Tab 4

Saskatchewan Municipal Board
Assessment Appeals Committee

Appeal: 0008/2006

RESPONDENT: 612984 Saskatchewan Ltd.
c/o Altus Derbyshire, Division of Altus Group Limited

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

City of Saskatoon
c/o Lee Fuller and Tim Ritchie
222 – 3rd Avenue North
Saskatoon, SK S7K 0J5

respecting the assessment of:

Parcels 119852129, 119854042 and 119872457
320 22nd Street West
Roll Number: 494915640

for the year 2006;

BEFORE: David Wilkin, Panel Chairman
Robert L. Edwards, Member
Felix Hoehn, Member
Cynthia J. Schwindt, Secretary

APPEARED FOR THE APPELLANT: Cindy Yelland
Tim Ritchie
Don Davison
Vivian Klein

APPEARED FOR THE RESPONDENT: Kenneth G. Love Q.C.
Daryl Genereux

This appeal was heard in Room 9.1, Sturdy Stone Centre, 122 - 3rd Avenue North, in Saskatoon, Saskatchewan, on May 31, 2007.

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

ISSUES:

(i) Does the Committee have jurisdiction to hear this appeal, having regard to the provisions of the Act and the manner and timing of service of the notice of appeal?

(ii) Did the Board err in finding that the default land size multiplier (LSM) of 130% should be used in the calculation of the subject's land assessment?

(iii) Did the Board err in its calculation of the subject property's revised fair value after applying the default LSM?

FACTS:

(1) The subject property is a neighbourhood shopping centre known as Grand Central Mall, and is located on a 148,588.37 square foot parcel.

(2) The retroactive base date of municipal assessments for taxation purposes in the Province of Saskatchewan is June 30, 2002. The fair value of the subject property identified on the 2006 assessment notice was $2,117,300. Since the subject property is classed as a commercial property, its assessed value is the same as its fair value.

(3) The sole ground of appeal before the Board was that in view of the property's "site size, location and influences" the base land rate (BLR) of $9.10 per square foot and the land assessment rate of $6.07 per square foot were too high.

(4) In the proceedings before the Board, the appellant (respondent before the Board, hereinafter referred to as "the assessor" or "the city") conceded that one of the sales used to calculate the BLR applied to the property should not have been used in the calculation. This caused the Board to order the BLR applied to the property to be reduced from $9.10 per square foot to $8.70 per square foot. This order was not appealed.

(5) The Board also considered whether the LSM of 115% that had been applied to the subject's land neighbourhood (Neighbourhood 30003, 22nd Street West) could be considered reliable for determining the influence of size on the value of the subject parcel. The Board determined that this LSM was not reliable for the subject parcel and ordered that the subject's LSM should be calculated by using the applicable default curve of 130%.

(6) The respondent (appellant before the Board, hereinafter referred to as "the owner") also submitted that the standard parcel size (SPS) for the neighbourhood of 10,000 square feet was in error and that the SPS should

have been 6,500 square feet. The Board found that the assessor had not erred by applying an SPS of 10,000 square feet.

(7) Accordingly, the Board asked the assessor to recalculate the property's fair value assessment using a BLR of $8.70 per square foot, an SPS of 10,000 square feet, and an LSM curve of 130%.

(8) The assessor's reply to the Board recalculated the fair value assessment of the property. The reply stated that changes in the valuation of land ordered by the Board would cause the market adjustment factor (MAF) applied to the improvements on the property to increase to 0.67 from the 0.59. The increased MAF offset some of the reduction in the fair value that would have resulted if the adjustment of the property's fair value had been based solely on the reduction of the land value.

(9) The Board ordered that the increased MAF should apply to the property in spite of the owner's objection. When combined with the lower land valuation, this reduced the subject's fair value by $161,600, from $2,117,300 to $1,955,700.

(10) The record of the Board includes:

a) Exhibit A1 - Notice of appeal dated November 24, 2005;
b) Exhibit A2 - Written brief from Altus Derbyshire, received by the Board on February 24, 2006, and addenda thereto, including:
   - Property inventory card for 320 22nd Street West, printed November 9, 2005,
   - A copy of "Commercial Land – 2002 Base Year Land Sales" (for 22nd Street West),
   - City of Saskatoon Street map, 22nd Street Address Based Zoning Map, and 22nd Street Legal Base Zoning Map,
   - A copy of *Imperial Oil Limited v. Regina (City)*, 2003 SKCA 81,
   - Copies of the Records of Decision of City of Saskatoon Board of Revision decision numbers 53-2005 and 55-2005.
c) Exhibit A3 - Copies of the first pages of property inventory cards for 1013 22nd Street West, 418 22nd Street West and 1010 22nd Street West, all printed on March 1, 2006.
d) Exhibit R1 - Undated "City of Saskatoon Assessment Report to the Saskatoon Board of Revision" signed by Vivian Klein for Gord Lawson, City Assessor, and date-stamped February 21, 2006 by the Board, with attached:
   - Property inventory cards for 320 22nd Street West, and comparables 702 22nd Street West, 901 22nd Street West, 727 22nd Street West, all printed January 17, 2006,
   - Chart of Fair Value Comparisons, Commercial/Multi-Residential,
   - 2006 Assessment Notice for 320 22nd Street West,
   - Maps showing the location of the parcel and its land neighbourhood,

- Spreadsheet comparison of MAF calculations for "current" 115% curve and after application of 130% default curve,
- "Land Value Effect – Applying the 1.30 Default (22nd Street Land)",
- Photographs of subject property and comparison properties.

e) Exhibit R2 - Additional Information from the City Assessor;
f) Minutes of the Board dated March 6, 2006 and March 8, 2006;
g) The decision of the Board dated April 25, 2006.

(11) It became apparent during the hearing that two documents that were part of the Board's record had not been received by the Committee. These documents were a memorandum from the Secretary of the Board, Joanne Sproule, to the City Assessor, dated March 13, 2006, and a memorandum from Lee Fuller, Assessment Manager, to Joanne Sproule dated March 16, 2006 (see Facts (7) and (8) above). The assessor agreed to provide the Committee with copies of these memoranda by June 13, 2007, with a copy to the owner. The owner was given leave to file a response, if desired, by June 20, 2007.

(12) The Committee received the two additional documents from the assessor on June 1, 2007 under cover of a letter from Vivian Klein, Assessment Appraiser. The letter indicated that a copy had been sent to the owner.

(13) The Committee's Secretary received an electronic mail from the owner's agent on June 18, 2007, advising that its electronic mail sent by the agent to the Secretary of the Board on March 20, 2006 should also be considered part of the Board's record. The March 20th correspondence objected to the assessor's recalculation of the subject's fair value.

(14) The Committee's Secretary notified both parties to the appeal that the Committee proposed to identify the documents received post-hearing as follows:

a) Exhibit AAC A2 - Undertaking from Secretary, Board of Revision dated March 13, 2006;
b) Exhibit AAC A3 - Assessor's response to Board of Revision Undertaking dated March 16, 2006;
c) Exhibit AAC R2 - Agent's response to Assessor's March 16, 2006 Board of Revision request dated March 20, 2006.

Both parties were granted a further two weeks to respond to the inclusion and identification of the above exhibits (to July 6, 2007) but nothing further was received from either party.

(15) The grounds of appeal to the Committee are:

> "The BOR erred in the application of the land size multiplier as described in Document Number 2.2.3 of the Manual. That is to say, the BOR failed to determine the land size multiplier using the comparable sales analysis where there were sufficient

> vacant land sales in the subject neighbourhood to establish a reliable adjustment factor. The 130% land size multiplier is to be used only where there are insufficient vacant land sales in both the neighbourhood and comparable neighbourhoods to establish reliable land size multipliers. Land sales from other commercial arteries show only a small reduction in per square foot prices as the site size increases (even with sites up to 400,000 sq ft).
>
> The Imperial Oil case does not apply in this instance, as the LSM determined from the neighbourhood was shown to be reliable."

(16) The notice of appeal to the Committee was dated May 17, 2006. It was sent by ordinary mail, postmarked May 26, 2006, and was received by the secretary of the Saskatchewan Municipal Board on May 30, 2006.

(17) The Committee advised the parties in a letter dated June 29, 2006 that the date of receipt of the notice of appeal raised the question of whether the notice of appeal had been filed in accordance with the time limit set by subsection 217(3) of the Act. The Committee advised the parties that it would determine whether the Committee had jurisdiction to hear and determine the appeal after hearing the parties on this issue.

(18) The Committee received written submissions from the owner on the jurisdictional issue on May 3, 2007. These submissions were labelled AAC R1 at the hearing. The Committee received written submissions from the assessor on the merits of the appeal on April 13, 2007. For the reasons below, the Committee did not accept these written submissions for use at the hearing.

(19) The Committee heard submissions from both parties at the Committee's hearing of the jurisdictional issue on May 31, 2007. Following a brief recess, the Committee advised the parties that it found that it had jurisdiction to hear and determine the subject appeal, and that written reasons for this finding would be provided with the Committee's reasons on the merits of the appeal.

LEGISLATION:

The Cities Act:

> **"165(2) All property is to be assessed at its fair value as of the applicable base date.**
>
> **(3) The dominant and controlling factor in the assessment of property is equity.**
>
> **(4) The value at which any property is assessed is to bear a fair and just proportion to the value at which all similar property is assessed:**
>
> **(a) in the city; and**

(b) in any school division situated wholly or partly in the city or in which the city is wholly or partly situated.

(5) In determining the value of any property, the assessor shall take into consideration and be guided by:

(a) any applicable formula, rule or principle set out in the assessment manual; and

(b) any facts, conditions and circumstances of the property that may affect its value.

(6) For the purposes of subsection (5), the assessment shall reflect all the facts, conditions and circumstances of the property on January 1 of each year as if they had existed on the applicable base date.

197(2) If land has been assessed together with improvements on it, no person shall base an appeal on:

(a) the valuation of land apart from the improvements to the land; or

(b) the valuation of improvements apart from the land on which the improvements are situated.

(6) A notice of appeal must be in writing in the form prescribed 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...

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;

(3) Notwithstanding that the value at which any property has been assessed appears to be more or less than its fair value, the amount of the assessment may not be varied on appeal if the value at which it is assessed bears a fair and just proportion to the value at which all similar property is assessed:

(a) in the city; and

(b) in any school division situated wholly or partly in the city or in which the city is wholly or partly situated.

(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 216 and the procedure to be followed on appeal.

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.

217(1) An appellant, including a city, 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 prescribed 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 written notice of the decision of the board of revision; or

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

(4) The appellant may file a notice of appeal pursuant to this section personally, by registered mail or by ordinary mail.

(5) Subject to subsection (6), if an appellant does not file a notice of appeal in accordance with this section, the appeal is deemed to be dismissed.

(6) If, in the opinion of the appeal board, the appellant's failure to perfect an appeal in accordance with this section is due to a procedural defect that does not affect the substance of the appeal, the appeal board may allow the appeal to proceed on any terms and conditions that it considers just.

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 land or improvements may be placed on the assessment roll.

347(1) Except where otherwise provided in this Act, any notice, order or other document required by this Act or the regulations to be given or served may be served:

(a) personally;

(b) by registered mail to the last known address of the person being served;

(c) by hand delivering a copy of the notice, order or document to the last known address of the person being served; or

(d) by posting a copy of the notice, order or document at the land, building or structure or on a vehicle to which the notice, order or document relates.

(2) A notice, order or document served in accordance with clause (1)(b) is deemed to have been served on the fifth day after the date of its mailing.

(3) A notice, order or document served in accordance with clause (1)(c) or (d) is deemed to have been served on the day after the date of its delivery or posting."

SASKATCHEWAN ASSESSMENT MANUAL (THE MANUAL):

Volume 1, Chapter 2, Document Number 2.2.1, page 1 (Date: 03/11/14):

"**Summary**

This section contains the valuation procedures for determining site adjustments specific to individual land parcels.

...

Description

Site adjustments may be applied for characteristics such as depth, size, irregular shape, corner influence, location, infrastructure, environmental contamination, and other site adjustments.

Formulas, Rules and Principles

Site adjustments shall be used to account for variations in the value of individual land parcels that are attributable to characteristics specific to the individual parcel.

Site adjustments shall be applied only when the parcel varies from the typical characteristics for the neighbourhood. When all of the parcels in the neighbourhood have similar site characteristics the value of the common features shall be reflected in the base land rate for the neighbourhood."

Volume 1, Chapter 2, Document Number 2.2.3, page 1 (Date: 03/11/14):

"**Summary**

This section contains the valuation procedures for determining size adjustments.

Application

When:

(a) land is valued on a square foot or acreage basis; and

(b) it is determined that the sale price of a larger parcel in a neighbourhood is less per unit than the sale price of a smaller parcel;

then a land size multiplier will be applied to land parcels that are other than the standard size parcel.

The standard size parcel may be a specific size or a size range.

Formulas, Rules and Principles

Where there are sufficient vacant land sales in a neighbourhood to establish a reliable land size multiplier, the size adjustments shall be determined by comparable sales analysis.

Where there are insufficient vacant land sales in the neighbourhood, and there are sufficient vacant land sales in a comparable neighbourhood to establish a reliable land size multiplier, the land size multiplier curve from the comparable neighbourhood shall be used.

Where there are insufficient vacant land sales in both the neighbourhood and comparable neighbourhoods to establish reliable land size multipliers, the following land size multipliers shall be used:

Present Use	Land Size Multiplier Curve	
	Cities	Other Municipalities
Residential, except multi-family	1.80 (180%)	1.80 (180%)
Multi-family	1.10 (110%)	1.80 (180%)
All other uses	1.30 (130%)	1.80 (180%)

"

CASE LAW:

Imperial Oil Ltd. v. Regina (City), 238 Sask. R. 204 (C.A.).

Merivale/Gateway Limited Partnership v. Prince Albert (City) (2003), 227 Sask. R. 274 (C.A.)

Prince Albert (City) v. Riocan Holdings Inc. (2004), 249 Sask. R. 205 (C.A.).

Regina (City) v. Laing Property Corp. (1994), 128 Sask. R. 29 (C.A.).

Regina (City) v. East Landing Plaza Ltd., 2000 SKCA 141.

Wascana Energy Inc. v. Gull Lake (Rural Municipality No. 139) (1998), 168 Sask. R. 58 (C.A.).

COMMITTEE DECISIONS:

Appeal 0215/2001, *Regina (City) v. Imperial Oil Ltd.*
Appeal 0181/2005, *Imperial Oil Ltd. v. Regina (City)*
Appeals 0001/2006 and 0002/2006, *FCL Ventures Ltd. v. Regina (City)*
Appeal 0009/2006, *Saskatoon (City) v. Hillcrest Memorial Gardens Ltd*
Appeals 0042/2006 to 0046/2006, *Regina (City) v. Deloitte & Touche LLP*

JURISDICTIONAL ISSUE:

[1] The reasons for the Committee's determination that it had jurisdiction to hear this appeal are as follows.

[2] The Board's decision was dated April 25, 2007. The notice of appeal to the Committee was dated May 17, 2006, and was sent to the Saskatchewan Municipal Board by ordinary mail, postmarked May 26, 2006. It was received on May 30, 2006.

[3] Subsection 217(3) (a) of the Act requires an appellant to "serve the notice of appeal... within 30 days after being served with a written notice of the decision of the Board of Revision." Under subsection 24(3) of *The Interpretation Act, 1995*, S.S. 1995, c. I-11.2, the calculation of the 30 day period should exclude the first day and include the last day.

[4] The owner's counsel submitted that in accordance with *The Interpretation Act, 1995*, the last day for serving the notice of appeal would have been May 25th, the 30th day after the date of the Board's decision. This meant that the notice of

appeal was already out of time when it was posted on May 26th, let alone on the date of delivery of May 30th.

[5] The assessor countered that the Board's decision had been received on April 26, 2006, as indicated by a date stamp on the assessor's copy of the Board's decision. The Committee accepted this document and marked it as Exhibit AAC A1. Since subsection 217(3) provides that the appeal period only begins to run when a party is "served with a written notice of the decision of the Board of Revision", if the date of service was April 26, 2006 the notice of appeal was posted within the appeal period but received after the period had expired.

[6] The assessor's counsel submitted that the Committee should allow the appeal to proceed because subsection 217(6) allowed the Committee to do so "[i]f, in the opinion of the appeal board, the appellant's failure to perfect an appeal in accordance with this section is due to a procedural defect that does not affect the substance of the appeal."

[7] In *Wascana Energy Inc.* supra, the Saskatchewan Court of Appeal (the Court) held that a notice of appeal to a board of revision was effective even though the board had received it one day after the statutory appeal period had expired, and even though the statute did not confer any power on the board to enlarge the appeal period. Subsection 303(1) of *The Rural Municipality Act, 1989*, S.S 1989-90, c. R-26.1 (as repealed by *The Municipalities Act, S.S.* 2005, c. M-36.1, s. 407) provided that a person "may give notice in writing ... to the administrator." It did not specify how notice might be given.

[8] A contextual consideration of section 303(1) led the Court to conclude that registered mail was an acceptable means of giving notice to the board. Unlike giving notice by handing a document to the administrator, giving notice by registered mail entailed a series of acts that began with posting and ended with receipt. This meant that there was uncertainty in the application of the provision, because it was not clear whether the requirement of notice to the administrator was satisfied when the notice of appeal was posted or only upon receipt by the administrator. The Court considered the purpose of the provision in the context of the overall system of

appeals of assessments, and the absence of a provision in the statute that deemed receipt of the notice within a certain number of days of its mailing. The lack of a deeming provision was significant because this meant that if the provision were interpreted as requiring receipt within the time period set by the statute this would cause uncertainty for an appellant. The Court stated at paragraph 29 that:

> "...[I]t is difficult to think that the proper exercise of the right of appeal, when notice of appeal be given by means of registered mail, should be made to depend not upon the posting of the notice within the 20 day period, something that lies within the power of the person exercising this right, but upon the receipt of the notice by the administrator within the period, something that is beyond the power of the person in the absence of a [deeming] provision ..."

[9] As in *Wascana Energy*, in this case the notice of appeal was posted but not received within the time limit stipulated by the statute. Further, although subsection 217(4) includes "ordinary mail" among the permitted means of filing a notice of appeal, there is no provision in the Act that deems a document served by ordinary mail to have been received a certain number of days after mailing. Therefore, an interpretation of section 217 that required a notice of appeal sent by ordinary mail to have been received, and not just posted, within the 30-day period would raise the same concerns about uncertainty as in *Wascana Energy*.

[10] The assessor observed that no prejudice was claimed by the owner, and argued that therefore the reasoning of the Court in paragraph 33 of *Wascana Energy* applied equally to this appeal and justified the Committee's use of subsection 217(6) to allow the appeal to proceed:

> "... In the light of what has already been said of the subject-matter and purpose of the subsection, together with the objectives of its provisions and the scheme of which it forms part, it is difficult to think the legislature intended that the effect should be fatal when the notice of appeal is posted within the prescribed time and arrives within sufficient time to allow for the hearing and determination of the appeal in keeping with the scheme of the enactment."

[11] The owner contended that *Wascana Energy* should be distinguished from the current case because section 217(1) requires the notice of appeal to be "served", and not "given" as in the provision considered by the Court. The owner

argued that this also distinguished this case from the recent decision of this Committee in *FCL Ventures Ltd. v. Regina (City)*, AAC Appeals 0001/2006 and 0002/2006, where the Committee found that the use of the term "filed" in section 198(1) of the Act instead of "given" as in the provisions considered in *Wascana Energy* was not sufficient reason to depart from the principles expressed by that decision. The following comments of the Court at paragraph 17 of *Wascana Energy* support the owner's contention that the use of the term "served" in section 217(1) may be significant:

> "In the context of ascribing precise meaning to the word *give*, receipt might be seen as a necessary component thereof. **This is especially so if by *give* the legislature meant *serve*--a legal term of art signifying formal delivery and actual or constructive receipt. In that event, the subsection, in calling for written notice to be given to the administrator, would call for both the posting and the receipt of the notice within the prescribed time**. On the other hand, in using the ordinary word *give* instead of the legal term *serve*, the legislature might be seen as having intended a less formal requirement, one satisfied by the posting of notice within the prescribed period, consistent with the commonplace application of this enactment." (Emphasis added - bold)

[12] This leads to the crucial question of whether the Legislature used the term "serve" in section 217(1) of the Act as a term of art that required formal delivery and actual or constructive receipt within the prescribed time.

[13] The term "serve" in section 217(1) must be read in conjunction with the balance of the section and the content and object of the statute as a whole. In *Prince Albert (City) v. Riocan Holdings Inc.* supra, at paragraphs 14 and 15, the Court said the following about the appropriate approach to statutory interpretation:

> "[14]… In *Rizzo and Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27*, at p. 41, the Supreme Court of Canada set out the fundamental rule as follows:
>
> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> [15] Also relevant is s. 10 of *The Interpretation Act, 1995, S. S. 1995, c. 1-11.2:*

> 10 Every enactment shall be interpreted as being remedial and shall be given the fair, large and liberal construction and interpretation that best ensure the attainment of its objects."

[14] A review of section 217 of the Act as a whole reveals three reasons for concluding that the Legislature did not use the word "serve" in subsections (1) and (3) as a "term of art" that mandates a strict application of the requirements for initiating an appeal:

1) The word "serve" is not used consistently in section 217 when referring to the method of delivery of the notice of appeal. Subsections (5) and (6) use the term "file" instead of "serve" when referring to the same action.

2) Section 347 of the Act sets out the permitted methods of delivery of documents that are "given or served", and includes provisions specifying when a document that is sent by registered mail or hand delivered is deemed to have been served. The Legislature could have avoided any doubt about its intention to use the word "serve" as a term of art and about the meaning and application of this term by simply relying on section 347 of the Act. Instead, subsection 217(4) specifies how a notice of appeal may be "filed". In particular, under subsection 217(4) an appellant may "file" a notice of appeal by regular mail, a mode of delivery not permitted by section 347. Further, under subsection 347(2) a document served by registered mail is deemed to have been served on the fifth day after mailing, but there is no similar deeming provision in section 217 or elsewhere in the Act that applies to filing a notice of appeal by regular mail. As noted above, the absence of a deeming provision was material to the *Wascana Energy* decision.

3) Subsection 217(6) gives the appeal board authority to allow an appeal to proceed in spite of a "procedural defect". This power was given to the appeal board approximately a year after the decision in *Wascana Energy*, by amendments to the then governing legislation (see *An Act to amend The Urban Municipality Act, 1984*, S.S. 1999, c. 11, s. 15(3), amending S.S. 1983-84, c. U-11, s. 261, and *An Act to amend The Rural Municipality Act, 1989*, S.S. 1999, c. 9, s. 15(3), amending S.S. 1989-90, c. R-26.1, s. 317).

[15] The owner contended that the authority given to the Committee in subsection 217(6) to allow an appeal to proceed in spite of a procedural defect does not allow the Committee to override the 30-day requirement in subsection 217(3)(d) and only

allows the Committee to excuse instances of imperfect compliance within that period. It is true that the section only allows the Committee to grant relief from "a failure to perfect an appeal ...due to a procedural defect" and therefore it does not appear to allow the Committee to forgive a complete failure to comply with the requirements of section 217. However, this only brings the Committee back to the question of whether the use of the term "serve" in subsections 217(1) and (3) means that anything less than receipt within the 30-day period of a notice sent by ordinary mail constitutes a complete failure to comply with the appeal requirements. For the reasons given in the preceding paragraph, the use of the word "serve" in the context of section 217 does not lead to that conclusion.

[16] Even if the owner's submission that the use of the term "serve" in section 217 mandates a strict interpretation were accepted, it would not necessarily follow that the assessor's notice of appeal failed to meet the time requirements. Consistency would also require this approach to be applied to determining the beginning of the appeal period. Subsection 217(3)(a) states that the notice of appeal must be served within 30 days "*after being served* with a written notice of the decision of the board of revision" (emphasis added). Subsection 210(5) of the Act states that the secretary of the Board "*shall, by registered mail, send to each party*...a copy of the written decision..." (emphasis added). The Board sent a copy of the decision to the owner by registered mail (a registered mail receipt showing that the decision was mailed to the owner on April 25, 2006 is in the Board's record). Although the assessor acknowledged actual receipt of the notice of decision on April 26, 2006, according to the Act service by registered mail was mandatory, and subsection 347(2) of the Act deems a notice served by registered mail to have been served on the fifth day after the date of mailing. This means that according to the Act the 30-day period could not have commenced before April 30, 2006, five days after the date of the decision. If the 30-day appeal period commenced on that date, the last day for receipt of the notice of appeal was May 30th, the date that the assessor's notice of appeal was received by the Committee.

[17] For all of the foregoing reasons, the Committee disagrees with the owner's position that the use of the term "serve" in section 217 takes this case out of the

scope of the reasoning of the Court in *Wascana Energy* and also precludes recourse to subsection 217(6) in circumstances where the notice of appeal is mailed by ordinary mail within the 30 day period but not received until after that period. Alternatively, on a strict reading of the service requirements of section 217, the Committee finds that the 30-day appeal period did not commence until April 30, 2006, and therefore the notice of appeal was filed on time. In any event, if recourse to subsection 217(6) is needed to allow the appeal to be heard, then the Committee considers it appropriate to invoke that subsection.

PRELIMINARY ISSUE:

[18] The Committee received a written submission from the assessor signed by Terry Hegel and dated April 27, 2007. This was date-stamped as received by the Committee by email on April 13, 2007. The owner's counsel, Mr. Love, objected to the Committee making use of this document at the hearing because it had not been served on the owner in advance of the hearing, contrary to the Committee's pre-filing policy. The city advised that although its records indicated that its submissions had been sent to the owner, no proof of delivery was available. The Panel ruled that in light of the owner's objection the Committee would not make use of the written submissions at the hearing. The assessor, however, would be allowed a full opportunity to make oral submissions.

CONCLUSIONS AND REASONS:

Introduction

[19] 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 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.

[20] The assessor used the comparable sales analysis method in Document Number 2.2.3 of the Manual to determine a size adjustment for the subject land. This analysis yielded a 115% curve, which the assessor applied to all parcels larger than 10,000 square feet. The Board applied *Imperial Oil Ltd.* supra to find that the 115% curve could not be applied to the subject because the size difference between the parcels used to calculate the curve and the subject meant that the curve could not be considered reliable. This led the Board to order that the applicable "default curve" of 130% designated by Document Number 2.2.3 of the Manual should be applied to the subject.

[21] For the reasons given below, the Committee concludes that the Board did not err by finding that the default curve of 130% should be applied to the parcel.

[22] Although the owner agreed with the Board's decision to apply the 130% default curve to the subject, the owner contends that the Board erred when it calculated the fair value that should result from this conclusion.

[23] The Committee questions whether the issue of the calculation of the subject's fair value based on the 130% default curve is properly before it. Sections 216 and 217 of the Act allow a party that believes that the Board erred to appeal to the Committee with a notice of appeal setting out all the grounds of appeal. This gives the Committee's jurisdiction to address the alleged error and gives notice of the grounds to the opposing party.

[24] The owner withdrew its appeal challenging the fair value assigned to the property by the Board after determining that the default multiplier curve of 130% should apply (AAC Appeal 0005/2006). Nevertheless, the owner contended that even if the Committee dismissed the city's appeal of the Board's decision to substitute the default curve for the 115% curve, the Committee was "bound" to correct any error it found in how the Board implemented this decision.

[25] The owner also submitted that the issue of whether the Board erred when calculating the subject's value based on a 130% LSM was properly before the Committee because the errors alleged by the owner relate to the SPS and the MAF used in that calculation, and these components of the property's fair value were referenced in the assessor's notice of appeal. The Committee does not find this argument persuasive. These references only appeared in the opening paragraphs of the notice of appeal that summarized the history of the proceedings and provided a context for the assessor's appeal. The appeal takes issue with only one finding of the Board – that the default LSM should be used to determine the subject parcel's size adjustment.

[26] The Committee finds that it can consider the owner's objection to the Board's revision of the MAF applied to the subject property because this challenged the Board's jurisdiction. The Committee may consider a *vires* issue that has not been raised in a ground of appeal because the Committee cannot affirm a Board decision that is a nullity: *Regina (City) v. East Landing Plaza Ltd.*, 2000 SKCA 141 at paragraph 4, and *Merivale/Gateway Limited Partnership v. Prince Albert (City)* (2003) 227 Sask.R. 274 at paragraph 8. Accordingly, the Committee allowed argument from the parties on the recalculation of the subject's fair value based on the 130% LSM curve. The assessor did not object to this, and the assessor was not taken by surprise by the owner's objection to the Board's calculation because this formed part of the owner's cross-appeal that had just been withdrawn.

[27] For the reasons set out below, the Committee finds that the Board did not exceed its jurisdiction when it changed the applicable MAF, and the owner did not demonstrate any error in the Board's calculation of the property's fair value.

I. Land Size Multiplier

[28] To succeed in this appeal, the city had to demonstrate that the Board erred by finding that the Court's decision in *Imperial Oil* applied to this appeal

because the sales used to determine the LSM curve of 115% curve could not provide a reliable size adjustment factor for the subject.

[29] According to the Manual, if "the sale price of a larger parcel in a neighbourhood is less per unit than the sale price of a smaller parcel" the assessor should apply "a land size multiplier" to parcels that are other than the standard size parcel. The Manual also directs the assessor to use comparative sales analysis if there are "sufficient vacant land sales in a neighbourhood to establish a *reliable* land size multiplier" (Document Number 2.2.3, emphasis added). In the following passage, which was also quoted in the Board's reasons, the Court commented on the significance of the Manual's requirement that the LSM should be "reliable":

> "[6] The provisions of the Manual being applied indicate that the calculation of the LSM is necessarily a different calculation from that used to determine the base land rate.
>
> [7] Further, the disparity between the size in parcels used in the calculation by the assessor and the Committee and the subject land is so great that the curve on any graph would, of necessity, be unreliable. The word "reliable" must be given weight… It is difficult to envisage when the fall back rate would be used if not with a disparity of this size with the paucity of comparison. The parcels used must have compared some degree of reasonable correlation for the dimension being measured, that is here, size."

[30] The city made several arguments in support of its position that the Board should have distinguished the *Imperial Oil* decision and concluded that the 115% LSM was reliable, each of which will be considered below:

1) The lower size disparity between the largest sale used to establish the LSM of 115% and the subject;

2) The reliability of the 115% LSM was demonstrated in accordance with sales price analysis procedures, as required by step 7 of the comparative sales analysis procedure in Document Number 2.2.3;

3) Applying the default curve of 130% violated the Manual because it disregarded sales evidence that established a reliable 115% default curve for the neighbourhood only because there happened to be a very large parcel on 22nd Street; and

4) The default curve imposed a size adjustment that was disproportionate to the sales evidence in the subject neighbourhood and in similar commercial neighbourhoods in the city.

1. Lower Size Disparity

[31] In *Imperial Oil*, the parcel at issue was over twenty times the size of the largest sale that was used to establish an LSM of 115%. The assessor argued that *Imperial Oil* could be distinguished because in this appeal the size disparity between the largest sale used to establish the LSM and the subject parcel was only a multiple of about 6.5.

[32] The smaller size disparity between the largest sale and the subject is not enough to distinguish *Imperial Oil*. The Court did not refer to the ratio between the size of the parcel at issue and the size of the largest sale used to establish an LSM at all, let alone find that any particular ratio should be a threshold for determining the reliability of an LSM curve. Rather, the disparity that caused the curve to be unreliable was "the disparity between the size in *parcels used in the calculation*...and the subject land." Similarly, in the same paragraph the Court stated that "*the parcels used*" must be comparable by having "some degree of reasonable correlation" with the size of the subject (emphasis added).

[33] The foregoing point was also made by this Committee in AAC Appeal 0181/2005, *Imperial Oil Ltd. v. Regina (City)*. At issue in that appeal was the application of an LSM curve to the same property that had been the subject of the Court's decision in *Imperial Oil*. In the meantime, a new assessment cycle had offered the assessor new sales for determining the LSM, and, in particular, one sale of a forty acre parcel. Since the size of the relevant parcel was just over 100 acres, the ratio between the size of this parcel and the largest sale was 2.5. The other 10 properties in the sales array, however, were in the same size range of one-half acre to five acres as the sales that had been considered by the Court. The Committee found that it was the array of sales used to establish the LSM, considered as a whole, which had to be comparable with the subject. Therefore,

when all the other sales in the array used to establish the LSM curve bore no reasonable correlation in size to the subject property, the curve was not reliable for determining an appropriate size adjustment for that property.

[34] Similarly, In AAC Appeals 0042/2006 to 0046/2006 (*Regina (City) v. Deloitte & Touche LLP*) and in AAC Appeal 0009/2006 (*Saskatoon (City) v. Hillcrest Memorial Gardens Ltd.*) this Committee based its conclusion on whether the LSM curve could be extended to the subject property on an analysis of the sales array as a whole and not solely on the size of the ratio between the largest sale in the array and the size of the subject.

[35] In this case, the sizes of parcels used by the assessor to calculate the LSM curve of 115% are not comparable to the subject. The assessor determined that the SPS for the neighbourhood was a range of up to 10,000 square feet. This left four vacant land sales to establish the LSM for the neighbourhood, with parcel sizes of 10,827 square feet, 16,492 square feet, 17,380 square feet and 22,750 square feet. All of the sales used to determine the 115% LSM curve are more comparable in size to the sales used to establish the BLR of $8.70, which ranged between 3,245 and 6,795 square feet, than they are to the subject's 148,588 square feet.

2. Sales Price Analysis and Reliability

[36] The assessor argued that the 115% curve was reliable because it was established in accordance with the procedures in Document Number 2.2.3 of the Manual. The curve was calculated from vacant sales in the neighbourhood, and it was tested for accuracy as directed by step 7 of the comparative sales analysis procedure (Exhibit R.1, p. 39). This demonstrated that the 115% curve fit the sales well. The assessor contended that since there were enough vacant land sales in the neighbourhood to establish an LSM curve, the Manual did not allow the default LSM curve to be used. The Manual only allowed the default curve to be used if a reliable LSM could not be derived from either the comparative sales method or the comparative neighbourhood method.

[37] This argument is indistinguishable from the argument accepted by the Committee in Appeal 0215/2001, *Regina (City) v. Imperial Oil Ltd*, which was reversed by the Court. The Committee wrote, at paragraph 19, that:

> "[t]he calculation procedure for size adjustments instructs the assessor to determine the most reliable curve that best fits the sale price ratios for all land sales in the neighbourhood. So the curve is "best fit" to the available sales and not necessarily the "best fit" to all parcels in the neighbourhood."

The Committee added that since it was possible to establish a reliable trend from comparable sales, there was no need to defer to the default LSM table.

[38] The Court's disagreement with this interpretation of the Manual was implicit in its reversal of the Committee's decision. The Court focused on whether the LSM curve could be considered reliable for the parcel being adjusted, not whether the LSM curve established a "trend" for the neighbourhood.

[39] The need for comparability with the particular property being adjusted is consistent with the Manual's general provisions governing site adjustments, of which size adjustments are only one instance. Document Number 2.2.1 states that the section on site adjustments provides "valuation procedures for determining site adjustments *specific to individual parcels*". It is a characteristic of a particular parcel, such as depth, irregular shape, location, corner influence or size that causes the parcel to need a site adjustment. Hence, Document Number 2.2.1 states that site adjustments should be used "to account for variations in the value of *individual* land parcels that are attributable to characteristics *specific to the individual parcel*" when the parcel "varies from the typical characteristics for the neighbourhood" (emphasis added). It follows that the Manual's requirement for reliability must be read as referring to the ability of the LSM to adjust for the size of the individual parcel at issue in relation to the parcel size reflected in the BLR. This means that the sales used to establish an LSM must be sufficiently comparable to the parcel being adjusted that the trend disclosed by this LSM curve will be a reliable indicator of the appropriate size adjustment for that parcel.

In this case, the parcel sizes in the sales array are not comparable to the size of the subject, and therefore the LSM curve of 115% is not a reliable indicator of a size adjustment for the subject.

3. Disregarding Sales Evidence

[40] The assessor submitted that the Board's order did not comply with the Manual's direction to use comparative sales evidence to establish an LSM when there are sufficient vacant land sales in the neighbourhood to establish a reliable adjustment factor.

[41] Although the 115% LSM curve is not reliable for the subject property, its reliability for parcels that are in the same size range as sales in the array that was used to calculate the curve was not questioned. As the assessor observed, if the largest parcel in the neighbourhood was no larger than the largest property in the sales array there would have been no grounds to challenge the reliability of the 115% LSM curve. The assessor argued that the 130% default curve should not be substituted for the 115% LSM curve for all properties larger than the SPS just because the neighbourhood happened to include a particularly large property.

[42] This argument is founded on an assumption that the Manual permits only one LSM curve in a neighbourhood, and therefore if the default curve must be used for the subject then it must also be used for all other size adjustments in the neighbourhood. This would mean that sales evidence establishing a reliable LSM for many or most of the properties in the neighbourhood would be disregarded.

[43] The argument that the Manual does not allow different LSM curves in the same neighbourhood was also referred to in the Committee's first *Imperial Oil* decision (AAC Appeal 215/2001 at paragraph 12) in which the same dilemma arose. Although the Court's decision did not comment on whether two LSM curves could be applied in the same neighbourhood, this argument did not deter the Court from applying the 130% default curve to the parcel under appeal.

Moreover, the Court did not state that the default curve must be used in all other size adjustments in the same neighbourhood. It would be reading too much into the Court's affirmative reply to the question of whether the Committee had erred "by holding that eight sales of parcels up to 208,000 square feet were sufficient to establish a reliable land size multiplier *for all parcels in the neighbourhood*" (emphasis added) to take this as meaning that the eight sales did not establish a reliable LSM for *any* parcels in the neighbourhood.

[44] Here, too, it is relevant that Document Number 2.2.1 of the Manual states that the purpose of the valuation procedures in the Manual is to determine site adjustments "specific to individual parcels". Requiring the same valuation procedure for all size adjustments in a neighbourhood would conflict with this purpose.

[45] For size adjustments, Document Number 2.2.3 requires the assessor to consider the sales evidence in the neighbourhood as a whole to determine whether "the sale price of a larger parcel in a neighbourhood is less per unit than the sale price of a smaller parcel." If the assessor determines that unit sale prices decline as parcel sizes increase, then "*a land size multiplier* will be applied to all land parcels that are other than the standard size parcel" (emphasis added). This does not require the assessor to apply the *same* land size multiplier to all parcels in the neighbourhood.

[46] The Manual offers the assessor a hierarchy of three alternative evaluation procedures for determining land size adjustments and limits the use of lower ranked procedures to an inability to use a preferred procedure. This limitation must also be read with reference to the purpose of the adjustment, which is to find adjustments "specific to individual parcels". Therefore, while a specific parcel may not be adjusted with a lower ranked procedure if a preferred procedure could be used, this does not preclude the use of more than one of these procedures in the same land neighbourhood.

[47] Finally, the city's objection that applying the 130% default curve would cause the LSM calculated from sales evidence to be disregarded appears to be more theoretical than real. Pages 69 and 70 of Exhibit R1 and the assessor's memorandum dated March 16, 2006 demonstrate that in practice the assessor considered it possible to apply more than one LSM in the same neighbourhood. In both of these documents the assessor's calculations demonstrate that if a 130% LSM curve must be applied to the subject, the assessor would still apply the 115% LSM curve for parcels for which the curve could still be considered reliable. Additionally, it is noted that within this neighbourhood the assessor's original sales analysis effectively applied two LSM curves. Strictly speaking, per Document Number 2.2.3 of the Manual, a land size multiplier is only applied to land parcels that are other than the standard parcel size. However, as permitted by the Manual, the assessor found that in this neighbourhood the standard size parcel was a range that extended from zero to 10,000 square feet. The result was equivalent to applying two LSM curves; that is, all land parcels less than 10,000 square feet received no adjustment to the BLR for land size, while all parcels greater than this size received the benefit of the application of the 115% curve.

4. Does the default curve impose a size adjustment that is disproportionate to the sales evidence in the subject neighbourhood and similar neighbourhoods?

[48] The assessor also objected to applying the default curve to the subject property because it "injects size into the equation" in a manner that is disproportionate to the sales evidence. Although the 130% default curve reflects a higher size influence than the 115% curve indicated by the sales evidence, it was the assessor's conclusion that sales evidence indicated that the sale price of larger parcels in the neighbourhood was less per unit than the sale price of smaller parcels that triggered the requirement in Document Number 2.2.3 to apply a land size multiplier to all parcels that are other than the standard size parcel.

[49] Sales evidence that supports a 115% curve at parcel sizes that are much closer to the SPS than the subject does not lead the Committee to conclude in this case, as it did with reference to a 105% curve in paragraph 6 of Appeals 0042/2006 to 0046/2006, *Regina (City) v. Deloitte & Touche LLP*, that "size is not particularly significant in this neighbourhood, because the incremental land areas, while diminishing in per unit value, are holding their value."

[50] The city augmented its argument against the 130% default curve by referring to a general lack of sales evidence in Saskatoon's largest commercial neighbourhoods that supports a finding that as a parcel gets larger the rate per square foot needs to be reduced by "a dramatic amount". It referred to Committee decisions in 2005 appeals that found no size influence on unit prices in similar neighbourhoods. Although the city did not ask the Committee to apply sales evidence from another neighbourhood, it argued that comparisons to other neighbourhoods supported the reliability of the 115% LSM curve for the subject.

[51] It may be reasonable to expect that there will be a similar relationship between parcel size and price per unit of land in the subject neighbourhood as in similar commercial neighbourhoods. However, Document Number 2.2.3 of the Manual does not allow the reliability of an LSM curve derived from comparable sales analysis in one neighbourhood to be determined by sales data from other neighbourhoods. The Manual only allows the assessor to resort to comparable neighbourhood analysis where there are insufficient vacant land sales "in the neighbourhood" to establish a reliable LSM. Further, the comparative neighbourhood method only allows the assessor to import a LSM from "a comparable neighbourhood", not from evidence selected from several neighbourhoods.

[52] The assessor also defended the 115% LSM curve derived from comparative sales evidence on the grounds that the Manual only allows a default LSM curve as a last resort if neither the comparative sales method nor the comparable neighbourhood method can be used. However, the assessor did not place evidence before the Board that demonstrated that a LSM curve from a

comparable neighbourhood could establish a reliable LSM curve for the subject property, and neither the assessor nor the owner recommended the use of this method to the Committee.

[53] For all of the foregoing reasons, the Committee finds that the Board did not err when it ordered that the default 130% LSM should be applied to the subject property.

II. The Board's Calculation of the Property's Fair Value

[54] The owner alleged that the Board erred when calculating the subject's fair value based on the 130% default LSM curve because it failed to apply a 10,000 square foot SPS and increased the MAF applied to the improvements.

1. Standard Parcel Size

[55] The Board ordered that a 130% LSM curve be applied to the subject, based on an SPS of 10,000 square feet. In a post-hearing memorandum dated March 13, 2006 (Exhibit AAC A2), the Board had asked the assessor to recalculate the property's fair value on that basis. The owner claimed that the reply dated March 16, 2006 from Lee Fuller, Assessment Manager (Exhibit AAC A3), recalculated the property's fair value based on an SPS of 80,000 square feet. Mr. Fuller's memorandum provided a recalculated total fair value of the property of $1,955,700, the same amount ultimately ordered by the Board.

[56] A review of the Board's record reveals that the property's adjusted fair value was, in fact, based on a 10,000 square foot SPS. Mr. Fuller's calculation expressly stipulated this SPS, as had been requested by the Board. The figure of 80,000 square feet also appeared in the memorandum, but with reference to the "LSM", which was specified as "115% for parcels up to 80,000 sq. ft. (3.5 times the largest land sale)" and "130% for parcels over 80,000 sq. ft." As will become apparent from the discussion below, the assessor's size threshold for applying the 130% LSM curve related to the assessor's calculation of a revised MAF for

the property and did not affect the SPS used to calculate the subject's Board ordered land value.

[57] It is evident from the final paragraph of Mr. Fuller's memorandum that the subject's revised land value of $575,323 was the product of 148,000 square feet. (subject's parcel size) multiplied by $8.70 (BLR) and further multiplied by a factor of 0.44505, based on an LSM of 130%. The factor of 0.44505 is consistent with information that had been provided by the assessor on page 70 of Exhibit R1, a chart that shows how applying the 130% default curve on 22nd Street affects land values. This chart shows that applying this curve and a 10,000 square foot SPS to a 150,000 square foot parcel (only slightly larger than the subject) would yield a size adjustment factor of 0.444.

2. Revised Market Adjustment Factor

[58] Mr. Love objected to the Board's decision to increase the MAF for the subject property from 0.59 to 0.67 on three grounds. He argued that (a) since the revised MAF was not requested by the Board in its memorandum of March 13, 2006 it should not have been included in Mr. Fuller's calculation of March 16, 2006, and that the Board erroneously relied on this calculation, (b) that this created a "site-specific" MAF that singled out this parcel, and (c) that the Board lacked jurisdiction to increase the MAF because no appeal ground challenging the MAF was before the Board.

a) Reliance on the Assessor's Revised Fair Value Calculation

[59] The Board's record is not consistent with the Board having unwittingly adopted a calculation that included a change in the MAF. When the Board requested a recalculation of the subject property's fair value in its post-hearing memorandum of March 13th, it had before it the assessor's position that a change in the LSM would affect the MAF (see Exhibit R1 paragraphs 17-18 and 69), and so it was not surprising that the assessor included this change in the reply. Indeed, on page 13 of its reasons the Board expressly referred to the assessor's position on the

change to the MAF in R1 in the context of its reasons for accepting the assessor's calculation. Further, the owner's opposition to the change in the MAF expressed in its memorandum of March 20th forms part of the Board's record.

b) Is the Revised MAF "Site-specific"?

[60] The calculations provided by the assessor in Exhibit R1 demonstrated how applying a 130% LSM curve would affect the valuation of improvements of sales in the MAF array. Mr. Fuller's March 13th memorandum combined the effect on the MAF of an adjusted LSM and a reduced BLR of $8.70. The assessor's calculation showed the effect of these land valuation changes on the array's median value. That value was the MAF for the neighbourhood, not for a single property. The Board's decision, on page 13, also refers to changes to the MAF "for the neighbourhood". In the absence of any evidence or indication that the Board intended the revised MAF to apply only to a single property this argument must fail.

(c) The Board's Jurisdiction

[61] This leaves the question of whether the Board had jurisdiction to increase the MAF in the absence of a ground of appeal that challenged the MAF. The owner argued that its appeal to the Board was limited to two grounds. The first ground appealed the property's land assessment. The second ground alleged that the property's 0.59 MAF was too high, but this ground of appeal was withdrawn at the commencement of the Board's hearing.

[62] The Board addressed the source of its authority to amend the MAF on pages 12 and 13 of its decision. The Committee is in substantial agreement with the Board's reasons, but adds the following.

(i) How Land Valuations Affect the MAF

[63] The object of applying a MAF to the valuation of an improvement is to adjust the improvement's replacement cost less depreciation by a factor that

brings market influences to bear on the fair value of the property. The MAF applied to the subject's improvements was calculated with the sales comparison method described in Document Number 4.1.12 of the Manual. After identifying eligible sales of properties with comparable improvements, the assessor deducted the fair value of the land from the sale price of each property to obtain residual building values. The assessor then divided the residual building values by the buildings' replacement cost new less depreciation to arrive at "market ratios". The subject's MAF was the median market ratio of all the sales in the MAF grouping.

[64] Higher land fair values will reduce residual building values. This will tend to reduce the market ratios in the sales array as well as the median market ratio, which becomes the MAF for comparable buildings and structures in the neighbourhood. This means that if an error that inflated the land value of a property under appeal also inflated the land values of properties in the MAF sales array, then correcting that error will also reduce the land values of those properties. This may result in a higher MAF and a higher improvement value for the property under appeal.

[65] In this case, the Board identified two errors in the land valuation. The Board reduced the BLR to $8.70 from $9.10, and it changed the LSM curve applied to the subject parcel. The change in the BLR affected the land valuation of every parcel in the 22nd Street land neighbourhood, and affected the MAF calculation because the reduced land value increased the building residual values and the market ratios for every property in the MAF array. The change in the LSM curve ordered by the Board affects the land value of only one of the properties in the MAF array (see below), but also increased the MAF.

[66] Therefore, the effect of the errors in the land valuation on the subject's total fair value was mitigated by a MAF that was lower than it would have been without the errors. 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 effect on the MAF of the change in the LSM ordered by the Board was not as straight forward to calculate as the effect of the reduced BLR, because its influence depended on whether the assessor interpreted the Manual as allowing more than one LSM curve in the same land neighbourhood. If only one LSM curve could be used in a neighbourhood then the Board's order would require the 130% LSM curve to be used for every size adjustment in the neighbourhood. This would have increased the market ratio of every property in the MAF array with a parcel size greater than 10,000 square feet.

[68] The calculation provided in Exhibit AAC A3 indicates that the assessor interpreted the Manual as allowing more than one LSM curve to be used for size adjustments in a neighbourhood. This yielded a more favourable result for the owner because it limited the effect of the land valuation change to one property in the MAF array that was comparable to the subject property because its particularly large size also precluded the application of the 115% LSM curve.

[69] Since the reliability of an LSM curve depends on the sales array as a whole and not just the size of the largest sale in the array, the Committee might question the seemingly arbitrary threshold of "3.5 times the largest land sale" for applying the 130% default LSM curve. However, an examination of the MAF sales array and the assessor's calculation of the new MAF (Exhibit AAC A3) reveals that the precise location of this threshold is not material to the result in this case.

[70] The site sizes of all but two of the properties in the MAF array that exceed the SPS are still well within the range of the parcel sizes of properties used to determine the 115% LSM curve. The two exceptions are 103 Avenue P South (which was the subject of two sales shown in the array) at 23,338 square feet, and 2305 22nd Street West, with a site size of 93,295 square feet. It is apparent from a review of the parcel sizes of the sales used to determine the 115% LSM curve (see above at paragraph [35]) that regardless of precisely where the limit of reliability of this curve lies, it would be very difficult to argue either that this curve should not apply to the 103 Avenue P South property, or that it would still be reliable for a

parcel as large as the property at 2305 22nd Street West. Therefore, the Committee cannot take issue with the calculation in Exhibit AAC A3, which left the 115% LSM curve in place for all of the properties in the array except the 2305-22nd Street East property, to which the default 130% LSM curve was applied. The resulting decrease in that property's land value caused its building residual value and market ratio to increase, and this in turn changed the median market ratio and the MAF for the neighbourhood to 0.67.

(ii) Section 197(2) of the Act

[71] The owner did not contest the assessor's position that changes in land values can affect the MAF, but did contest the Board's jurisdiction to account for this effect by adjusting the MAF applied to the property. The owner argued that the Board had no jurisdiction to change the MAF applied to the subject because the only ground of appeal before it alleged an error in the land valuation.

[72] The subject property's 2006 Assessment Notice expressed the property's assessment as a single value, which included both land and improvements. Consequently, subsection 197(2) of the Act precludes an appeal of the valuation of land apart from the improvements to the land, and it forbids an appeal of the improvements apart from the land on which the improvements are situated. This section appears to be designed to prevent exactly what the owner is attempting to achieve in this instance – to have an error in the land value of the subject corrected without accounting for the effect this error had on the valuation of the improvements.

[73] Counsel for the owner did not offer an alternate purpose for this subsection, but argued that this provision is overridden by the equity provisions in the Act. However, in the Committee's view subsection 197(2) promotes rather than reduces equity. If this section had not been enacted, an appellant could limit an appeal exclusively to the land valuation. If the Board found an error in the land valuation, it could correct that error but could not correct any effect of this error on the property's improvement valuation. The result would be a valuation of the property that remained inconsistent with the formulas, rules and principles in the Manual. Equity,

however, results from applying the prescribed method to determine fair value in a fair and uniform manner throughout the assessment roll (*Regina (City) v. Laing Property Corp.* supra at paragraphs 59 to 67). 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 requirements of the Manual and the requirement of subsection 165(3) of the Act that the dominant and controlling factor in the assessment of property is equity.

[74] Although the Board admitted to some doubt about whether subsection (2) of section 197 is consistent with subsection (6) of the same section, the Committee sees no inconsistency between these subsections. Subsections (6) (a) and (b) require an appellant to state specific grounds for alleging that an error has been made in determining the assessment, and to set out in summary form the supporting facts for each ground of appeal. This requirement applies to all appeals, regardless of whether the alleged error relates to the valuation of the land or the improvements or both. There is no contradiction between a) requiring an appellant to provide specific grounds of appeal to identify the issues in the appeal and to thereby provide notice to the Board and the respondent of the alleged error, and b) requiring any appeal to be against the valuation of the property as a whole, such that if an error affects more than just the land or improvement portion of the property's valuation the Board has jurisdiction to consider the effect of the error on both components.

[75] The purpose of correcting an error in the subject's land rate is to further the overriding interest of equity between the fair values of properties. This objective will be undermined if two errors that inflated the subject's fair value (the BLR and the 115% LSM curve) were removed without accounting for the effect of these errors on the MAF. Failing to adjust the MAF accordingly would have substituted a fair value that was too low for a fair value that was too high. It is evident from the Board's reasons that it did not believe this result, in the words of section 210(1) of the Act, would have been "just and expedient".

[76] Accordingly, the Committee finds that the Board did not exceed its jurisdiction by changing the MAF applied to the subject property to 0.67, and did not err in calculating the property's fair value.

DECISION:

This appeal is dismissed.

For 2006, the fair value and assessed value of the property shall be $1,955,700, the amount determined by the Board. The filing fee shall be retained.

DATED AT REGINA, Saskatchewan this

4th day of September, 2007.

SASKATCHEWAN MUNICIPAL BOARD
Assessment Appeals Committee

Per: _____
Wade Armstrong, Chairman

Per: _____
Cynthia J. Schwindt, Secretary

Felix Hoehn, for the Committee

_____

I concur:

_____
David Wilkin, Member

_____
Robert L. Edwards, Member

Tab 5

Saskatchewan Municipal Board
Assessment Appeals Committee

DETERMINATION OF APPEALS UNDER
Section 216 of *The Cities Act*

Appeal Numbers: AAC 2011-0091 (Owner) and 2011-0100 (SAMA)
Date and Location: June 12, 2012 – Moose Jaw, SK

Sasco Developments Ltd. (Owner)

- and -

City of Moose Jaw and
Saskatchewan Assessment Management Agency (SAMA)

APPEARED FOR:

The Owner:	Jesse Faith, Altus Group Limited Deanna Puff, Altus Group Limited
Saskatchewan Assessment Management Agency:	Dwain Weeks Terry Hadley-Cole
The Municipality:	City of Moose Jaw – No one appeared

HEARD BEFORE:

David Wilkin, Chairman
Gordon Hubbard, Member
Ron Rollie, Member

Barry Fry, Secretary
Dianne Ford, Member (Observer)

These appeals are against the decision of the Board of Revision (the Board) for the City of Moose Jaw pursuant to section 216 of *The Cities Act* (the Act).

In this decision, Sasco Developments Ltd. and its agent will be referred to as "the owner", the Saskatchewan Assessment Management Agency will be referred to as "SAMA" or "the assessor" and the Saskatchewan Municipal Board, Assessment Appeals Committee will be referred to as "the Committee".

ISSUES:

Did the Board err in:

(i) Failing to provide a final revised assessed value which reflects its findings;

(ii) Ordering the assessor to use actual income data from the subject property; and,

(iii) In failing to find that the number of rooms and seating capacity of the subject was incorrect?

FACTS:

(1) The property is legally described as Parcel 3, Plan 77MJ16498, Property Number 485000500 and civically described as 1590 Main Street North.

(2) The subject property is a 223,040 square foot parcel improved with a full service hotel (locally known as the Heritage Inn) built in 1979 with 103 rooms and seating capacities of 202 (beverage room), 750 (conference room), 116 (dining room) and 40 (lounge).

(3) The assessed value (assessment) and taxable assessment for the subject property was determined by way of the income approach to value. That value, $5,302,500, was appealed to the Board by the owner. The property was initially valued based on 104 rooms and a dining room capacity of 140. At the Board's hearing, the assessor acknowledged an error in these figures and recommended to the Board a revised value of $5,123,800 based on corrected data.

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.

(4) The owner's grounds of appeal to the Board set out that the assessment valuation is excessive due to the following

"1. The assessor erred when not stabilizing the income & expenses over a period of 3-5 years.

2. The assessor erred in the application of the current modelled income of the property.

3. The occupancy used in determining the assessment is excessive and is significantly higher that (sic) the actual performance of the subject.

4. The assessor erred in the calculation and application of the current cap rate.

5. The assessor erred in the calculation of the net income of the property when not considering an adjustment to reflect the actual performance of the subject property.

6. The properties used to develop the cap rate, revenue and expense ratios of the current neighbourhood stratification used to determine the subject's assessment do not accurately represent the subject. The stratification is in error.

7. The assessor has erred in not using the correct number of units for the hotel rooms and dining room capacity, as of January 1st, 2011.

8. The assessor has been asked to provide several specific documents used to derive assessments for hotels and motels in the City of Moose Jaw of which have not been received to date."

(5) The record of the Board includes:

a) Notice of appeal dated April 12, 2011, with Schedule A and an assessment notice attached;
b) April 13, 2011 acknowledgement of appeal;
c) May 12, 2011 notice of time and date for the hearing;
d) July 4, 2011 email from the owner to the Board requesting the hearing be recorded;
e) With respect to the hearing being recorded, an e-mail from the Board; the Board's Order for Recording; and a letter from Royal Reporting Services, all dated July 5, 2011;
f) Appellant's submission to the Board (Exhibit A-1) dated June 17, 2011 with Appendices A to N attached;
g) Addenda (1 to 5) dated June 21, 2011, respecting confidential materials;
h) Respondent's written submission to the Board (Exhibit R-1) prepared by SAMA, dated June 30, 2011, with Appendices A to E and a "Book of References" (Tabs 1 to 7) attached;

i) A transcript of the Board's July 11, 2011 hearing;
j) The decision of the Board dated July 14, 2011; and
k) July 15, 2011 e-mail from SAMA to the Board and the appellant's e-mail response dated July 18, 2011 respecting the value to be placed on the assessment roll to reflect the Board's decision.

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

> "**DECISION:**
>
> It is the decision of the Board that the Assessor erred as equity was not achieved in the assessment of the subject property. Therefore it is the decision of the Board that the actual reported room rates and vacancy rates for primary accommodations be used in determining the assessed value of the property."

(7) The owner's grounds of appeal to the Committee are:

> "The 2011 Board of Revision for the City of Moose Jaw erred in its decision in the following respects;
>
> 1. Albeit the Board was correct in finding a number of errors in the assessment under appeal, the Board erred in not providing a revised assessment value.
>
> 2. The Board erred in not finding that the number of rooms and seating capacity of the subject was incorrect."

The notice of appeal to the Committee was dated and received on August 2, 2011.

(8) SAMA's grounds of appeal to the Committee are:

> "1). The Moose Jaw Board of Revision (BOR) has failed to determine a value to be placed on the assessment roll.
> 2). The BOR erred in law by directing the assessor to use actual income data from the subject property, contrary to the previous SMB decision on this property and to Sections 164.1(2), 165(1) and 210(1.1) of the Act.
> 3). Each of the findings under the heading "Conclusion" in the BOR decision represent errors of law or an unreasonable interpretation of the facts presented.
> 4). The BOR condensed the issues under appeal and then failed to address the issues under appeal, specifically the use of median indicators from comparable properties.

5). The BOR erred in law in finding that the assessor is required to follow the Valuation Parameters in the Market Valuation Handbook, when the Market Valuation Handbook is merely a guide and is not binding on the assessor.
6). The BOR erred in law in its interpretation of what is required to meet the market valuation standard.
7). The BOR erred in law in failing to give any effect to the assessor's legitimate exercise of his discretion in developing the model and applying the model to the subject property.
8). The BOR erred in law and jurisdiction in that it refused to allow the assessor to lead its verbal evidence in full, thereby (a) breaching the principles of natural justice and (b) resulting in a reasonable apprehension of bias against the assessor."

The notice of appeal to the Committee was dated and received on August 4, 2011.

(9) The Committee received a written submission from SAMA identified as Exhibit AAC Assessor 1.

(10) The Committee received a written submission from Altus Group Limited on behalf of the owner, identified as Exhibit AAC Agent 1.

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;

164(1) All property in a city is subject to assessment.

164.1(2) Non-regulated property assessments shall be determined according to the market valuation standard.

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.

...

(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:

(i) a statement indicating whether the assessor considered any decisions of the appeal board pursuant to subsection 165(3.2) in determining the assessment; and

(iii) if the assessor did consider one or more decisions of the appeal board in determining the assessment, a statement indicating whether the assessor decided to apply, to apply in part, to apply with modification or not to apply the decision of the appeal board to the assessment and the reasons for that decision.

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."

CASE LAW:

Sasco Developments Ltd. v. City of Moose Jaw and Saskatchewan Assessment Management Agency, 2012 SKCA 24

COMMITTEE DECISION:

Appeals 2009-0068 and 2009-0073, *Saskatchewan Assessment Management Agency, Sasco Developments Ltd. and City of Moose Jaw*, July 19, 2010

CONCLUSIONS AND REASONS:

[1] The Committee has received two appeals against a decision of the City of Moose Jaw Board of Revision, one filed on behalf of the owner and one filed by SAMA. On the basis of the presentations of the owner and SAMA, the Committee must decide if the record shows that an error has occurred. The role of the Committee is not to redo the Board's hearing. Rather, the Committee is to review the evidence from that hearing and determine whether the Board came to the correct conclusion in rendering its decision. Should the Committee determine that the Board did not come to the correct 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.

[2] The Board heard the owner's appeal and made a decision in which it ordered a recalculation of the value and directed SAMA to use the "actual reported room rates and vacancy rates" for primary accommodations to determine the assessed value for the subject property. SAMA did not recalculate the value as directed but advised the Board that it was appealing the Board's decision to the Committee. SAMA initially offered to place on the 2011 roll a value of $3,706,500, pending the resolution of the matter through appeal. This value was based on the owner's submission to the Board. The owner declined that offer, suggesting to the Board that it request SAMA calculate a revised value based on the Board's findings. SAMA subsequently indicated to the Board that it could not follow the Board's directions in calculating a new value and sought clarity from the Board through a revised decision that would remove any doubt of the Board's intention. The owner also sought a revised decision from the Board with a definitive outcome. The Board's secretary responded in an e-mail to the parties stating that "the present assessment stands" (i.e. $5,302,500) and that the Committee would be making a final ruling on the matter.

[3] In the Committee's view, the owner's appeal to the Committee is based on the expectation that SAMA's calculation of a revised value based on the Board's direction will yield a value less than SAMA's offer of $3,706,500.

[4] We see SAMA's appeal to the Committee as being based on the argument that the Board misinterpreted what is required to meet the market valuation standard and its decision is in error in directing the assessor to use actual income data from the subject. SAMA argues that the new 2011 value for the subject property would be $5,543,600 if it were to follow the Board's direction as SAMA understands it.

[5] The subject hotel is valued by way of SAMA's Primary Accommodation model. This model relies on a four-sale sample to calculate a median capitalization rate. For Hotel and Accommodation properties in this Primary Accommodation group, SAMA has reviewed a sample of submitted income and expense statements to look for average levels of performance. From reports submitted by hotel operators, SAMA examined room rents from eight full service and nine limited service properties and occupancy rates from 17 Primary Accommodation properties. From the eight full service Primary Accommodation properties, SAMA determined a weighted median room rack rate for the subject property. Two market room rents were developed for Primary Accommodations, based on level of service. A single occupancy rate was developed using reported occupancies from comparable properties in Moose Jaw, Yorkton and the Rural Municipality of Prince Albert No. 461.

[6] The subject property's assessed value for 2009 was appealed to the Board and the Board's decision was appealed to the Committee. The Committee's decision for 2009 was further appealed to the Saskatchewan Court of Appeal (the Court), which rendered a decision dated March 6, 2012 (*Sasco Developments Ltd. v. City of Moose Jaw and Saskatchewan Assessment Management Agency,* 2012 SKCA 24, noted above). The Court's decision would have been very helpful to the Board for its 2011 appeal on the

same property. Unfortunately, the relative timing of these matters led to the Board issuing its decision well before the Court's decision was rendered. The Committee has the benefit of the wisdom of the Court's decision as it considers the subject appeals and, as explained below, will rely on it heavily. A number of issues were canvassed in the Court's decision, the most important of which for the purposes of these appeals, is the issue of basing the subject property's value in general on its own income and expenses. The Court found that the Committee was correct when it decided that the Board erred in law when it varied the assessment on that basis.

[7] In these appeals, the owner's arguments and submissions to the Board can be summed up as: the property's actual performance is not being represented in SAMA's model. This recurring theme led the Board to conclude that the valuation model used to determine the subject's assessed value was in error and that the correct value would be determined using the subject's actual income and occupancy information in the model. These arguments and submissions are demonstrated in the owner's notice of appeal to the Board (grounds 2, 3, 5, and supporting facts 2.b., 2.c., 2.d., 3.b., 4.c., and 5.c.) as well as in the following references from the transcript, where Mr. Faith, representing the owner, states:

At page 35, lines 22 to 25:

> "Now, that gives you a bit of a comparison summary between SAMA's model that's being currently used to value the property and the actual performance of the"

At page 36, lines 15 to 20:

> "their model. If you were to look at actual values for this property, we're looking at closer to $35 and a value of 1.3 million. This begins, I guess, where we're seeing these significant differences in the performance of this property."

At page 37, lines 8 to 18:

> "Now, comparisons of on a line-by-line room expense is a little more difficult because SAMA's model calculates

> them a little different than what was reported by the subject. But I think what is important as we sort of boil it down to the end is if we look at that total NOI, SAMA was calculating a value at about 3.8 million where the subject is coming in about 2.7. So we're well over the million dollar mark after expenses are removed."

At page 38, lines 2 to 4:

> "You can see here again SAMA is applying 57 percent, where the subject is just under 45 percent."

At page 39, lines 13 to 16:

> "this province, and we believe that that mind-set should incorporate the flexibility to value properties closer to their market value and represent the performance of subject."

At page 41, lines 14 to 17:

> "requested for the Board, we provided calculations of what we think is certainly more representative of the actual performance of the subject. If we look to tab 2, this"

At page 42, lines 1 to 5:

> "So, after looking at the performance of the subject property over the three-year period and stabilizing it, as you can see we come up with approximately 3.7 million. This was a very comparable value of"

At page 43, lines 22 to 25:

> "CHAIRMAN: So the relief you seek from the Board is that the assessment should be 3,706,514?
>
> MR. FAITH: Yes."

[8] Clearly, the Board did exactly what the owner requested but failed, in the owner's view, to set an assessed value that reflects the owner's request, even though the Board asked for and received an affirmative answer from the owner that applying his model would yield a value of $3,706,514 (Transcript: lines 22 to 25, page 43; page 24 of owner's "Confidential Addenda" to Board). The Board found that the assessed value was in error because it was based on potential revenue and it gave the owner what he

asked for by ordering that actual reported room rates and vacancy rates be used in the model instead of potential revenue. (The Committee agrees with SAMA's submission that the Board probably meant to say "occupancy" rates given that "vacancy" generally relates to other commercial properties and means the opposite to "occupancy" which is the term that relates specifically to accommodation properties.)

[9] The Committee is puzzled as to why the owner changed his position to the Committee, suggesting that he never asked the Board to use the subject's actual income and expense information. The record shows that the Board did exactly what the owner asked of it and now the owner is questioning the Board's decision.

[10] The Committee is not convinced that the owner proved error in the initial assessed value, other than the data errors which were subsequently corrected through SAMA's recommendation. Error must be proven before the value can be set aside and recalculated on appeal. The owner's submissions to the Board did not prove error; they strongly advocated only for the application of a different model, one that represents the subject property's actual performance. We find it is not an inappropriate use of the assessor's discretion to group limited and full service income and expense items to arrive at some, if not all, median rates given that the statistical testing required by legislation improved and there was a marked difference in the medians by so doing.

[11] Saskatchewan legislation directs the use of mass appraisal techniques under what the Act refers to as the market valuation standard in determining the assessed value (which is an estimate of the property's market value and not market value itself) of a non-regulated property such as the subject. Mass appraisal and standard appraisal methods include the gathering and analysis of market value data common to a group or groups of properties and which is subject to statistical testing.

[12] In *Sasco* (noted above), at paragraph [13], the Court characterized mass appraisal of hotel properties as including the establishment of "the common data base requisite to the determination of the annual net operating income that a hotel property in a group of similar properties can typically be expected to generate in the market place..." This, and similar quotes from paragraphs [19] and [20], speaks specifically to the need for the assessor to consider the revenue potential of a hotel in a group of hotels. The Board mistakenly took issue with SAMA relying on "potential revenue" instead of actual revenue, when potential revenue is exactly what the Court said must be considered.

[13] One of the questions the Court was asked to address in *Sasco* is if the Committee erred in interpreting the law as precluding "determination of a non-regulated property assessment by taking into consideration some or all of the property's own characteristics." The Court answered that the Committee did not err. The Court found that "it was not open to the agency to estimate the market value of the Heritage Inn property based in general on 'its own income and expenses.'" The Court further found that it was also not open to the Board to order SAMA to do so, relying on subsection 210(1.1) of the Act which states that "a non-regulated property assessment shall not be varied on appeal using single property appraisal techniques."

[14] Using only actual or individual values offends the market valuation standard as it is not a mass appraisal technique and the required statistical testing would no longer be possible, thus equity cannot be achieved. The Board erred when it ordered a revision to the assessment based on the subject's own income and expenses.

[15] The Committee disagrees with the parties that the Board erred by not providing a final value in this appeal. Giving direction to the assessor to revise an assessment is acceptable, as the Committee found in its decision for Appeal 2009-0081, *Saskatchewan Assessment Management Agency, City of Moose Jaw and Gene's Ltd.*, May 5, 2011. In that

decision, the Committee determined that "...the Board's powers, as encased in section 210, are not limited to either confirming or changing the assessment. The Board can direct the assessor to change the assessment." In this appeal, SAMA disagreed with or was confused by the Board's direction and the owner wanted the Board to further direct SAMA to calculate a revised value and place it on the assessment roll. SAMA chose to appeal the decision instead, thereby leaving the matter of a final value somewhat uncertain (does an e-mail from the Board's Secretary constitute a "decision" of the Board?). In this case, the error rests with SAMA, not the Board, for not taking the Board's direction and calculating a revised assessed value, as flawed as SAMA believes that value to be.

[16] Certainly, the Board could have requested an undertaking from SAMA to calculate a revised value and then vetted the result with the owner, prior to making its decision. Based on the outcome of this process, the Board would have been in a much better position to direct what the final assessed value was to be, had it chosen to follow that course of action. This process likely would have shown the Board that SAMA's 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. This would have led the Board to take a different approach with the parties. As explained above, the Board clearly had a choice; it is not bound to provide a final value but may direct the assessor to calculate the final value. The directions given; however, must be as clear as possible and the Board should be prepared to consider and respond to requests for clarity, particularly when both parties are confused by the Board's decision.

[17] With respect to the issue of the correct number of rooms and seating capacity, SAMA made a recommendation to the Board to revise the assessment based on changes to the room count (103 rather than 104) and seating capacity of the dining room (116 rather than 140) which reflected correct data. The Board did not address this recommendation in its decision. The owner acknowledged to the Committee its

agreement with SAMA's recommendation to correct the erroneous information. The Committee finds that the Board erred by not revising the assessed value to correct the data errors that were before it.

[18] For the above reasons, the Committee finds the Board did not err in its decision by failing to provide a final revised assessed value. The Committee finds that the Board erred by ordering the assessor to use actual income data from the subject property to value the subject property; and by failing to find that the number of rooms and seating capacity of the subject were incorrect. Based upon the record and submissions to it, the Committee orders the assessor to value the subject property (assessment and taxable assessment) at $5,123,800 for 2011.

DECISION:

Appeal 2011-0091 is sustained. The filing fees shall be refunded.

Appeal 2011-0100 is sustained. The filing fees shall be refunded.

DATED AT REGINA, Saskatchewan this

1st day of November, 2013.

SASKATCHEWAN MUNICIPAL BOARD
Assessment Appeals Committee

Per: _____
Gordon Hubbard, Vice-Chairman
Saskatchewan Municipal Board

Per: _____
Cathy Moberly, Director

Tab 6

THE COURT OF APPEAL FOR SASKATCHEWAN

Citation: 2009 SKCA 59 Date: 20090421

Between: Docket: 1500

City of Prince Albert

Appellant (Respondent)

- and -

101027381 Saskatchewan Ltd.

Respondent (Appellant)

- and -

Saskatchewan Assessment Management Agency

Interested Party

- and -

Saskatchewan Municipal Board

Interested Party

Coram:

Klebuc C.J.S., Gerwing and Jackson JJ.A.

Counsel:

David G. Gerecke for the Appellant
Leonard D. Andrychuk, Q.C. for the Respondent
Dona-Lynn Morley for Saskatchewan Assessment Management Agency
Barry J. Hornsberger, Q.C. for Saskatchewan Municipal Board

Appeal:

From:	Saskatchewan Municipal Board, Assessment Appeals Committee Decision of July 18, 2007 in appeal 0027/2006
Heard:	April 21, 2009
Disposition:	Dismissed (Orally)
Written Reasons:	May 14, 2009
By:	The Honourable Madam Justice Gerwing

In Concurrence: The Honourable Chief Justice Klebuc
The Honourable Madam Justice Jackson

Gerwing J.A.

[1] The City of Prince Albert was granted leave to appeal a decision of the Assessment Appeals Committee which concluded that it had no jurisdiction to increase the assessed value of properties on an appeal in which the tax payer sought to reduce the assessment and in which the City had not sought there or below to increase it. The material portion of the Committee's ruling is as follows:

> [25] On June 7, 2007, the Committee further advised the assessor that it believed that the case of *The City of Regina v. East Landing Plaza Ltd. and Saskatchewan Assessment Management Agency (2000 SKCA 141)* continues to be applicable where the basis of appeal was that the assessments being appealed were too high, as in the subject appeals. The assessor subsequently advised, in a July 3, 2007, letter that he did not agree with this position.
>
> [26] It was the Committee's understanding that by including an additional sale in the base land rate, the resulting assessments would decrease. It did not consider the impact on the standard parcel size and the resultant calculation. Such a conclusion was therefore based on an error in calculation. Therefore, the Committee has undertaken to alter its decision to add clarity.
>
> [27] The Committee's position is that if the inclusion of the additional sale resulted in a decrease to the land assessment, in light of the basis of the appeal being that the assessment was too high, then such calculation is appropriate. If the inclusion of the additional sale resulted in an increase to the land assessment, in light of the basis of appeal, then the calculation is in error and the Committee has no authority to order an increase in the assessed values.

The Board then concluded that the values for 2006 should be no higher than the original values.

[2] Leave was granted to appeal on the issue of whether the Committee had the authority to increase the assessed value in these circumstances.

[3] In this Court, it was argued by the appellant that *The City of Regina v. East Landing Plaza Ltd. and Saskatchewan Assessment Management Agency*, 2000 SKCA 141, was not applicable to the circumstances and that, since the legislation had been changed subsequent to *East Landing Plaza*, if *East Landing Plaza* was indeed indistinguishable, it should not be applied. Further, there was argument on whether, even if *East Landing Plaza* was not applicable or was no longer relevant because of the new legislation, procedural fairness could or could not be met in the circumstances if the tax payer's appeal lead to an increase.

[4] In the decision of *East Landing Plaza* I said:

> [1] A land owner appealed an assessment for taxation purposes to the Board of Revision of the City of Regina (the "Board") alleging it to be too high. No cross-appeal was filed by the City, but the Board increased the assessment. The City then appealed to the Saskatchewan Municipal Board Assessment Appeals Committee (the "Committee") to ask for a further increase. There was no cross-appeal by the owner.
>
> [2] The Committee concluded that the Board had erred, having no jurisdiction, as the matter had unfolded, to make an increase, and it restored the original value.
>
> [3] Leave to appeal was granted with respect to the following three questions:
>
> (1) Did the Committee err in jurisdiction in making an order with respect to issues not raised by the appellant's notice of intention to appeal?
>
> (2) Did the Committee err in law in ruling that the assessed value cannot be increased where the board orders correction of errors in the assessment?
>
> (3) If not, then did the Committee err in jurisdiction in failing to have regard to and to apply s. 263.2 of The Urban Municipality Act, 1984 to order an adjustment in the assessment to reflect the corrections?
>
> [4] We are of the view that the answer to all three of these questions is no. On the facts of the case, the Committee was correct in concluding that the Board had no jurisdiction to make the order which it did. It then, as an appellate entity, was asked to affirm what was, in essence, a nullity. This it could not do. While its procedure was flawed to some extent in that it did not specifically raise the vires issue so as permit the City to make argument on it, its conclusion in this respect was

correct. The issue of vires in the body below was open to it and indeed necessary to it to consider its conclusion in this regard.

[5] The significant facts are the same and the pleading procedure throughout the appeal process is indistinguishable in any significant way from that in *East Landing Plaza*. That is, the Court in *East Landing Plaza* accepted the primary importance of the notice of appeal in determining the scope of assessment appeals. There was no appeal by the municipality in that case claiming that the assessment should be varied in its favor. 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.

[7] The statute itself in giving a right of appeal to the Board of Revision, gives such right both to the tax payer and the taxing authority. There is nothing that precluded the City from launching a notice of appeal or cross-appeal to argue that the valuation should be changed in its favor. The statute also requires that the grounds of appeal be set out, a significant factor indicating that the parties in proceeding under this Act should be fully aware of the issues that they will be facing. If they were not required to set out their positions fully it is difficult to see how the Board could proceed with any

efficiency or the parties could represent themselves effectively. While the position of the City was that this type of unannounced and unpled attempt to change the assessment would generally only be used against sophisticated commercial enterprises, there is nothing to indicate this would be the case. Were the pleadings not to be paramount in the way contemplated by *East Landing Plaza* it would be open in any case for either the City or the taxpayer to attempt to assert a position advocating change in its favor without having filed a notice of appeal or cross-appeal.

[8] We note in passing that limitation to issues raised in notices of appeal or cross-appeal is consistent with the jurisprudence in other jurisdictions with similar legislation.[1]

[9] The features of importance in the then relevant *The Urban Municipality Act, 1984*, S.S. 1983-84, c. U-11 (repealed) with respect to appeal have largely and in substance been carried forward in *The Cities Act*, S.S. 2002, c. C-11.1. The most significant is that *The Cities Act* in s. 197(6) still requires the notice of appeal to set out the specific grounds of error and the facts relied on. The requirement to apply for leave to amend a notice of appeal and the discretion of appeal boards to refuse an amendment continues in s. 209 of *The Cities Act*. Further, as pointed out by the tax payer, s. 210(1) provides that the power to adjust can only be exercised as a result of an appeal. There is of course a power to adjust up or down which is necessary depending upon who has

[1] See for example: *Newterm Ltd. v. St. John's (City)*, 74 Nfld. & P.E.I.R. 328 and *79912 Manitoba Ltd. v. Winnipeg (City) Assessor*, 131 Man. R. (2d) 264.

appealed the ruling below but there is no indication that the specificity of the appeal proceeding is in any way displaced to give the Board authority to correct any assessment on any appeal.

[10] *The Cities Act*, like its predecessor Act, has an appeal process requiring a detailed listing of the grounds of appeal and the facts supporting it. There is nothing suggested in any section in the *Act* which would derogate from the importance of the pleadings on an appeal.

[11] It should be noted that SAMA attempted to introduce Hansard on this point. While we noted the material and concluded that it was ambivalent and not useful in dealing with whether or not the primacy of the appellate process was diminished, we are also of the view that this is one of those instances where, even in the era of purposive construction, there is no utility in going to Hansard. As Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham, Ont.: LexisNexis Canada Inc., 2008) at p. 576 notes:

> No doubt, there are occasions when the text is precise and clear, and concerns about the right of citizens to rely on what the text clearly says are more than purely formal. In such cases, the apparent meaning of the text properly outweighs evidence of a contrary intention derived from extrinsic materials. There are also occasions when ambiguity in a text is convincingly resolved through textual or scheme analysis. Again, in such cases the extrinsic materials would probably be dismissed. But even in cases of this sort there is no reason why those materials should not be consulted and given their appropriate weight having regard to all relevant circumstances and considerations.

In this case, as noted, the provision in *The Cities Act*, as in its predecessor, clearly sets out a procedural method for appeals and nothing suggests any need for extrinsic assistance, even if it has been available.

[12] Accordingly, we are of the view that under the new legislation there is no reason that *East Landing Plaza* is not applicable or that the same result substantively would not be arrived at under the new Act.

[13] Finally, given the above, we need say little about the argument about procedural fairness, other than to note that common sense indicates that when either the City or the tax payer has not indicated any disagreement with the ruling and proceeds to the appeal process on the basis of the appeal and reasons for appeal filed by the other, that should be the basis for the hearing and the decision. This assurance that the only issues will be those raised in the pleadings is of course potentially beneficial both to tax payers and taxing authorities and is wholly consistent with the scheme of the past and current legislation.

[14] For these reasons, the appeal is dismissed with costs to the tax payer in the usual way.

Tab 7

THE COURT OF APPEAL FOR SASKATCHEWAN

Citation: 2008 SKCA 46 Date: 20080411

Between: Docket: 1111

HDL Investments Inc. et al.

Appellants

- and -

City of Regina and
Saskatchewan Assessment Management Agency

Respondents

Coram:
Vancise, Lane & Jackson JJ.A.

Counsel:
Leonard D. Andrychuk, Q.C. for the Appellants
Jayne Krueger for the Respondents

Appeal:

From:	Assessment Appeals Committee Saskatchewan Municipal Board
Heard:	November 15, 2007
Disposition:	Dismissed
Written Reasons:	April 11, 2008
By:	The Honourable Mr. Justice Lane
In Concurrence:	The Honourable Mr. Justice Vancise The Honourable Madam Justice Jackson

Lane J.A.

[1] This is an appeal of a decision of the Assessment Appeals Committee (the "Committee") of the Saskatchewan Municipal Board and is brought pursuant to s. 33.1 of *The Municipal Board Act*.[1] The section provides for an appeal only on a question of law or on a question concerning the jurisdiction of the Board, and only with leave of a judge of this Court. Leave to appeal was granted on May 12, 2005. The appeal is a consolidation of some 80 assessment appeals involving downtown office properties in Regina for the years 2001 and 2002. The parties agree this appeal is to go forward alone on the understanding it will determine the outcome of the other appeals.

[2] Specifically, this appeal relates to the inclusion of the Wascana Energy Building in the sales array for the purposes of calculating the Market Adjustment Factor (the "MAF") by the sales comparison method as set out in the Saskatchewan Assessment Manual (the "Manual"). The sale of the Wascana Energy Building was found to have been an "atypical sale" by this Court in *Regina (City) v. Harvard Developments Ltd.*,[2] which I will refer to herein for ease of reference, as *HDL #1*.

I. Relevant History

[3] The sale, in 1991, of the Wascana Energy Building has been a matter of some difficulty for the assessor. Various boards of revision have noted the

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[1] S.S. 1988-89, c. M-23.2.
[2] 2004 SKCA 103.

sale was made in such unusual circumstances, and effected on such unusual terms and conditions, it became difficult to determine the sale price for assessment purposes. As mentioned above, the appropriateness of the use of that sale to determine the MAF was previously considered by this Court in *HDL #1*. That too was an appeal from the Assessment Appeals Committee with respect to the Wascana Energy Building which pertained to assessments from 1998 and involved the previous assessment cycle. In that decision, the Court found the Wascana Energy sale could not be included in the sales array to calculate the MAF for high-rise office buildings. The Court's reasons in *HDL #1* are central to this appeal.

[4] In the case before us, involving the current assessment cycle, the assessor grouped a number of sales of office buildings to calculate a MAF of 0.41. On appeal, the Board of Revision found the Wascana Energy sale could not be used to determine the MAF because it did not constitute a typical sale. The Board ruled that the evidence led could not support a contrary conclusion to the one reached by the Board in relation to *HDL #1* (Appeal 98-520). Thus, the assessor was ordered to remove the Wascana Energy sale from the sales array.

[5] The assessor appealed the Board's decision to the Committee, which heard the 2001 and 2002 assessment appeals for the relevant properties on December 20, 2004.

[6] However, following the hearing before the Board and prior to filing the material for the appeal to the Committee on November 18, 2004, this Court rendered the *HDL #1* decision on July 16, 2004.

[7] In light of the *HDL #1* decision, the assessor, as appellant, filed a written submission to the Committee setting out its revised adjustments to the Wascana Energy sale. Specifically, the assessor incorporated the adjustments suggested to the Court by the owners in *HDL #1* (the owners not conceding the sales price was capable of being adjusted). The assessor also established a citywide MAF neighbourhood for all office buildings on the basis of its testing for variables. On the basis of these revisions, the assessor contends it made the adjustments required by the Court in *HDL #1* and therefore cured the deficiencies the Court found to have existed in that decision. The appellants herein made oral representations but filed no written material before the Committee.

[8] Following a review of the adjustments made by the assessor, the Committee concluded it must fall back on the inherent presumption of correctness of the assessment because there was no argument or evidence to the contrary. It ruled "The assessment is presumed to be correct unless and until it is demonstrated to be wrong."[3] Because it found the Board to have been in error, it therefore fell to the Committee to review the evidence and arguments and to do what the Board ought to have done.

[3] Assessment Appeals Committee decision of February 16, 2005 at p. 16.

[9] The Committee found the sales adjustments proposed by the assessor to be reasonable and concluded the Wascana Energy Building should "be included in the neighbourhood for the sake of comparability."[4]

II. Issues to be Determined on Appeal

[10] The owners applied to this Court for leave to appeal the decision of the Committee. Leave to appeal was granted in May 2005 on the following grounds (as stated in the Order granting leave to appeal):

(a) The Committee erred by mischaracterizing, misreading or ignoring the decision of this Court in *Harvard Developments Ltd. et al v. The City of Regina et al*, 2004 SKCA 103 (the "HDL Decision"), which confirmed the decision of the Board of Revision in appeal 98-520 that the Wascana Energy Building sale could not be used for MAF purposes, when the Committee decided to overturn the Board's decision to exclude the said sale from the MAF sales array.

(b) The Committee erred by grounding its decision in the premise that the only issue before the Board and the Committee was whether the Assessor had properly adjusted the sale of the Wascana Building, and ignoring and failing to deal with one of the Appellants' main arguments concerning the Wascana building sale, such argument being that the sale price of that building could not be adjusted to represent a typical market value transaction per the Manual Document 1.1.6.

(c) The Committee erred in its interpretation or application of the HDL Decision or Document 1.1.6 of the Manual, or ignored the evidence before it, when it determined that the Assessor had correctly performed all necessary adjustments under Document 1.1.6.

(d) The Committee erred in its interpretation or application of Document 1.1.6 of the Manual when it determined that the question of whether a sale is capable of adjustment or is properly adjusted is to be determined by reference to the assessment Neighbourhood in which the building is placed.

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[4] *Ibid.*

[11] In their materials, the respondents distill these four questions to two issues:

> A. Whether the Wascana Energy Sale should be included in the list of Sales of office buildings in Regina, Saskatchewan for the purpose of calculating the MAF for office buildings in Regina; and
>
> B. If the Wascana Energy Sale should be included in the Sales, then did the Assessor adjust the sale price for the Wascana Energy sale in accordance with the Manual and in accordance with the HDL Decision?[5]

[12] In my view, these three questions must be answered:

1. Did this Court hold that the Wascana Energy Building could not be or was incapable of being adjusted?
2. Did the Committee err in law in finding it capable of adjustment?
3. Did the Committee err in law in concluding that the assessor had appropriately adjusted the sale price for the Wascana Energy Building?

I will rely on this condensed version of the issues as the framework for my analysis and subsequent decision.

III. Review of *HDL #1* and Relevant Assessment Principles

[13] Before I turn to the parties' arguments it is necessary to set out what the Court had to say in *HDL #1* and refer to some assessment principles which are not in issue on this appeal. It is important to limit the focus of inquiry to only those issues relevant to the appeal at hand. As the Court noted in *HDL #1*: "... we should point out that the multiplicity of proceedings over the assessments

[5] City of Regina Factum at p. 13.

in question had spawned such a tangle of sometimes confusing material, contradictory decisions, and diverting issues as to have made it difficult to accurately cut through to the heart of the matter involving the sale of the Wascana Energy Building."[6]

[14] In *HDL #1* this Court found the owners had: (1) established the existence of unusual circumstances surrounding the sale; (2) demonstrated the unusual terms and conditions on which it had been affected; and (3) established that the assessor, while having made the "Time Adjustment" had made neither the "Financing Adjustment", nor the "Conditions of Sale Adjustment" as provided for in Document 1.5.1 and 1.5.2 of Volume 1 of the Manual. These required adjustments to the sale price are essentially the same in the present case as those before the Court in *HDL #1*. Therefore, for the purposes of this judgment I will refer to the provision numbers of the Manual used by the parties herein and which apply to the present assessment cycle.

[15] The parties agree the Assessor is required to use the sale price of arms length sales in the determination of the fair value of land and improvements in order to fairly compare the various sales prices. Furthermore, it is agreed that the sales may need to be adjusted to reflect a typical market value transaction. The Manual makes provisions for specific adjustments to allow for sale comparisons and specifically, Document 1.1.6 of the Manual sets out the rules of assessment regarding the consideration of the sale price used in the determination of the fair value of land and improvements.

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[6] *Supra*, note 2 at para. 29.

[16] However, not all of the adjustments are applicable to every sale. The two adjustments in issue in *HDL #1* were the "Financing Adjustment" and the "Conditions of Sale Adjustment." These adjustments are set out in Document Number 1.1.6 as follows:

General

Sale price shall be considered in the determination of the fair value of land and improvements in accordance with the rules in this section.

Formulas, Rules and Principles

Each sale price used to determine:

- base land rates and site adjustments for urban land;
- abnormal functional obsolescence, abnormal economic obsolescence, and market adjustment factors for building and structures; and
- local market indexes for agricultural land shall:

  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".

Two or more comparable arm's length sales shall be used to determine:

- base land rates for urban land;
- market adjustment factors for buildings and structures; and

- local market indexes for agricultural land.

Only sales of property located in the Province of Saskatchewan including all the property located within the municipal boundary of the City of Lloydminster shall be considered.

Sale Price Adjustments

Fee Simple Interest Adjustment
Where the sale price of a property does not represent the fee simple interest in the land and improvements, and the cash value of each interest can be determined, the adjusted sale price shall be determined by application of the following calculation procedure:

1. Determine the interests not included in the sale price.

2. Calculate the cash value of each interest.

3. Calculate the adjusted sale price by adding the cash value of each interest to the sale price.

Financing Adjustment
Where the sale price of a property includes financing terms or conditions not representative of a typical market value transaction at the time of the sale, and the cash value of each financing term or condition can be determined, the adjusted sale price shall be determined by application of the following calculation procedure:

1. Determine the financing terms and conditions that do not represent market conditions.

2. Calculate the cash value for each term or condition.

3. Calculate the adjusted sale price by applying the cash value of the financing terms and conditions to the sale price.

Non-Realty Adjustment
Where the sale price of a property includes non-realty items, such as personal property, business concerns, and other items that are not real property, and the cash value of each non-realty item can be determined, the adjusted sale price shall be determined by application of the following calculation procedure:

1. Determine the non-realty items included in the sale price.

2. Calculate the cash value of each non-realty item.

3. Calculate the adjusted sale price by subtracting the cash value of the non-realty items from the sale price.

Conditions of Sale Adjustment

Where the sale price of a property includes conditions of sale, such as land assemblies, lack of exposure to the market, and payment of taxes that do not represent a typical market value transaction at the time of the sale, and the cash value of each sale condition can be determined, the adjusted sale price shall be determined by application of the following calculation procedure:

1. Determine the sale conditions that do not represent market conditions.

2. Calculate the cash value of each sale condition.

3. Calculate the adjusted sale price by applying the cash value of the sale condition to the sale price.

Time Adjustment

Where a property sale occurred before or after the base date and the sale price does not represent market conditions as of the base date, and the rate of change in sale price over time can be determined, the adjusted sale price shall be determined by application of the following calculation procedure:

1. Determine whether sale price differences for properties that sold before or after the base date is due to time.

2. Calculate the rate of change in sale price per time period between the sale date and the base date.

3. Calculate the time adjustment based on the rate of change per time period and the total number of time periods between the sale date and the base date.

4. Calculate the time adjusted sale price by multiplying the sale price by the time adjustment.

Application

Where the sale price of an arm's length sale can be adjusted, the adjusted sale price shall be determined by application of the following formula:

$$SP_{ADJ} = (SP + Fee \pm Fin - Real \pm Cond) \times Time$$

where: SP_{ADJ} = adjusted sale price

SP = sale price
Fee = fee simple interest adjustment
Fin = financing adjustment
Real = non-realty adjustment
Cond = conditions of sale adjustment
Time = time adjustment

[17] In *HDL #1* the Court said: "*Assuming* the sale price of the Wascana Energy Building was capable of satisfactory adjustment, the Committee further assumed that the assessor had in fact adjusted it appropriately...."[7] [Emphasis added]. However, the Court found the Assessor, while having made the "time adjustment" as provided for in the Manual, had made neither the "financing adjustment" nor the "conditions of sale adjustment" as required by the Document.

[18] I will return to the word "assuming" because it factors into the appellants' argument.

[19] The Court, in its reasons, considered the question of consequential remedies. The appellants asked the Court to not only set aside the decision of the Committee but confirm the decision of the Board of Revision. The City asked instead the Court make the required adjustments and determine the MAF.

[20] The Court refused for these reasons:

> [41] The City's submission entails some rather far-reaching implications. First, it assumes that the sale price of the Wascana Energy Building is capable of appropriate adjustment pursuant to Volume 1, Documents 1.5.1 and 1.5.2 of the Manual. Second, it implies that assigning a higher market adjustment factor to most, but not all, of the high-rise buildings in downtown Regina is compatible with the statutory principles of equity, comparative fairness, and proportionality. Third, and perhaps most importantly, it entails maintaining the exceptional high-rise building neighbourhood in downtown Regina on the strength of only two sales, one of which has been plagued by controversy throughout.

[7] *Ibid.* at para. 34.

[42] Seen in this light, and that which follows, we are not prepared to accede to the City's request.

[43] Even if the sale price of the Wascana Energy Building were capable of adjustment as contemplated by Volume 1, Documents 1.5.1 and 1.5.2-an uncertain matter-making the adjustments is fraught with difficulty. The sale price lends itself to the time adjustment made by the assessor, but it does not readily lend itself to financing or conditions of sale adjustments. This is especially so of such conditions of sale adjustments as would have to be made before the sale could be seen to represent a typical market value transaction. [8]

[21] The parties submitted further materials which confirmed the difficulties:

[44] The written submissions of the parties following the hearing of the appeal illustrate the difficulty. The parties remained far apart on how, and to what effect, the sale price of this building could be suitably adjusted. Counsel for HDL Investments, while not conceding that the sale price was capable of satisfactory adjustment, worked up a series of compromise adjustments which, if adopted, would ultimately result in a market adjustment factor of .40, rather than .30. We considered adopting these adjustments, for in general .40 seems closer to the mark than .30, but counsel for the City emphatically rejected them, maintaining that it was not possible to work one's way through to a market adjustment of .40 on proper application of the relevant provisions of the Manual. This aside, no matter which of the competing views one might choose to act upon, the result would not inspire the necessary measure of confidence, bearing in mind the underlying aims of adjusting the sale price of this building.[9]

[22] The Court continued:

[47] The sale has been so controversial because it is commercially peculiar in so many respects. Indeed, it appears to be a commercial oddity. To rely upon it in combination with only one other sale, for the critical purposes of identifying an exceptional building neighbourhood in the downtown area and then of assigning a significantly higher market adjustment factor than prevails generally in the downtown area, would seem at odds with the exercise of good judgment and sound discretion. The objective mind resiles from the notion that such an odd sale is capable of carrying such a critical burden.[10]

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[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*

That then is the background to this appeal.

IV. Position of the Parties

[23] The appellants ("owners") take the position the Court's decision in *HDL #1* determined that the Wascana Energy sale was so atypical it could not be used to calculate the MAF because it simply could not be adjusted to reflect a typical market value transaction. The appellants say the respondent cited only the Court's reference to the "terms" of sale and completely ignored the Court's acceptance of the Board's finding there were also atypical "conditions" of sale such as: the zero vacancy, single high quality long-term tenants and high rental rate conditions. The "terms" of sale, being the cash flow guarantee, the rental commission and a second mortgage, were responded to by the City but not the "conditions" of sale. The appellants, in other words, make a distinction between the "terms" of sale and the "conditions" of sale.

[24] The appellants also contend the Court in *HDL #1* found three errors made by the Committee. Firstly, the Committee failed to recognize the owners had proven their case, and then acted on the assumption they had not proven their case. Secondly, the Committee erred by assuming the assessor had in fact adjusted the sale in keeping with the provisions of the Manual. And on that assumption the Committee concluded the sale was properly adjusted and brought the sale back into the sales array to determine the MAF.

The Committee found the assessor had made a time adjustment but had not made the financing or conditions of sale adjustments.

[25] The appellants argue there was a third error found in that when the Committee imposed a MAF of .60, it failed to consider the statutory principle that the assessed value of the building must bear a fair and just proportion to the assessed value of similar buildings. This goes to the actual calculation of the MAF.

[26] The appellants submit that the decision in *HDL #1* means the Wascana sale was not capable of a proper adjustment and therefore could not be used to determine the MAF.

[27] The appellants assert that the doctrine of *stare decisis* should be invoked. This is due to the appellants' position that: (1) the Court in *HDL #1* found the Wascana sale to be incapable of proper adjustment; and (2) the evidence before the Committee was the same evidence before the Committee in *HDL #1*. Thus, the decision of the Court in *HDL #1* was binding upon the Committee in the case at hand.

[28] The appellants say the Committee only relied on a portion of the *HDL #1* decision. Referring to the three financing terms cited by the Court, and to the portion of the decision relating to the Court's consideration of consequential relief, the Committee mistakenly relied on the Court's use of the qualifying words "assuming" or "even if" this sale could be adjusted to

come to the conclusion the sale was in fact capable of adjustment, and that only the three adjustments, *i.e.* time, financing and conditions of sale, were required.

[29] In addition to the doctrine of *stare decisis*, the appellants say the assessor was estopped from including the Wascana sale in any MAF sales array when the assessor had no "fresh and compelling evidence" to demonstrate the Wascana sale was not atypical or was capable of proper adjustment.

[30] With regard to the second ground of appeal the appellants say the Wascana sale should be discarded because many of the terms of sale, including the rental bonus and guaranteed long-term zero vacancy rate could only be accounted for by way of income type valuation techniques which were at the time prohibited by *The Urban Municipality Act, 1984*[11] s. 239.01 (now repealed), which then read:

> **239.01** (1) In determining the value of land or improvements, none of the assessor, the board of revision or the appeal Board shall employ or take into consideration any technique or method of appraisal based on the use of income or benefits.

The Committee dismissed these arguments, saying it would not deal with the issue of income valuation because it said it did not need to decide the matter.

[31] Regarding the third ground of appeal, the appellants argued the assessor adjusted only the terms of the sale agreement and did not attempt to adjust the

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[11] S.S. 1983-84, c. U-11.

conditions of sale. For example, the occupancy rate in the rental rate conditions was not adjusted. It says the Committee ignored the owners' submissions in this regard, because it came to the conclusion the owners failed to meet the onus on them to prove the conditions and terms of the sale were still atypical because of the change in neighbourhoods, *i.e.* a reduction in the number of neighbourhoods to one citywide neighbourhood. In other words, what may have been atypical in the previous MAF neighbourhood may not be atypical when the MAF neighbourhood is expanded to include all of the relevant sales in the new citywide MAF neighbourhood.

[32] The appellants say the Committee erred when it found the Board failed to take into account the "citywide" office neighbourhood. The one citywide neighbourhood was not established until after the Board's decision. In any event, the citywide neighbourhood did not really exist, because the number in the sales array the assessor started with in the original neighbourhood was essentially the same number of sales used in the citywide neighbourhood.

[33] The appellants go further and say that even if there had been one citywide neighbourhood going into the Board hearing, there is nothing in Document 1.1.6. to suggest there is some connection between the analysis of terms and conditions of the sale and the assessment neighbourhood to which the property belongs in any given assessment year. To the contrary, the Manual expressly says that whether a term or condition is typical is to be determined by reference to a "typical market value transaction at the time of the sale."

B. Position of The City of Regina

[34] The City contends Document 1.1.6 of the Manual does not require that each and every atypical term must be capable of adjustment in order for the sale to be used. It is first necessary to determine if the atypical term impacts the sale price of the property. If such a term does not impact the sale price of the property there is no need to adjust the sale price for that property for that term. It says the Court in *HDL #1* identified the unusual aspects of the Wascana Energy sale as follows:

> (i) The seller undertook to guarantee the buyer a cash flow of $2,200,000 for the two year period following the sale, an amount that substantially exceeded the rent recoverable over that period, resulting in the seller having to later pay the buyer $1,549,812;
>
> (ii) The buyer undertook to pay the vendor $500,000 in commissions on the rent-up of the building, even though it had been fully rented beforehand; and
>
> (iii) The seller took a second mortgage of $3,980,000, increasing the building's debt/equity ratio to over 90% and resulting in combined mortgage payments exceeding the rent. In time the purchase had to be refinanced because of the risk of default and loss to the holder of the first mortgage.[12]

[35] It says a clear reading of *HDL #1* can only mean the Court ruled the assessor had only made the time adjustment, and had failed to make the financing or conditions of sale adjustments. If these adjustments had been made, the assessor made no error, and the sale could be included in the sales array. The City says this is precisely what the assessor did after the Board of Revision hearing and prior to the appeal to the Committee. In fact, the

[12] *Supra*, note 2 at para. 12.

assessor made the very adjustments which were put forward by the owners in *HDL #1*.

[36] The City refers to this particular paragraph in *HDL #1*:

> [44] The written submissions of the parties following the hearing of the appeal illustrate the difficulty. The parties remained far apart on how, and to what effect, the sale price of this building could be suitably adjusted. Counsel for HDL Investments, while not conceding that the sale price was capable of satisfactory adjustment, worked up a series of compromise adjustments which, if adopted, would ultimately result in a market adjustment factor of .40, rather than .30. We considered adopting these adjustments, for in general .40 seems closer to the mark than .30, but counsel for the City emphatically rejected them, maintaining that it was not possible to work one's way through to a market adjustment of .40 on proper application of the relevant provisions of the Manual. This aside, no matter which of the competing views one might choose to act upon, the result would not inspire the necessary measure of confidence, bearing in mind the underlying aims of adjusting the sale price of this building.[13]

[37] The City submits this excerpt is confirmation of the conclusion that the Court did not say the sale could not be adjusted. Further, the City contends the Court, by asking for submissions at the City's request, indicated the Court thought adjusting the sale was possible. The City says it appears from the decision the Court would have accepted the owner's proposed adjustments but for the assessor's objections. These are now the very adjustments the assessor put before the Committee herein in both its written and oral submissions.

[38] The City also submitted the record before the Committee only consists of the assessor's calculation of the revised MAF for the Wascana Energy sale. That is the only evidence before the Committee because the appellants failed

[13] *Ibid.* at para. 44.

to tender any evidence having taken the position the sale could not be adjusted. The City says the appellants are simply re-arguing factual questions concerning adjustments to the property sale price, which are not questions of law. The question of adjustments to a sale price is a question of fact and not of law. Furthermore, the City says the fact the Court in *HDL #1* asked the parties to submit materials to demonstrate how the sale could be adjusted, clearly supports the assessor's position the sale was capable of adjustment. The Committee made no error.

[39] As mentioned above, the City restated the grounds as two issues with the second issue being: if the Wascana Energy sale should be included in the sales array then did the assessor adjust the sale price of the sale in accordance with the Manual and in accordance with the *HDL #1* decision?

[40] In relation to this second issue, the City contends the appellants' arguments that there is no new evidence and the facts have not changed since the facts as found in the *HDL #1* decision are simply not accurate. Instead, the City submits the following differences in the facts are apparent. The *HDL #1* decision applied to the assessment year 1998, which had as its base date, 1994. The present appeals for the assessment years 2001 and 2002 have a base date of 1998. For each year of assessment relating to office buildings, more evidence was presented. Thus, as a new assessment cycle began in 2001, new issues were the subject of those appeals. Furthermore, a number of different sales are used in the sales array for the current assessment cycle which is different from the assessment cycle relevant to *HDL #1*. The City says that

perhaps the key change since the 1998 appeal is the fact the Committee had the Court's reasoning in that decision to provide guidance to the assessor, the Board and the Committee itself. Previously, the assessor took the position that further adjustments to the Wascana Energy sale were not necessary but, as a result of the *HDL #1* decision, it took a different view and accepted that further adjustments relating to financing and conditions of sale were now needed. In light of the decision and the requirements for further adjustments, those adjustments were made as provided for in the Manual. The Committee found the adjustments proposed by the assessor were reasonable, the reasons for making the adjustments were found in the record, and on the evidence before it no error was demonstrated.

[41] The City also refers to the Committee's description of the adjustments made by the assessor as follows:

> The assessor has amended his view of these adjustments with the Court's direction in mind.
>
> Firstly, no one disputes the assessor's time adjustment. Secondly, the financing adjustment is set out directly in the sales agreement. The agreement between the parties to the sale provides for two sale prices – one price if the sale is financed conventionally and one price that includes vendor financing. While the purchasers ultimately made the choice of vendor financing, the other sale price is an equally valid negotiated alternative. Therefore, it is not inappropriate for the assessor to rely on this amount to represent typical financing. Thirdly, the assessor concedes that the owners' appeal against the terms of the sale is correct in that the income guarantee and the rental commissions are atypical conditions. He has accepted the adjustments as put forward in the appellant's presentation to the Board.
>
> Once the Wascana Tower sale is adjusted as noted, then it represents an arm's length sale, both in the terms of the Manual and in terms of the market place. There is no provision in the Manual to ignore an arm's length sale, so it is appropriate that

it be used in the sales array; and when one does so, the calculated MAF is 0.39 for the office buildings appealed in Schedule A.[14]

[42] The City submits the calculation of the sales adjustment is a question of fact and, the Committee found as a fact the assessor's calculations were reasonable and the reasoning behind the adjustments was found in the record. Therefore, the City concludes these issues are not properly appealable as they do not demonstrate any error of law.

[43] Finally, the City submits the Committee is required to presume the assessment is accurate and, unless the appellants demonstrate otherwise, there was no argument to the contrary and the presumption of correctness in the assessment prevails. The City notes it is only now that the appellants assert the assessor's adjustments are not acceptable. According to the position of the City, the appellants were asking the Committee to do the appellants' work and elicit evidence from the assessor – that is not the Committee's responsibility. Instead, it was up to the appellants to tender evidence on the issue as to why the assessor's approach was problematic. The appellants chose not to do so and cannot now challenge the Committee's decision at this stage.

[44] Lastly, the City submits the question of what factors are taken into account in calculating time, financing and conditions of sale adjustment are all questions of fact and, the appellants failed to raise these issues at the Committee. It is not now within this Court's jurisdiction to have a new debate over what factors are accounted for in the various adjustments and what

[14] *Supra*, note 3 at pp. 13-14.

additional factors allegedly need be adjusted. These calculations of adjustments are questions of fact, which involve the application of the specialized expertise of the assessor and in this case the Committee. The Committee found as a fact the assessor exercised its discretion in accordance with the *HDL #1* decision, the Manual and the record. Therefore, no error of law, fact or assessment principles has been demonstrated and the assessor's discretion cannot be interfered with.

V. Decision

[45] I am of the view the appeal must be dismissed. It is clear the Court in *HDL #1* found the sale complex, but did not rule out the possibility of the sale being adjusted to reflect an arm's length market transaction. The Court did not say that the sale could not be adjusted. Although the owners did not concede their position that the sale could not be adjusted, they did submit an adjustment proposal for the Court's consideration. Further, as the Committee noted, once the assessor established a citywide MAF neighbourhood, the terms and conditions of the Wascana Energy sale may not be uncommon. The onus was on the appellants to refute the assessor's evidence and to demonstrate the terms and condition of the sale were atypical. It failed to do so. As the Committee states: "until it is established that these conditions are not common for those signature skyline type buildings, then the assessor's discretion should be respected when he finds it is appropriate to include the sale in the neighbourhood array that is applied to all offices."[15] The Court in *HDL #1* did not say the sale could not be adjusted and I am persuaded by the

[15] *Ibid.* at p. 18.

arguments of the respondents the sale could be adjusted. Finally, it is clear the appellant, in challenging the assessor's adjustments, is challenging factual findings and has demonstrated no error of law.

[46] I agree with the City. The proper forum for the appellants to challenge the assessment was at the Committee. When the assessor filed new material, as the City makes clear, adequate time was given to the appellants to file material and they chose not to do so.

[47] I agree with the appellants the Committee was in error when it found the Board failed to take into account the fact the assessor had established a citywide neighbourhood when in fact this did not occur until after the Board's decision. However, in my view, nothing turns on that error.

[48] The distinction argued by the appellant between "conditions" of sale and "terms" of sale is not a distinction made in Document 1.5.2. The words are not defined. Regarding the Financing Adjustment the provision reads in part: "Where the sale of a property included financing terms or conditions not representative of market financing or conditions at the time of the sale, the sale price is adjusted to account for the effect of the different conditions on the sale price." In my view, when the Court in *HDL #1* ruled the assessor failed to make the financing adjustment, it was referring to all of those terms and conditions applicable to the financing of the sale. The Committee found the financing adjustment was made and there is no evidence to the contrary.

[49] In the result, the grounds of appeal are very narrow. The Committee, on the evidence before it, found that the assessor made the adjustments which it had failed to make in *HDL #1*. The Committee had no evidence to the contrary.

[50] The appeal is dismissed with costs in the usual way.

DATED at the City of Regina, in the Province of Saskatchewan, this 11th day of April, A.D. 2008.

"LANE J.A."

LANE J.A.

I concur "VANCISE J.A."

VANCISE J.A.

I concur "JACKSON J.A."

JACKSON J.A.

Tab 8

Saskatchewan Municipal Board
Assessment Appeals Committee

Appeals: 0047/2005 to 0086/2005

RESPONDENT: City of Regina

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

Various (See Schedule A)
c/o Archie Fieldgate
Deloitte & Touche LLP
Property Tax Services
900 – 2103 11th Avenue
Regina, Saskatchewan
S4P 3Z8

respecting the assessment of:

See Schedule A

For the year 2005;

BEFORE: Wade Armstrong, Chairman
Harvey Fishbook, Member
Ron Hilton, Member
Sandra Sylvester, Acting Secretary

APPEARED FOR THE APPELLANT: Archie Fieldgate, Corinne Guran

APPEARED FOR THE RESPONDENT: Gerry Krismer, Al Bishoff, Mike Schulkowsky

These appeals were heard in Room 460, 2151 Scarth Street, in Regina, Saskatchewan, on January 30, 2006.

These appeals are against the decisions of the Board of Revision (the Board) for the City of Regina, pursuant to section 216 of *The Cities Act* (the Act).

ISSUE:

Did the Board err in its decision to uphold the office Market Adjustment Factor (MAF) of 0.35 or should some of the sales indicators be removed from the array?

FACTS:

(1) These appeals are for a series of properties currently used as office buildings in the City of Regina.

(2) The properties under appeal here and the respective values are shown on Schedule A as follows:

Schedule A

Appeal	Owner Name	Civic Address	Property Value
0054/2005	Ardvark Investments Ltd.	1860 Rose Street	$2,937,000
0054/2005	Ardvark Investments Ltd.	1801 Hamilton Street	$9,219,400
0047/2005	T-Law Management Ltd.	1911 E Truesdale Drive	$446,900
0048/2005	RB II Properties Inc.	2151 Scarth Street	$2,026,900
0049/2005	RB Properties Inc.	2002 11th Avenue	$7,597,600
0050/2005	Co-operators Life Insurance Company	1920 College Avenue	$7,095,700
0050/2005	Co-operators Life Insurance Company	1919 15th Avenue	$648,700
0051/2005	Remai Investment Corporation	1717 Rose Street	$2,138,600
0052/2005	General Properties Ltd. et al	1900 Albert Street	$12,262,100
0053/2005	Access Communications Co-operative Limited	2250 Park Street	$2,795,700
0055/2005	Sask. Motor Club Ltd.	200 N Albert Street	$712,100
0056/2005	Cityview Properties Ltd.	2550 15th Avenue	$1,354,000
0057/2005	Conexus Credit Union	265 N Albert Street	$749,600
0057/2005	Conexus Credit Union	900 Victoria Avenue	$228,900
0057/2005	Conexus Credit Union	3433 5th Avenue	$268,000
0057/2005	Conexus Credit Union	4540 Albert Street	$507,800
0058/2005	Credit Union Central	2055 Albert Street	$9,929,900
0059/2005	Saskatchewan Telecommunications	320 N Pasqua Street	$510,500
0059/2005	Saskatchewan Telecommunications	2121 Saskatchewan Drive	$20,949,700
0059/2005	Saskatchewan Telecommunications	2782 Kliman Crescent	$123,800
0059/2005	Saskatchewan Telecommunications	2700 31st Avenue	$246,300
0060/2005	Konoff, John R; Dizy, Christian J	6250 Rochdale Blvd.	$509,200
0060/2005	Konoff, John R; Dizy, Christian J	1463 Albert Street	$457,400

0061/2005	The Canada Life Assurance Company	1901 Scarth Street	$10,355,800
0062/2005	HDL Investments Inc. et al	1874 Scarth Street	$10,172,400
0063/2005	HDL Investments Inc.; Saskpen Properties Ltd.	1825 Cornwall Street	$479,200
0063/2005	HDL Investments Inc.; Saskpen Properties Ltd.	1800 Scarth Street	$8,385,300
0064/2005	HDL Investments Inc. et al	1845 Cornwall Street	$1,139,100
0065/2005	595776 Saskatchewan Ltd.	1822 Scarth Street	$431,000
0066/2005	HDL Investments Inc.	2170 12th Avenue	$313,600
0067/2005	101049086 Saskatchewan Ltd.	2100 Broad Street	$1,832,600
0068/2005	628470 Saskatchewan Ltd.	2161 Scarth Street	$643,000
0069/2005	614472 Saskatchewan Ltd.	2101 Smith Street	$270,500
0070/2005	Harry Jedlic	100 4010 Pasqua Street	$164,400
0071/2005	Dubravka Krajac	200 4010 Pasqua Street	$140,400
0072/2005	Buckshee Management Ltd.	300 4010 Pasqua Street	$140,400
0073/2005	Judy M Yu	400 4010 Pasqua Street	$157,800
0074/2005	Robert A MacKay	500 4010 Pasqua Street	$161,400
0075/2005	Medland Devonshire Development Corporation	600 4010 Pasqua Street	$140,400
0076/2005	Saskatchewan Pharmaceutical Assoc.	700 4010 Pasqua Street	$140,400
0077/2005	Virginia Jedlic	800 4010 Pasqua Street	$154,800
0078/2005	NCO Building Inc.	2500 Victoria Avenue	$5,009,900
0079/2005	Adag Corp. Canada Ltd.	1777 Victoria Avenue	$9,424,500
0080/2005	Parliament Place Holdings Ltd.	2631 28th Avenue	$1,250,800
0081/2005	101027726 Saskatchewan Ltd.	2110 Hamilton Street	$4,008,500
0082/2005	Saskatchewan Opportunities Corporation	4141 Wascana Parkway (2 Research Drive) 10065610 Board Appeal 25922	$462,000
0082/2005	Saskatchewan Opportunities Corporation	4141 Wascana Parkway (2 Research Drive) 10065613 Board Appeal 26146	$0
0083/2005	Saskatchewan Opportunities Corporation	4141 Wascana Parkway (1 Research Drive)	$3,433,100
0084/2005	Saskatchewan Opportunities Corporation	4141 Wascana Parkway (10 Research Drive) 10065612 Board Appeal 25836	$10,007,200
0084/2005	Saskatchewan Opportunities Corporation	4141 Wascana Parkway (6 Research Drive) 10065611 Board Appeal 25974	$4,735,400
0085/2005	Saskatchewan Telecommunications Holding Corp.	2329 Saskatchewan Drive	$1,948,500
0086/2005	Saskatchewan Government Telephones/Saskatchewan Telecommunications	1855 Lorne Street	$7,016,900

Note: The Board accepted recommendation to reduce the values for the following appeals:

0057/2005 – 900 Victoria Avenue – $301,200 to $228,900
0060/2005 – 1463 Albert Street – $530,800 to $457,400
0070/2005 – 100 4010 Pasqua Street – $180,400 to $164,400
0071/2005 – 200 4010 Pasqua Street – $154,100 to $140,400
0072/2005 – 300 4010 Pasqua Street – $154,100 to $140,400
0073/2005 – 400 4010 Pasqua Street – $173,200 to $157,800
0074/2005 – 500 4010 Pasqua Street – $177,100 to $161,400
0075/2005 – 600 4010 Pasqua Street – $154,100 to $140,400
0076/2005 – 700 4010 Pasqua Street – $154,100 to $140,400
0077/2006 – 800 4010 Pasqua Street – $169,900 to $154,800
0082/2005 – 4141 Wascana Parkway (2 Research Drive) (Board Appeal 25922) – increase from $305,300 to $462,000 and (Board Appeal 26146) decreased from $156,700 to $0. The value of $156,700 for Board Appeal 25922 was combined with the value of $305,300 for Board Appeal 26146 for a total value of $462,000

As commercial properties, the assessed value equals 100% of fair value.

(3) The sale indicators relied on by the assessor to arrive at the 0.35 MAF are as follows:

Sale	Civic Address	Sale Date	Adjusted Sale Price	DRCN	Indicator
1	240 Argyle St	Oct-00	$140,000	$395,519	0.00
2	1950 11th Ave	Mar-02	$2,100,079	$28,265,220	0.04
3	2220 12th Ave	Dec-97	$725,000	$6,527,083	0.05
4	2401 Saskatchewan Dr	Feb-99	$720,000	$4,540,828	0.05
5	1880 Saskatchewan Dr	Mar-00	$650,000	$2,806,011	0.10
6	1914 Hamilton St	Jun-02	$2,880,000	$17,137,721	0.14
7	2267 Albert St	Jun-97	$77,500	$241,274	0.15
8	2050 Cornwall St	Aug-99	$350,000	$1,448,486	0.17
9	2100 Broad St	Feb-98	$1,070,000	$5,022,431	0.20
10	776 Broad St	Feb-99	$265,000	$556,638	0.21
11	1855 Victoria Ave	Oct-98	$5,000,130	$21,824,540	0.22
12	2142 Robinson St	Jul-99	$138,000	$396,292	0.23
13	2550 12th Ave	Mar-99	$1,265,000	$4,086,604	0.23
14	1524 Albert St	Jun-02	$242,000	$603,453	0.24
15	105 McMurchy Ave	May-99	$81,000	$185,234	0.27
16	1401 Albert St	Jun-98	$78,000	$114,307	0.28
17	2110 Hamilton St	Mar-02	$3,199,700	$11,116,697	0.28
18	1620 Albert St	Feb-98	$75,500	$98,325	0.30
19	2002 11th Ave	Nov-99	$6,678,715	$20,303,243	0.30
20	204 Wascana St	Oct-01	$500,000	$644,694	0.32
21	380 Gardiner Park C	Apr-98	$205,000	$444,770	0.33
22	2500 Victoria Ave	Oct-98	$4,857,212	$13,828,909	0.34

23	2211 Smith St	Jul-98	$140,000	$271,449	0.34
24	304 Victoria Ave	Jan-00	$240,000	$582,236	0.35
25	2132 Broad St	Jun-98	$115,500	$241,474	0.35
26	2002 11th Ave	May-02	$7,900,000	$20,303,243	0.36
27	2102 Scarth St	Nov-00	$150,000	$211,134	0.38
28	2365 Albert St	Nov-99	$3,945,000	$10,041,386	0.38
29	2045 Broad St	Oct-98	$8,267,595	$19,893,799	0.40
30	1801 Hamilton St	Feb-01	$13,900,000	$31,850,383	0.40
31	2161 Scarth St	Mar-99	$800,000	$1,591,606	0.45
32	2571 Broad St	Sep-98	$1,737,000	$3,289,099	0.46
33	4303 Albert St	Sep-00	$1,075,000	$2,017,915	0.47
34	2220 Victoria Ave	Jul-99	$1,305,000	$1,336,109	0.47
35	438 Victoria Ave	Mar-00	$123,500	$158,692	0.52
36	2500 12th Ave	Dec-97	$335,000	$329,531	0.53
37	2220 College Ave	Dec-97	$3,268,000	$5,900,878	0.53
38	1002 Victoria Ave	Apr-02	$111,000	$129,665	0.55
39	2220 College Ave	Dec-99	$3,940,000	$5,900,878	0.64
40	310 Gardiner Park C	May-99	$360,000	$433,672	0.70
41	1920 Broad St	Mar-00	$14,470,000	$19,429,586	0.74
42	1800 Garnet St	May-97	$220,000	$290,812	0.74
43	800 Horace St	Apr-98	$85,500	$77,409	0.78
44	1620 Albert St	Aug-01	$130,000	$90,509	0.93
45	2704 10th Ave	Sep-00	$199,500	$195,534	0.96
46	2424 College Ave	Dec-02	$365,000	$302,817	1.03
47	2300 Smith St	Dec-02	$310,000	$199,101	1.32

(4) The grounds of appeal to the Board were as follows:

"**SECTION 2:** I make this appeal on the following grounds:

1. The market adjustment factor (MAF) of 0.35 for this neighbourhood is incorrect.

2. The stratification for this neighbourhood is incorrect when one considers comparability.

SECTION 3: In support of the above grounds, I hereby state the following facts to be true and accurate:

Of the sales used to develop the MAF, there are a number which do not meet the requirements of the Manual, whose treatment does not fulfil the requirements of the Manual, or whose use is not permitted under the applicable legislation. These include, but are not limited to, the sales for 2002 11th Avenue (1999), 2500 Victoria Avenue, 2045 Broad Street, 2571 Broad Street, and the two sales for 2220 College Avenue.

This MAF array also includes five sales that do not fit the criteria of the Commercial Office neighbourhood: 2211 Smith Street, 2102 Scarth Street, 2220 E Victoria Avenue, 2424 College Avenue, and 2300 Smith Street.

> The comparability of the sales used is questionable, both when comparing the sales within the sales array to one another and also when comparing the sales to other properties receiving this MAF. There appears to be a large disparity between physical characteristics and market influences both within the sales array and among the properties to which this MAF has been applied."

(5) The decisions of the Board regarding the disputed sales are as follows:

2500 Victoria Avenue and 2045 Broad Street:

> "While this transaction may have been complex, complexity in and of itself does not make a sale invalid. Moreover, the fact that the parties ultimately did allocate what, in their opinion was a fair market for fee simple interest, is compelling evidence. Not only was this sworn under oath in order to register the transfers of title at Land Titles Office, the values were confirmed to the Assessor by operation of the verification forms. The Board finds that both of these sales meet the criteria as identified in the Manual for consideration as an arm's length sale, and have been correctly included in the MAF analysis for the subject neighborhood."

2211 Smith Street, 2102 Scarth Street, 2424 College Avenue, 2300 Smith Street:

> "The Assessor advised the Board that although these four properties may have been residential properties at one time they had been substantially renovated into offices; therefore, they must be included in office strata. The Assessor pointed out that should a new sales grouping be established to include these four offices buildings and all similar office buildings, this would calculate a MAF of 0.71.
>
> The Board concludes that these four properties, having been costed as office buildings, are correctly placed in the sales array."

2571 Broad Street:

> "The Assessor advised the Board that both the vendor and the purchaser completed sales verification forms. Both parties confirm that they were unrelated. Copies of the completed Sales Verification forms were provided to the Board.
>
> The Board finds that this sale meets the criteria as identified in the Manual, and has been correctly included in the MAF analysis for the subject neighborhood."

2220 Victoria Avenue East:

> "The Assessor advised that the property was inspected on March 13, 2003 and it was then determined that the improvements included in the sale price of $1,305,000 were those as identified in the Replacement Cost Summary Report (Exhibit IR-2) for this property. Since 80% of the RCNLD of the $1,336,110 is related to office portion on the property, it is clearly an office building.
>
> The Board finds that when an Assessor is required to place a mixed-use property into one group or another, the predominant factor shall be the majority use."

2220 College Avenue (1997 sale):

> "The Board concludes that the 50% interest sale portion of this transaction has been verified; the sale correctly adjusted and therefore should be included in the sale array."

2220 College Avenue (1999 sale):

> "The Board agrees with the Agent that a change to the 1999 sale price of 2220 College Ave. is warranted and should be changed from $3,940,000 to $3,753,700.
>
> The revised sale price of $3,753,700 in the sales array for 2220 College Ave. (1999 Sale) will change the calculated MAF from 0.64 to 0.61. The median MAF would remain at 0.35."

The outcome of the decision of the Board was to change the 1999 sale price of 2220 College Avenue in the sales array, but to dismiss the remaining appeal issues. This resulted in no change to the MAF of 0.35.

Note: The appeals to the Committee take no issue with the decisions for 2220 Victoria Avenue East or 2220 College Avenue (1999 sale).

(6) The record of the Board includes:

a) Notice of appeal dated January 6, 2005;
b) Board correspondence requesting clarity on January 27, 2005;
c) A response to the above request dated February 10, 2005;
d) An appeal package prepared by Deloitte & Touche, which is contained in two binders covering a series of appeals;
e) An assessment report from the assessor submitted March 16, 2005;
f) Additional submissions marked IR -1, IR - 2, IR - 3, and IR - 4 respectively;
g) Board order dated April 6, 2005 to amend the notice of appeal and to delete related materials filed with the Board;
h) Transcript of the Board proceedings from April 6 and 7, 2005; and,

i) The decision of the Board, dated May 31, 2005.

(7) The grounds of appeal to the Committee are summarized to say that the Board failed to consider the evidence that would or should have taken it to a different result and the Board failed to give adequate reasons to explain that the included sales were in fact arm's length sales.

(8) The Committee received written submissions from the appellant and respondent.

LEGISLATION:

The Cities Act:

"165(2) All property is to be assessed at its fair value as of the applicable base date.

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

(4) The value at which any property is assessed is to bear a fair and just proportion to the value at which all similar property is assessed:

(a) in the city; and

(b) in any school division situated wholly or partly in the city or in which the city is wholly or partly situated.

(5) In determining the value of any property, the assessor shall take into consideration and be guided by:

(a) any applicable formula, rule or principle set out in the assessment manual; and

(b) any facts, conditions and circumstances of the property that may affect its value.

(6) For the purposes of subsection (5), the assessment shall reflect all the facts, conditions and circumstances of the property on January 1 of each year as if they had existed on the applicable base date.

210(3) Notwithstanding that the value at which any property has been assessed appears to be more or less than its fair value, the amount of the assessment may not be varied on appeal if the value at which it is assessed bears a fair and just proportion to the value at which all similar property is assessed:

(a) in the city; and

(b) in any school division situated wholly or partly in the city or in which the city is wholly or partly situated.

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.

223(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 220 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.

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 land or improvements may be placed on the assessment roll."

THE SASKATCHEWAN ASSESSMENT MANUAL (the Manual):

Volume 1, Chapter 1, Document Number 1.1.2, page 1 (Date: 03/11/14):

"(c) **"arm's length sale"** means:

(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, 2002;"

CONCLUSIONS AND REASONS:

[1] This Committee has received a series of appeals against the decisions of the City of Regina 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.

[2] The Committee heard this series of appeals starting with the file for Appeal 0054/2005, specifically the building on 1801 Hamilton Street. Thereafter, the parties to the appeal petitioned that all evidence and argument be carried forward to the remaining properties on Schedule A. This was the procedure adopted by the Board and the Committee agrees with the parties' petition in this case.

[3] The portfolio sale including 2500 Victoria Avenue and 2045 Broad Street is locally referred to as the Brookfield sale. The particulars of that sale were considered in Appeal 0122/2003 et al and an appeal of the Committee's decision is now before the Saskatchewan Court of Appeal. The appellant reminded the Board of this status and proceeded to introduce further evidence against the use of this sale. As the Board was not persuaded by this new evidence, the appellant argued its significance before the Committee.

[4] The record shows that a portion of the sale proceeds for the Brookfield sale was arranged by way of a debenture that could not be converted for four years. The appellant argued that the definition of an arm's length sale (cited above) requires an exchange of "cash or cash equivalents" and that a debenture based transaction should therefore be excluded from the array. It was argued that

section 1540.6 of *The Canadian Institute of Chartered Accountants Handbook* specifies that a cash equivalent should be convertible to cash in a short period such as three months or less.

[5] In addition, part of the sale was financed by the purchaser issuing equity in the form of freely tradable units in the purchaser's fund. In the above handbook, equity is also excluded from the term "cash equivalents".

[6] The appellant did not revisit any of the arguments put forward in Appeal 0122/2003 et al, but asked that they be included in this record in written form. The Committee's 2003 decision was also submitted.

[7] It was acknowledged that these two indicators lie one above the median MAF and one below, and if combined into one indicator would result in a factor very near to the median. Therefore, the exclusion of these two sales would have little or no effect on the 2005 MAF, however, if the sales do not meet the requirements of the Manual, then they should be excluded. The principles of the Manual should be applied across the board.

[8] The two Smith Street properties (2211 and 2300), along with 2102 Scarth and 2424 College were all built as houses. The streetscape of these buildings has not changed and this suggests that the buildings are better comparables to another neighbourhood the assessor calls "house form commercial". The direction from the Manual is that these should be costed from their original construction use unless there is significant structural alteration. Therefore, these should not be considered commercial buildings.

[9] As the sale indicators for these properties all lie above the median MAF, then their exclusion should affect the MAF and reduce the valuation of the subject properties.

[10] The property at 2571 Broad Street was the former Red Cross building and was sold to the Canadian Blood Service. The appellant argues that this sale was influenced by the recent "blood scandal" so the sale can hardly be considered as typical. The federal government was involved as facilitator in this transaction to the extent that the parties to the sale should be considered related and therefore this is not an arm's length sale.

[11] The 1997 sale of 2220 College Avenue is a transaction between related parties and should not be considered an arm's length sale. College Park Properties owned one-half of the property and Great West Life Assurance owned the other half. Both parties sold their interests to Parkview Office Limited and the Parkview directors are the same persons as the directors of College Park, so this is not an open sale and it should be excluded from the sales array. The parties told the assessor that there was a relationship in the sales verification form.

[12] Common to the sales discussed above was the fact that the sales agreement often included terms for interest rates associated with mortgages or debentures that were at double-digit rates. These rates exceed normal financing costs and therefore the sale prices should be adjusted to reflect the non-market conditions.

[13] With regard to the Brookfield sale, the assessor responded to point out that the Board was not asked to revisit or reconsider the outcome from Appeal 0122/2003 et al. The appellant filed the previous evidence and argument that had already been considered and is now before the Saskatchewan Court of Appeal. Therefore, the Board did not err when it neither changed its decision nor commented on those issues. The Board was only asked to consider the new material related to the "cash equivalents" definition in *The Canadian Institute of Chartered Accountants Handbook*.

[14] As this handbook is not part of the Manual, its specific definitions have no application in the assessment field. Real property purchases are financed though

mortgages and other instruments typically with longer terms than three months, so this limitation is not valid here. Therefore, with no reason to change the earlier rulings and with no new evidence that is relevant, the Board did not err to leave the Brookfield sale in the array.

[15] It is the assessor's position that the four disputed sales are no longer house form commercial. These properties have been through extensive interior renovations that have changed the character of the original buildings. Properties in the house form commercial category still have a residential floor plan, complete with kitchen and washroom facilities expected with the original construction. Such is not the case with these four disputed properties. At the Board hearing it was discovered that the appellant had not inspected these properties, rather had come to this position based on the streetscape alone. The assessor argued the appellant had only provided the Board with allegations and no evidence of an error. Therefore, the Board had not erred when it dismissed the appeal against the four buildings claimed to be residential buildings rather than commercial buildings.

[16] As to the former Red Cross buildings, the assessor argued that the appellant had misunderstood the transaction and had made an argument before the Board that is not based in fact. First off, neither the Red Cross or the Canadian Blood Service is a government agency, so the appellant's main point has no basis. This is not an internal transfer between related parties. Secondly, the blood donor program is a separate entity; it is a business activity that is not related to the holding of property. In fact the Red Cross continues to occupy a portion of this building in order to carry on its other activities apart from blood collection.

[17] The transcript shows that the Board heard from Mr. Schuler of the assessor's office, who at one time had direct involvement with the property transfers and the associated appraisals in this effort. His opinion was that the

parties acted in their own interests with the assistance of full appraisal reports to set the exchange prices.

[18] As the appellant's main position that this was the same as an internal government transfer has no basis, the Board did not err when it decided to dismiss this portion of the appeal and leave the sale in the sales array.

[19] As to the College Avenue sale, the assessor acknowledges that one co-owner bought the interests of another co-owner. These two parties were not related in any way, they happened only to own a partial interest in the same building. It is only the one portion of this sale that has been relied on in the sales array. The transaction of College Park to Parkview is indeed between the same parties and is perhaps only a name change. It has not been considered; only the sale from Great West to Parkview has been relied upon. This sale was supported by market value appraisals so there is no indication that there was any reason not to rely on the sale.

[20] The Committee has heard in the past, as it heard here, about the use of the sales verification form. The Committee has considered this to be a means to gather facts by the assessor. One does not need to have specialized training to recount his or her understanding of a sales transaction. When completing the form a common person should be able to relate to the assessor what is known about the purchase or sale from direct knowledge. After the assessor has gathered the facts, it is then available for he or she to make a decision on the validity of the sale based on specialized knowledge of the Manual.

[21] The Committee accepts that two parties can own a share of a property but despite that ownership can still act in a way to maximize their own respective positions. Unless there is some limitation or some compulsion to sell only to the other party, there is no reason to exclude the sale from the array.

[22] It is acknowledged that some appraisers no longer use this sale as it is considered too low, but that would not support the appellant's position that its inclusion in the sales array leads to a value for the subject properties that is too high. Therefore, the Board did not err when it decided to include this sale in the array.

[23] It is appropriate for the Board to uphold the Brookfield sale as it was continued from 2003. As those matters are now before the Court, the Board did not err when it decided not to revisit the decision on the previous issues. The new issue being a link to a defined term for accountants is a matter to be considered. However, it must be immediately discounted, as there was no link made to convince the Board that a specific accounting definition has any relevance in an assessment scheme. As the Manual is given the status of law in Saskatchewan one must first consider any definitions found within the document and finding none, then the words should be given their common meaning. Regardless, it must be recognized that real estate transactions are generally longer-term contracts than three months. It is inconceivable that one would expect full payment for any contract in three months, especially in this multi million-dollar sale. That the debenture had a four-year term is not an unreasonable condition for a real estate transaction.

[24] As to the stated interest rates appearing to be excessive, the assessor explained that it is common for preliminary contracts to set out a rate that is particularly favourable but one that is set aside for current market rates when the contract is finalized. Hearing nothing to the contrary, the Board did not err when it gave no weight to the arguments related to excessive financing rates.

[25] As to the claim that the four former residences are in the wrong sample, the Committee agrees that the Board did not err when it was not persuaded to remove these sales based on a view of the buildings from the street. The appellant should be expected to provide more solid evidence of an error to convince a Board (or this Committee) that there has been an error in the valuation.

[26] As to the former Red Cross building and the Parkview building on College Avenue, the appellant's main contention was that the sales should be excluded because the parties are related. The assessor showed the Board that this appeal ground had no basis. Given the related party scenario was the issue raised, the Board had no reason or jurisdiction to consider other matters and therefore did not err when it decided to leave these two sales in the array.

[27] The Committee must comment to the assessor that it is not possible to rely on appraisals or market value sales when dealing with related parties. The Manual provides for an adjustment for a series of atypical market terms and conditions, but there is no adjustment contemplated for related parties (among other issues). Therefore, this cannot be explained away by a market price sale. It can only be dealt with, as was the case here, by demonstrating there is no relationship in the first place.

[28] There was an issue in one of the appeals where the level of exemption is incorrect. For reasons of ownership and occupancy, the level of exemption changes from year to year and in this year the assessor did not get the updated information before the roll was finalized. The owner's agent did not appeal the exemption. The two parties agree that the level of exemption should be changed and there is no dispute as to the quantum. Both parties petitioned the Committee to rule on the matter, as no one would be prejudiced by doing so.

[29] The Committee must refuse to make any change to the level of exemption. It has been written in many decisions in the past that this Committee can only act when its jurisdiction is found in the legislation; jurisdiction cannot be found through consensus. Therefore, there will be no order regarding the level of exemption and the Committee will not comment further.

[30] The Committee finds that the Board did not err on the main issue of the appeals. The disputed sales should remain as indicators of value in the sales array for office buildings.

DECISION:

The appeals are dismissed. The assessed values shall remain as set out in Schedule A.

The filing fees shall be retained.

DATED AT REGINA, Saskatchewan this

21st day of June, 2006.

SASKATCHEWAN MUNICIPAL BOARD
Assessment Appeals Committee

Per: _____
Wade Armstrong, Chairman

Per: _____
Cynthia J. Schwindt, Secretary

I concur:

_____
Harvey Fishbook, Member

_____
Ron Hilton, Member

Tab 9

Saskatchewan Municipal Board

Assessment Appeals Committee

DETERMINATION OF AN APPEAL UNDER
Section 216 of *The Cities Act*

Appeal Number: AAC 2013-0093
Date and Location: April 2, 2014 – Regina, SK

Garry Andrews

Appellant

- and -

City of Moose Jaw

Respondent

APPEARED FOR:

The Appellant: Garry Andrews

The Respondent: Represented by the Saskatchewan Assessment Management Agency (SAMA) as assessment service provider:
Harvey Fishbook, Appraiser
Leah Byklum, Assessment Appraiser

HEARD BEFORE: John Eberl, Panel Chairman
Lorna Cottenden, Member
Lee Fuller, Member

Lise Gareau, Director

INTRODUCTION:

[1] The Saskatchewan Municipal Board, Assessment Appeals Committee (the Committee), has received an appeal from a decision of the Board of Revision (the Board) for the City of Moose Jaw (the City), dated July 16, 2013, which dismissed the Appellant's appeal against the assessment of the subject property: Lot 3, Block A, Plan D850 at 820 Skipton Road, Property Number 525010600.

[2] The role of the Committee is not to redo the Board's 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. If the Committee concludes that the Board did not come to the proper conclusion based upon the evidence before it, then the Committee is required to do what the Board ought to have done. The onus is on the Appellant to demonstrate to the Committee where the Board erred.

ISSUE:

[3] Did the Board err in confirming the 2013 assessed value of $205,700 for the property as recommended by the assessor in consideration of the river valley slump zone?

FACTS:

[4] The property was valued using the sales comparison method through multiple regression analysis (MRA). The basic steps in this methodology are:

- Identify arm's length sales of residential properties.
- Use MRA to determine the significance of, and interrelationships among property characteristics for determining value.
- Use MRA to determine the adjustment amounts (coefficients), for the property characteristics and for the constant.
- Determine the adjustment amounts for property characteristics not accounted for on the previous step.
- Test the reliability of the MRA equation by comparing the values estimated using MRA to sales prices.
- Determine the assessed value for the group of properties being valued through application of the valuation model, in this instance – residential properties.

SAMA used a single citywide hybrid MRA model that contains both additive and multiplicative components. The model was determined using 1,890 sales that occurred from 2008 to 2010. No adjustment was made in the model for properties that were within the river valley slump zone.

[5] The property is a single-family residence located at the end of Skipton Road, with the rear of the site backing on to the river valley. There is a steep bank very near the back of the lot and, at one location, encroaching on the parcel. Basic property characteristics are as follows:

Lot Size	5400 sq ft
Residence Effective Age	1969
Residence Type	I and 2 storey
Residence Construction Quality	Low / Fair
Residence Area	1858 sq ft
Basement	Partial - unfinished
Detached Garage	480 sq ft
Decks	534 sq ft total

[6] For 2013, the City applied the following assessed and taxable values to the property:

Property	Assessed Value	Percentage of Value	Taxable Assessment
Total	$206,600	70	$144,620

The retroactive base valuation date for assessments for 2013 is January 1, 2011. As a residence, the property is a non-regulated property for assessment valuation purposes.

[7] The record of the Board is attached as Appendix "A".

[8] The notice of appeal to the Board is dated March 28, 2013. The grounds were as follows:

> "This house in now in the slump zone in the worst area designated. When I bought the house it was not in this zone but shortly thereafter it was. I bought it for the price of the lot ($73,000) and hoped to build new. I no longer can do so. I also have been told that getting a mortgage on it for re-sale is unlikely. The house is adjacent to a bank overlooking the river. It is eroding significantly and now the garage at the rear of the property is only @ 5 feet away on one corner from the bank."

The notice of appeal indicated that the Appellant did discuss his appeal with the City.

[9] The Board identified the sole issue for the appeal as:

"1. What is the effect of the slump zone designation on the subject property?"

[10] The decision of the Board, dated July 16, 2013, was:

> "It is the decision of the Board that the Appellant failed to provide evidence to show where the Assessor erred in fact, or in law or in the application of the legislation. Therefore, the assessed value shall be, as presented in the recommendation of the Assessor, reduced by $900 from $206,600 to $205,700."

The $900 reduction in value recommended by the assessor was due to the reduction in the useable land due to slumping into the river valley. SAMA reduced the amount of land being valued to 5,009 square feet.

[11] The grounds of appeal to the Committee, as stated by Mr. Andrews, are:

"1. The comparables used by the assessors were not appropriate. The assessors did not cite slump zone properties which were sold since the City put in place its new bylaw. Further, the properties they did use were mostly combined Slump Zone 1 and 2. There was only one Slump Zone 1 property used of the ten they put forward and again, these were sold before the Slump Zone designation bylaw came into effect.
2. I mentioned at the time of the revision hearing that a realtor had said the designation of my property would negatively impact upon its value and re-sale. He indicated it might be sold for $125,000 however, I did not have his estimate in writing. Since that time two additional realtors were asked for their opinion on the re-sale value of the property and I have included their comments in this package. For the record, the realtors were from different companies and did not confer with one another. In each case, they place the market value of my property at between $60,000 to $75,000 not the $206,000 which the assessors have determined.
3. I also mentioned at the time of the revision hearing that a qualified appraiser had told my realtor there was a property sold on 9th Avenue S.W. in Moose Jaw in Slump Zone 1. I understand the new designation and subsequent regulations resulted in its diminished value and negatively impacted its re-sale. I have located the information regarding this property (Lot 7, Blk/Par 12 – Plan V1328 Ext 0) and have included it in this package. For the record, the house and property, sold for $35,000 as of November 28, 2011 and therefore unlike the assessors' examples, was after the new bylaw came into effect. The assessors did not include this information in their presentation and I believe it is a more accurate comparison than any which were previously put forward."

The above grounds are written as received from the Appellant. The notice of appeal to the Committee was dated August 5 and received on August 7, 2013. Attached to the notice were the following five documents:

- An Information Services Corp. (ISC) title search for a property at Lot 7, Block 12, Plan V 1328 with a parcel value of $35,000 as of November 28, 2011.
- Three Google photos of the above property, indicating an address of 1300 – 9th Avenue S.W., Moose Jaw. (The date on the photos appears to be August 1, 2013.)

- An ISC parcel picture showing the site plan of the above property.
- An email from E.G. Hill, with Century 21 Insight Realty dated July 26, 2013.
- A three-page market evaluation of 820 Skipton Road prepared by Jami Thorn of Royal Lepage Landmart, dated July 25, 2013.

[12] SAMA filed a 19-page submission to the Committee dated and received on March 14, 2014. This material was received by the Committee and marked as exhibit AAC – R1. No additional materials were received from the Appellant.

LEGISLATION:

[13] Legislation and regulation applicable to this appeal is listed in Appendix "B" attached to this decision.

CASE LAW:

[14] Court decisions included in the submissions or referred to by the Committee are listed in Appendix "C" attached to this decision.

PRELIMINARY ISSUE – NEW EVIDENCE:

[15] At the Committee hearing, there were conflicting opinions expressed regarding the five documents that the Appellant included with his grounds of appeal to the Committee. SAMA's submission to the Committee on pages 12 to 14 objected to the documents being accepted by the Committee as, in their view, this constitutes new evidence and does meet the limited circumstances under which the Committee can accept new evidence. As the evidence is new, the corresponding grounds (numbered 2 and 3) to the Committee are not valid.

[16] The Appellant stated that ground number 2 relating to the realtor's opinions of value was talked about at the Board hearing, but that he did not include written opinions to the Board. The Appellant also said that, in ground number 3, he had stated to the Board that an appraiser had told his realtor of a sale in slump zone 1, but that he did not include documentation to the Board regarding this sale.

[17] SAMA referred to the date of the sale in slump zone 1 as November 28, 2011. This date has two implications: one, information regarding the sale would have been available 18 months before the Board hearing; and, two, the sale is after the cut-off date for the 2013 revaluation. SAMA also stated that the realtor's opinions of value were dated after the July 15 Board hearing, yet the Appellant could have obtained this information prior to the Board hearing.

[18] After hearing the views of both parties on the matter, the Committee deliberated in private. The panel members decided that the five documents included with the August 5, 2013, notice of appeal were new evidence and, as such, could not be accepted. This ruling was communicated to the parties at the hearing. The primary reason for this decision was that the Committee is restricted under provincial legislation to accepting new evidence only under limited circumstances. This limitation is elaborated in *The Cities Act* (the Act) section 223(1)(c), which is reproduced in Appendix "B" of this decision. The facts that gave rise to the decision are:

- The notice of appeal to the Board was dated March 28, 2013, the notice of hearing was dated June 10 and the hearing took place on July 15. This allowed ample time for the Appellant to research and present evidence to the Board in support of his grounds of appeal.
- The realtor opinions of value were dated July 25 and 26, 2013, over a week after the Board hearing. The Appellant could have obtained Realtor's opinions in writing at any time from March 28 to June 25 (the 20 day Board submission deadline).
- The sale that the Appellant wished to introduce was documented by ISC on November 28, 2011, a considerable length of time before the Board hearing.

Therefore, all of the information that the Appellant wished to introduce to the Committee was discoverable well in advance of the Board hearing, and does not meet the requirement in the Act at 223(1)(c).

[19] The role of the Committee is clearly stated in the Act as indicated below:

> **"Appeal determined on record**
> **222 Subject to section 223, 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 220."**

Section 220 refers to the record of the Board (see Appendix "A" attached). In other words, the Committee must determine appeals on the basis of the evidence, argument and other information that was before the Board.

[20] The Committee notes that the Appellant is resident in Alberta and may not be familiar with Saskatchewan legislation. In seeking to introduce new evidence, the Appellant may have been responding to the Board's decision that "...the Appellant failed to provide evidence to show where the Assessor erred in fact, or in law or in the application of the legislation." Saskatchewan legislation allows for assessments to be appealed annually to the Board of Revision (and subsequently to the Committee). The Appellant is free to introduce whatever evidence he feels is relevant to the Board in any subsequent year.

SLUMP ZONE - POTENTIAL EFFECT ON VALUE:

[21] The question before the Committee is the following: Did the Board err in confirming the 2013 assessed value of $205,700 for the property as recommended by the assessor in consideration of the river valley slump zone?

[22] The Appellant provided a detailed history of his involvement in the property in his exhibit to the Board (A-1, dated June 24, 2013). A point form summary of this information is as follows:

- He purchased the property in May 2010 at $73,000 with the intent of eventually building a new home on the site.
- The property had been a bank foreclosure.
- He did not require a mortgage to complete the purchase. Subsequently, a bank had informed him that the property was "un-mortgageable" due to the history of slumping in the immediate vicinity.
- On August 9, 2010, he was told that the City was planning a zoning change to address the slumping issues. The "slump zoning" bylaw came into effect in the fall of 2010. The property is in slump zone 1. This designation means that there can be no new construction on the site without a geotechnical survey and report. For a building permit to be issued, the report must conclude that the proposed construction will not create further slumping. The Appellant met with city engineers on June 17, 2013, and was informed that there were no plans to inhibit further slumping into the river valley.
- There had been a house south of the subject property (nearer the river valley). Due to bank erosion, the house was demolished and the land is owned by the City. The southwest corner of his detached garage is approximately 6 feet from the bank, and the original sidewalk that ran beside the garage has fallen into the valley.
- He obtained a cost to cure estimate from a landscape architect of $20,000 to $30,000, and a realtor's opinion of selling price of $125,000 but likely no more.
- According to SAMA records, houses across the street are valued at $159,000 and $175,700. There has been a substantial increase in the assessment and property taxes from 2012 to 2013. The property's assessed value should be in the $90,000 range rather than $144,620. (In this context, the Appellant means the taxable assessment.)

[23] SAMA's evidence to the Board was as follows:

- The property was valued using the sales comparison approach with a hybrid MRA model. Sales from 2008 to 2010 inclusive were used in the analysis. No adjustment was made for the slump zoning.

- An email from the Manager of Planning with the City (exhibit R-1, appendix D) indicates that the slump zone hazard regulations came into effect in March 2011. This was after the base valuation date of January 1, 2011. A copy of the regulation (R-1, appendix F) states that development in the slump zone will not be permitted without a favourable geotechnical report, and is subject to approval by City Council. Properties in the "s1" district are considered to have a high to moderate risk of slope failure. Within the "s1" zone, no new principal uses are allowed, and all existing uses are classed as legal non-conforming. Minimum setback for new developments is 3:1 (horizontal to vertical) from the toe of the slope, unless a different setback is recommended in the geotechnical report.
- Two aerial views of the subject property (one in 2008 and one in 2011) were included in R-1, appendix E. They show that the location of the bank was quite similar over that time span.
- In order to address the Appellant's concerns, SAMA undertook a study of assessments versus selling prices of residences within the slump zone. This is in R-1, appendix C. Eleven sales are shown on the chart, with two in the "s1" area, three in both "s1" and "s2", and the remaining in "s2". The ratio of the assessment to selling prices (ASR) is an indication of potential assessment bias. If assessments are consistently above the selling prices (i.e., the ratio is consistently above 1.00), the properties are being over-assessed and there could be an error in the assessment. The median ratio for all 11 sales is .83, showing that the slump zone properties are being under assessed by approximately 17%. The two "s1" sales have a median ASR of .83. SAMA interpreted this information to show that, had the slump zone affected values, the ASRs would have been "well in excess of 1.00."
- SAMA also included photos of two comparable sales at 337 and 341 Grandview Street West, which were included in the 11 slump zone sales and had ASRs of .89 and .76 respectively. In SAMA's view, the subject property has been assessed equitably.
- SAMA did not use the sale of the subject property in its analysis, as it was a bank foreclosure and, in their opinion, not indicative of normal market conditions.
- SAMA inspected the property prior to the Board hearing, and recommended a $900 reduction in the assessed value, as slumping had reduced the useable site from 5,400 sq ft to 5,009 sq ft.

[24] At the Committee hearing, the Appellant expressed frustration at not being allowed to present new evidence. He reviewed the evidence presented to the Board, and stated that the comparables presented by SAMA were sales that occurred before the slump zone designation, and not of use in addressing his issue. The Appellant also noted that the comparables presented by SAMA were not similar to his property as the lots were far deeper and larger, with the houses toward the front of the sites. His lot is much smaller at 50 ft by 108 ft. The Appellant stated that the valuation base date was

arbitrary and commented (respectfully) that this was an instance of "bureaucracy in the way of common sense."

[25] SAMA stated to the Committee that there was no sales evidence that showed a decrease in value due to the slump zone. SAMA used all the sales that were available within the slump zone to see the potential effect on prices. Differences in the characteristics of the 11 sales to the subject property are taken into consideration. The assessment on the property is influenced by the relatively large size of the house. They acknowledged that the slump zone designation came into effect after the valuation base date and that there may be a measurable discount in prices that can be applied to the planned 2017 revaluation. SAMA committed to conduct a "careful analysis" in this regard. SAMA asserted that the Board made a correct decision and that the recommended assessment of $205,700 should be confirmed by the Committee.

[26] The Board decision outlined the evidence and arguments of the parties and went on to support the SAMA recommended reduction in the assessment. The Board did little in the way of analyzing the evidence and legislation. It would have been helpful to the parties had they done so. Since the Board's decision is short on rationale, it is the responsibility of the Committee to review the evidence and legislation and decide whether or not the Board made an error.

[27] Assessments in Saskatchewan are retrospective. In other words, the date of valuation is in the past and assessments for 2013 are to reflect market conditions as of January 1, 2011. SAMA has the legislative authority to specify valuation base dates through Board Orders. (SAMA Board Orders can be searched online at www.sama.sk.ca.) The Board Order that relates to 2013 assessments reads as follows:

> "This is an Order pursuant to clause 12(1)(d) of *The Assessment Management Agency Act* to: ... establish January 1, 2011 as the base date for determining assessed values of properties for the years 2013 to 2016."

Related to the base date is a second Board Order that specifies a cutoff date for market information.

> "This is an Order pursuant to clause 12(1)(d) of *The Assessment Management Agency Act*.
>
> 1. Market data that occurred or arose after December 31, 2010 shall not be used to determine the assessed value of non-regulated properties for the years 2013 to 2016."

This Order prohibits assessors from using market information (including sales and other data) after December 31, 2010. The Act requires that assessments are to be valued as of the base date (for 2013, this is January 1, 2011). The Act states:

> **"Preparing annual assessments**
> **165(1) An assessment shall be prepared for each property in the city using only mass appraisal.**
>
> **(2) All property is to be assessed as of the applicable base date. (Emphasis added)"**

Since the slump zoning was enacted in March 2011, there is no window through which post slump-zoning sales can be used for the 2013 assessment. The Committee is required to make decisions with regard to provincial legislation and cannot "set aside" the law to allow for exceptions no matter how compelling the case. The Saskatchewan Court of Appeal has made this clear in *Sasco Developments versus the City of Moose Jaw* (2012 SKCA 24 (CanLII)). The Board did not err when it found that there was insufficient evidence to show an error in the assessment of the property.

ADDITIONAL COMMENTS:

[28] Sales are used to establish assessments, as they are objective and verifiable facts. Realtor's opinions of value are subjective, and their accuracy is heavily dependent on the quality and quantity of the information available and the realtor's experience and analysis. Realtor's opinions are not market facts and are not a substitute for valid arm's length sales.

[29] Saskatchewan legislation requires that assessments must be determined through mass appraisal. The Act at section 163 (f.3) reads as follows:

> **"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;**

Sasco reinforced the principles of mass appraisal in the Act when it stated:

> **"[12] Mass appraisal is defined in section 163 to mean the process of preparing assessments for a group of properties using standard appraisal methods, employing common data and allowing for statistical testing. Read in context, the term "a group of properties" may be taken on application to mean a group of "similar" properties. And the term "common data" may be taken to mean pieces of information in the form of facts and statistics pertaining to market value and common to a group of similar properties."**

In the case of the subject property, similar properties are residences within the slump zone and ideally within zone "s1". In order for the slump zone properties to be valued using mass appraisal, there must be sufficient sales to allow for statistical testing. Using the May 2010 sale of the subject property alone would not meet the mass appraisal requirement. The Court of Appeal in *Sasco* found that using only the income and expense information for the subject hotel violated the requirement for mass appraisal. The Court also found in *Cadillac Fairview* (2000 SKCA 84 (CanLII)), that a single sale could not be used to determine a market adjustment factor.

DECISION:

[30] The Committee understands the concerns of the Appellant, but must work within the existing legislation and court rulings. Within this context, the Committee cannot find an error in the Board's decision. Accordingly, the Committee confirms the decision of the Board and the 2013 assessment of the subject property shall remain as ordered at:

Property	Assessed Value	Percentage of Value	Taxable Assessment
Total	$205,700	70	$143,990

[31] The appeal is unsuccessful so the filing fee will be retained.

Dated at REGINA, Saskatchewan this 20th day of May, 2014.

Saskatchewan Municipal Board – Assessment Appeals Committee

Per: _____
John Eberl, Panel Chairman

Per: _____
Lise Gareau, Director

Appendix "A"

The record of the Board includes:

a. Notice of Appeal to the BOR

b. March 28, 2013 Acknowledgement letter from BOR secretary to Garry Andrews

c. June 10, 2013 Notice of Hearing letter from BOR secretary to Garry Andrews

d. Exhibit A-1 - Appellant's written submission (2 pages) with the following attached:

   i. SAMAView – Map and Text Search for 820 Skipton Rd
   ii. Twelve colour photographs of houses across the street from 820 Skipton Rd

e. Exhibit R-1 - Assessor's (SAMA) submission (28 pages) with the following Appendices attached:

   A. Comparable Properties
   B. Subject Property Detailed Property Record
   C. Residential Slump Zone Analysis
   D. Slump Hazard Development Regulations Implementation
   E. Aerial View of Subject Property
   F. Slump Hazard Overlay Districts – S! and S2
   G. Neighbourhood Map
   H. Neighbourhood Descriptions
   I. Building Sketch
   J. Agreement to Adjust the Assessment
   K. USPA and CUSAP References
   L. Certification/Qualifications

f. July 16, 2013 BOR Decision with letter same date and copy of registered mail receipt

Appendix "B"

LEGISLATION: (Saskatchewan legislation can be searched free of charge online at the Queen's Printer - Government of Saskatchewan - www.qp.gov.sk.ca)

The following legislation relates to the appeal:

The Cities Act:

"Interpretation of Part
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;

Regulated and non-regulated property assessments
164.1(2) Non-regulated property assessments shall be determined according to the market valuation standard.

(3) Notwithstanding subsection (2), the rules set out in sections 165 and 169 apply to the assessment of all property unless stated to apply only to regulated property assessments or only to non-regulated property assessments.

Preparing annual assessments

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

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

(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.

...

(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.

Simplified appeals

195(1) This section applies, at the option of the appellant, to an appeal concerning the assessment of:

(a) a single family residential property regardless of the total assessment; or

(b) any property that has a total assessment of $250,000 or less.

(2) Notwithstanding subsection 192(6), the chairperson of the board of revision may appoint one person from among the members of the board of revision to hear and rule on appeals to which this section applies.

...

(4) A notice of appeal pursuant to this section is to be in the form prescribed pursuant to subclause 185(1)(c)(ii) and subsection 197(6).

(5) Section 200 does not apply to an appellant in an appeal to which this section applies.

Appeal procedure

197(6) A notice of appeal must be in writing in the form prescribed 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 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.

Disclosure of evidence

200(1) If an appellant intends to make use of any written materials on the hearing of an appeal, at least 20 days before the date set for the hearing the appellant shall:

(a) file a copy of the materials with the secretary of the board of revision; and

(b) serve a copy of the materials on every other party to the appeal.

Decisions of board of revision

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.

Appeals from decisions of board of revision

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.

Transmittal of board of revision record

220 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 209;

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

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

Appeal determined on record

222 Subject to section 223, 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 220.

New evidence

223(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 220 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."

The Assessment Management Agency Act:

"Powers and duties
12(1) In addition to any other duty imposed on it by this Act or the regulations, the agency shall:

...

(d) subject to section 12.1, prepare and establish, by order, any assessment manuals, guidelines, handbooks and other materials required for the valuation of property that:

(i) in the opinion of the agency, are appropriate; or

(ii) are required by a municipal Act;
and make orders governing the use of such manuals and materials;"

Appendix "C"

COURT DECISIONS - Court of Appeal decisions are available free of charge online from the Canadian Legal Information Institute (www.canlii.org/en/sk/)

Assessment Appeals Committee Decisions:

2009-0061 – Patricia and Earl Warwick v. RM of Mervin No. 499

2009-0072 – Crescent View Par 3 Ltd. v. City of Moose Jaw

2009-0057 – Hepburn Agencies Ltd. v. Hepburn (Village)

Court of Appeal Decisions:

Regina (City) v. Laing Property Corp. (1994), Sask. R. 29 (C.A.); [1994] S.J. No. 698 (C.A.)

Estevan Coal Corp. v. Estevan (Rural Municipality No. 5), [2000} S.J. No. 439 (C.A.)

Cadillac Fairview Corporation Limited et al. v. The City of Saskatoon et al, [2000] SKCA 84

HDL Investments Inc. v. Regina (City) [2008] SKCA 47

Bison Properties Ltd. v. Regina (City), (2009), 314 Sask. R. 259 (C.A.); [2008] S.J. No. 766 (C.A.)

Sasco Developments Ltd. v. City of Moose Jaw and SAMA, [2012] SKCA 24

Tab 10

SAMA
Saskatchewan Assessment Management Agency

Quality Assurance Division

2014 PRIMARY AUDIT REPORT

This Primary Audit Report was prepared pursuant to section 22.1 of *The Assessment Management Agency Act* (the "AMA"), to determine whether the municipality's assessment are in compliance with the applicable audit requirements. For Primary Audits, the applicable audit requirements are whether the municipality's overall level of appraisal falls within the acceptable range [0.98 to 1.02] of the median assessed value to sale price ratio for the sales used to determine the assessed value for the improved residential and commercial properties in the municipality. This Primary Audit Report was prepared as required by the AMA and for no other purpose.

The primary audit result for the named municipality is:

Effective Date	Municipality	Median Ratio	Audit Requirement
September 25th, 2014	CITY OF REGINA	1.00	Compliant

REQUIRED CORRECTIVE ACTION: NONE

ASSUMPTIONS AND LIMITING CONDITIONS:

This Primary Audit report is prepared subject to the following assumptions and limiting conditions:

1. The Primary Audit was prepared on the basis of the information provided to the Quality Assurance Division from the municipality and/or its assessment service provider;
2. It was assumed that all data and information provided for the purpose of this audit was:
   (a) accurate; and
   (b) prepared pursuant to the requirements of the municipal Acts and the Saskatchewan Assessment Manual;
3. This report was prepared on the assumption that all assessed values were properly prepared by an assessment appraiser certified by the Saskatchewan Assessment Appraisers' Association;
4. The Quality Assurance Division has not verified any of the sales data provided for the purposes of the Primary Audit; nor has it verified the accuracy or completeness of the information provided;
5. The conclusion presented in this report is based solely on the data and information provided; should there be any material error in the information provided, then the conclusion of this report is subject to change;
6. This report does not endorse or validate any of the valuation methods that may or may not have been used by the municipality or its assessment service provider in arriving at the reported assessed values. Any review of valuation methods employed to derive the assessed values for the municipality is beyond the scope and purpose of this audit;
7. This report is for the roll year indicated and for no other;
8. The conclusion in this report that the municipality's assessments comply with the applicable audit requirements is based on one statistical measure and does not certify or guarantee the accuracy of any of the assessed values on the municipality's assessment roll. Verification of the accuracy of any of the individual assessed values reported by the municipality and their assessment appraiser is beyond the scope and purpose of this audit.

Prepared by Quality Assurance Division, SAMA.

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

EVIDENCE DOCUMENT

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

TABLE OF CONTENTS

[1] The purpose of this evidentiary report 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"). In ensuring this report complies with the reporting requirements of the Saskatchewan Assessment Appraisers' Association (SAAA), the International Association of Assessing Officers (IAAO) and the Appraisal Institute of Canada (AIC), the following Salient Terms and Conditions must be provided.

SUMMARY OF SALIENT TERMS AND CONDITIONS

[2] The following information is a summary of important factors, terms and limiting conditions that are essential to the understanding of this appeal submission and the assessment of the subject property.

Regulatory Governance

[3] The analyses, opinions and conclusions were developed and this report has been prepared in conformity with:

- the relevant Provincial laws and regulations of the Province of Saskatchewan and Bylaws of the City of Regina;
- the Code of Ethics of the Saskatchewan Assessment Appraisers' Association (SAAA), the International Association of Assessing Officers (IAAO) and the Appraisal Institute of Canada (AIC);
- the Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP); and
- the Uniform Standards of Professional Appraisal Practice (USPAP).

[4] In the City of Regina Assessment Branch, 20 of 21 valuators are licensed through the Saskatchewan Assessment Appraisers' Association. Five of the 21 valuators also are accredited with the senior appraiser designation (AACI) through the Appraisal Institute of Canada (AIC), and seven also are certified as senior assessment evaluators (CAE) with the International Association of Assessing Officers (IAAO).

Compliance with CUSPAP and USPAP

[5] An appeal submission is created and presented for the purpose of providing an explanation of how an assessment was determined as well as providing evidence in response to issues raised before a Board of Assessment Appeal or Court. It is not intended to complete any of the functions required to analyze, develop and communicate an opinion of value as required under a property appraisal. Therefore, an appeal submission is not an appraisal; it falls under the realm of expert testimony. However, CUSPAP dictates that expert testimony that addresses value and is presented in a public forum, such as in Boards of Assessment Appeal, must comply with the reporting standards of CUSPAP.

[6] USPAP does not specifically address the issue of appeal submissions. However, USPAP does note that "an individual's public identification as an appraiser establishes an expectation that valuation services will be performed in compliance with USPAP."[1]

Important Terms, Dates and Definitions

Client - City of Regina.

Intended Use - explanation of assessment and supporting evidence for appeal purposes before the City of Regina Board of Revision.

Intended Users - the City of Regina Board of Revision (and Saskatchewan Municipal Board's Assessment Appeals Committee and Court of Appeal, as needed), the City of Regina Assessment Branch, and the Appellant.

Purpose - to respond to allegations of assessment error and to comply with *The Cities Act*, ss.200(4).

Type of Value - market value in fee simple prepared using mass appraisal; pursuant to *The Cities Act*, c.163(f.1) and (f.2) and ss.164.1(2).

Effective (Base) Date of Valuation - January 1, 2011 (retrospective): pursuant to *The Cities Act*, c.163(d); and per SAMA Board Order Dated July 8, 2010 made pursuant to *The Assessment Management Agency Act*, c.12(1)(d).

Scope of Work

[7] Scope of work refers to the type and extent of research and analysis necessary to complete an assignment. The scope of work undertaken by the Assessor to value the subject property for

[1] Refer to USPAP, Advisory Opinion 32 (AO-32), p.A-113.

assessment purposes is described in paragraphs [34] through [55] of this submission.

Analysis of Exposure Time

[8] Exposure time refers to the estimated length of time the property interest appraised would have been offered on the market before the hypothetical consummation of a sale at market value on the effective date of the appraisal. CUSPAP and USPAP require that each real property appraisal report contain sufficient information to enable the intended users of the appraisal to understand the report properly. USPAP notes that meeting this requirement does not require the reporting of exposure time in all assignments.

[9] The Assessor does not collect information on length of time a property is on the market.

Hypothetical Conditions[2]

[10] CUSPAP and USPAP describe a Hypothetical Condition as "that which is contrary to what exists but is supposed for the purposes of analysis" and may be used where the hypothetical condition is clearly required for legal purposes. Hypothetical Conditions assume conditions contrary to known facts about physical, legal or economic characteristics of a subject property. There is one Hypothetical Condition present in this valuation, namely:

1. *The Cities Act*, ss.165(3.1) – each assessment must reflect the facts, conditions and circumstances affecting the property as of January 1 of each year as if those facts, conditions and circumstances existed on the applicable base date.

[11] This is considered a hypothetical condition because the property characteristics as of January 1 may have been different, or not even existed, on the base date.

Extraordinary Assumptions[3]

[12] CUSPAP and USPAP describe an Extraordinary Assumption as "an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions." CUSPAP requires each Hypothetical Condition to be accompanied by a corresponding Extraordinary Assumption. There is one Extraordinary Assumption present in this valuation; it is the same as the Hypothetical Condition noted above.

[13] This is considered an extraordinary assumption because the property characteristics as of

[2] Refer to CUSPAP 2.29 and 7.12 and USPAP SR 6.2(i).

January 1 are assumed to exist on the base date.

Jurisdictional Exceptions[4]

[14] The Jurisdictional Exception Rule exempts appraisers from the part or parts of CUSPAP and USPAP that are contrary to the law or public policy of a particular jurisdiction. There are four Jurisdictional Exceptions claimed in this report:

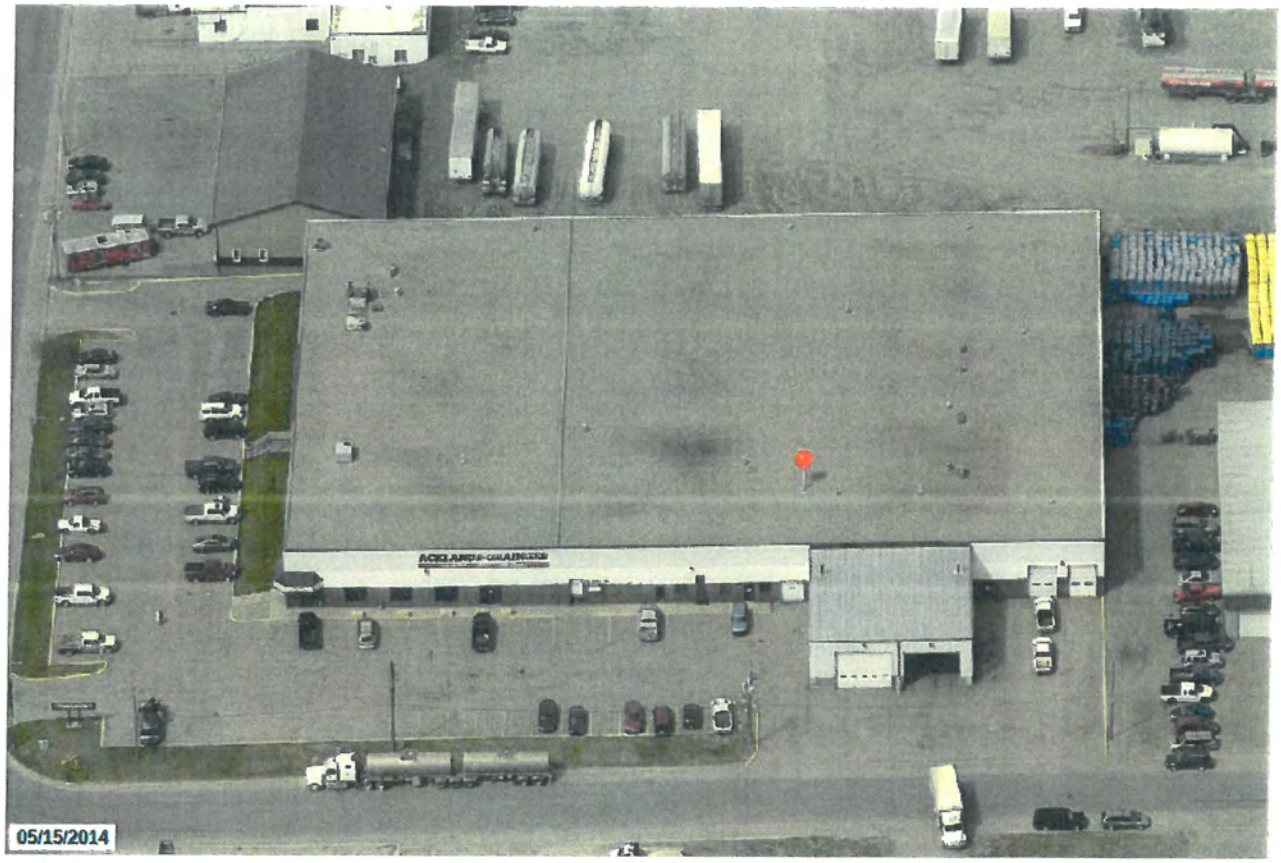
1. *The Cities Act*, c.163(f.1) and ss.165(1) - require the appraiser to prepare the assessed value of property using mass appraisal methods.
2. *The Cities Act*, ss.165(3.1) - each assessment must reflect the facts, conditions and circumstances affecting the property as of January 1 of each year as if those facts, conditions and circumstances existed on the applicable base date.
3. *The Cities Act*, ss.210(1.1) and ss.226(3) - a non-regulated property assessment shall not be varied on appeal using single property appraisal techniques.
4. SAMA Board Order Dated December 16, 2009 made pursuant to *The Assessment Management Agency Act*, c.12(1)(d) - market data that occurred or arose after December 31, 2010 shall not be used to determine the assessed value of non-regulated properties, unless owners' fiscal years do not follow the calendar year and end on or before May 31, 2011.

[3] Refer to CUSPAP 2.24 and 7.11 and USPAP SR 6.2(i).

[4] Refer to CUSPAP 2.35, 3.6 and 7.12.4 and USPAP Definitions and Jurisdictional Exception Rule.

PHOTOGRAPH OF THE SUBJECT PROPERTY

680 McLeod



VALUATION METHODOLOGY

Property Assessment Valuation Standards

[15] As set out in section 164 of the Act, all property in the city is subject to assessment. Further, section 164.1 of the Act requires that assessments must be determined in accordance with one of two standards. The two Valuation Standards used to determine assessments in Saskatchewan are:

- the Market Valuation Standard for non-regulated property; and
- the Regulated Property Assessment Valuation Standard for regulated property.

[16] As well and pursuant to the Act, assessments for all properties reflect the retrospective base date of January 1, 2011; are determined using mass appraisal techniques; and reflect the facts, conditions and circumstances affecting properties as of the base date.

[17] The property that is the subject of this report is a non-regulated property.

Market Valuation Standard

[18] The *Market Value Assessment in Saskatchewan Handbook* (the "Handbook") provides guidance for the assessment of all properties valued using the Market Valuation Standard. The Handbook describes how the three approaches to value may be used and is intended to integrate with *Marshall and Swift's Residential Cost Handbook* and the *Marshall Valuation Service* (commercial properties). While the Handbook does not have the force of law, it may be used in conjunction with relevant Saskatchewan legislation, accompanying regulations and SAMA Board Orders.

[19] According to clause 163(f.1) of the Act, the Market Valuation Standard is "...achieved when the assessed value of the property:

- is prepared using mass appraisal;
- is an estimate of the market value of the estate in fee simple in the property;
- reflects typical market conditions for similar properties; and

- meets quality assurance standards established by order of the agency."

[20] The Market Valuation Standard contains several terms that require further definition, namely *mass appraisal*, *market value* and *fee simple*.

[21] Clause 163(f.3) of the Act defines *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."

[22] Clause 163(f.2) of the Act defines *market value* as "...the amount 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."

[23] The term *fee simple* is not defined in the Act. The *Market Value Assessment in Saskatchewan Handbook* defines *fee simple* (or *estate in fee simple* or *fee simple estate*) as "absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the four powers of government: taxation, expropriation, police power, and escheat."

Assessment Publications

[24] In order to effectively implement the new legislative requirements with respect to assessment in Saskatchewan, the following publications are available for regulated and non-regulated property assessments:

- The **Saskatchewan Assessment Manual** - speaks primarily to regulated property assessments and has the force of law.
- The **Market Value Assessment in Saskatchewan Handbook** - provides direction for the assessment of non-regulated property and does not have the force of law.
- The **2011 Cost Guide** – provides direction to SAMA's Assessment Services Division for the assessment of non-regulated property and does not have the force of law
- **Marshall Valuation Service** and **Residential Cost Handbook** publications - used in the application of the cost approach to value and do not have the force of law.
- Various valuation theory textbooks published by the Appraisal Institute of Canada, the Appraisal Institute (United States) and the International Association of Assessing Officers, among others - do not have the force of law.

[25] Use of any of the above publications (or any other publication) must be in combination with relevant Saskatchewan legislation, accompanying regulations and SAMA Board Orders.

Approaches to Value

[26] The standard appraisal methods, contained in the definition of mass appraisal, include three standardized approaches to value property: the Sales Comparison Approach to Value, the Cost Approach to Value and the Income Approach to Value.

[27] The Sales Comparison Approach to Value is an approach for estimating market value-based assessments by comparison to the sale prices of similar properties that have sold recently. The Sales Comparison Approach is based on the theory that value is directly related to the sale prices of similar properties, and the assumption that a purchaser would not pay more to purchase a property than that paid for comparable properties of similar utility. This approach is most commonly used in valuing residential properties.

[28] The Cost Approach to Value is used for estimating market value-based assessments that quantifies the cost in current dollars, less depreciation, to replicate the property being assessed. This approach is based on the assumption that a potential purchaser would pay no more for the property than the cost of its replacement, less depreciation. The assessment industry relies on the Marshall Valuation Service and Residential Cost Handbook rates to determine replacement costs. This approach was commonly used for valuing commercial properties in the city prior to the implementation of the Income Approach to Value in 2009.

[29] The Income Approach to Value is used to estimate market value-based assessments by analyzing the anticipated future benefits or income from a property and converting this income into an estimate of present value.

[30] Some property types such as agricultural land, railway, resource equipment, heavy industrial properties and pipelines continue to be valued under a regulated property assessment standard using an assessment manual established by SAMA. Other property types that are non-regulated, such as residential, commercial and multi-family properties, are not required to be valued based on a specific assessment manual but are valued using one of the three valuation approaches (noted above) to ensure that the requirements of the Market Valuation Standard are met.

Difference between Market Value and Sale Price

[31] The market value-based assessment of a property is sometimes confused with the sale price of an individual property. A property's sale price is, by definition, not the same as its estimate of market value assessment. The sale price of a property is a historical fact – it is the amount the purchaser agreed to pay and the seller agreed to accept for the sale of the property under the circumstances surrounding the sale. A market value-based assessment is not a historical fact – it is an estimate of value.

[32] Sale price information is necessary to develop market value assessments. Assessors gather information on properties that have sold to determine the ranges of sale prices in the marketplace. This statistical data is used as part of the process for calculating market value-based 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 market value-based assessments of specific types of properties that have similar characteristics.

[33] While the actual sale price of a property might be in the same range as the sales of similar properties, the resulting market value-based assessment estimate is a composite analysis of all of the similar sales.