
RECORD OF DECISION
CITY OF SASKATOON, BOARD OF REVISION

APPEAL NO.:	139-2019 (lead)	ROLL NO:	405304050
	048-2019		405305100
	132-2019		415303200

RESPONDENT: City of Saskatoon

In the matter of an appeal to the City of Saskatoon, Board of Revision by:

APPELLANT: Altus Group Limited on behalf of various owners

respecting the assessment of:

Appeal No.	Property Owner	Legal Description - Parcels	Civic Address
139-2019	City of Saskatoon	164957989	3810 Arthur Rose Avenue
048-2019	City of Saskatoon	165137182	3924 Brodsky Avenue
132-2019	101172416 Saskatchewan Ltd.	161458993,161459006, 161459084,161459107	126 Wheeler Street

for the year 2019:

BEFORE

Mr. Adrian Deschamps, Chair, Board of Revision
Ms. June Bold, Member, Board of Revision
Mr. Cameron Choquette, Member, Board of Revision

**Appeared for
the Appellant**

Mr. Jesse Faith, Altus Group Limited

**Appeared for
the Respondent**

Mr. Travis Horne, Revaluation and Assessment Appeal
Coordinator, Assessment & Valuation

The appeal was heard in Council Chamber, City Hall, in the City of Saskatoon on July 26, 2019.

This is a regular appeal of the assessment of a **commercial** property in the City of Saskatoon. In this decision, we refer to the Board of Revision Panel as the “Board” or “Panel,” to *The Cities Act* as *The Act*, and to the Saskatchewan Assessment Management Agency Assessment Manual as “the Manual,” and the Saskatchewan Assessment Management Agency Market Value Handbook as “the Handbook”.

PRELIMINARY ISSUES:

The parties were advised that the proceedings were being recorded for the purposes of the Board and the Panel Clerk. The Chair introduced the Board members and the Panel Clerk and briefly outlined the procedures that would be followed during the course of the hearing.

At the request of the Respondent, and pursuant to Section 208 of *The Cities Act*, the Chair ordered that the hearing be recorded by Royal Reporting Services.

The Agent and the Respondent agreed that Appeal 139-2019 would be heard first and that all evidence and argument from that appeal would be carried forward into appeals 132-2019 and 48-2019.

The Agent and Respondent agreed that the evidence and argument from Appeal 36-2019 be carried forward into the record of this appeal as it pertains to the cap rate ground of appeal.

GROUND AND ISSUES:

- Ground 1: The Assessor erred in the calculation of the property assessment when applying the current capitalization rate.
- Ground 2: The Assessor has failed to achieve the market valuation standard.
- Ground 3: The Assessor has failed to maintain equity when determining the current assessment of the subject property.
- Ground 4: The Assessor has failed to apply the findings of SMB decision AAC 2017-0225 in determining the current assessment.
- Ground 5: The estimated net operating income is in error.

EXHIBITS:

** Denotes Exhibits **not** submitted within the prescribed time as provided in Section 200(1) of *The Cities Act*

- A.1 Notice of Appeal from Altus Group to the Board of Revision, received February 4, 2019.

- A.2 **COMMON DOCUMENT** - Appellant's submission to the Board of Revision, (Acklands-Granger Inc. Et Al), received April 30, 2019 (Note: Document includes Appendix A to V and Addenda 1 to 5). (**FOR USE WITH:** 36, 41, 44, 46, 47, 48, 56, 57, 65, 72, 87, 88, 90, 91, 92, 115, 118, 129, 132, 134, 135, 137, 138, ,139, 140, 145,146,147, 149, 154, 155, 156, 158, 160, 161, 165, 168, 169, 172, 174, 175, 178, 180, 184, 185).
- A.3 Document A.3 was not submitted for this file.
- A.4 Document A.4 was not submitted for this file.
- A.5 **COMMON DOCUMENT** – Appellant's submission to the Board of Revision, (Conax Properties Ltd. Et Al) received April 30, 2019. (**FOR USE WITH:** 96, 97, 98, 99, 100, 101, 139, 48, 132, 164)
- A.6 **COMMON DOCUMENT** - Appellant's rebuttal document to the Board of Revision, (Acklands-Granger Inc. Et Al), received May 15, 2019 (**FOR USE WITH:** 36, 41, 44, 46, 47, 48, 56, 57, 65, 72, 87, 88, 90, 91, 92, 115, 118, 129, 132, 134, 135, 137, 138, ,139, 140, 145,146,147, 149, 154, 155, 156, 158, 160, 161, 165, 168, 169, 172, 174, 175, 178, 180, 184, 185).
- A.7 **COMMON DOCUMENT** - Appellant's submission titled "Expert Will Say Statement & Curriculum Vitae" submitted to the Board of Revision, received May 15, 2019 (**FOR USE WITH:** 36, 41, 44, 46, 47, 48, 56, 57, 65, 72, 87, 88, 90, 91, 92, 115, 118, 129, 132, 134, 135, 137, 138, ,139, 140, 145,146,147, 149, 154, 155, 156, 158, 160, 161, 165, 168, 169, 172, 174, 175, 178, 180, 184, 185).
- B.1 Document B.1 was not submitted for this file.
- R.1 **COMMON DOCUMENT** – submitted by the City Assessor titled "Warehouse & Automotive Response 2019 Assessment", received May 13, 2019. (**FOR USE WITH:** 36, 41, 44, 46, 47, 48, 56, 57, 65, 72, 75, 87, 88, 90, 91, 92, 115, 118, 129, 132, 134, 135, 136, 137, 138, 139, 140, 145, 147, 149, 154, 155, 156, 158, 160, 161, 163, 164, 165, 168, 169, 172, 174, 175, 178, 180, 181, 184, 185)
- R.2 **COMMON DOCUMENT** –submitted by the City Assessor titled "2019 General Law and Legislation Brief", received May 13, 2019. (**FOR USE WITH:** 36, 41, 44, 46, 47, 48, 56, 57, 65, 72, 75, 87, 88, 90, 91, 92, 115, 118, 129, 132, 134, 135, 136, 137, 138, 139, 140, 145, 147, 149, 154, 155, 156, 158, 160, 161, 163, 164, 165, 168, 169, 172, 174, 175, 178, 180, 181, 184, 185)
- R.3 **COMMON DOCUMENT** –submitted by the City Assessor titled "2019 Expert Witness Law and Legislation Brief", received May 13, 2019.

(FOR USE WITH: 36, 41, 44, 46, 47, 48, 56, 57, 65, 72, 75, 87, 88, 90, 91, 92, 115, 118, 129, 132, 134, 135, 136, 137, 138, 139, 140, 145, 147, 149, 154, 155, 156, 158, 160, 161, 163, 164, 165, 168, 169, 172, 174, 175, 178, 180, 181, 184, 185)

R.4 **COMMON DOCUMENT** –submitted by the City Assessor titled “2019 Notice of Appeal Law and Legislation brief”, received May 13, 2019.

(FOR USE WITH: 36, 41, 44, 46, 47, 48, 56, 57, 65, 72, 75, 87, 88, 90, 91, 92, 115, 118, 129, 132, 134, 135, 136, 137, 138, 139, 140, 145, 147, 149, 154, 155, 156, 158, 160, 161, 163, 164, 165, 168, 169, 172, 174, 175, 178, 180, 181, 184, 185)

R.5 **COMMON DOCUMENT** –submitted by the City Assessor titled “2019 Response Evidence Law and Legislation Brief”, received May 13, 2019.

(FOR USE WITH: 36, 41, 44, 46, 47, 48, 56, 57, 65, 72, 75, 87, 88, 90, 91, 92, 115, 118, 129, 132, 134, 135, 136, 137, 138, 139, 140, 145, 147, 149, 154, 155, 156, 158, 160, 161, 163, 164, 165, 168, 169, 172, 174, 175, 178, 180, 181, 184, 185)

R.6 **COMMON DOCUMENT** –submitted by the City Assessor titled “Salient Facts & Field Sheets”, received May 13, 2019.

(FOR USE WITH: 41, 44, 46, 47, 48, 56, 57, 65, 72, 75, 80, 87, 88, 90, 91, 92, 96, 97, 98, 99, 100, 101, 115, 118, 122, 129, 132, 134, 135, 136, 137, 138, 139, 140, 144, 145, 147, 149, 154, 155, 156, 158, 160, 161, 164, 165, 168, 169, 172, 174, 175, 178, 180, 184, 185)

FACTS:

The following particulars supplied by the Assessment & Valuation Division are of public record and are deemed material to the issues under appeal.

Appeal No.	Roll No.	Legal Description (Parcels)	Zoning	Current Assmt	Current Taxable Assmt	% of Assmt
139-2019	405304050	164957989	IL2	10,139,600	10,139,600	1.00
048-2019	405305100	165137182	IH2	7,142,700	7,142,700	1.00
132-2019	415303200	161458993, 161459006, 161459084, 161459107	IL3	11,921,500	11,921,500	1.00

GROUND 1 to 4

Carry forward from 36-2019:

APPELLANT'S EVIDENCE AND ARGUMENTS:

- [1] The Appellant's position was that the issue before the Panel was the inequity in the assessments of some large warehouses in Saskatoon. That inequity had arisen because the Assessor's stratification of those properties had been based first on location. As well, the Assessor had used smaller properties as comparables. The neighborhood stratifications in the Assessor's current model were based on narrow market segments with size breaks of 7,000 and 24,000 sqft in selective geographic neighborhoods. This narrowing should be removed so as to allow the stratification to be more reflective of a division of properties into groups that had similar traits and value characteristics.
- [2] The Assessor had combined several neighbourhoods into the current cap rate group "3" and "7". This group represented stratification for warehouses that were larger than 7,000 sqft and had site coverage of either less than or greater than 27%. All of the properties under appeal fell into one of the two groups relative to their site coverage.
- [3] The Appellant found the neighbourhood stratification used by the Assessor to be unsupported. The 2013 revaluation had stratified large warehouses city wide so that those warehouses similar in size both north and south of 51st Street were assessed using the same cap rate. In the current assessment model, location took precedent over building size. The result was that, dependent upon the neighbourhood and site coverage, a warehouse property greater than 24,000 sqft could be assessed with a cap rate of either 5.50%, 6.60% or 8.64%.
- [4] One of the sales used by the Assessor to develop the 6.60% cap rate was the property located at 118 Tubby Crescent. That property, located in NBHD 30017 (north of 51st Street), was greater than 24,000 sqft and had a calculated cap rate of 8.12%. The sales of similarly sized properties from NBHD 30023, south of 51st Street, had cap rates of 7.22%, 8.49%, 8.67% and 8.95%. This indicated that there was no significant division north or south of 51st Street for properties greater than 24,000 sqft.
- [5] The Appellant acknowledged that rental markets and sales markets may or may not be similar, but in the case of warehouses greater than 24,000 sqft north and south of 51st Street they were similar. The majority of the six sales used by the Assessor to develop the 8.64% cap rate were located in NBHD 30023, south of 51st Street. The Assessor's model market rent for those properties was based on a \$9.54/sqft constant with no adjustment for location. The Tubby Crescent sale located in NBHD 30017, north of 51st Street, also had a model market rent based on a \$9.54/sqft constant with no adjustment for location. Its market cap rate however, was only 6.60% because the Assessor had placed it in Group 7.

- [6] Once the Assessor determined that the stratification of warehouse properties would consider location first, those large warehouses >24,000 sq. ft., that were excluded from Market Area 5 became subject to valuations based on sales of smaller properties. This resulted in the significant discrepancy in the assessed value of those properties that found themselves in the 5.50% or 6.60% cap rate groups.
- [7] Statistical analysis for the Appellant was done by Mr. Simpson. Using the Mann-Whitney U test, he analyzed the sales (with the exception of Group 6) by building size without regard to location. Initially, the sales were arrayed city-wide with a >24,000 sqft break point without consideration of site coverage. The result indicated, with a 95% confidence level, that the two groups were different in the market place. That analysis produced a cap rate of 8.31%.
- [8] A second analysis, again using the Mann-Whitney U test, removed sales with site coverage below 17%. The result showed a higher level of confidence and demonstrated that a city-wide stratification of warehouses >24,000 sqft with >17% site coverage was warranted and further, that it reflected the analysis submitted in the Maple Leaf appeal.
- [9] *Mr. Simpson's results were then sent to Dr. Volodin by the Tax Agent for his review and consideration. Dr. Volodin, after the Chair qualified him as an expert in mathematics and statistics, responded to questions from the Tax Agent as follows:*
- Mann-Whitney, in this situation, was the best test for the cap rate variable to determine comparability in neighbourhood stratification because it was nonparametric.
 - The graphical analysis submitted in Exhibit A.2 (Appendix – Tab U) indicated that cap rates increased as building size increased. The regression analysis confirmed that a size adjustment for large warehouses was warranted.
 - The analysis for both sales groups, all sales city-wide and the removal of sales with <17% site coverage, was statistically significant.
 - The data from Mr. Simpson was “perfect” with a significant number of observations below 7,000 sq. ft., between 7,000 and 24,000 sq. ft., and over 24,000 sq. ft. He did not see any evidence to indicate that the North Industrial area was acting significantly different than the South.
- [10] *The statistical analysis for the Appellant that was done by Mr. Simpson and then sent to Dr. Volodin by the Tax Agent was also sent to Mr. William Levis for his review and consideration. In a letter dated May 14, 2019 (Exhibit A.2: App. BB) he was asked to respond to nine questions regarding the validity of the analysis. His written responses to those questions were part of the Appellant's written submission (Exhibit A.2: App. CC). Mr. Levis contributed to the hearing by telephone after the Chair qualified him as an expert in mathematics and statistics. He responded to a request from the Tax Agent for a summary of his thoughts on the analysis as follows:*

- Mann-Whitney U is an expert nonparametric test that can be used for a continuous variable against a “yes-no break” variable, where ‘yes’ indicates that a property has a certain characteristic and ‘no’ indicates that it does not. The test has been around since the 1940’s and can be used for a variety of things to test whether or not there is an equal distribution of the characteristics under study.
- Size was significant in the regression analysis sample sent to him – the neighbourhood variable was eliminated because it fell under the threshold of significance. Statistically speaking, there was no difference between the neighbourhoods as indicated by that variable.

[11] The summary / conclusion of Mr. Levis’ written response to the Tax Agent’s questions was: (Exhibit A.6 App. CC)

- 9) *In my opinion, based on the analysis provided*
- a) *There is a difference in capitalization rates between large warehouses and small warehouses*
 - b) *There is no significant difference between the neighbourhoods north and south of 51st Street*
 - c) *There is no significant difference between the large warehouse neighbourhoods by location city wide*

[12] The argument put forward here was the same as in 2017-18. The inequities in the assessment of warehouses >24,000 sqft could be remedied by expanding Market Area 5 to include NBHDs 30006, 30017, 30021 and 30026. In the alternative, there had been submitted an analysis of size on a city-wide basis as was considered and accepted in the Maple Leaf decisions BOR 60-2017, BOR 244-2018 and SMB 2017-0225. Those analyses were also done by nonparametric testing.

ASSESSOR’S EVIDENCE & ARGUMENTS:

Ms. Amy Huang was qualified by the Chair as an expert witness in statistical analysis. The Tax Agent requested that the record show that she was an employee of the City with the Assessment Office and that it was unclear how, or if, she was involved with the creation and analysis of the assessments under appeal.

[13] In response to questions from Mr. Horne, Ms. Huang said that she had done the rent model for the warehouse valuation for the current cycle. She participated in the time adjustment, but did not do the cap rate analysis. Prior to the hearing she had reviewed the Appellant’s statistical analysis (Appendices U and V of Exhibit A.2, Altus’ 20-day submission).

[14] Regarding p. 489 of that document, Mr. Simpson’s suggestion that there was a size influence at 24,000 sqft was “weird” because size was a continuous variable but he transformed it into a binary variable. She would not have done it that way.

[15] Regarding Mr. Simpson's finding that the AO neighbourhood was statistically insignificant, the variable he used had to be related to p. 491 (*All warehouse sales by size with <17% site coverage (group 1,2,3,4,5,7)*). It was not proper to run that type of regression. She said she was only able to replicate the Agent's analysis by putting the AO neighbourhood in as a nominal variable, which was wrong.

The remainder of the Assessor's evidence was given by Mr. Horne.

[16] The Tax Agent had alleged that the Assessor has failed to use similar properties to develop the assessments. The application of the market value standard required that "the assessments bear a fair and just proportion to the market value of similar properties". After a review of the Tax Agent's submissions the Assessor could find no evidence of what "market value" was or what the "market value of similar properties" was. Without evidence of what he believed "market value" or "similar properties" to be, the Agent had failed to demonstrate error.

[17] The Handbook did not limit the Assessor to a narrow market segment of only one geographic neighbourhood. The Assessor's approach developed models based on the term "neighbourhood" meaning Market Area Neighbourhood which at times may only represent a geographic area. Both the Handbook and the Cost Guide used the term "neighbourhood" to refer to any type of market stratification or grouping developed by the Assessor.

[18] The Tax Agent had suggested that size should be the first consideration in the stratification of the subject properties. The IAAO has said otherwise: in a neighbourhood there is an environment that has a direct and immediate effect on value. That neighbourhood will be a geographic area in which the properties are homogeneous and share important location characteristics. That is what the Assessor did. He looked at a possible basket of value driven characteristics and determined that he should first consider location, then size, then site coverage.

[19] Building size was not commonly accepted as the primary characteristic for assessment purposes. In reviewing Exhibit R.1 he noted:

- p.62 – (excerpt from IAAO textbook) Location was its own bold heading, Size was subject to Improvement
- p.72 – (excerpt from a UBC textbook- Important factors in demand analysis in the industrial market) all items related in some manner to location but none to size
- p.73 – (handbook Gas Station Valuation Guide) the most important single attribute of land was its location
- p.74 – (Colliers presentation on appraisal theory) property physical characteristics were secondary to location

[20] Beginning at p.54 of Exhibit R.1 was the City's current cap rate sales groups 1 to 7 and their associated COD's and cap rate statistics. That data was not provided by

Altus in their analysis. When asked about further statistical testing they did not turn their minds to properties <24,000 sqft. Putting sales >24,000 sqft into one group would have an adverse effect on some of the remaining groups.

- [21] The Tax Agent had argued that the sale of Tubby Crescent produced a cap rate comparable to other large warehouses and should have been assessed the same by combining the neighbourhoods north and south of 51st Street. However, the properties were not comparable because they were in different locations. Tubby Crescent was the only large property sale north of 51st and one sale did not make a market.
- [22] The Tax Agent had also argued that there was an inconsistent estimate of value by the Assessor for properties north and south of 51st Street. That was because he found the properties comparable for rents but not for cap rates. However, the rental market and sales markets were different. The Market Rent Model included lessees and lessors while the sales market included purchasers and vendors.
- [23] The Tax Agent acknowledged that cap rate group 6 was excluded from their analysis. That and the site coverage issue were unsupported in any way other than relying on the Maple Leaf decision. Every appeal every year must be decided on the record.

End carry forward from 36-2019.

GROUND 5:

APPELLANT'S EVIDENCE & ARGUMENTS:

The Appellant was represented at the hearing by Altus Group Limited. Acting as the Agent for the Appellant, Jesse Faith gave the following testimony:

The Agent identified Exhibit A.5 as the primary submission for the Panel to consider as it addresses the matter of zoning. Exhibit A.5 contains past decisions from the Board of Revision and the Assessment Appeals Committee that should be applied to the subject property under appeal as it pertains to zoning.

CROSS-EXAMINATION OF APPELLANT:

The Respondent's cross-examination of the Appellant and questions from the Panel yielded the following additional information:

- 1) Appendix E of Exhibit A.5 is present in the submission in order to demonstrate error in the assessment.
- 2) The Agent is asking for the Board to consider only the written submission and will not be providing any argument for the evidence provided.

- 3) The Agent agreed that some of the properties appealed today were not previously appealed.
- 4) The confidential documents included in the previous records provided for in Appendix E of A.5 are not included.
- 5) The Agent stated that he is not here to argue the similarity or dissimilarity between the properties previously appealed and those under appeal today.

APPELLANT SUMMATION:

The Agent indicated that he had tendered all of the evidence and had no further comments to add.

APPELLANT FINAL REBUTTAL:

The Agent argued that the Assessor attempted to draw in expert testimony from previous hearings and issues, but those experts only testified to the cap rate ground of appeal and not the ground pertaining to zoning.

The Agent cited AAC 2017-0194, a recent decision of the Committee that ruled on the issue of Board of Revision jurisdiction and process. The Committee found that the Board was not mistaken in hearing appeals from both the owners and tenants of the same properties in the separate hearings and issuing separate decisions.

Speaking to BOR 13+14-2019, the Agent argued that the new evidence included in the emails of Exhibit R.1 did not convince that Panel to come to a different result of changing the 18% rental rate reduction. The decision said *"The subject properties have assessments that are a "double whammy" of inequity. They are assessed the same as dissimilar properties and not assessed the same as similar properties"*.

The Agent asked that the appeal be allowed.

ASSESSOR'S EVIDENCE & ARGUMENTS:

Travis Horne of the City of Saskatoon Assessment and Valuation Division was the Respondent and gave the following testimony:

Referencing Exhibit R.1, the Respondent provided the Assessor's zoning response which referred to standard mass appraisal techniques, statistically significant data, and various case law. The case law provided to the Panel included interpretations of Section 227 of the *Act* which states the following:

(1)A decision made by a board of revision or the appeal board on an appeal of an assessment of any property applies, to the extent that it relates, to any assessment placed on the assessment roll for the property after the appeal is initiated but before the decision is made, without the need for any further appeal being initiated with respect to the assessment.

(2) If the parties to an appeal cannot agree as to whether or to what extent subsection (1) applies in their circumstances, any party to the appeal may apply to the board that issued the decision to issue a ruling on the matter.

(3) On an application pursuant to subsection (2), the board may make any ruling that it considers appropriate and that ruling is subject to appeal in the same manner as any other decision issued by that board.

The Respondent stated that this section of the *Act* does not apply to the subject properties because they have not been previously appealed, thus it is incumbent upon the Appellant to provide sufficient evidence to satisfy the burden of proof and demonstrate error in the assessment.

The Respondent then presented the MRA model used by the Assessor. The model demonstrates that zoning is not statistically significant. Further bolstering this point, the Respondent cited a number of emails included in Exhibit R.1 that showed that zoning was tested and not found to be significant in the assessment of the subject property.

Pointing to the entire evidence presented by the Assessor, the Respondent argued that the entire theory of the Appellant is disproven and that the only evidence the Panel has to consider is that zoning does not affect value and should not be included in the assessment.

The Respondent concluded his arguments and evidence by referencing the Board of Revision's policy and procedures manual that states the Board "*must decide the appeal based upon the facts presented to it, there must be sufficient evidence to prove the assessment or classification contains an error*". Simply relying on the past decisions without a new record of evidence and the appropriate information contradicts the Board's own policy and cannot substantiate the conclusion that the Appellant desires.

Not having the confidential information that the previous appeals had creates an insufficient record that ought to have this appeal dismissed on all grounds.

CROSS-EXAMINATION OF RESPONDENT:

The Appellant's cross-examination of the Respondent and questions from the Panel yielded the following additional information:

- 1) Pages 76-81 of Exhibit R.1, which are the emails indicating that zoning is not significant, were included in the record for Appeals 13+14-2019.

RESPONDENT SUMMATION:

The Respondent began his summation by citing the following decisions from the Saskatchewan Municipal Board and the Board of Revision:

AAC 2017-0192 (Case Canada v. City of Regina) para. 29 that states "In order to show an over assessment, you need to consider the entire assessment model, not just rents".

BOR 171-2018 and 509-2017 which are the two decisions pertaining to warehouse properties filed in their respective years. This case law demonstrates the impact of the decisions made by this Board and should be considered when coming to a decision on the subject property.

BOR 13+14-2019 which pertains to 3927 Wanuskewin Road (under appeal today), demonstrates that there is another record with other evidence, but the Appellant is asking that you simply rely on past decisions and carry forward a decision. The fact is that no evidence was put forward on how zoning is significant in this year and this puts the Panel in a difficult place of possibly having to rule against the previous decision in 13+14-2019.

BOR 86-2019 et al illustrates how the Board of Revision can consider appeals from past years and come to different decisions based on new evidence and argument. The Respondent stated that this is what the Assessor is asking for today – to consider the evidence put forward by both parties and come to a decision that is different than those made in 2017 and 2018.

The Respondent asked that the appeal be dismissed.

RULES, STATUTES, PRECEDENTS:

In the general course of its deliberations, the panel was guided by the principles expressed in Sections 164 and 165 of *The Cities Act*, the Market Value Assessment in Saskatchewan Handbook for non-regulated properties, and the Saskatchewan Assessment Agency Manual for regulated properties.

The relevant sections of *The Cities Act* are as follows:

- Section 165(2) provides that property is to be valued as of the “base date”, which has been established by the Saskatchewan Assessment Management Agency (SAMA) as being January 1, 2015. In determining property value, all facts, conditions and circumstances that are required to be taken into account are to be applied as if they had existed on that base date.
- Section 165(3) directs that equity is the dominant and controlling factor in the assessment of property. Section 165(4) directs that equity in regulated property assessments is achieved by applying the regulated property assessment valuation standard uniformly and fairly. Section 165(5) states that 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. If, as a general matter, the same methodology has been employed in the valuation of the property in question as has been employed in the valuation of other such properties in the municipality, then there is no basis, in general, for varying the valuation on appeal.
- It must be noted this is a “mass assessment” system, not an individualized appraisal system.

ANALYSIS AND CONCLUSIONS:**GROUND 1 to 4:*****Carry forward from 36-2019:***

- [1] The central issue in this and the related appeals is how the Assessor has chosen to stratify warehouses for the purpose of determining a model market cap rate. In his submission the Assessor has said:

“It is a standard mass appraisal method to stratify first by Location and then by other value driven characteristics.” (Exhibit R.1 p.13)

To that end, he then first created three locational groups, then four size groups, then four site coverage groups. The result was seven possible market cap rates for warehouses in the city. With that configuration, it was possible for a warehouse >24,000 sqft to be assessed with a market cap rate of 5.50%, 6.60% or 8.64%.

- [2] The Tax Agent had identified the Appellant's position on this stratification in the Grounds at Section 3: Supporting Facts: (i):

“The assessor has stratified by location for large warehouses without sales evidence to support the conclusion. The market of large warehouses similar to the subject is not limited to a specific location.”

- [3] Mr. Horne drew the Panel's attention to at least ten references to authorities in the City's submission (Exhibit R.1) that he said confirmed that, in assessment, location should take precedence over size. One such reference was noted previously:

p.62 – (excerpt from IAAO textbook) Location is its own bold heading, Size is subject to Improvement

In fact, a close look at the table referenced showed that there were three headings that appeared in this order: “Improvement Data”, “Land Data” and “Location Data”. Interestingly, the first heading had as its first subheading “size” while “market area” appeared as a subheading of the third heading. It was an error to infer from this reference that location should be the primary consideration. Most of the references were similarly tinted in their presentation.

- [4] The City was concerned that putting all properties >24,000 sqft into one group would have an adverse effect on the assessment of some of the current groups. In the Preston Crossing appeal, the Committee said such a concern was not warranted where properties that were not comparable were assessed as though they were because they should not have been grouped together to begin with.

- [5] The City argued that the Tubby Crescent sale should not be moved to Market Area 5 simply because its sale cap rate was more similar to those sales in 5. The City's argument was that *"One sale does not make a market."* (Exhibit R.1 p.15). The Agent, at p.10 of Exhibit A.6, noted that currently the Assessor relied on one sale from AO neighbourhood 30007 (2501 Thayer Avenue) to calculate the 8.64 cap rate. He also noted that since the "one" sale situation existed in all three of the Assessor's current stratifications, the argument should not be given credence.
- [6] The City put forward that the Agent had failed to apply the Mann-Whitney Test and run multiple regression properly and had also erred by not applying the Mann-Whitney Test to ratios. Referring to p.106 of Exhibit R.1, the City quoted Robert Gloudemans, author of the IAAO Red Book, as saying that you do not run the Mann-Whitney Test on things other than ratios. (that alleged quote could not be found in that portion of the submission)
- [7] The Tax Agent's response was that the non-parametric Mann-Whitney Test was designed to test the comparability of any two variables. Use of the Mann-Whitney Test for assessment to sale ratios would test the results of the assessment, but that was not the issue in this appeal. The issue before the Panel was whether the neighbourhoods were defined correctly.
- [8] The City called Ms. Huang to testify as an expert witness on its behalf. When introducing her, Mr. Horne advised the Panel that she would speak only to the Appellant's submission which reinforced the statement in Exhibit R.1: Summary of Testimony: App. KK that she would *"discuss the contents of the Tax Agent's evidence as it relates to statistics and the proper application of them within the context of expert knowledge and standard mass appraisal principles."*
- [9] The bulk of her testimony, however, consisted of drawing bell curves on a blank sheet on a clipboard which she said showed the "shape" of the data. It was not clear how this related to the Appellant's submission. She did not seem to directly address any of the analysis done by Mr. Simpson as found at Appendices U and V of Exhibit A.2.
- [10] The summary in App. KK (referenced above) also stated that she would *"testify that the Tax Agent has reached statistically unreliable and inappropriate results regarding the Mann-Whitney test and regression."* To that end, and in response to questions from Mr. Horne, she stated that: (as noted previously in testimony)
- Regarding p. 489 of that document, Mr. Simpson's suggestion that there was a size influence at 24,000 sqft was "weird" because size was a continuous variable but he transformed it into a binary variable. She would not have done it that way.
 - Regarding Mr. Simpson's finding that the AO neighbourhood was statistically insignificant, the variable he used had to be related to p. 491 (*All warehouse sales by size with <17% site coverage (group 1,2,3,4,5,7)*). It was not proper to

run that type of regression. She was only able to replicate the Agent's analysis by putting the AO neighbourhood in as a nominal variable, which was wrong.

[11] Dr. Volodin and Mr. Levis who testified on behalf of the Appellant, after reviewing the analysis done by Mr. Simpson, reached the following conclusions:

- Mann-Whitney, in this situation, was the best test for the cap rate variable to determine comparability in neighbourhood stratification because it was nonparametric.
- There is a difference in capitalization rates between large warehouses and small warehouses.
- The graphical analysis submitted in Exhibit A.2 (Appendix – Tab U) indicated that cap rates increased as building size increased. The regression analysis confirmed that a size adjustment for large warehouses was warranted.
- There is no significant difference between the neighbourhoods north and south of 51st Street.
- There is no significant difference between the large warehouse neighbourhoods by location city wide.
- The analysis for both sales groups, all sales city-wide and the removal of sales with <17% site coverage, was accurate.

[12] After reviewing the evidence and testimony, the Panel finds that the analysis done by Mr. Simpson supports a previous finding of the Board, and subsequently the Committee, that the Assessor's stratification of large warehouses in Saskatoon is deficient. Analysis done both for this and the Maple Leaf appeals agree that warehouses >24,000 sqft and having a site coverage greater than 17% should be stratified city wide, excluding those properties in the Assessor's Group 6. All analysis to date has shown that size and site coverage were the only significant variables. It has also shown that location was not a significant variable because, as Mr. Levis said, it fell under the threshold of significance.

End carry forward from 36-2019.

GROUND 5:

- [1]. In accordance with Board of Revision policy, the Panel must make a decision based on the evidence and facts presented to them during a hearing. It is important to acknowledge that Panel members Choquette and Bold were Panel Members on appeal of BOR 13+14-2019 and are aware of the details of those proceedings. However, for the purposes of this decision, they are restricted to relying strictly on the evidence presented on July 26, 2019.
- [2]. It is the responsibility of the Appellant to submit evidence and argument that satisfies the burden of proof and demonstrates that the Assessor made an error in the calculation of the assessment.

- [3]. The subject properties are commercial warehouse properties located in the Silverwood Industrial area, close to the two chemical plants.
- [4]. The Appellant submitted Exhibit A.5, which was cited as the record of evidence that lead to the BOR decision of 598-2017, 599-2017, and 601-2017. It also included the AAC decisions of 2017-0188, 2017-0189, 2017-0190, and 2018-0060.
- [5]. In BOR 598-2017, the Panel ruled in favour of the Appellant and found that *“districts designated as IL2, IL3, and IH2 require further statistical analysis to validate the currently applied coefficients.”*
- [6]. In AAC 2017-0188, the Committee found that the Board made a mistake when it failed to apply an 18% reduction in the market rent calculation. In addition, the Committee found that the *“Board did not make a mistake by instructing the Assessor to conduct further analysis of the rental rates and occupancy levels to validate the currently applied coefficients; applying a cap rate of 5.5%; sustaining the tenant size adjustment; removing the arterial coefficient from the property valuation; and misinterpreting the evidence regarding the operation of MRA, standard mass appraisal methods, common data, and statistical testing.*
- [7]. In BOR 13+14-2019, the Panel followed the direction of the Court of Appeal in *Prince Albert (City) v. Prince Albert Co-op Association Ltd., 2017 SKCA 52* when it stated that a Committee decision *“can only be carried forward and applied to assessments of property that were subject of the appeal”*. The Panel required the Appellant to submit evidence and argument on the new properties under appeal in order to write a decision that satisfied the requirements of the *Act* and followed the direction of the Court of Appeal.
- [8]. It is important for a Board of Revision to remain consistent and accurate in its decision making; however there are some circumstances that require a Board to come to different decisions based on the evidence and argument presented.
- [9]. The Appellant is asking this Panel to consider the decisions cited above and apply them based on the record provided at the hearing. The Appellant stated this throughout the course of the hearing and provided very little argument as to why the Panel should do this.
- [10]. The Respondent outlined that the Appellant's request cannot be granted due to the lack of evidence provided and the inability to apply S.227 of the *Act*.
- [11]. The Panel carefully considered the request of both parties and has concluded the following:
 - a. The Appellant failed to provide sufficient evidence as to how the properties under appeal are similar to the properties that have been previously appealed and have been awarded a reduction in rental rates.

- b.** The Panel respects the previous decisions written by the Board and Committee and acknowledges that the properties under appeal are located in the restrictive zones, but absent evidence for the properties under appeal that outlines this similarity and its impact on assessment, the Panel cannot allow the appeal.
- c.** The Panel agrees with the process used by the Board in BOR 13+14-2019, where it required the Appellants to submit argument and evidence on the properties under appeal regarding how they were similar to the previously appealed properties, not to simply carry forward decisions that are rendered on similar properties. This approach is consistent with the Court of Appeal and with the annual right of appeal as mentioned in the *Act*.
- d.** The Panel agrees with the Assessor in the fact that there was not sufficient evidence presented to prove the assessment is in error for the subject properties.

DECISION:

In accordance with Section 210(1) (b) of *The Cities Act*, the Board changes the assessment and directs a revision of the assessment roll for all properties under appeal. The resultant change in assessment will reflect a revised stratification to include (with the exception of the current Group 6) all warehouses under appeal city wide >24,000 sq. ft. and having a site coverage greater than 17%. The new Market Cap Rate arising from this stratification will be applied to the determination of the new assessed value of the subject properties.

The Current Assessed Values are reduced. The assessments are ADJUSTED and all other aspects of the appeals are dismissed.

The Appellant's filing fees are refunded.

DATED AT SASKATOON, SASKATCHEWAN, THIS _____ DAY OF _____,
2019.

CITY OF SASKATOON BOARD OF REVISION

_____ for the Panel
Mr. Cameron Choquette, Member

I concur:

Mr. Adrian Deschamps, Chair

Ms. June Bold, Member

TAKE NOTICE, that in accordance with Section 216 of *The Cities Act*, any party to an appeal before a Board of Revision has a right of appeal to the appeal board, respecting a decision of a board of revision; and against the omission, neglect or refusal of a board of revision to hear or decide an appeal.

A notice of appeal form can be downloaded from **www.publications.gov.sk.ca** (select Saskatchewan Municipal Board from the Ministry list, and select Notice of Appeal to the Assessment Appeals Committee). The notice of appeal must be filed within 30 days after being served with this Record of Decision, to:

Secretary, Assessment Appeals Committee
Saskatchewan Municipal Board
4th Floor, Room 480
2151 Scarth Street
Regina, SK S4P 2H8
(Telephone: 306-787-6221; FAX: 306-787-1610; info@smb.gov.sk.ca)

In the case of the omission or neglect of the Board of Revision to hear or decide an appeal, the notice of appeal to the appeal board may be filed at any time within the calendar year for which the assessment was prepared.

An appeal fee is required by the Assessment Appeals Committee and **must be filed within the same 30-day appeal period or the appeal is deemed to be dismissed**. Assessment Appeals Committee fees are based on a scale related to the assessment of the property under appeal:

\$50 for each \$100,000 in assessed value, or portion thereof, to a maximum of \$600.

For additional information, please contact the Assessment Appeals Committee, Saskatchewan Municipal Board, at the address and/or telephone number indicated above.

(Note: Where an appellant failed to appear at the hearing, either personally or by agent, the decision of the Board of Revision is final and no further appeal may be taken)