
RECORD OF DECISION
CITY OF SASKATOON, BOARD OF REVISION

APPEAL NO.:	100-2019 (lead)	ROLL NO:	405310060
	044-2019		405305350
	096-2019		405309510
	097-2019		405309515
	098-2019		405309525
	099-2019		405310095
	101-2019		405310055
	164-2019		405311540

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
100-2019 (lead)	Sheray Enterprise Ltd.	203144431	214 – 4014 Arthur Rose Avenue
044-2019	Bridge City Investments Ltd.	165137171	4015 Brodsky Avenue
096-2019	Tyson Pederson Consulting	203125317	102 – 4002 Arthur Rose Avenue
097-2019	Sheray Enterprise Ltd.	203125317	104 – 4002 Arthur Rose Avenue
098-2019	Sheray Enterprise Ltd.	203125317	108 – 4002 Arthur Rose Avenue
099-2019	Sheray Enterprise Ltd.	203144431	200 – 4014 Arthur Rose Avenue
101-2019	Sheray Enterprise Ltd.	203144431	216 – 4014 Arthur Rose Avenue
164-2019	Conax Properties Ltd.	203306105	10 – 3985 Arthur Rose Avenue

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 pertaining to the zoning ground, would be carried forward into appeals 100-2019, 101-2019, 164-2019, 44-2019, 96-2019, 97-2019, 98-2019, and 99-2019.

GROUND AND ISSUES:

Ground 1: The estimated net operating income is in error.

- a) The current model rental rate is not reflective of the market value.
- b) The current rental rate does not account for the impact due to the restrictive zoning associated with the property.

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
100-2019 (lead)	405310060	203144431	IH2	557,100	557,100	1.00
044-2019	405305350	165137171	IH2	2,527,400	2,527,400	1.00
096-2019	405309510	203125317	IH2	561,000	561,000	1.00
097-2019	405309515	203125317	IH2	552,000	552,000	1.00
098-2019	405309525	203125317	IH2	557,100	557,100	1.00
099-2019	405310095	203144431	IH2	545,000	545,000	1.00
101-2019	405310055	203144431	IH2	545,000	545,000	1.00
164-2019	405311540	203306105	IH2	588,700	588,700	1.00

Begin carry forward from 139-2019:

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. 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 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.

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 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 R.1, which are the emails indicating that zoning is not significant, were included in the record for appeals 13+14-2019.

APPELLANT SUMMATION:

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

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.

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 13+14-2019, the Agent argued that the new evidence included in the emails of 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.

End carry forward from 139-2019.

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:

- [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 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 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 that outlines this similarity and its impact on assessment, the Panel is unable to allow the appeal.
- c. The Panel agrees with the process used by the Board in 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)(a) of *The Cities Act*, the Board confirms the assessment. The appeal is dismissed.

The filing fee is retained.

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)