



**Saskatchewan Municipal Board
Assessment Appeals Committee**

Appeal: 0154/2005

RESPONDENT: Vallar Investments Ltd.
c/o Grace Muzyka
Brunsdon Junor Johnson Appraisals
#204 - 640 Broadway Avenue
Saskatoon, Saskatchewan S7N 1A9

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, Saskatchewan S7K 0J5

respecting the assessment of:

Parcels 119859261, 119859272, 136286905
1310 20th Street West
Roll Number: 504819640

for the year 2005;

BEFORE: David Wilkin, Panel Chairman
Robert L. Edwards, Member
Jenny Lai Yu, Member
Cynthia J. Schwindt, Secretary

**APPEARED FOR
THE APPELLANT:** Lee Fuller, Judy Reynolds

**APPEARED FOR
THE RESPONDENT:** Grace Muzyka, Larry Braun

This appeal was heard in Room 9.1, 9th Floor, Sturdy Stone Building, 122 - 3rd Avenue North, in Saskatoon, Saskatchewan, on February 22, 2006.

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

ISSUES:

- (i) Did the Board err in reducing the fair value of the subject property by the application of an abnormal economic obsolescence factor that was calculated not in compliance with the Saskatchewan Assessment Manual (the Manual)?
- (ii) Did the Board err in using paired sales data that was not entered as evidence by either party to calculate the abnormal economic obsolescence factor?

FACTS:

- (1) The property is located on Parcels 119859261, 119859272, 136286905 civically known as 1310 20th Street West in the Pleasant Hill neighbourhood in the City of Saskatoon.
- (2) The subject property is a seven storey, 44 unit, high rise apartment building constructed in 1979 with a steel frame structure rated as average quality and condition.
- (3) In its decision the Board ordered an application of a 0.24 abnormal economic obsolescence factor to the subject property. The fair/assessed values changed as follows:

Original Fair Value: \$1,824,600
Reduced Fair Value by the Board: \$1,390,600
Original Assessed Value: \$1,277,220
Reduced Assessed Value by the Board: \$973,420

As a residential property, the assessed value is 70% of the fair value. The base date for all valuation in Saskatchewan is June 30, 2002.

- (4) A city wide high rise apartment Market Adjustment Factor (MAF) of 0.62 is applied to the subject property.
- (5) The record of the Board includes:
 - a) Exhibits A1 and A2 - copies of the notice of appeal signed by the property owner, Larry D. Braun on December 17, 2004;
 - b) Exhibit A3 - written submission by the appellant dated April 19, 2005 including:

- i) Appendix B – Multi Family Improved Properties - Fair Value Comparisons;
 - ii) Three multiple-listing sales information of condo units located on 1416 20th Street West;
 - iii) Two page spreadsheet identifying assessment information and taxes for 44 condo units located on 1416 20th Street West; and,
 - iv) Two page untitled spreadsheet outlining information regarding condo units located on 1416 20th Street West.
- c) Exhibit A4 - two page exterior color photographs of the subject property, 1416 20th Street West, and properties used by the assessor to develop the MAF;
 - d) Exhibit R1 - 59 page assessment report prepared by Winnifred Tarko with the following Appendices:
 - Appendix A: six page property inventory card for subject property;
 - Appendix B: Multi Family Improved Properties - Fair Value Comparisons; and,
 - Appendix D: 2005 Amended Assessment Notice showing fair value of \$1,824,600 and assessed value of \$1,277,220.
 - e) Undertaking by Tim Ritchie to the secretary of the Board dated June 16, 2005 identifying the change in fair value indicated in Fact (3);
 - f) Minutes of the Board dated April 28, 2005; and,
 - g) Decision of the Board dated July 8, 2005.
- (6) The Committee received a nine page unsigned written submission from the City Assessor, Gord Lawson dated January 16, 2006.
 - (7) A submission to the Committee from Brunsdon Junor Johnson Appraisals incorrectly submitted for this appeal. It is intended for Committee Appeal 0177/2005.
 - (8) Analysis and conclusions of the Board reads in part:

"After careful consideration, the Panel is of the opinion that there are indeed external influences that affect the value of the subject improvement and that these are not accounted for in the MAF sales. The building suffers from economic obsolescence that is not captured in the MAF. It is the Respondent's position that, according to the SAM, sales are required in order to quantify the effect of the abnormal obsolescence.

The Panel believes it to be inequitable to ignore a problem that is unique to a property because there are no sales to recognize and quantify the obsolescence. To do so would be contrary to the equity provisions of *The Cities Act*.

...

In order to determine the amount of obsolescence to apply, the Panel referred to sales data that was

previously made available to the Panel. The Panel examined the ratio of two Mixed Use sales that occurred, one in the subject neighbourhood and one in the CBD neighbourhood from where most of the MAF sales for the subject came from.

1040 - 20th Street (20th St) 2 floors Gross area 2542 Sq. Ft.
 Adjusted Sale Price \$92,936
 9/11 23rd Street East (CBD) 2 floors Gross area 2650 Sq. Ft.
 Adjusted Sale Price \$121,500

The ratio of the two sales indicate a 0.24 obsolescence factor."

(9) The decision of the Board is:

"The Panel rules that the subject property suffers from abnormal economic obsolescence and that a 0.24 obsolescence factor should be applied resulting in a change in fair value from \$1,824,600 to \$1,390,600, for a reduction of \$434,000 in fair value.

The Appellant's filing fee is refunded."

(10) The grounds of appeals to the Committee are:

"The Board of Revision erred in applying a reduction in the value of the high rise apartment property through application of abnormal economic obsolescence. The paired sales method was derived using sales of properties that were not comparable to the subject property. Furthermore, the paired sales used in the Board's calculation were not placed into evidence by either party at the hearing.

The Sask. Assessment Manual requires that: "Two or more comparable arm's length sales shall be used to determine: ... abnormal ... economic obsolescence adjustments ..." (Doc 1.1.6, Page 1) In this instance, the Board of Revision made use of only one sale to determine abnormal obsolescence."

LEGISLATION:

The Cities Act:

"163 (d) "base date" means the date established by the agency for determining the value of property for the purpose of establishing assessment rolls for the year in which the valuation is to be effective and for each subsequent year preceding the year in which the next revaluation is to be effective;

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

(2) An assessment must be prepared for an improvement whether or not the improvement is complete or capable of being used for its intended purpose.
165(1) The assessor shall prepare assessments for all property in the city.

(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.

(7) For the purposes of subsection (5), the agency may, in the assessment manual, establish alternate appraisal methods.

(8) A city may use an alternate appraisal method established pursuant to subsection (7) if:

(a) the alternate appraisal method is approved for use by order of the agency;

(b) the city meets the criteria, as set out in the assessment manual, to use the alternate appraisal method; and

(c) the council of the city has received a report from the assessor adopting the use of the alternate appraisal method within the city.

197(1) An appeal of an assessment may only be taken by a person who:

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

(b) believes that an error has been made:

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

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

(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.

(3) A city, other taxing authority or the agency may appeal an assessment to a board of revision on the grounds that an error has been made in:

- (a) the valuation or classification of any property in the preparation of the relevant assessment roll or assessment notice; or
- (b) the content of the relevant assessment roll or assessment notice.

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

- (a) the agency prepared the valuation or classification of any property being appealed; or
- (b) the appeal is by a city or other taxing authority.

(5) The appellant shall give a separate notice of appeal for each assessment being appealed.

(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.

(7) An appellant may withdraw his or her appeal for any reason by notifying the secretary of the board of revision at least 15 days before the day on which the appeal is to be heard by the board of revision.

198(1) A notice of appeal must be filed, together with any fee set by the council pursuant to section 196, with the secretary of the board of revision at the address shown on the assessment notice:

(a) within 30 days after the date on which the notice of assessment is mailed to the person; or

(b) if no notice of assessment is mailed to the person, within 30 days after the later of.

(i) the date on which the notice of assessment is published pursuant to section 187; and

(ii) the date on which the notice of a bylaw dispensing with the preparation of assessment notices is published pursuant to section 187.

(2) The appellant shall give a notice of appeal pursuant to this section by personal service, by registered mail or by ordinary mail.

203(4) A board of revision may make rules to govern its proceedings that are consistent with this Act and with the duty of fairness.

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.

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.

(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), the appeal board shall not change the amount of an assessment if the value at which the property 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.”

CASE LAW:

The Saskatchewan Court of Appeal, in *Cadillac Fairview Corporation Limited and The T. Eaton Company Limited v. The City of Saskatoon and Saskatchewan Assessment Management Agency*, (1999) Sask. [2000] 11 W.W.R.

THE MANUAL:

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

Volume 1, Chapter 1, Document Number 1.1.6, page 1 - Sale Price (Date: 03/01/22)

Volume 1, Chapter 4, Document Number 4.1.11, pages 1 and 2 - Economic Obsolescence (Date: 03/01/22)

CONCLUSIONS AND REASONS:

[1] The Committee has received an appeal against the decision of the 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, nor to substitute its view for that of the Board. 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] For this appeal, the appellant will be referred to as the assessor and the respondent will be referred to as the agent.

[3] Mr. Fuller appeared on behalf of the assessor. He expressed three major concerns. The first two concerns relate to the methodology used by the Board to calculate the obsolescence factor. The assessor took issue with the two properties used in the calculation of the abnormal economic obsolescence factor and submitted that they are “non-comparable” as required by the Manual.

[4] Mr. Fuller pointed to Document Number 1.1.6, page 1 of the Manual which states that “two or more comparable arm’s length sales” are required to quantify the abnormal economic obsolescence. He also referred to Document Number 4.1.11, pages 1 and 2 which outline two methodologies for the calculation. Even though the Board did not specify which method was used, it is the opinion of the assessor that the Board violated both methodologies. First, if the Board had used the Sales Adjustment Method, step one requires the use of “sale price of two or more comparable buildings or structures with a similar external economic impairment.” The assessor contends that the Board erred by using only one sale from the 20th Street West neighbourhood in the calculation.

[5] Mr. Fuller argued that it was likely that the Board used the Paired Sales Method and he explained the 3 steps required for this methodology:

- a) Find the sale of a comparable building with the obsolescence.
- b) Find the sale of a comparable building without the obsolescence. This step requires the ‘comparable building or structure must be identical except for the external economic impairment in utility and desirability.’
- c) Calculate the obsolescence by finding the ratio of the comparable building with the economic impairment to the comparable building without the economic impairment.”

[6] Mr. Fuller argued that the Board made two errors using this method. First, they did not follow the specifications identified in step two of the Paired Sales Method. The Board chose two non-identical, non-comparable properties with different ages, parcel sizes, condition ratings, and basement structures. In addition, these two properties are from two different Mixed Use MAF groupings: the 20th Street West property has the MAF of 1.34 while the Central Business District (CBD) property has the MAF of 0.66.

[7] Second, Mr. Fuller contends that the Board did not make adjustment to the sale prices. He stated that land value should be subtracted from the sale prices in order for the ratio to reflect only the improvement value component. The Board has created an inaccurate ratio. The 0.24 obsolescence factor includes other influencing factors and is not the true indicator of the abnormal economic obsolescence.

[8] Upon questioning by the Committee, Mr. Fuller clarified that the assessor did not take issue that the paired sales are from the Mixed Use (Commercial and Residential) property grouping. The assessor felt that it would be appropriate as long as the grouping contains a residential component.

[9] Upon further questioning by the Committee, Mr. Fuller explained that due to lack of sales of high rise apartments in the subject neighbourhood, a city wide MAF of 0.62 was applied to the subject property. This MAF was derived from six sales, five are from the CBD neighbourhood and the sixth is from 10th Street East. Mr. Fuller testified that the best way to reflect location differences is by the differing land values. The base land rate for the subject neighbourhood is \$1.30 per square foot while the base land rate in the CBD ranges from \$8 to \$14 per square foot. The assessor feels that the low base land rate is sufficient to account for any negative influences found in the subject neighbourhood.

[10] The assessor concluded that if the Board finds the subject property suffers from economic obsolescence, then the Manual must be followed in order to properly quantify the amount of obsolescence. The Board could not pick and choose sales from an array without valid basis. In this case, the Board erred by straying from the instructions of the Manual to calculate the abnormal economic obsolescence factor.

[11] The assessor's third concern relates to the Board making an error in law by violating *The Cities Act*, Section (6) clauses 197 to 212. The Act mandates the appellant and respondent to present evidence in testimony upon which the Board decides. Mr. Fuller claimed that: "It's the parties to the appeal that brings forth the evidence. The Board can't base their decision on factual evidence that wasn't presented by either party. The Board can't obtain evidence on their own." He stated that the parties weren't given the opportunity to cross-examine the evidence and their rights were being violated.

[12] The agent argued that the Board did find the subject property was assessed incorrectly and tried to quantify it. The Board found that the subject was treated inequitably because it was being assessed the same as a high rise apartment from CBD.

[13] The agent stated that the owner did not have extensive experience in assessments. He did not provide quantitative evidence to substantiate his claims during the Board's hearing. However, he did describe in length the disparities experienced by the subject property. In Appendix B, Mr. Braun compared the subject with the three comparables provided by the assessor. He described the disadvantages of the subject's location. The Pleasant Hill neighbourhood has high crime statistics. The subject property is surrounded by small, old rental homes without the benefit of river views and close proximity to parks. On the other hand, the City's comparables are located in lower crime neighbourhoods with favorable access to river views and to the Meewasin Valley. Being in an

inferior neighbourhood, the subject property suffers from lower rental income, higher vacancy rates, and higher maintenance costs. With these factors that negatively influenced the value of the subject property, the Board was satisfied that the subject suffers from the declining neighbourhood condition and decided that some form of abnormal economic obsolescence should be applied.

[14] The agent also testified that with very few high rise apartments in the subject neighbourhood, the owner found only one direct comparison. It is the high rise condominium complex located on 1416 20th Street West. The majority of his written submission relates to this condo complex. The agent claims that on average the high rise apartment is assessed at \$40,000 per unit while the high rise condominium unit is assessed at approximately \$30,012 per unit. The high rise apartment is being assessed at a rate 25% higher than a unit in the high rise condominium. In order to justify this higher assessment, the subject property requires a monthly rent of \$700 per unit. However, due to the inferior location, the units can only yield a monthly rental income of \$400 to \$500 per month.

[15] The agent also could not verify as to how the Board obtained the two sales used to quantify the obsolescence factor. It was her opinion that the Board learned of these sales prior to this case and they applied the knowledge to this appeal. She cited previous Committee decisions for Appeals 0201/2001 and 0305/2001 to support her argument in this regard.

[16] She also agreed with the assessor that the Board should have made adjustments to the sale prices in order to improve the accuracy of the resulting ratio. However, she did argue that these two properties are comparable and possess similar characteristics. They are both commercial on the main floor with residential units above. Both are receiving the same depreciation rate, the replacement cost new less depreciation (RCNLD) are similar, one has \$47,200 while the other has \$48,600. The condition rating is close; one has 0.9 rating

while the other has a rating of 1.0. Therefore, the Board was justified in using them to quantify the obsolescence factor.

[17] The agent also suggested that the Committee could consider granting an obsolescence factor based on the option of using the MAF ratio derived from low rise apartments. She contends that the assessor was unreasonable in stating that the land captures all the obsolescence and ignored other options to quantify the obsolescence.

[18] Prior to addressing the two issues under appeal, the Committee would comment on the following evidence and related argument:

First, the Committee acknowledges that the property owner is not an expert in assessments and has done the best he could to present evidence before the Board. However, the evidence pertaining to the condominium complex does not hold weight because a condominium is assessed differently and belongs to a different class. The comparison with the 1416 20th Street West condo complex is invalid for this case.

Second, the Committee heard the agent's quoting of previous Committee decisions for Appeals 0210/2001 and 0305/2001 in her arguments. These decisions related to functional obsolescence issues which differed from economic obsolescence as defined by the Manual. It must be remembered that the Committee makes its decision on the specific argument and circumstances presented for each appeal. Based on the relevance of the principles, the finding of one decision will not automatically apply equally to another decision. Therefore, the decisions quoted by the agent will not be applicable for this case.

Issue 1: Did the Board err in reducing the fair value of the subject property by the application of an abnormal economic obsolescence factor that was calculated not in compliance with the Manual?

[19] To address this issue, the Committee examined the following sections of the Manual. First, economic obsolescence is defined in Document Number 1.1.2, page 1 as:

- "(a) **"abnormal economic obsolescence"** means economic obsolescence not accounted for in the market adjustment factor;
- (i) **"economic obsolescence"** means the loss in value from replacement cost new less physical deterioration and functional obsolescence due to the impairment in utility and desirability caused by factors external to the land on which the building or structure is located;"

[20] Document Number 4.1.11, pages 1 and 2 of the Manual outlines the formulas, rules and principles regarding the development of abnormal economic obsolescence factor:

"Summary

This section contains the valuation procedures for determining the amount of abnormal economic obsolescence for residential, commercial, and miscellaneous buildings and structures valued by the replacement cost method.

Formulas, Rules and Principles

Economic obsolescence is the loss in value from replacement cost new less physical deterioration and functional obsolescence due to the impairment in utility and desirability caused by factors external to the land on which the building or structure is located.

Economic obsolescence can be caused by a variety of factors such as location, zoning, neighbourhood decline, lack of property demand, and provincial economic conditions. No allowance shall be made for economic obsolescence caused by changes in the highest and best use of the land and improvements.

No allowance shall be made for economic obsolescence except as may be accounted for in the calculation of abnormal economic obsolescence, and the calculation of the market adjustment factor.

Abnormal economic obsolescence is any economic obsolescence not accounted for in the market adjustment factor. Where there is no abnormal economic obsolescence attributed to the building or structure, the economic obsolescence factor shall be 1.0.

Abnormal economic obsolescence shall be determined in accordance with the sales adjustment method, paired sales method, or comparable unit method.

Sales Adjustment Method

The sales adjustment method may be used to determine the amount of abnormal economic obsolescence. The amount of economic obsolescence shall be determined from the sale price and the replacement cost new less physical deterioration and abnormal functional obsolescence of the comparable buildings or structures with a similar external economic impairment in utility and desirability.

The amount of abnormal economic obsolescence shall be determined by application of the following calculation procedure:

1. Determine the replacement cost new less physical deterioration and abnormal functional obsolescence of the comparable buildings and structures with a similar external economic impairment in utility and desirability.
2. Determine the sale price of the comparable buildings or structures with a similar external economic impairment in utility and desirability.
3. Calculate the economic obsolescence factor by:
 - dividing the sale price of the comparable buildings or structures by the replacement cost new less physical deterioration and abnormal functional obsolescence of the comparable buildings or structures; and
 - dividing the result by the market adjustment factor applied to the comparable building or structure.
4. Apply the median economic obsolescence factor.

Paired Sales Method

The paired sales method may be used to determine the amount of abnormal economic obsolescence. The amount of economic obsolescence shall be determined from the sale price of a comparable building or structure with a similar external economic impairment in utility and desirability and the sale price of a comparable building or structure which lacks the external economic impairment in utility and desirability.

The amount of abnormal economic obsolescence shall be determined by application of the following calculation procedure:

1. Determine the sale price of a comparable building or structure with a similar external economic impairment in utility and desirability.
2. Determine the sale price of a comparable building or structure which lacks the economic impairment in utility and desirability. The comparable building or structure must be identical except for the external economic impairment in utility and desirability.

3. Calculate the economic obsolescence factor by dividing the sale price of the comparable building or structure with the external economic impairment in utility and desirability by the sale price of the comparable building or structure which lacks the external economic impairment in utility and desirability."

[21] Upon reviewing the evidence in the record, the Committee agreed with the assessor that the Board based the calculation using the Paired Sales Method. As indicated by the above steps of the calculation procedure, finding the comparable building or structure with and without the external economic impairment is the first criteria that must be met. The properties should have common denominators for comparison. The criteria is that the building sales should possess similar characteristics with respect to age, size, date of sale, and/or present use, zoning, type of construction and quality, facilities, physical attributes and influences in the same market. It is evident that the two sales used by the Board are dissimilar in age: one was built in 1948 while the other was built in 1962. The MAF groupings are different: the 20th Street West property has a MAF of 1.34 while the CBD property has a MAF of 0.66. The basement structures are different: one has a partial basement while the other has a full basement. Identifying correct comparables of properties is essential in carrying out the calculation procedure when the dominant consideration in assessment is equity in the nature of comparative fairness.

[22] In *Cadillac Fairview* (supra) decision, paragraphs [35] and [36] speaks to the concept of comparability as:

"[35] ... Comparability is the root of every step of the process, and from which each succeeding step grows.

[36] The word comparable is not defined in the manual, nor are the words compare, comparative, comparison or similar. We must take them to have their ordinary dictionary meaning, subject, of course, to the context in which they are used, that is, the surrounding words and the manual as a whole."

[23] After examining all the evidence, the Committee finds these properties to be non-comparable for the purpose of calculating abnormal economic obsolescence. The Saskatchewan Court of Appeal does not condone the use of non-comparable sales. Therefore, the Board has erred by not meeting the requirement set out in Document Number 4.1.11 of the Manual under Paired Sales Method.

[24] The Committee also heard that there is a lack of sales evidence to allow the assessor to calculate a valid obsolescence factor for the subject neighbourhood. It would be problematic for the assessor to arbitrarily calculate an obsolescence factor using some type of unconventional adjustment without the support of sales evidence. The assessor is mandated to follow the rules, principles and formulas of the Manual.

[25] In *Cadillac Fairview* (supra) part of paragraph [80] states:

"It is not open to the assessor to depart from the formulas, rules and principles of the manual when, in the opinion of the assessor, their application produces an undesirable result."

[26] The Committee acknowledges the agent's suggestion regarding the option of using the low rise apartment grouping to derive a MAF ratio to quantify the abnormal economic obsolescence for the subject neighbourhood. The mandate and the role of the Committee, is to rule on the Board's decision based on the evidence in the record. This option suggested by the agent was not presented during the Board's hearing, and the Board did not base its decision on this evidence. Therefore, it would be inappropriate for the Committee to place weight on this suggestion to form its decision.

[27] The Committee is mindful that the objective of the calculation is to measure the abnormal economic obsolescence. In paragraph [23], the Committee finds the Board has erred by not meeting the criteria set out in the

calculation procedure of the Paired Sales Method. Furthermore, the Board also erred by not making any adjustments to the sale prices. This means the obsolescence factor includes other influences and is not a true measure of abnormal economic obsolescence. Therefore, the 0.24 obsolescence factor is invalid. The Board has erred in reducing the fair value of the subject property by the application of this abnormal economic obsolescence factor. The appellant wins on the first issue.

Issue 2: Did the Board err in using paired sales data that were not entered as evidence by either party at the hearing to calculate the abnormal economic obsolescence factor?

[28] The assessor alleged that the Board based “their decision on factual evidence that was not presented by either party. This circumvents the rights of parties to cross-examine on and to counter evidence. ... In effect, the Board introduced evidence, which they cannot do.”

[29] The Board’s ruling on page 7 of the decision states:

“In order to determine the amount of obsolescence to apply, the Panel referred to sales data that was previously made available to the Panel.”

[30] The Committee referred to the text of “*Administrative Law: Principles & Advocacy*” [2005] Edition, page 85, under the section titled “*The Requirement to Base Decision Solely on Evidence*”, which states:

“Parties have the right to expect that the tribunal’s decision will be based on the facts established at the hearing, and not on other information. An adjudicator who relies on facts within his or her own knowledge or on facts learned outside the hearing compromises the integrity of the hearing process. Not only is there a possibility that such information is incorrect, but parties would not have an opportunity to respond to it or to influence how the adjudicator uses it.” (Committee emphasis)

[31] The Committee also noted on page 85 of the same text, under the section of “*The Right to Cross-Examine*” which states:

"Parties have the right to know the evidence being brought against them and to respond to it. They must have a fair opportunity to learn of any information that is unfavourable to them and to correct or to contradict it... In fact, the right to cross-examine... has been described as "fundamental and a "vital element" of the system... Cross-examination may show that the evidence is untrue, bring out additional significant facts." (Committee emphasis)

[32] As defined by law, "procedural fairness" is the standard of treatment required of all agencies, including tribunals such as the Board. "The duty to act fairly, which is also known as the "fairness doctrine" is a procedural rule rather than a substantive rule. That is, it does not provide a right to a fair decision, but a right to a decision reached through fair process." (Committee emphasis)

[33] The Committee is also mindful of section 200(1) to (5) of the Act which governs the disclosure of evidence to ensure that all parties to an appeal have ample opportunity to examine the evidence and to ensure the right of cross examination by the parties.

[34] Section 203(4) of the Act mandates the proceedings before the Board as follows:

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

[35] The Board, by bringing in evidence that was not presented during the hearing to make its decision has violated the above sections of the Act and denied the parties right to cross-examine this evidence. As a result, the Board also has not met the procedural fairness requirement in this regard. For the second issue, the Committee finds the Board did err in using the paired sales data that was not entered as evidence. The appellant wins on the second issue.

DECISION:

In accordance with the preceding review of the two issues, the Committee rules the fair value of the subject property will be returned to \$1,824,600.

The filing fee will be refunded.

DATED AT REGINA, Saskatchewan this

26th day of September, 2006.

SASKATCHEWAN MUNICIPAL BOARD
Assessment Appeals Committee

Per: _____
Wade Armstrong, Chairman

Per: _____
Cynthia J. Schwindt, Secretary

Jenny Lai Yu, for the Committee

I concur:

David Wilkin, Member

Robert L. Edwards, Member