Assessment
Land	$299,900	$209,930
Building	$ 52,100	$ 36,470
Total	$352,000	$246,400

The retroactive base date of municipal assessments for taxation purposes in the Province of Saskatchewan is June 30, 2006. As a residential class of property, the percentage of value equals 70% of the assessed value.

(4) The grounds of appeal to the Board were threefold with the first issue being that the improvements are seasonal use, not residential.

The second issue identified relates to the land as agriculture, not residential. Approximately 13-14 acres is non arable bush land or hay land, the remainder is used for recreational use.

The third issue identified is that the assessor used insufficient data to arrive at the value of the land.

(5) The record of the Board includes:

a) Assessment notice dated April 9, 2009;
b) Notice of appeal dated June 8, 2009 with two pages of attached grounds of appeal;
c) Land title records showing the values of three separate parcels in the municipality;
d) A letter to the appellants dated June 24, 2009 setting a hearing date of July 23, 2009;
e) A letter from the appellants dated June 29, 2009 asking for an adjournment to the week of September 28 or the week of October 13, 2009;
f) A registered letter from the Board Secretary dated July 9, 2009 indicating that the hearing will take place on July 23, 2009. This letter was not received until August 5, 2009;
g) A letter from the appellants dated July 12, 2009 indicating that they have not received any response from their letter of June 29, 2009;
h) A letter dated July 13, 2009 setting a hearing date of August 19, 2009, sent by registered mail and received on August 5, 2009;
i) An assessment report from the Saskatchewan Assessment Management Agency (SAMA) including Appendices A and B;
j) A letter to the appellants dated August 5, 2009 indicating that the registered letter of July 9, 2009 was returned unclaimed with attached said letter and a copy of the envelope;
k) A letter dated August 17, 2009 from the appellants again asking for an adjournment of the hearing on August 19, 2009;
l) Minutes of the Board for August 19, 2009; and,
m) The decision of the Board, dated August 19, 2009.

(6) The decision of the Board found the following:

> "Equity is the dominant and controlling factor in the assessment of property (195(5)). Equity in non-regulated property assessments 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. (195(7)) As previously mentioned, in consultation and agreement with the R.M. of Mervin, SAMA has applied this $18.47 per square foot rate to all lakefront large parcels around Turtle and Bright Sand Lakes if they

> have a summer cottage or house or if they have been approved for subdivision.
>
> This Board of Revision recognizes that the Appellant has been given more than the prescribed time to prepare documentation for this appeal. All documentation, that was received by the Board Secretary on June 9th, 2009, was heard by all parties of this appeal.
>
> **This Board recommends that SAMA's land calculation error for the total land value must be changed from $304,300 to $299,900 and the taxable land value must be changed from $213,010 to $209,930. The improvement values remain unchanged. The total property assessment changed from $356,400 to $352,000 and the taxable property assessment changes from $249,480 to $246,400. This appeal has been granted only for the land values as recognized in the calculation as specified by SAMA's information that was presented."**

(7) The grounds of appeal to the Saskatchewan Municipal Board, Assessment Appeals Committee (the Committee) are:

> "The factor of equity was inappropriately applied as the land used for comparable assessment is distinguishable from our land. Furthermore, the board of revision did not provide requisite time for presentation of documents by the appelant [sic]."

The notice of appeal to the Committee was dated September 24, 2009 and received on September 25, 2009.

(8) The Committee received a written submission from the appellants identified as Exhibit AAC-A1.

(9) The Committee also accepted with acceptance of the appellant a map of the area from the respondent identified as Exhibit AAC-R1.

LEGISLATION:

The Municipalities Act:

> **"193 In this Part:**
>
> **(d) "base date" means the date established by the agency for determining the value of land and improvements for the purpose of establishing assessment rolls for the year in which the valuation is to be effective and for each subsequent year preceding the year in which the next revaluation is to be effective;**
>
> **(e.1) "market valuation standard" means the standard achieved when the assessed value of 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

(iv) meets quality assurance standards established by order of the agency;

(e.2) "market value" means the amount that a property should be expected to realize if the estate in fee simple in the property is sold in a competitive and open market by a willing seller to a willing buyer, each acting prudently and knowledgeably, and assuming that the amount is not affected by undue stimuli;

(e.3) "mass appraisal" 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;

194(1) All property in a municipality is subject to assessment.

195(1) An assessment shall be prepared for each property in the municipality using only mass appraisal.

(2) All property is to be assessed as of the applicable base date.

(3) Notwithstanding subsection (2), land and improvements may be assessed separately in circumstances where separate values are required.

(4) Each assessment must reflect the facts, conditions and circumstances affecting the property as at January 1 of each year as if those facts, conditions and circumstances existed on the applicable base date.

(5) The dominant and controlling factor in the assessment of property is equity.

(7) Equity in non-regulated property assessments 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.

196(1) The Lieutenant Governor in Council may make regulations:

(a) establishing classes of property for the purposes of this section; and

(b) setting percentages of value that are applicable to classes of property established pursuant to clause (a).

(2) Classes of property established pursuant to subsection (1) may be all or any of the following:

(a) classes of land;

(b) classes of improvements;

(c) classes of land, improvements or both classified according to the use to which the land or improvements or land and improvements are put.

(3) The assessor shall determine to which class established pursuant to the regulations, if any, any property belongs.

197 After calculating the assessment of property that belongs to a class of property established pursuant to subsection 196(1), the assessor shall determine the taxable assessment of the property by multiplying the assessment by the percentage of value applicable to the class of property to which the property belongs.

225(1) An appeal of an assessment may only be taken by a person who:

(a) has an interest in any property affected by the valuation or classification of any property; and

(b) believes that an error has been made:

(i) in the valuation or classification of the property; or

(ii) in the preparation of or the content of the relevant assessment roll or assessment notice.

(4) The agency is to be made a party to an appeal if:

(a) the agency prepared the valuation or classification of any property being appealed; or

(b) the appeal is by a municipality or other taxing authority.

(6) A notice of appeal must be in writing in the form established in regulations made by the minister and must:

(a) set out the specific grounds on which it is alleged that an error exists;

(b) set out in summary form, the particular facts supporting each ground of appeal;

(c) if known, set out the change to the assessment roll that is requested by the appellant;

(d) include:

(i) a statement that the appellant and the respondent have discussed the appeal, specifying the date and outcome of that discussion, including the details of any facts or issues agreed to by the parties; or

(ii) if the appellant and the respondent have not discussed the appeal, a statement to that effect specifying why no discussion was held; and

(e) include the mailing address of the appellant.

233(1) Boards of revision are not bound by the rules of evidence or any other law applicable to court proceedings and have the power to determine the admissibility, relevance and weight of any evidence.

(4) A board of revision may make rules to govern its proceedings that are consistent with this Act and with the duty of fairness.

240(1) After hearing an appeal, a board of revision or, if the appeal is heard by a panel, the panel may, as the circumstances require and as the board or panel considers just and expedient:

(a) confirm the assessment; or

(b) change the assessment and direct a revision of the assessment roll accordingly:

(1.1) Notwithstanding subsection (1), a non-regulated property assessment shall not be varied on appeal using single property appraisal techniques.

(2) A board of revision or panel shall not exercise a power pursuant to subsection (1) except as the result of an appeal.

(3) Notwithstanding subsection (1), an assessment shall not be varied on appeal if equity has been achieved with similar properties.

(4) A board of revision shall decide all appeals within 90 days after the date on which the municipality publishes a notice pursuant to section 217, and no appeal may be heard after that date unless allowed pursuant to subsection 219(2) or 243(9) or section 404.

(4.1) Notwithstanding subsection (4), in the year of a revaluation pursuant to *The Assessment Management Agency Act*, a board of revision shall decide all appeals within 120 days after the date on which the municipality publishes a notice pursuant to section 217, and no appeal may be heard after that date unless allowed pursuant to subsection 219(2) or 243(9) or section 404.

(5) After a decision is made pursuant to subsection (1), the secretary of the board of revision shall, by registered mail, send to each party:

(a) a copy of the decision together with written reasons for the decision; and

(b) a statement informing the party of the rights of appeal available pursuant to section 246 and the procedure to be followed on appeal.

246 Subject to section 224(5), any party to an appeal before a board of revision has a right of appeal to the appeal board:

(a) respecting a decision of a board of revision; and

(b) against the omission, neglect or refusal of that board to hear or decide an appeal.

247(1) An appellant, including a municipality, other taxing authority or the agency, bringing an appeal to the appeal board shall serve on the secretary of the appeal board a notice of appeal setting out all the grounds of appeal.

(2) A notice of appeal pursuant to subsection (1) must be in the form established in regulations made by the minister.

(3) The appellant shall serve the notice of appeal mentioned in subsection (1):

(a) within 30 days after being served with a decision of the board of revision; or

(b) in the case of the omission, neglect or refusal of the board of revision to hear or decide an appeal, at any time within the calendar year for which the assessment was prepared.

250 On the request of the secretary of the appeal board, the secretary of the board of revision shall, with respect to each appeal to the appeal board, send to the appeal board:

(a) the notice of appeal to the board of revision;

(b) materials filed with the board of revision before the hearing;

(c) any exhibits entered at the board of revision hearing;

(d) the minutes of the board of revision, including a copy of any order made pursuant to section 239;

(e) any written decision of the board of revision; and

(f) the transcript, if any, of the proceedings before the board of revision.

252 Subject to section 253, and notwithstanding any power that the appeal board has pursuant to *The Municipal Board Act* to obtain other information, an appeal to the appeal board pursuant to this Act is to be determined on the basis of the materials transmitted pursuant to section 250.

253(1) The appeal board shall not allow new evidence to be called on appeal unless it is satisfied that:

(a) through no fault of the person seeking to call the new evidence, the written materials and transcript mentioned in section 250 are incomplete, unclear or do not exist;

(b) the board of revision has omitted, neglected or refused to make a decision; or

(c) the person seeking to call the new evidence has established that relevant information has come to the person's attention and that the information was not obtainable or discoverable by the person through the exercise of due diligence at the time of the board of revision hearing.

(2) If the appeal board allows new evidence to be called pursuant to subsection (1), the appeal board may make use of any powers it possesses pursuant to *The Municipal Board Act* to seek and obtain further information.

256(1) After hearing an appeal, the appeal board may:

(a) confirm the decision of the board of revision; or

(b) modify the decision of the board of revision in order that:

(i) errors in and omissions from the assessment roll may be corrected; and

(ii) an accurate, fair and equitable assessment for the property may be placed on the assessment roll.

(2) If the appeal board decides to modify the decision of the board of revision pursuant to subsection (1), the appeal board may adjust, either up or down, the assessment or change the classification of the property.

(3) Notwithstanding subsections (1) and (2), a non-regulated property assessment shall not be varied on appeal using single property appraisal techniques.

(3.1) Notwithstanding subsections (1) and (2), an assessment shall not be varied on appeal if equity has been achieved with similar properties.

(4) After a decision is made pursuant to subsection (1), the secretary of the appeal board shall, by ordinary mail, send a copy of the decision together with written reasons, if any, for the decision to each party in the appeal."

MARKET VALUE ASSESSMENT IN SASKATCHEWAN HANDBOOK (THE HANDBOOK):

"1.3.1 Market Valuation Standard

Market Valuation Standard assessments (referred to in the municipal Acts as "non-regulated property assessments") are as of the base date set by SAMA.

According to the municipal Acts the "market valuation standard" is "...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

(iv) meets quality assurance standards established by order of the agency;"

The municipal Acts define "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;". The IAAO (Property Appraisal and Assessment Administration, 1990, page 651) has a similar definition for mass appraisal - "the process of valuing a group of properties as of a given date, using standard methods, and allowing for statistical testing".

"Market value" is defined in the municipal Acts as "...the amount that a property should be expected to realize if the estate in fee simple in the property is sold in a competitive and open market by a willing seller to a willing buyer, each acting prudently and knowledgeably, and assuming that the amount is not affected by undue stimuli;".

"Estate in fee simple" is also referred to as "fee simple estate". It is defined (Appraisal of Real Estate, 2nd Canadian Edition, 2002) as absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, expropriation, police power and escheat.

Difference Between the Market Value and the Sale Price

Sometimes the market value assessment of a property is confused with the sale price of an individual property. However, the sale price is not necessarily the market value assessment on a property. The sale price is a historical fact. It is the amount the purchaser agreed to pay and the seller agreed to accept under the circumstances surrounding the sale. Market value is not a historical fact - it is an estimate within a range. A sale price might not equal the market value assessment on a property for any of the following reasons:

- The sale might not have occurred in the assessment year or the date on which the property was valued.
- The purchaser or seller might not have been aware that similar properties were selling for more or less than the price for which the property was purchased.
- The buyer or seller may have been unduly motivated (for example, urgency due to being

transferred to another city, needed to sell property as part of a division of matrimonial assets, etc.)

- The sale may have involved a trade, partial interest, special financing, personal property, or assumed leases.

Assessors gather information on properties that have sold and determine the ranges of sale prices in the marketplace. This statistical data is used as part of the process for calculating market value assessments.

Sale price information helps to develop market value assessments. Assessments are calculated by analyzing the range of sale prices of groups of properties at a specific point in time. Several sales of similar properties are compared to determine typical market values of specific types of properties that have similar characteristics.

While the actual sale price of a property might be in the same range as the sales of similar properties, the resultant market value assessment is a composite analysis of all of the similar sales.

Key Characteristics of Market Value

The key characteristics of market value are:

- It is the most probable price estimate within a range, not the highest, lowest, or average price. It should also be fair and equitable.
- It is expressed in terms of a dollar value.
- It assumes a transaction between unrelated parties in the open market.
- It assumes a willing buyer and a willing seller with no advantage being taken by either party.
- It recognizes the present use and potential use of the property.

Three Approaches to Value

There are three standardized approaches to estimate the assessment of a property:

- Sales comparison approach
- Cost approach
- Income approach. (also referred to as the rental income approach)"

CASE LAW:

Cadillac Fairview Corp. v. Saskatoon (City), 2000 SKCA 84, 199 Sask. R. 72.

CONCLUSIONS AND REASONS:

[1] This Committee has received an appeal against a decision of the Rural Municipality of Mervin No. 499 Board of Revision, and on the basis of the presentations of the appellant and respondent, must decide if the record shows that an error has occurred. The role of the Committee is not to redo the hearing. Rather, the Committee is to review the evidence from that hearing and determine whether the Board came to the proper conclusion in rendering its decision. Should the Committee conclude that the Board did not come to the proper conclusion based upon the evidence before it the Committee is then required to do what the Board ought to have done. The onus is upon the appellant to demonstrate to the Committee where the Board has erred.

Appellant's Submission

[2] The appellants argued the Board did not provide enough time to provide written evidence and argument to establish their case. The record shows that the notice for the hearing was sent on July 13, 2009 but not received until August 7, 2009, just 12 days prior to the hearing.

[3] The second point argued by the appellant was that the assessed value was incorrectly established using only one sale. This is in direct contradiction of the Saskatchewan Court of Appeal (the Court) decision in Cadillac Fairview, supra, which was a decision on a question of the Market Adjustment Factor (MAF). In this case the Court decided that the MAF could not be based on one sale as it could not be tested in a mass appraisal system. The appellant argued that the same test should be applicable for the valuation of land in order to achieve the required market valuation standard.

[4] In addition the one sale used from Turtle Lake is not a good comparison; it was available for re-subdivision and has currently been divided into several smaller lots. The subject property is not eligible for re-subdivision therefore the two properties are not comparable in the market place.

[5] The third point concerned a number of sales on Bright Sand Lake that were disregarded by the assessor and the Board that should have been used in the analysis. A 17 acre parcel on Bright Sand Lake that sold in 2003 for $42,700, Lot 15, Block 1, Plan 81B12877 sold for $3,000 and Lot 16, Block 1, Plan 81B12877 sold for $3,180 and lastly a set of three lots sold in 2005 for $60,000 (L'Heureux sale).

[6] The final point by the appellant was the 2007/2009 sales used by the assessor to validate the land values should have carried no weight with the Board. These sales are outside the time frame and have no bearing on any values as of the base date.

Respondent's Submission

[7] The respondent stated that the assessor did not use the 2007/2009 sales to establish any values but did use the sales to verify the results.

[8] He also argued that the subject property is available to be subdivided and therefore is an excellent comparable to the one large acreage sale on Turtle Lake.

[9] The respondent argued that the sale of the 17 acre parcel on Bright Sand Lake is too far removed from the base date and as a result would have to be time adjusted in order to be used in the analysis. As for the two smaller lots, they were not lake front lots, and were sold by the Municipality and considered as forced sales therefore were not comparable to the subject. The sale of the three lots (L'Heureux) was an improved sale and not considered in the valuation of land.

Committee's Decision

[10] As it relates to the appellant's concerns with the assessor's use of one sale to establish the subject's assessed value and the assessor's reliance on sales outside of the sales timeframe to "verify" the results, the Committee is cognizant of the Court decision in Cadillac Fairview, supra, where the Court clearly states:

> "[70] Finally, use of one sale to determine a MAF does not comply with Document 1.1.1 which states that the method of valuation established by the manual is mass appraisal, the process of valuing properties as of a given date, using standard methods and allowing for statistical testing. It is not disputed that use of one sale is not a standard method of determining a MAF. Use of one sale certainly does not allow for statistical testing.
>
> [73] The city's contention that it established the reliability of the MAF by a comparison with the MAF established in Regina through two sales of enclosed malls, and by a comparison with the sale price of Midtown Plaza itself after the cut off date does not advance its case. A MAF arrived at by a method not provided for by the manual cannot be justified on this basis. Equity lies in the even, consistent and proper application of the manual, according to its terms. In this case, the taxpayer (and the owners of the other enclosed malls) has been treated differently from all other taxpayers in terms of calculation of the MAF."
>
> (Committee emphasis)

[11] In the Committee's view the assessor has done exactly what Cadillac Fairview, supra, has said not to do; the assessor has used one sale to establish the land rate for this area.

[12] Section 193 of the Act states:

> **"(e.1) "market valuation standard" means the standard achieved when the assessed value of 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**

> **(iv) meets quality assurance standards established by order of the agency;**
>
> **(e.2) "market value" means the amount that a property should be expected to realize if the estate in fee simple in the property is sold in a competitive and open market by a willing seller to a willing buyer, each acting prudently and knowledgeably, and assuming that the amount is not affected by undue stimuli;**
>
> **(e.3) "mass appraisal" 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;"**

[13] The law states that the appraiser must use the market valuation standard when valuing these types of properties. It goes on to say that the market valuation standard must be achieved by using mass appraisal techniques, and mass appraisal means a method that allows for statistical testing.

[14] In using only one sale to determine the land value the appraiser is left with the problem of not being able to test the results in an assessment to sales ratio (ASR) study to determine the accuracy of the analysis. While the ASR is 1/1 as it must be with only one sale, how do you calculate a coefficient of dispersion?

[15] The Committee is also puzzled as to how the appraiser managed to determine a land size multiplier curve using only one sale. A curve requires at least two points of reference, so the appraiser must have either predetermined the standard parcel size from an external source or predetermined the curve itself.

[16] The Committee finds that the Board erred in allowing the appraiser to value the property using only one sale.

[17] The Committee also finds the use of sales after the cut off date to be of no value. The land value must be based on evidence that was present at the time of the base date and therefore sales after the base date have no bearing on the evidence, even as a verification.

[18] In order to ensure that the calculation of the subject land's assessed value meets the legal requirements, it is clear that more than one sale must be used in the sales analysis. In reviewing the evidence before the Board, the Committee finds that only the 2003 sale of 17 acres on Bright Sand Lake is similar to both the sale used by SAMA and the subject in terms of both size and location.

[19] The Committee is of the opinion that the three remaining sales do not compare in size or location and should not be used in the sales analysis. The Committee concludes that for this appeal the 2003 sale of the 17 acre waterfront site must be used in conjunction with the sale at Turtle Lake to establish the land values for larger parcels on the lake front. To understand the outcome resulting from this finding, in a letter dated March 11, 2010, the Committee asked the assessor to provide a recalculated assessed value for the subject land, using the two available larger parcel sales. The assessor was requested to provide this information with a copy to the appellant, by March 26, 2010. The appellant was advised that should comment be required on the results of this undertaking, same must be provided by April 2, 2010.

[20] The assessor responded to this request by submission received by the Committee on March 26, 2010. The recalculated assessed value for the subject land was $151,700. For the following reasons the Committee places no weight on the assessor's comment from within the undertaking that "... median assessment to sale ratio should be 1.00 and the COD less than 20. This valuation method does not appear to produce an accurate assessment."

[21] Firstly, the Committee is aware of a number of cluster sale analysis completed by SAMA and used to determine assessed values for properties located throughout the Province, that likewise do not achieve the above results. Secondly, the evidence in the record for this appeal as discussed at length above is that the assessed value calculated for the subject land was based upon one sale. Neither

the Board nor the Committee can allow an assessment to stand that does not meet the requirements of the law.

[22] With respect to the time frame concerns raised by the appellant, the Committee is of the view that this issue does not need to be addressed due to its decision on the substantive merits.

DECISION:

This appeal is sustained. For 2009, the assessed value of the subject land shall be $151,700 based upon using the two sales of:

a) The 20.3 acre parcel sold in 2006 on Turtle Lake for $309,000; and,

b) The 17 acre parcel on sold in 2003 on Bright Sand Lake for $42,700.

The filing fee shall be refunded.

DATED AT REGINA, Saskatchewan this

13th day of April, 2010.

SASKATCHEWAN MUNICIPAL BOARD
Assessment Appeals Committee

- original signed by -

Per: ______________________
David Wilkin, Chairman

- original signed by -

Per: ______________________
Cynthia J. Schwindt, Secretary

- original signed by -

Robert L. Edwards, for the Committee

____

I concur:

- original signed by -

____
Leslie Sullivan, Member

Tab 3

Saskatchewan Municipal Board
Assessment Appeals Committee

Appeal: 2011-0079

RESPONDENT: City of Saskatoon

In the matter of an appeal to the Assessment Appeals Committee, Saskatchewan Municipal Board, by:

610539 Saskatchewan Ltd.
c/o Garry Coleman
Altus Group Limited
226C Cardinal Crescent
Saskatoon, SK S7L 6H8

respecting the assessment of:

Parcels 118932420, 118932475, 118932543
102 Cardinal Crescent
Roll Number: 464805690

for the year 2011;

BEFORE: David Wilkin, Chairman
Jenny Lai Yu, Member
Randy Markewich, Member

APPEARED FOR THE APPELLANT: Jesse Faith

APPEARED FOR THE RESPONDENT: Darcy Huisman
Travis Horne

This appeal was heard in Room 2.1, Sturdy Stone Building, 122 - 3rd Avenue North, in Saskatoon, Saskatchewan, on May 17, 2012.

The appeal is against the decision of the Board of Revision (the Board) for the City of Saskatoon pursuant to section 216 of *The Cities Act* (the Act).

ISSUES:

Did the Board err in:

(i) Neglecting to adjust the occupancy level of the subject property to recognize the significant variance between the market performance of the subject and the applied model occupancy percentage; and,

(ii) Failing to adjust the number of rooms available for rent to reflect the facts, conditions and circumstances as of January 1, 2011?

FACTS:

(1) The subject property is known as the Heritage Inn and is located in the Airport Business Area of the City of Saskatoon. The parcels are improved with a six storey, 166 room full service hotel equipped with restaurant, lounge and pool. The assessor has used the income approach to value to determine the assessed value for the subject.

(2) The assessed value and taxable assessment for the subject property as reflected by the Board's decision was $4,747,300.

The retroactive base date of municipal assessments for taxation purposes in the Province of Saskatchewan is June 30, 2006. As a commercial property, the percentage of value equals 100% of the assessed value.

(3) The grounds of appeal to the Board as they relate to the issues remaining for this appeal were:

> "2. The assessor erred in the application of the current ADR and occupancy in determining the assessment."
>
> "4. The properties used to develop the valuation ranges of the current neighbourhood stratification used to determine the subject's assessment do not accurately represent the subject. The stratification is in error.
>
> 5. Equity has not been achieved."
>
> "Supporting Facts:
>
> 2.
>
> a. The actual ADR and occupancy values are significantly lower than applied by the assessor. The 3 year average for

occupancy and ADR is significantly less than the assessor has used.

b. The value determined by the model is at significant variance to the actual performance of the subject property.

c. The assessor has used neither the properties actual ADR or occupancy to calculate the gross room revenue.

d. As of January 1st, there are three rooms which are not rentable due to damage and have been removed from the serviced rentable room inventory.

e. As of January 1st, there are another three rooms which have been removed from the serviced rentable room inventory. One is used as a maintenance office and two are used for hotel storage.

f. As of May 30th, 2006, the reported occupancy was nearly half of the rate used to currently assess the property."

"4.

a. Comparable, or similar, properties have not been used to value the subject.

b. The model range for the ADR and occupancy has not been developed from the subject property.

c. The subject property is not a "flag" property.

d. The subject's occupancy and ADR is significantly lower and not represented by the properties used to develop the model ranges.

e. The property did, and does, require significant repair.

f. The pool is closed.

5.

a. Comparable properties receive a lower assessment per room."

(4) The record of the Board includes:

a) Exhibit A.1 - Notice of appeal dated May 16, 2011 signed by Jesse Faith, with Schedule A attached;

b) Exhibit B.1 - March 3, 2011 deficiency letter from the secretary of the Board to the agent;
c) Exhibit A.2 - March 7, 2011 perfection letter from the agent to the secretary of the Board;
d) Exhibit A.3 - Confidential materials marked as Appendix B to G by the agent received on June 10, 2011 by the Board;
e) Exhibit A.4 - 39 page submission by the agent with Appendices A to L inclusive attached and received by the Board on June 10, 2011;
f) Exhibit A.5 - Addenda 1 to 21 inclusive by the agent to the Board, received by the Board on April 19, 2011;
g) Exhibit R.1 - 13 page assessment report with Appendices A to G on behalf of the respondent, received by the Board on June 20, 2011;
h) Exhibit R.2 - Appendices C to G submission by the respondent marked as confidential;
i) Minutes of the Board dated June 30, 2011;
j) Board's request and Order for Court Reporter for June 30, 2011;
k) Board Confidentiality Order relating to Document "B" of Exhibit A.3 and Appendix "C" - Property Valuation Sheet in Exhibit R.2;
l) Transcript of the Board dated June 30, 2011; and,
m) Decision of the Board dated July 12, 2011.

(5) In rendering its decision for the issues related to this appeal, the Board commented:

> "The Panel first considered the issue of room rental inventory. In R.2 it is noted that the subject owner reported □ [A] rooms, in use, for the years 2004, 2005 and 2006. In testimony, it was confirmed this was the correct number of rooms in 2011, though 6 of them have been taken out of circulation by management for either repairs because of damage or converted to other uses like offices and storage.
>
> ...
>
> It is the view of the Panel that the room count should be □ [A] rooms. The fact that 6 rooms are temporarily out of service, in 2011, should not exclude them from inventory, as they do have the potential to generate income to the real estate. The decision to remove them temporarily from inventory, for whatever purpose, is an internal management issue. This is consistent with the Guide's recommendation of using the income approach to value (the present worth of anticipated or forecasted future benefits) to calculate the assessed value of the subject.
>
> ...
>
> The Panel is convinced that the "bulk of hotels", with occupancy rate range of 50 - 80%, represents "typical" in the Saskatoon market. The occupancy rate of 60.3% -

> 73.3%, for the "full service" grouping of hotels seems to represent typical. For the Assessor to have included the subject's actual occupancy rate of □ [A]% in the analysis would have skewed the results of a typical operating hotel, in this grouping, because it was behaving atypically."

The Board concluded the following:

> "In conclusion the Panel does not find that the Assessor erred in the development of the hotel model for this grouping of hotels. Though the subject is under performing, and may appear to be different, it has the potential to perform as well as the other hotels in its grouping. The Panel finds that the subject is being treated equitably in the calculation of its assessed value in relation to the other hotels in this grouping."

The decision of the Board found the following:

> "It is the Panel's decision that all Grounds are dismissed."

(6) Grounds of appeal to the Saskatchewan Municipal Board, Assessment Appeals Committee (the Committee) as they relate to the remaining issues are as follows:

> "The 2011 Board of Revision for the City of Saskatoon erred in its decision in several respects;
>
> I. When failing to find, or list, all of the relevant facts presented by the appellant, as suggested by the Assessment Appeals Manual, as published by Saskatchewan Ministry of Municipal Affairs."
>
> "16. When finding that the current assessment represents the market value of the subject.
>
> 17. In finding that all of the 6 rooms in question were temporaily [sic] out of service.
>
> 18. In neglecting to find that as of January 1st, 2011 that the number of rental rooms available was in fact □ [A].
>
> 19. In neglecting to consider the BOR decision for Appeal #73-2010.
>
> 20. In finding the subject was being treated equitability [sic] with other properties.

21. When neglecting to find that the property was not used to develop the modeled occupancy ranges.

22. When not adjusting the occupancy to reflect the significant difference between the market performance of the subject and the modeled value.

23. When not expanding the occupancy range to incorporate the subject's performance.

24. When finding the subject "has the potential to operate within the typical ranges of this hotel grouping" when no evidence was lead to support such a conclusion."

Note: Subsequent to filing the notice of appeal the Committee received an email on April 17, 2012 from the agent requesting the withdrawal of grounds 2 to 15.

(7) The notice of appeal to the Committee was dated July 29, 2011 and received on August 2, 2011.

(8) The Committee received written presentations from the agent marked as AAC Exhibit A1 and from the respondent marked as AAC Exhibit R1.

(9) On May 4, 2012, the Committee issued a Confidentiality Order at the request of the city assessor relating to "subject's occupancy rate of □ [A]%" as identified at page 10 of AAC Exhibit R1.

(10) On May 4, 2012, the Committee issued a further Confidentiality Order at the request of the Altus Group relating to Tab A, page 14 of AAC Exhibit A1.

(11) On May 18, 2012, the Committee issued a further Confidentiality Order at the request of Altus Group relating to "the subject's reported and stabilized occupancy rates as found at paragraphs 12 and 13 of AAC Exhibit A1."

(12) On May 18, 2012, the Committee issued a further Confidentiality Order at the request of the city assessor relating to "Appendices D and E (pages 20 to 39 inclusive) of Exhibit R1."

LEGISLATION:

The Cities Act:

"163 In this Part:

(f.1) "market valuation standard" means the standard achieved when the assessed value of 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

(iv) meets quality assurance standards established by order of the agency;

(f.2) "market value" means the amount that a property should be expected to realize if the estate in fee simple in the property is sold in a competitive and open market by a willing seller to a willing buyer, each acting prudently and knowledgeably, and assuming that the amount is not affected by undue stimuli;

(f.3) "mass appraisal" 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;

(f.4) "non-regulated property assessment" means an assessment for property other than a regulated property assessment;

165(1) An assessment shall be prepared for each property in the city using only mass appraisal.

(3) The dominant and controlling factor in the assessment of property is equity.

(3.1) Each assessment must reflect the facts, conditions and circumstances affecting the property as at January 1 of each year as if those facts, conditions and circumstances existed on the applicable base date.

(4) Equity in regulated property assessments is achieved by applying the regulated property assessment valuation standard uniformly and fairly.

(5) Equity in non-regulated property assessments 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.

183(1) The assessor shall make the assessment roll available for public inspection during normal business hours from the day of completion of the assessment roll to the last day for lodging an appeal.

(2) The council may authorize that the assessment roll or portions of the assessment roll be available for public inspection at any additional times that the council may determine.

197(6) A notice of appeal must be in writing in the form prescribed in regulations made by the minister and must:

(d) include a statement that:

(i) the appellant and the respondent have discussed the appeal, specifying the date and outcome of that discussion, including the details of any facts or issues agreed to by the parties; or

(ii) if the appellant and the respondent have not discussed the appeal, a statement to that effect specifying why no discussion was held; and

(e) include the mailing address of the appellant.

200(4) At least 10 days before the date set for the appeal hearing, the assessor shall file with the secretary of the board of revision and serve a copy on all parties to the appeal:

(a) a complete assessment field sheet; and

(b) a written explanation of how the assessment was determined, including:

201(1) Before providing information to the assessor or any other party to an appeal, the party that is to provide the information may:

(a) declare the information confidential; and

(b) seek an undertaking of the other party that:

(i) all or some of the information provided is provided solely for the purpose of preparing an assessment or for an appeal hearing; and

(ii) no other use may be made of the information.

(2) Failure to provide an undertaking pursuant to subsection (1) forfeits the right of the other party to obtain the information being sought by any other process.

(3) No person who is required to comply with an undertaking given pursuant to this section shall fail to do so.

202(1) On the request of any party to an appeal, a board of revision, the appeal board or the Court of Appeal may make an order declaring all or any part of the information provided by that party to be confidential if the board of revision, the appeal board or the Court of Appeal determines that disclosure of that information on the hearing of the appeal could reasonably be expected to:

(a) result in financial loss or gain to the party or to any other person;

(b) prejudice the competitive position of the party or of any other person; or

(c) interfere with the contractual negotiations or other negotiations of the party or of any other person.

209(1) On application made by an appellant appearing before it, a board of revision may, by order, grant leave to the appellant to amend his or her notice of appeal so as to add a new ground on which it is alleged that error exists.

210(1) After hearing an appeal, a board of revision or, if the appeal is heard by a panel, the panel may, as the circumstances require and as the board or panel considers just and expedient:

(a) confirm the assessment; or

(b) change the assessment and direct a revision of the assessment roll accordingly:

(i) subject to subsection (3), by increasing or decreasing the assessment of the subject property;

(ii) by changing the liability to taxation or the classification of the subject property; or

(iii) by changing both the assessed value of the subject property and its liability to taxation or its classification.

(1.1) Notwithstanding subsection (1), a non-regulated property assessment shall not be varied on appeal using single property appraisal techniques.

(3) Notwithstanding subsection (1), an assessment shall not be varied on appeal if equity has been achieved with similar properties.

(4) A board of revision shall make all decisions on appeals within 180 days after the date on which the city publishes a notice pursuant to section 187, and no appeal may be heard after that date except where allowed pursuant to subsection 189(2) or 213(9) or section 360.

216 Subject to subsection 196(5), any party to an appeal before a board of revision has a right of appeal to the appeal board:

(a) respecting a decision of a board of revision; and

(b) against the omission, neglect or refusal of a board of revision to hear or decide an appeal.

226(1) After hearing an appeal, the appeal board may:

(a) confirm the decision of the board of revision; or

(b) modify the decision of the board of revision in order that:

(i) errors in and omissions from the assessment roll may be corrected; and

(ii) an accurate, fair and equitable assessment for the property may be placed on the assessment roll.

(2) If the appeal board decides to modify the decision of the board of revision pursuant to subsection (1), the appeal board may adjust, either up or down, the assessment or change the classification of the property.

(3) Notwithstanding subsections (1) and (2), a non-regulated property assessment shall not be varied on appeal using single property appraisal techniques.

(3.1) Notwithstanding subsections (1) and (2), an assessment shall not be varied on appeal if equity has been achieved with similar properties."

MARKET VALUE ASSESSMENT IN SASKATCHEWAN HANDBOOK (THE HANDBOOK):

Hotel/Motel Valuation Guide, Section 2.4 Using the Income Approach to Value Hotels, Segregation of the Hotel Real Estate Component, page 6
Hotel/Motel Valuation Guide, Section 3.6 Compare Income and Expense Ratios to Industry Norms, Recommendation, page 28
Hotel/Motel Valuation Guide, Section 5.2 Explanation of Valuation Forms Example, Form 2 - Hotel Valuation Proforma Analysis (HTL2) Example, Variance Allowed (Entry Column "M"), page 52

REFERENCE SOURCE: INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS (IAAO) STANDARD ON RATIO STUDIES–2010:

Part 1. Guidance for Local Jurisdictions, Subsection 5.2, Outlier Ratios, page 12
Part 2. Equalization and Performance Monitoring, Subsection 11.1.5, Adjustments for High Variability and Small Samples, page 34
Definitions, Confidence interval, page 40
Definitions, Outliers, page 42
Appendix B. Outlier Trimming Guidelines, Section B.2 Scrutiny of Identified Outliers, page 53

COMMITTEE DECISION:

Appeal 2011-0046, *Manitou Springs Hotel Inc. v. Resort Village of Manitou Beach*

CASE LAW:

Sasco Developments Ltd. v. Moose Jaw (City), 2012, SKCA 24, CACV1981

CONCLUSIONS AND REASONS:

[1] This Committee has received an appeal against the decision of the City of Saskatoon Board of Revision, and on the basis of the presentations of the appellant and respondent, must decide if the record shows that an error has occurred. The role of the Committee is not to redo the hearing. Rather, the Committee is to review the evidence from the hearing and determine whether the Board came to the proper conclusion in rendering its decision. Should the Committee conclude that the Board did not come to the proper conclusion based upon the evidence before it the Committee is then required to do what the Board ought to have done. The onus is upon the appellant to demonstrate to the Committee where the Board has erred.

Issue 1: Occupancy Level Applied in the Model

[2] The agent stated that the subject is currently classified as a full service hotel with four other full service hotels in its grouping namely, the Ramada, the Park Town, Confederation Inn and the Best Western Harvest Inn. According to the agent, the Board erred in sustaining the current model occupancy rate applied to the subject. The current model occupancy range is invalid because it was developed excluding the subject's occupancy data which contradicted the assessor's practice to establish all other model valuation ranges using income and expense data from all five full service hotel properties.

[3] The agent pointed to the reported income and expense forms provided by the owner as support to demonstrate that the occupancy levels for the subject were consistently below the industry norm. The indicated occupancy levels for 2004 to 2006 were □ [A], □ [A]% and □ [A]% respectively. The three year stabilized occupancy rate is □ [A]%. Since this trend showed that the subject's stabilized occupancy rate □ [A] of the occupancy levels achieved in this market, it was deemed by the assessor to be "atypical" and excluded from further analysis as an "outlier".

[4] The agent explained that the current model occupancy range was developed from four out of five full service hotels. It was determined to be 60.3% to 73.7%. The subject was assessed using the low end of the developed model range at 60.3%. The agent claimed that the application of this occupancy rate inflated the assessed value of the subject. The current valuation does not represent the typical performance of the subject, thus it could not be reflective of its market value. The agent alleged that the assessor ignored the first tenet of the assessment system by failing to produce an "appropriate market value" for the subject.

[5] The agent confirmed that he took issue only with the "occupancy" variable since the assessor utilized all other performance data from the subject to establish the remaining model valuation parameter ratios. According to the agent, the assessor's practice of selectively excluding the occupancy data for the subject is inconsistent and flawed. The assessor has failed to recognize the second tenet of the strength of the assessment system by not treating the subject fairly and consistently with other similar properties.

[6] Since the Board accepted the subject as being "atypical" due to its low occupancy levels, the agent suggested that should equate to the subject being found to be "dissimilar" to the other properties in its grouping. On page 31 of Exhibit A.4, the agent showed that despite the under performance of the subject, it bears the highest assessed value per room among three of the four other full service hotels in its grouping (Ramada, Park Town and Confederation Inn). The subject's $28,598 assessed value per room is also higher than the median assessed value per room of $21,785 (median of five is $24,700 calculated for the Confederation Inn - see page 10 of Exhibit R.1). Therefore, the agent concluded that the current assessment of the subject does not represent a fair and just proportion to the market value of similar properties.

[7] The agent stated that the market valuation standard has not been met and he proposed two remedies to the Committee in order to achieve equity. First, he

suggested that the assessor should incorporate the subject's occupancy data to expand the model occupancy range to accommodate the subject's variation.

[8] Second, the agent proposed that the assessor apply the stabilized occupancy rate for the subject at □ [A]% to determine an assessed value that would reflect the subject's actual performance level. The current assessment of $4.7 million was based on revenue calculated using the City's "low end" model range of 60.3% and it could not be representative of the subject given the wide variance between the actual and model occupancy rates. In Appendix E of Exhibit A.3, the agent proposed a revised model calculation using the stabilized occupancy rate and showed a revised assessed value of $1,238,675 or $7,462 per room.

[9] On behalf of the respondent, Ms. Huisman stated that the agent's argument is incorrect because the assessor does not deem the subject, as a full service hotel to be "atypical". In Saskatoon, the assessor has determined the assessment of hotel properties using the income approach. The methodology was based on valuation parameters established by performance measures from industry norms. The assessor clarified that in determining the subject's assessment, only the "occupancy" level as a performance measure was considered "atypical". The other income and expense data for the subject was typical of a full service hotel; thus the assessor was correct in using all other income and expense data of the subject to develop the remaining model valuation ranges.

[10] The assessor further explained that in 2009, the City discussed this issue with both the owner and the manager. The assessor also conducted follow up site inspections of the subject property in 2009 and 2011. The conclusion from these discussions and inspections failed to yield a quantifiable reason associated with the low occupancy levels. The assessor concluded that the under-performance was caused by management and staffing issues. In fact, through the 2010 appeal of the subject property, the agent agreed with the assessor that the under-performance could be related to staffing and union issues.

[11] The assessor stated that the goal of assessment is to value solely the real estate and not to value issues related to management and the business. To meet the requirements of the market valuation standard, the assessor is required to generate values which reflect "typical" performance in the market. The assessor pointed to the Board's decisions for 2010 and 2011 that supported the finding that management issues led to low occupancy rates and these were not related to the real estate. The Board was correct in finding that to include the subject's occupancy data would skew the income analysis.

[12] Mr. Horne on behalf of the respondent stated that the agent's contention regarding the subject as "dissimilar" to other full service hotels in its grouping is invalid. He argued that the agent did not present evidence to support his claim that the subject is erroneously stratified. With only one element (occupancy level) being considered "atypical", the Heritage Inn still fits all other criteria set out by the assessor for its full service hotel grouping. Therefore, all other income and expense data relating to the subject should correctly be deemed to be relevant and must be included in the development of the full service income model.

[13] In response to a question from the panel, Mr. Horne explained that the model income and expense percentages were tested against the actual reported percentages on important components (including occupancy levels) that contributed to the final value estimate. To further confirm the validity of each valuation parameter, the end range value was tied back to the statistical measure of coefficient of dispersion (COD) to ensure that the values met or exceeded the Handbook's requirement of representing the industry norm.

[14] For the following reasons, the Committee finds the Board did not err in its decision sustaining the occupancy percentage applied to the subject.

[15] First, the Committee acknowledges upon review of Appendix E in Exhibit R.2 (page 36) that the typical occupancy level for full service hotels is 67%. The assessor determined the full service hotel occupancy market range was 60.3% -

73.7% which represents a 10% variation from the typical occupancy level. The Committee found that the model range development is in accordance with the following guidance as stated in the Hotel/Motel Valuation Guide on page 52 of the Handbook:

> "The "variance allowed" is the degree by which the actual performance of the hotels i.e., the stabilized revenues and expenses, is permitted to vary from the typical hotel performance in that property class i.e. the industry norms (Column O). The default value is ± 10%, however, it is up to the assessor's judgment as to the latitude or flexibility allowed in the valuation of specific hotel and motel properties." (Committee emphasis)

[16] Having considered the below market stabilized occupancy levels for the subject from 2004 to 2006, the Board found the assessor appropriately employed the low end of the model occupancy range of 60.3% to the subject to determine its assessed value. The Committee agreed with the Board's finding because this practice is in compliance with the following recommendation provided at page 28 of the Handbook:

> "Valuation data employed should conform within a set range of the industry norms. This will provide some flexibility in approach as well as equity and uniformity of results."

[17] The Committee is also mindful of the Saskatchewan Court of Appeal (the Court's) guidance in its 2012 decision for *Sasco Developments Ltd.*, supra, paragraph [80] which states:

> "... While a variation of the magnitude present here may suggest error, it does not in itself demonstrate error by the assessor. Instead, it invites inquiry into the underlying issues of fact and appraisal principle and practice. And what invites inquiry, in the event of dispute, invites decision." (Committee emphasis)

[18] The Handbook on page 28 of the Hotel/Motel Valuation Guide echoes the Court's guidance to invite inquiry:

> "If the variance between actual performance and the industry norm is large, it may be advisable to interview the owner or operator of the hotel to determine the cause of the variance, and"

[19] Ms. Huisman's testimony convinced the Committee that the respondent exercised due diligence and demonstrated prudent scrutiny in attempting to determine the cause of the subject's low occupancy levels.

[20] As evident at page 51, lines 17 to 21 of the transcript, in response to a question by the respondent, the agent confirmed that he did interview the owner regarding the issue of low occupancy, however at lines 25 to 26 of this page and at page 52, lines 1 to 7 it is indicated that the agent failed to provide the Board with an answer that would pinpoint the cause of the low occupancy. The Committee notes that the onus of proof is with the appellant and the lack of evidence from the agent prompted the Board to make a logical conclusion that it should rely on the assessor's finding that management was the cause for the subject's low occupancy.

[21] In considering the agent's argument that the "atypical" low occupancy level of the subject impelled it to become "dissimilar" to other full service hotels, the Committee took note of the evidence provided at page 15 of Exhibit R.1 where the assessor provided the criteria developed for all categories of hotels. The subject contains a restaurant, meeting/conference rooms and has the recreational facility of an indoor pool. These components meet the physical criteria established for a full service hotel. Further, at page 19 of Exhibit R.1, the assessor provided a chart outlining the valuation parameters for full service hotels. Upon examining the subject's "Property Value Summary Report" included in Appendix C of Exhibit R.2, the Committee notes that the subject is in compliance with all of the full service hotel model valuation ranges applied to determine its assessment. The agent did not provide cogent evidence to substantiate that the subject has been incorrectly classified nor did he specify which hotel category the subject should belong. Therefore, the Committee finds the evidence supported the classification of the subject as a full service hotel.

[22] The Committee notes that the Board had previously accepted the underlying issues that caused the low occupancy levels impacting the subject were related to management and staffing. In 2010, the Board confirmed this cause in its decision for the subject Appeal No. 63-2010:

> "The Panel has determined that circumstances internally at the business may have an effect on the income and expense streams and in this instance, the occupancy. The Assessor cannot base an assessment on actual data that may be skewed by internal circumstances."

[23] The agent alleged that the Board erred in its 2011 decision by relying on the above finding. The agent maintained that the exclusion of the subject's occupancy data for model range development could not generate an appropriate market value for the subject.

[24] The Committee accepts the fact that the subject was considered to be "atypical" and is an "outlier". In determining the appropriateness of the exclusion of the subject's occupancy data, the Committee referred to *IAAO Standard on Ratio Studies-2010*, at page 42 where it defines "outliers" as: "[o]bservations that have unusual values, that is, differ markedly from a measure of central tendency."

[25] On page 12 of *the IAAO Standard on Ratio Studies–2010*, Section 5.2: "Outlier Ratios", the assessor is instructed to follow the following procedures in dealing with outliers:

> "In preparing any ratio study, outliers should be
>
> 1. identified
> 2. scrutinized to validate the information and correct errors
> 3. trimmed if necessary to improve sample representativeness"

[26] On page 53 of Appendix B. Outlier Trimming Guidelines of the *IAAO Standard on Ratio Studies–2010*, Section B.2 Scrutiny of Identified Outliers, the following instruction is provided:

> "The preferred method of handling an outlier ratio is to subject it to additional scrutiny to determine whether the sale is a non-market transaction or contains an error in fact. If an error can be corrected (for example, data entry), the property should be left in the sample. If the error cannot be corrected or inclusion of the identified outlier would reduce sample representativeness, the sale should be excluded." (Committee emphasis)

[27] The Committee finds the assessor complied with the above procedures and instructions set out by the IAAO in the exclusion of the occupancy data of the subject in model range development.

[28] The Committee acknowledged that the three year stabilized occupancy rate of □ [A]% is approximately □ [A]% below the typical full service hotel occupancy rate of 67%. The assessor has properly identified the subject as an outlier based on this wide variance between actual and market occupancy levels. As noted earlier, the assessor confirmed that further investigation to validate the information in order to find the cause of the subject's low occupancy levels was completed.

[29] The Committee accepts that the cause of the under-performance is related to non-realty issues (management). Page 6, Section 2.4 of the Handbook states that in hotel valuation, management is an intangible asset and should be separated from the real estate and the value of other component parts. The Committee sees no quantifiable reason presented that would substantiate acceptance of the subject's under-performance as it relates to management. Without valid evidence, the Committee concludes that the issues relating to the subject's under-performance cannot be corrected by the assessor for assessment purposes.

[30] To further examine the effect of the exclusion of the subject occupancy data, the Committee is cognizant of the requirements expressed in section 163(f.3) of the

Act requiring the use of standard appraisal methods, employing common data and allowing for statistical testing in determining assessed values. The objective of these requirements is to ensure that the market valuation standard is met.

[31] The Committee takes note of the importance of confidence intervals in statistical testing. In Section 11.1.5, page 34 of the *IAAO Standard on Ratio Studies–2010*, it states:

> "High variability, small sample size or a combination of these factors often causes confidence intervals to become quite wide. Wide confidence intervals reflect the imprecision of the underlying statistic and can decrease the usefulness of the performance measures." (Committee emphasis)

[32] Based on the above, the Committee concludes that the inclusion of the subject occupancy rates as an outlier would increase the variability of the sample and would result in minimizing the usefulness of this performance measure. In addition, the Committee accepts that to achieve the market valuation standard, the assessed value is required to reflect typical market conditions for similar properties and inclusion of an outlier would negatively affect the confidence interval; in turn, diminish the reliability of the statistics which served as benchmarks to reflect typical market conditions.

[33] The Committee accepts the assessor's position that in order to reflect typical market conditions the valuation must be based on "typical" performance of comparable properties. The goal is to achieve a range of normal tolerance that could represent the industrial norm. Therefore, the Board was correct in sustaining the occupancy level applied to the subject and this ground of appeal is dismissed.

Issue 2: Total Number of Available Rooms for rent

[34] The agent alleged that the Board failed to recognize section 165(3.1) of the Act which requires the assessment reflect the facts, conditions and circumstances affecting the property as of January 1, 2011. According to the agent, the Board has

ignored the fact that six rooms are not rentable due to both water damage and converted uses. By sustaining the total number of available rooms for rent at 166, the Board's ruling inflated the total room revenue which leads to an excessive assessed value.

[35] The agent submitted a series of colour photographs of the interior and exterior of the subject property in Appendix G of Exhibit A.3. The agent stated that the photographs clearly demonstrate the converted uses of the ground floor rooms to offices and storage. These rooms were retrofitted and no longer generate income in the form of rent as guest rooms. The photographs also showed the decommissioning of the water damaged guest rooms where demolition was taking place and renovations are in progress to bring the quality up to hotel standard. Contrary to the Board's finding that "they are temporarily out of service", the agent contended that these changes are permanent in nature and six rooms should be removed from rental inventory.

[36] The agent then argued that the Board's decision for the subject was inconsistent with its previous ruling for Appeal No. 73-2010 where it found that the converted use of a rental room to hospitality room in the Park Town Hotel justified its exclusion from the rental inventory. The agent maintained that the inconsistent rulings of the Board have created an inequity. According to the agent, in both cases, the rooms are no longer equipped to fit the definition of "typical" accommodation as a hotel guest room.

[37] In conclusion, the agent stated that the total number of available rooms for rent is a critical component in the calculation of total room revenue, as such; the assessor has the responsibility to conduct regular inspections to adjust and to correct the number of rooms in the inventory to ensure fair and equitable assessments.

[38] Ms. Huisman, on behalf of the assessor stated that the Board was correct in sustaining the total number of available rooms for rent at 166 as this number was

provided by the owner for the years 2004 to 2006. The assessor has relied on it to be the correct number of rooms available for rent to determine the subject's assessment.

[39] Even though the assessor stated the agent alleged that three rooms experienced water damage and three rooms were converted to another use, there was a great deal of confusion pertaining to the definite number and usage of rooms considered to be "out of service". The agent failed to provide a definite plan as evidence to support the future uses of the converted rooms.

[40] When the assessor conducted a physical inspection with the hotel manager and the agent, the manager confirmed that three rooms will return to rental inventory. In fact, it is the manager's opinion that due to the low occupancy of the subject, there is no urgent market demand to bring the rooms back into inventory. He also did not confirm a definite time of completion to repair the water damage rooms. Therefore, the respondent concluded that it is management's decision to determine which rooms should be fixed, the speed of the work to be completed, the timeline which the rooms should be placed back into inventory and the alternate usage of the rooms with regards to demand. It is the assessor's position that internal management decisions should not affect the value of the real estate in assessment.

[41] The assessor advised the Committee that the model already accounted for adjustments to chattels through application of an allowance for furniture, fixtures and equipment (FF & E). The lack of typical guest room furnishings in the rooms under appeal could not be the determining factor affecting the capability of these rooms to generate future income. In addition, hotel guest rooms require the necessary electrical and plumbing components to function. She claimed that the six rooms that are out of service still maintained these operating components. The potential for these rooms to generate revenue still exist; therefore, it would be inappropriate to remove them from the rental inventory.

[42] With regards to the agent's argument pertaining to Board Appeal No. 73-2010, the respondent disagreed that the subject is similar. For the Park Town appeal, the Board based its decision on the significant structural changes to the rental room and the permanent change in the intended use to justify its removal from the rental inventory.

[43] When questioned by the Committee with regards to the June 10, 2011 inspection notes as found in Appendix E of Exhibit R.2, the assessor confirmed that "3 rooms are never going back into leaseable rooms". Ms. Huisman submitted these three rooms were not included in the reported 166 rooms; in fact, she stated the actual number should be 169. According to Ms. Huisman, the Board was still correct in maintaining the total rooms as 166 despite the fact that three rooms were confirmed to be permanently out of the rental inventory.

[44] For the following reasons, the Committee finds the Board failed to adjust the rooms that are out of service to determine the total available rooms for rent. The Committee finds a great deal of discrepancy in the evidence presented by both parties with regards to number and usage of the rooms under appeal.

[45] Firstly, the following is a summary of the photographs contained at pages 36 to 44, Appendix G of Exhibit A.3:

Photograph Page Number	Room Number	Illustrated Usage
36	104	Marketing converted to Fitness
37	106	Office
38 and 39	115	Storage and Office
40	116	Storage
41	117	Unconfirmed – process of demolition
42	625	Water damaged guest room
43	627	Water damaged guest room
44	629	Water damaged guest room

The notable difference from this evidence is the following:

Total Number of Rooms out of service as illustrated = 8
Agent's proposed number of rooms out of service = 6

[46] Secondly, the Committee examined the document attached to Appendix G of Exhibit A.3 titled "Room Availability Reconciliation for Sat Jan 1, 2011" and found the following:

Room Number	Reason for out of Service
115	Proposed fitness room
116	Storage
117	Storage
402	Office
627	Roof Leaking
629	Roof Leaking

Based on the above, the Committee noted the following differences:

a) Total Rooms Out of Order 6 + Total available for sale 161 = 167 total room count
b) Room No. 402 was not identified in the photograph evidence

[47] Thirdly, the Committee referred to the assessor's evidence as found at Appendix E in Exhibit R.2, titled "Inspection Notes (Confidential)" as of June 10, 2011. The summary of findings are as follows:

Room Number	Usage
□ [D]	□ [D]
□ [D]	□ [D]
□ [D]	□ [D]
□ [D]	□ [D]
□ [D]	□ [D]
□ [D]	□ [D]
□ [D]	□ [D]
□ [D]	□ [D]
□ [D]	□ [D]
□ [D]	□ [D]

Based on the above, the respondent found:

"• We came to the conclusion there are <u>166</u> rooms in the inventory

- Regarding all the questionable rooms – 3 will go back into the mix when fixed. <u>3 are never going back into leasable rooms</u>" (Committee emphasis)

[48] Lastly, during the hearing, the Committee heard Ms. Huisman's position that the actual room count should be 169 with three rooms not included in the reports by the owner. The Committee notes this position was not before the Board, and accordingly will place no weight on this claim.

[49] Due to the inconsistencies in the evidence presented by both parties, the Committee considers the following comment as provided in its decision for Appeal 2011-0046, paragraph [23] on page 18 to be relevant:

> *"Both the Board and the Committee, as appellate tribunals are required to comply with the principal of natural justice, therefore, both must be guided by the rules of evidence as a basis for its decisions. <u>To make a decision based on the evidence in the record means to use **reliable** information that tends logically to show the existence or non-existence of facts relevant to the issue to be determined</u>."* (Committee emphasis)

[50] The Committee must focus on evidence that is <u>consistent</u> to develop valid conclusions. Consistent information has a direct correlation with a higher degree of reliability. Throughout the proceedings, Ms. Huisman presented that the assessor relied on the income and expense forms provided by the owner as the main source of data for analysis in the development of both valuation parameters and the resulting assessed values. The total room count of 166 was consistently indicated by the owner for the years 2004 to 2006 that are included in evidence as identified at Appendix F of Exhibit R.2. This same number was confirmed by the assessor in its inspection notes submitted in Appendix E of Exhibit R.2. Lastly, this number was further confirmed by the Board on pages 19 and 20 of its decision:

> "In R.2 it is noted that the subject owner reported 166 rooms, in use, for the years 2004, 2005 and 2006. In testimony, it was confirmed this was the correct number of rooms in 2011 ...

> It is the view of the Panel that the room count should be 166 rooms."

[51] Based on the evidence, the Committee concurs with the finding of the Board that 166 is the total number of rooms potentially available for rent.

[52] In considering the adjustment with regard to the number of rooms that are out of service, the Committee recognized that it is usual practice for hotels to take guest rooms out of inventory on a routine basis for upgrading as part of their operation. The Committee heard the assessor's submission that the decision to remove rental rooms from inventory is based on a permanent nature of conversion, the extent of alterations which included structural changes in plumbing and electrical components and the intended use of the room that would affect its capability to generate rental income.

[53] The Committee acknowledged that there are two situations impacting the out of service rooms under appeal. First, the converted use rooms contained alterations in mechanical components and are currently used as office and storage. Second, the guest rooms that have experienced water damage and require renovations.

[54] The Committee heard the agent state the guest rooms that experienced water damage were taken out to improve their quality and to bring them up to hotel standards. The intended use remains that of a hotel guest room with mechanical components that continue to remain intact. Upon completion of the required renovations, it is reasonable to conclude that these guest rooms would continue to generate room revenue through placement in the hotel's inventory. Therefore, the Committee concludes that these rooms do not warrant removal from the rental inventory.

[55] With regards to the converted use rooms, both evidence from the agent (photographs) and the assessor (inspection notes) confirm their current usage as office and storage. The alterations that occurred are more permanent in nature.

There is no evidence to substantiate that they will be converted back to guest rooms within the current year. Therefore, it is reasonable to conclude that these rooms do not possess the capability to generate income in the form of room rentals and they should be removed from the room rental inventory.

[56] The Committee noted the assessor conducted the referenced site inspection on June 10, 2011 accompanied by the agent and the general manager of the hotel, Mr. Mike Ulene. With both parties present during the inspection, it is logical for the Committee to accept that the conclusions indicated on the inspection notes were agreed to by all parties and could be relied upon by the Committee. Specifically, the Committee notes the following conclusion is pertinent:

> "Regarding all the questionable rooms – 3 will go back into the mix when fixed. 3 are never going back into leasable rooms"

[57] The Webster dictionary defines "never" as "not ever, not under any condition, not in any degree."

[58] Based on the conclusion that the 166 total room count is accurate and that there are three rooms that will not be returning to the rental inventory, the Committee concludes that 163 rooms will be the total rooms available for rent. This number should be applied in the model to determine the assessed value of the subject. Therefore, this ground is sustained.

DECISION:

This appeal is sustained.

The filing fee shall be refunded.

DATED AT REGINA, Saskatchewan this

27th day of September, 2012.

SASKATCHEWAN MUNICIPAL BOARD
Assessment Appeals Committee

- original signed by -

Per: ______________________
David Wilkin, Chairman

- original signed by -

Per: ______________________
Mike Back, Director

- original signed by -

Jenny Lai Yu, for the Committee

____

I concur:

- original signed by -

____
Randy Markewich, Member

Some of the information in this document has been severed from the document pursuant *to The Freedom of Information and Protection of Privacy Act* and/or *The Cities Act*:

Reference	Severed pursuant to
A	*The Cities Act*, section 202
B	*The Freedom of Information and Protection of Privacy Act* paragraph 24(1)(d)
C	*The Freedom of Information and Protection of Privacy Act* paragraph 24(1)(e)
D	*The Freedom of Information and Protection of Privacy Act* paragraph 24(1)(i)
E	*The Freedom of Information and Protection of Privacy Act* paragraph 24(1)(k)