



**Saskatchewan Municipal Board
Assessment Appeals Committee**

Appeal: 2009-0089

RESPONDENT: City of Prince Albert

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

Stockyards (Prince Albert) GP Ltd.
c/o Garry Coleman
Altus Group Limited
226C Cardinal Crescent
Saskatoon, Saskatchewan S7L 6H8

respecting the assessment of:

Parcel G, Plan 93PA01950
600 15th Street East
Roll Number: 220011510

for the year 2009;

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

**APPEARED FOR
THE APPELLANT:** Garry Coleman, Jesse Faith

**APPEARED FOR
THE RESPONDENT:** Brian Moore, Joe Day, Bob Pocha, Dale Braitenbach

This appeal was heard in McIntosh Mall, 3rd Floor, Room 3.1, 800 Central Avenue, in Prince Albert, Saskatchewan, on May 5, 2010.

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

ISSUES:

Did the Board err in its decision to uphold the assessment by:

- (i) Relying on an improper test of equity?
- (ii) Failing to recognize that the sales sample shows differences in the sale properties due to size, quality and use and thus overvalues the subject property?
- (iii) Failing to give weight to the sale price of the subject property as an indicator of its market value?

FACTS:

- (1) The subject property is a 28,100 square foot parcel improved with a 6,000 square foot class D frame building constructed in 1993. The subject is currently being used as a Grainfields Restaurant. The quality classification assigned to the building is good with an average condition rating. No functional or economic obsolescence has been deducted from the value of the improvements beyond the Market Adjustment Factor (MAF).

The subject property is currently receiving a MAF of 0.77.

- (2) The assessed values and taxable assessment for the subject property are:

<u>Assessed Value and Taxable Assessment</u>	
Land	\$252,567
Building	<u>\$477,177</u>
 Total (rounded)	 <u>\$729,800</u>

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

- (3) The grounds of appeal to the Board relevant to this appeal were:

"Ground 2: The assessment of the improvement value is too high and in turn in error.

Facts:

- a) The 0.77 is based on sales that are not indicative of the subject property in terms of quality. Good

quality restaurants would indicate a MAF of 0.65.

- b) The sale of 2144 6th Avenue West was not predominately a restaurant at the time of sale and should be removed from the MAF Calculation.
- c) The sale of 3223 2nd Avenue should be adjusted for business considerations. The purchasers were purchasing two franchises as well as the buildings and land. This sale price of this sale should either be adjusted down to reflect the inclusion of franchise fees or be removed from the MAF calculation.
- d) The subject property sold for \$612,500 which would indicate that the current 0.77 MAF should be changed to 0.58.
- e) Large restaurants (>4000 square feet) indicate a MAF of 0.58. The subject is 5,520 square feet and [sic] size and should receive a lower MAF than the .77 currently being applied or receive obsolescence for size."

(4) The record of the Board includes:

- a) Notice of appeal to the Board dated May 14, 2009;
- b) May 20, 2009 memo from the Board secretary to the city assessor providing appeal submissions received on May 15, 2009;
- c) June 10, 2009 letter from the Board secretary to the appellant with hearing agendas for August 25, 26 and 27, 2009 attached;
- d) Spreadsheet for required fees for Altus Group Limited for 2009 City of Prince Albert appeals;
- e) August 11, 2009 email message to the Board and assessor from Niki Engel of the Altus Group regarding revised covers for submissions;
- f) Appellant's 11 page appeal submission with Appendices A through P inclusive, completed July 28, 2009;
- g) An 18 page written submission from the city assessor dated August 14, 2009 with Appendices A through F attached;
- h) Email from the Board secretary to the appellant and respondent dated August 24, 2009 advising that appeals scheduled for August 25, 2009 had been moved to August 26, 2009; and,
- i) Decision of the Board dated October 26, 2009, in which the Board concluded that "the MAF calculated and used in the assessment of this property was in fact correct. There is no substantial or compelling argument to conclude otherwise" and decided to dismiss the appeal in its entirety.

- (5) The decision of the Board found the following:

"RULES:

Assessment in Saskatchewan is governed by legislation enacted by the Provincial Government. The Assessor in Prince Albert, being in a City, is bound by the Act. The Assessor must follow the provisions of the Act, and the Regulations enacted pursuant to it. These Regulations, which are prescribed by law in Saskatchewan, are found in the Saskatchewan Assessment Manual (the "Manual"). The Manual provides formulas, rules, or other technical requirements for the Assessor to follow. The Assessor can only use methods prescribed by this Manual.

ANALYSIS:

The Appellant's argument that the comparative properties used in calculating the MAF were not equal in terms of quality with the subject property was not proven. The Respondent argued successfully that they had used appropriate and equal quality properties. Further, the Respondent proved that the property identified by the Appellant as being other than a restaurant was indeed a restaurant at the time of its sale. The Respondent also proved that the franchise fees were not included in the purchase price used for the second business identified by the Appellant. Further, the Respondent successfully provided evidence to indicate that the methodology which they used to establish the MAF was appropriate, and that obsolescence was not appropriate.

CONCLUSION:

The Board concluded that the MAF calculated and used in the assessment of this property was in fact correct. There is no substantial or compelling argument to conclude otherwise.

DECISION:

The Panel concludes that the current assessment values for Roll number 220-011-510 should be maintained. This Appeal is hereby dismissed."

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

"1. The Board erred in its reliance that the Assessor must follow the Saskatchewan Assessment Manual and that the Assessor can only use methods prescribed by this Manual. The Assessor uses SAMA's 2006 Cost Guide which is non-regulated and does not have the force of law and not the Saskatchewan Assessment Manual.

2. The Board erred in its finding that the sales used to develop the MAF of 0.77 were indicative of the subject property in terms of quality.
3. The Board erred in its finding that the sale of 2144 6th Avenue West was predominately a restaurant at the time of sale.
4. The Board erred in its finding that large restaurants are not being over assessed and should not receive either a much lower market adjustment factor or obsolescence for size.
5. The Board erred in finding that the purchase price of the subject was not a better reflection of the market value and showed that the assessment was too high."

The notice of appeal to the Committee was dated November 20, 2009 and received on November 25, 2009.

- (7) To calculate a MAF of 0.77 for restaurants, the following sales were relied upon by the assessor. (Information excerpted from pages 8 and 9 of the appellants material to the Board.)

Roll Number	Property	Building Residual	Building RCNLD	Square Feet	Quality	Calc MAF
220011510	Grainfields	\$359,900	\$619,710	6,000	Good	0.58
102001810	Quiznos	\$205,300	\$316,348	2,175	Good	0.65
222002950	Spicy Peppercorn	\$112,300	\$146,121	1,952	Average	0.77
101007340	Shananigans	\$184,900	\$120,872	2,668	Average	1.53
102006560	Tim Hortons/Subway	\$849,500	\$524,323	3,793	Good	1.62
Median MAF 0.77						

- (8) The Committee received a written submission from the respondent identified as Exhibit AAC R1.

LEGISLATION:

The Cities Act:

“163 In this Part:

(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;

(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.

(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) 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.

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

(5) Equity in non-regulated property assessments is achieved by applying the market valuation standard so that the assessments bear a fair and just proportion to the market value of similar properties as of the applicable base date.

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.

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.”

CASE LAW:

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

Estevan Coal Corporation v. The Rural Municipality of Estevan No. 5, 2000 SKCA 82, 199 Sask. R. 57.

CONCLUSIONS AND REASONS:

[1] This Committee has received an appeal against a decision of the City of Prince Albert 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.

Issues common to all Altus appeals

[2] The appellant noted that the first area of concern set out in Ground 1 is based on the Board's view of equity and correctness. Did the Board err in relying on the regulations and methodology found in the Saskatchewan Assessment Manual (the Manual), while the subject was valued using the SAMA 2006 Cost Guide (the Guide) and does not have the force of law?

[3] The appellant contended that the rationale expressed by the Board in its Rules section of the decision has put its Analysis and Conclusion into question. The Board erroneously indicated that the Manual is the only source of methodology to be used by the assessor for the 2009 valuation cycle.

[4] The assessor conceded that it appeared the Board relied on a decision template from the previous assessment cycle by including this wording in its current decision.

[5] To deal with this ground, the Committee first referenced the Preface of the Guide which identified that the Vision for the 2009 Revaluation as:

"To build public trust by providing fair, transparent, understandable and defensible property valuations in a results based, mass appraisal, market value assessment system, used for the distribution of taxation."

[6] Implementation of the vision requires legislative amendments. First, in *The Assessment Management Agency Act* specifically section 12(1)(d)(i)(ii) gave the Saskatchewan Assessment Management Agency (SAMA) the authority to publish guidelines and handbooks or other reference materials in addition to the Manual for the move to market value in 2009. This enables SAMA to adopt industry standard manuals or reference materials such as the Marshall Valuation Service (M & S) cost manuals, by referring directly to them instead of having to re-publish the industry standard materials as a SAMA document.

[7] The principle to implement a market value system led to the development of a number of approaches to achieve the market valuation standard. The goal is to ensure that contemporary valuation methodologies have been applied to accurately measure the economic realities of the real estate market:

- 1) The use of the cost, sales comparison and income approach, where appropriate, in all jurisdictions. There are two non-regulated documents available for valuing these non-regulated properties: the Market Value Assessment in Saskatchewan Handbook (the Handbook) and SAMA's 2006 Cost Guide.
- 2) For regulated properties such as agricultural land, oil and gas wells, production equipment, linear property and heavy industrial property; the continuation of the regulated system using the Manual (2006 Base Year) is mandated.

[8] The subject property falls under the non-regulated property category and as such was valued by the assessor using both the Handbook and the Guide. The Manual continues to have the force of law, but the other handbooks, guidelines and reference materials do not. Nevertheless, any materials relied upon must also comply with relevant Saskatchewan legislation and accompanying regulations, and SAMA Board Orders.

[9] For the subject property, the Act is the legislation which the assessor must adhere to for proper assessment of all properties. Effective January 1, 2009, legislative amendments to the Act provided new definitions and guidelines.

- Section 163 gives new definitions for assessors to consider for market value, the market valuation standard and mass appraisal.
- Section 164.1 identifies the two standards to be met for regulated and non-regulated properties.
- Section 165(1) requires that assessments shall be prepared for each property in the city using only mass appraisal.

- Section 165(3) requires that the dominant and controlling factor of equity continues to be the predominant objective for assessment of properties.
- Section 165(5) specifies that equity in non-regulated property assessment is achieved by applying the market valuation standard so that the assessments bear a fair and just proportion to the market value of similar properties as of the applicable base date.

[10] To achieve the market valuation standard, the assessed value of the property must:

- a) be prepared using mass appraisal;
- b) be an estimate of the market value of the estate in fee simple in the property;
- c) reflect typical market conditions for similar properties; and,
- d) meet any quality assurance standards established by order of SAMA.

[11] In *Estevan Coal*, cited above, the Saskatchewan Court of Appeal (the Court) has previously defined equity as the application of the formulas, rules and principles set out in the Manual uniformly and fairly throughout municipality. This is still relevant for regulated properties valued using the Manual. In 2009, the definition of equity has been broadened through the above legislative changes to include consideration of the market valuation standard.

[12] Since the subject is a non-regulated property, the Board erroneously stated that the assessor “can only use methods prescribed by this Manual.” The Board neglected to identify the new rules and legislation governing the correct application of the market valuation standard for the subject as a non-regulated property pursuant to the above sections of the Act.

[13] Nevertheless, the Committee finds the Board did not err in its conclusion and analysis, which was based on the principle of equity pursuant to section 165 (5) of the Act.

[14] Therefore, the Committee finds that the conclusion of the Board is valid but the specification of the rules should be changed to reflect those in effect for the 2009 revaluation. The standard of review for correctness is not a check for the step-by-step procedures set out for assessors and appraisers to follow. Tribunals must look to the appraisal practices chosen by the assessor and to consider if these have resulted in an equitable value.

Issues specific to this appeal

[15] The Committee considers SAMA's mandate to prepare and establish assessment manuals, guidelines, handbooks and other materials required for the valuation of property for the province's assessors. In considering this mandate, the Committee notes that SAMA has under license, adapted an Alberta publication to be the Handbook, prepared the SAMA 2006 Cost Guide and, in addition, has arranged for the use of the Marshall Valuation Service Guide Book and the Marshall Residential Cost Handbook, both of which are frozen to the July 2006 base date and all of which are to be used in determining assessed values pursuant to subsection 163(f.4) of the Act.

[16] The Committee accepts that assessors are not required to follow the methodology in any of these publications for non-regulated properties. However, as SAMA has the mandate to provide the framework for the valuation of real property for property tax purposes, it is reasonable for the public, the reviewing tribunals and the courts to expect that the methodologies identified in the publications will be used as presented. Additionally, the Committee accepts that an assessor may move to other methods at any time, but acting in good faith as a professional with the responsibility of reporting his or her findings to the public,

the reviewing tribunals and the Court, the Committee expects that the assessor should disclose and be prepared to explain the basis and support for deviation whenever such a move is made. At all times, the assessor must recognize that the standards for mass appraisal require the use of standard appraisal methods.

[17] The appellant's agent examined the information from the sales sample with the intention of demonstrating to the Board that the subject property is over valued by the assessor. The subject is one of the five sales used in the sales analysis with a market ratio of 0.58. There is direct evidence that the Assessment to Sales Ratio (ASR) indicates a factor of 1.19 for the subject. Therefore, it could be concluded it is 19% over valued. This is attributable, at least in part, because it is the largest property in the sales sample. It is 6,000 square feet, where the rest of the sample ranges from 1,952 to 3,793 square feet.

[18] The agent further argued that by examining the good quality restaurants in the sample one could draw a similar conclusion, as the average ASR for good quality buildings is 1.10, pointing to a 10% overvaluation.

[19] Part of the problem, in the appellant's view, stems from the inclusion of the sale of the Shananigans' property in the sample as a comparable. This property is a multi-storey building with a 932 square foot apartment on the second level. This property should not be seen as a comparable for a large restaurant or a fast food restaurant. The Committee heard no arguments relating to the inclusion of the sale of 3223 2nd Avenue West.

[20] The appellant drew the Committee's attention to the fact that the present valuation scheme is acknowledged to be based on the Alberta assessment handbook. In that province, the appeal decisions have noted that the selling price is the best indicator of market value for any property and that it should be given overriding consideration.

[21] In summary, the appellant's position is that the Board erred in upholding the assessed value, given the selling price as an indicator of market value, analysis of the sales sample indicates that larger and better quality restaurants are over valued and the sample is influenced by a property that is not comparable. The assessment should have been changed to create a new neighbourhood or to afford the subject property obsolescence to reflect the downward influences on its value caused by its size or its quality.

[22] The assessor argued that the sales sample is small but represents the range of restaurant sales available in the city. There is no dispute of the appellant's mathematics regarding the indicators for the subject property, but moving away from that property, it is evident that the remaining indicators span the MAF or indicate a higher value, not a lower value. This indicates there is no bias for either size or quality. To adjust this five sale sample in any way would create a grouping so small that statistical testing would be meaningless, if possible at all.

[23] He argued that the Board did not err in its decision to dismiss the appeal on a statistical basis.

[24] The assessor acknowledges that courts and tribunals in other jurisdictions will give regard to single indicators for value. He argued, however, that Saskatchewan is on a mass appraisal system for both valuation and appeal, therefore these references are of no assistance here.

[25] He argued that the Board did not err in its decision to dismiss the appeal even with the sales price indicator as evidence.

[26] For the reasons that follow, the Committee accepts the position of the assessor in this appeal.

[27] There is only a small sample of five sales in this municipality that have a restaurant use as the predominant use and the assessor has decided to include all of these indicators in a sample to arrive at a city-wide MAF. In all cases, there will be properties above and below the median and while there are observations that can be made, the Committee accepts the assessor's argument that a trend is not evident. In Cadillac Fairview, cited above, the Court recognized that there are often options for groupings, but at the same time the Court deferred to the discretion afforded to the assessor when making these decisions. In a large sample, the result might be different, but in this case, the Board did not err.

[28] As for the Shananigans' property being included, the Committee notes that the predominant floor space (2,668 square feet) is for restaurant use and that the lo-rise apartment is of lesser size (932 square feet). The appellant makes no issue regarding the storage building (332 square feet). The respondent argued that a 2000 building permit was for the purpose of restaurant development and that use continues in the noted floor space. The sale date was 2005. Again, given the small sample size, the Committee accepts that this sale should be included with properties of the same predominant use – namely restaurant.

[29] In Estevan Coal, cited above, before it was entrenched in legislation, the Court ruled that it is appropriate for tribunals to conduct their valuations on the same basis as the assessor. This has now been entrenched when the market valuation standard has been defined as an estimate of market value using mass appraisal techniques. What is significant is that in this jurisdiction the Board is also prevented from making a decision based on single property appraisal techniques. It is common in other provinces and states to assess on mass appraisal and to deal with appeals on a single property appraisal basis, but in Saskatchewan the mass appraisal techniques are mandated for all parties.

[30] The agent's arguments suggest that the market value of the property is the objective of the Saskatchewan assessment scheme; therefore a one to one

relationship with the selling price and the assessment is ideal. The Committee does not see it to be so cut and dried. The International Association of Assessing Officers defines sale price in the text *Property Appraisal and Assessment Administration* as “[t]he price for which a property was sold.”

[31] While there are definitions given for market value by various professional authorities, it is defined in section 163(f.2) of the Act as:

“ . . . the amount that a property should be expected to realize if the estate in fee simple in the property is sold in a competitive and open market by a willing seller to a willing buyer, each acting prudently and knowledgeably, and assuming that the amount is not affected by undue stimuli.”

[32] To provide direction to assessment users in Saskatchewan, section 163(f.1) of the Act introduces and defines a new term, market valuation standard. This is:

“ . . . 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;”

[33] In the Committee’s view, the sale price represents the actual and historical amount a single seller and a single buyer concluded the price for which a specific property was exchanged. This is a reported number and makes no judgment on the knowledge or stimulus of either party and has no limitations placed on the sales environment.

[34] In a single property appraisal, the objective is to examine a series of sale prices to estimate what price any buyer and any seller, acting openly,

knowledgably and without duress, would pay for a specific property at a given time. This is the market value.

[35] In mass appraisal, the objective is to examine a series of sale prices to estimate what price any buyer and any seller, acting openly, knowledgably and without duress, would pay for any similar property in a market study area at a given time. This is the market valuation standard.

[36] Therefore, there is a link to the three values being considered, where the market valuation standard is intended to estimate the market value which, in turn, is intended to estimate sale price. In this assessment cycle, it can no longer be said that the value placed on the assessment roll is an artificial value because of these links. However, one must recognize there is a progressive range of variables from the sale price to the market value to the market valuation standard. The values found are tested separately, applied to different purposes and, as a result, may vary in the final dollar amount.

[37] The Board did not err when it dismissed the appeal on the basis of using the selling price as a determinative indicator.

[38] Therefore, the Board erred in its approach to considering this appeal, as the assessor has more discretion than to only follow a manual, but the Board did not err when it made its decisions regarding the value of this property when it did not re-stratify, or offer obsolescence and when it was not persuaded to replicate the selling price as the assessment.

DECISION:

This appeal is dismissed. For 2009, the assessed value shall remain as found by the Board.

The filing fee shall be retained.

DATED AT REGINA, Saskatchewan this
28th day of September, 2010.

SASKATCHEWAN MUNICIPAL BOARD
Assessment Appeals Committee

- original signed by -
Per: _____
David Wilkin, Chairman

- original signed by -
Per: _____
Cynthia J. Schwindt, Secretary

- original signed by -
Wade Armstrong, for the Committee

I concur: _____
- original signed by -
Jenny Lai Yu, Member

- original signed by -

Robert L. Edwards, Member