

# **BOARD OF REVISION**



## ***DECISION WORDING PRECEDENT DOCUMENT***

Last Updated: May 27, 2021

## INTRODUCTIONS

### **Standard Introduction**

This is an appeal of the assessment of a commercial/residential/multi-use property in the City of Regina. In this decision, we refer to Mr./Ms. who as the “Appellants” and/or the “Agents”, to Mr./Ms. assessor as the “Assessors” or the “Respondents”, to the Board of Revision Panel as the “Board,” to *The Cities Act* as the “Act”, and to the Saskatchewan Assessment Manual as “the Manual”.

### **LIMP.Introduction**

This is an appeal of the local improvement assessment of a residential property in the City of Regina. In this decision, we refer to Mr./Ms. assessor as the “Appellants”, and/or the “Agent,” to Mr./Ms. assessor as the “Assessors” or the “Respondent,” to the Board of Revision Panel as the “Board,” to *The Cities Act* as the “Act”, and to *The Local Improvement Act, 1993* as “LIA”.

## PRELIMINARY MATTERS

### Pre.01

There were no preliminary matters or objections at the commencement of the hearing.

### Pre.02

There was no objection to the jurisdiction or composition of the Board.

### Pre.03

The Assessor recommended that the total assessment be changed from **xx** to **xx**. The Assessor provided particulars of this change to the Board.

### Pre.04

The Appellant/Agent applied under subsection 209(1) of the Act to amend the Notice of Appeal to include **xxxxxxx** as grounds of appeal. The Respondent?? objected. The Board considered the application, in light of the circumstances, and **allowed/dismissed** the application and so ordered.

### Pre.05

The Board ordered the following amendments to the Notice of Appeal:

**insert wording from the order**

### Pre.06

The Appellant/Agent sought to have the Board consider late written materials. The Respondent objected. The Board considered the request, in light of the circumstances, and **agreed/refused** to accept and consider the materials and so ordered.

### Pre.07

The Appellant/Agent and the Respondent agreed that Appeal #2022-appeal # would be heard first, and that all evidence and argument from that appeal would be carried forward into the following appeals:

Appeal #2022-appeal #

### Pre.08

At the hearing, the Appellant/Agent applied to withdraw the following grounds of appeal:

**insert submission from Appellant/Agent**

The Board allowed the Appellant/Agent to withdraw **these/this** grounds of appeal. The Assessor did **not** object. His objection was **xxx**

### **Pre.09**

The parties agreed that all of the evidence heard in **xxxx** v. City of Regina, Appeal No. **xxx**, Board of Revision (herein "Appeal **xxx**") be considered as evidence in this appeal.

**Pre.10** (NOTE: You must indicate to the typist which of the paragraphs from Pre.11 to Pre.13 to insert, but if using this section, **you must first include pre.10**)

In *Kolitsas Holdings Ltd., et al. v. The City of Regina, et al.*, 2003 SKCA 74, the Court states the following at page 21:

### **Pre.11**

The introduction of expert testimony before a Board of Revision or the Committee must be determined on a case by case basis. Before expert opinion evidence is admitted, the moving party must demonstrate that such evidence is required on some matter beyond the common store of knowledge of the trier of fact, and about which the trier of fact would be unlikely to reach a correct decision without the expert's help.

### **Pre.12**

In assessment cases, the Board of Revision and possibly the Committee must assume the role of a trial judge and act as the "gatekeeper" in determining such an admissibility issue: See *R. v. J.J.*, [2002] 2 S.C.R. 600; 148 C.C.C. (3d) 487 at 499-500.

### **Pre.13**

... [W]e go no further than refer to the criteria for admissibility of expert opinion evidence articulated by the Supreme Court of Canada in *R. v. Mohan, supra*. In *Mohan*, Sopinka J., speaking for the Court, outlined the following criteria that must be satisfied to permit the introduction of such evidence:

- 1) Relevance
- 2) Necessity
- 3) Absence of any exclusionary rule; and
- 4) A properly qualified expert.

It is for the "gatekeeper" to determine on a case by case basis whether such criteria have been satisfied.

### **Pre.14**

A court reporter was present, transcribing the evidence for this appeal.

### **Pre.15**

A court reporter was not present to transcribe the evidence for this appeal.

## **Pre.16**

This appeal took place according to the simplified procedure.

## **Pre.17**

The *Cities Act* provides the Board with discretion to order an amendment to the grounds of the Notice of Appeal. The Appellant (or Agent) requested that the Board amend the Notice of Appeal in this case.

The Board, in having considered the timing of the request, the opportunities given to the Appellant (or Agent) to raise the grounds in the original Notice of Appeal and any requests to perfect the Notice of Appeal, the relevance of the proposed amendment, the prejudice to any parties involved, and the ability of the Board to adjourn the appeal, has determined that the request must be denied (or allowed).

Reasons to support this are as follows:

- 1) what
- 2) what
- 3) what

## **Pre.18**

The Appellant (or Agent) filed a Notice of Appeal on date, 2022. The Secretary of the Board determined that the Notice of Appeal was insufficient as filed, and by letter dated date, 2022, notified the Appellant (or Agent) that he would be required to perfect the Notice of Appeal within # days of the date of that letter. On date, 2022, the Appellant (or Agent) filed further materials in response to the Secretary of the Board. There was no objection to the Notice of Appeal that was placed before the Board for this hearing. **OR** The Assessor objected to the sufficiency of the Notice of Appeal that was placed before the Board for this hearing.

## **Pre.19**

Appeals #2022-appeal # and #2022-appeal # were heard concurrently due to Appeal #2022-appeal # dealing with civic address of larger property; the portion is occupied by a tenant, namely business name. Although the hearings for these two appeals were co-joined, the two appeals were not consolidated. The remain two separate appeals.

In this Appeal #2022-appeal #, the ‘subject’ is civic address of larger property in its entirety.

In this Appeal #2022-appeal #, the ‘subject’ is the portion of civic address of larger property known as business name.

## ISSUES

### **Iss.01**

The Board identified the issues to be:

- 1) what
- 2) what
- 3) what

### **Iss.02**

The parties confirmed that these are the only issues the Board is required to determine.

## FACTS

### **Facts.01**

The subject property is civically described as insert address. It is a commercial/residential/mixed use property, with a total assessment of \$XXX for year. The total assessment was arrived at using the cost, income or direct sales approach to value.

The specific features of the property relevant to this appeal are (insert details as per evidence in the appeal).

### **Facts.02**

The Respondent agreed individual market values may differ from the total assessment, but said Assessors are bound by provincial legislation, which dictates how properties are assessed. Values are derived using mass appraisal techniques, rather than individual appraisals. Residential properties are valued by using a multiple regression analysis. The Respondent testified that rules, procedures and guidelines defined in the Act and in the assessment manual prepared by SAMA had been correctly followed. The Respondent also supplied copies of the property detail report and calculations employed respecting the subject property.

### **Facts.03**

The Agent/Appellant presented the Board with the following information:

what

The Board has considered this information, and in the Board's view, it is not relevant.

## **RULES / THE CITIES ACT**

### **Rules.01**

Assessment in Saskatchewan is governed by legislation enacted by the provincial government. The Assessor in Regina, being in a city, is bound by the Act. The Assessor must follow the provisions of the Act, and the Regulations enacted pursuant to it. Legislation as well as the Manual provides rules, formulas and other technical requirements for the Assessor to follow. The Assessor can only use methods prescribed by legislation.

### **Rules.02**

Assessment is a technique applied on a large-scale called mass appraisal. The Saskatchewan Court of Appeal describes the technique as follows:

The method of valuation remains mass appraisal, the process of valuing a group of properties using standard methods and allowing for statistical testing. Individual appraisals and actual market value of the property being assessed have no place in the process. (*The Cadillac Fairview Corporation Limited et al. v. The City of Saskatoon et al.*, 2000 SKCA 84, June 29, 2000, at paragraph 34.)

### **Rules.03**

There is the over-riding principle of equity. The Act requires that all property be assessed as of the applicable base date. Equity is achieved by following the procedure outlined by the Court of Appeal for Saskatchewan in precedent case law. The Act, in subsection 165(3), provides that the “dominant and controlling factor in the assessment of property is equity”. To achieve equity, the Assessor must apply the directed method of assessment uniformly and fairly throughout the assessment roll. The Assessor does have a degree of discretion, where appropriate, and the Courts have instructed the Board to pay deference to that discretion, when appropriate. The Saskatchewan Court of Appeal explains this issue in *Estevan Coal Corporation v. Rural Municipality of Estevan No. 5 et al.*, 2000 SKCA 82, June 29, 2000, at paragraphs 19 through 23.

### **Rules.04**

The Board of Revision’s role is to review the assessment for error. If, on the evidence, the Appellant cannot demonstrate an error in the assessment, the appeal must be dismissed. However, if the Appellant demonstrates an error, then the Board has the power of correction. When the Assessor has assessed a property and achieved equity as prescribed by legislation, the Board is limited by the Act in altering the assessment by virtue of subsection 210(3), which prevents the Board from altering the assessment if equity has been achieved with similar properties in the city. The Board is also restricted from varying an assessment using single property appraisal techniques.

## **Rules.05**

Certain appeals may call into question the Assessor's application of various aspects of legislation, case law, the Manual, or otherwise, and in those cases, the Board will review those specific matters.

## **Rules.06**

The Board considers the following sections of the Act and the Saskatchewan Assessment Manual to also be relevant to this decision:

enter the relevant section(s)

## **Rules.07**

The Board considers the following legal precedents to be relevant:

type "board of revision decision" or "smbaac decision" then fill in appropriate information

## **Rules.08 (Local Improvements)**

34(1) The Board of Revision has jurisdiction and power to review the proposed special assessments and to amend them as to all or any of the following matters:

- a) the names of the owners of the lands;
  - b) the frontage or other units of measurement of the lands used for calculating the special assessments;
  - c) the calculation of special assessments, having regard to equity and to their conformance to relevant bylaws and requirements of this Act;
  - d) the lands to which section 30 applies;
  - e) the lands that are or will be benefited by a local improvement and subject to special assessment; and
  - f) conformance of the items included in the cost of a local improvement and conformance of the rate of special assessment to the requirements of this Act.
- (2) The Board of Revision does not have jurisdiction or authority to review or alter the portions of the cost of the local improvement that are to be borne as the owners' share of the cost and the municipality's share of the cost respectively according to the bylaw providing for the undertaking of the local improvement except as may be required in order to make adjustments to special assessments pursuant to this section.
- (3) The Board of Revision does not have the power or authority to review or alter:
- a) the actual cost of a local improvement; or
  - b) the basis of special assessment chosen by the council pursuant to section 19. 1993, c.L-33.1, s.34.

## **ANALYSIS AND CONCLUSION**

### **Analysis.01**

The Appellant's testimony respecting property sale prices is not a mass appraisal approach to value which is a requirement of legislation.

### **Analysis.02**

Although the legislation sets out a market valuation standard which includes a requirement of mass appraisal, the Board can not find that an assessment is in error solely because the assessed value does not equal the actual market value. Market value is the amount that an individual property would sell for in the marketplace and takes into account the individual features of every property. The value of a property for assessment purposes is determined by applying the market valuation standard set out in legislation and the formulas, principles and tables contained in the Manual. Assessed values are determined by using mass appraisal and is based on averages that are applicable throughout Saskatchewan.

### **Analysis.03**

Assessed value assigns the same value to all buildings of a comparable nature. Comparable does not mean exactly alike. There may be some differences between the subject property and comparables used by the Assessor, which would be accounted for in market value. Assessed value however, does not take into account these variances.

### **Analysis.04**

The Board finds that there is no error in the assessment and the appeal must fail.

### **Analysis.05**

Residential properties are assessed using the sales comparison approach based on multiple regression analysis. Prior to 2005 properties of this type were costed, depreciated, and then adjusted by a market adjustment factor. Since 2005, the Assessor determines a single value for the property (land and buildings together) by determining a value based upon a sales comparison approach. Residential properties with like features are tested using a statistical process. This process then leads directly to the end result, being the assessed value.

### **Analysis.06**

In conclusion, the Board understands and empathizes with the Appellant's point of view and arguments but, in the final analysis, the Board can find no error in the assessment.

## DECISIONS

### **Dec.01 (dismisses all)**

The Board dismisses this appeal with respect to all issues.

The appeal filing fee shall be retained.

### **Dec.02 (allows all)**

The Board allows this appeal. The Assessor is ordered to change what (e.g. the capitalization rate from ? to ?).

Therefore, the Assessor is ordered to change the year total assessment and is directed to revise the assessment roll as follows:

Total assessment changed from:	\$«ORIGINA L_ASMT»	to	\$«C1_DECISION _ASMT»
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The appeal filing fee shall be refunded.

### **Dec.03 (allows some)**

The Board allows this appeal with respect to the xxxx valuation only. The Assessor is ordered to change what (e.g. the capitalization rate from ? to ?).

Therefore, the Assessor is ordered to change the year total assessment and is directed to revise the assessment roll as follows:

Total assessment changed from:	\$«ORIGINA L_ASMT»	to	\$«C1_DECISION _ASMT»
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The appeal filing fee shall be refunded.

### **Dec.04 (school/owner)**

The Board allows the appeal with respect to school support registered owner. Therefore, the Assessor is directed to revise the assessment roll as follows:

From:	Public Board ( <u>xxx</u> %); Separate Board ( <u>xxx</u> %)
To:	Public Board ( <u>xxx</u> %); Separate Board ( <u>xxx</u> %)





## **ASSESSOR'S RECOMMENDATION**

### **Standard Introduction**

Same autotext as on Page 1 of this document.

### **Pre.Recom**

Prior to the hearing of evidence, the Respondent informed the Board that the Assessor had a recommendation with respect to the land/building on the subject property.

### **Issues.Recom**

The issues before the Board are what

### **Facts.Recom.01**

The Assessor recommended that the total assessment be changed from xxx to xxx. The Assessor provided particulars of this change to the Board.

### **Facts.Recom.02**

The Appellant/Agent accepted the Assessor's recommendation at the hearing. Therefore, the Board was not required to consider any other issues.

### **Facts.Recom.03**

The Appellant did not appear at the hearing. Therefore, no evidence was presented to the Board on the Appellant's behalf.

### **Rules.Recom**

In light of the Assessor's recommendation, it is unnecessary for the Board to refer to the legislation, regulations, or manuals governing the assessment process.

### **Analysis.Recom**

The Board finds no other issues need to be addressed with respect to this appeal.



## PROTECTIVE APPEAL

### Standard Introduction

Same autotext as on Page 1 of this document.

### Pre.01

Same autotext as on Page 2 of this document.

### Pro.01

At the commencement of the hearing, the parties agreed to waive their opportunities to present evidence or argument to the Board, with respect to the year total assessment. The Board confirmed with the Agent and the Assessor that both were aware of their rights to present evidence and argument at the hearing. Both parties indicated that they did not wish to present anything further to the Board, as this Appeal is “protective” in nature. That is, there are past decision(s) which both parties agree to have the Board apply in this case. As both parties waived their opportunity to provide anything further to the Board, other than their written submissions filed ten days in advance of the hearing, the Appeal proceeded on that basis.

### Pro.02

This property is situated at insert address. The building on the property is a insert description.

The Agent contends that the insert what agent says is wrong is in error, and relies on past decision(s) of this Board, in this regard.

The Assessor submits that the assessment is properly conducted; however, he acknowledges that the past decisions of the Board have not upheld his methodology and application of legislation and the Manual. The year decision(s) of this Board are under appeal before the Saskatchewan Municipal Board Assessment Appeals Committee (SMBAAC). As such, the Assessor indicated that the Board may make a decision consistent with its past decisions, and allow the SMBAAC’s decision from the year appeals to govern at the end of the day.

### Pro.03

In this Appeal, as both parties have submitted that the Board should apply a decision consistent with the decision of the Board concerning this property in the previous year(s), the Board sees no reason to do otherwise.

The Board reviewed the within issues in name of appellant v. *City of Regina*, Appeal #2022-appeal #. Based upon the reasoning given in that Appeal and the oral and written submissions provided on behalf of the Agent and Assessor, the Board is prepared to allow this Appeal. The

what is in error and should be corrected from what to what . This decision should be read in conjunction with the above noted decision, in order to comprehend the reasoning behind the decision.

**Iss.01**

Same autotext as on Page 4 of this document.

## MISCELLANEOUS

### **Husk Citation**

Husk v. City of Regina (1996), 141 Sask. R. 74 (C.A.) (hereinafter “Husk”)

### **Laing Citation**

Regina (City) v. Laing Property Corp. (1994), 128 Sask. R. 16 (C.A) (hereinafter “Laing”)

### **Rules.09**

Same autotext as on Page 8 of this document.

### **Board of Revision Decision**

*name of appellant*, City of Regina, Appeal No. #, Board of Revision, (herein “Appeal #2022-appeal #”).

### **Court of Appeal Decision**

*who* v. *who*, citation, date of decision, page or paragraph #, states as follows:

### **SMBAAC Decision**

*who* v. *who*, date of decision, # of decision (S.M.B.A.A.C.) (hereinafter “#”)

### **Locational Adjustment**

Saskatchewan Assessment Manual - Volume 1 - Document Number 2.2.6, page 1, states:

“The location adjustment may be applied to account for any gain or loss in value, that is not accounted for in the neighbourhood base land rate, due to the proximity of the parcel to factors such as:

- A value influence centre;
- Schools, shopping, public transport and other attractions; or
- High traffic roadways, railways, industrial parks, high density residential housing, and other nuisances.”

### **1.1.1**

Market Value Assessment in Saskatchewan Handbook - Introduction defines mass appraisal as follows:

“...the process of preparing assessments for a group 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;”

## **2.1.3 Comparable**

### Comparable Neighbourhood Sales

Comparable neighbourhood sales may be used as an alternative to vacant land sales in the application of the sales comparison method for determining the base land rate.

Comparable neighbourhood sales should be used where vacant land sales in the subject neighbourhood are limited and there are sufficient vacant land sales in a comparable neighbourhood to establish reliable results.

## **34 Cadillac Fairview**

Paragraph 34 of *The Cadillac Fairview Corporation Limited et al v. The City of Saskatoon et al*, 2000 SKCA 84, June 29, 2000 ("*Cadillac Fairview*"), states as follows:

"It has already been mentioned that the manual has the force of law. In considering the issues, the content of Document 1.1.1 must always be kept in mind. The object of the process is to arrive at a fair value which is comparative value, close to market value, arrived at in accordance with the requirements of the Act and the manual. The method of valuation remains mass appraisal, the process of valuing a group of properties using standard methods and allowing for statistical testing. Individual appraisals and actual market value of the property being assessed have no place in the process. The concept of fair value, as opposed to market value, and the objects of the assessment process have been discussed extensively in *Laing* and *Estevan Coal* and these, too, must be kept in mind throughout."

### **73 Cadillac Fairview**

Paragraph 73 of *The Cadillac Fairview Corporation Limited et al v. The City of Saskatoon et al*, 2000 SKCA 84, June 29, 2000 ("*Cadillac Fairview*"), states as follows:

"The city's contention that it established the reliability of the MAF by a comparison with the MAF established in Regina through two sales of enclosed malls, and by a comparison with the sale price of Midtown plaza itself after the cutoff date does not advance its case. A MAF arrived at by a method not provided for by the manual cannot be justified on this basis. Equity lies in the even, consistent and proper application of the manual, according to its terms. In this case, the taxpayer (and the owners of the other enclosed malls) has been treated differently from all other taxpayers in terms of calculation of the MAF."