

DETERMINATION OF AN APPEAL UNDER
Section 216 of *The Cities Act*

Appeal Numbers: AAC 2013-0166 (Lead Appeal), 2013-0167, 2013-0168

Date and Location: April 30, 2014 – Regina, SK

Various c/o Altus Group Limited

Appellant

- and -

City of Weyburn

Respondent

APPEARED FOR:

The Appellant: Archie Fieldgate, Sr. Tax Consultant, Altus Group Limited

The Respondent: Vanessa Vaughan, Sr. Market/Commercial Appraiser,
Saskatchewan Assessment Management Agency (SAMA)
Joan Adacsi, Appraiser, SAMA
Brenna Keeler, Finance Manager/City Assessor, City of Weyburn

HEARD BEFORE: Lorna Cottenden, Panel Chair
Peter Stroh, Member
Ron Walter, Member

Lise Gareau, Director

INTRODUCTION:

- [1] This is an appeal from a Board of Revision (the Board) decision for the City of Weyburn (the City). The Board decided the assessed values of the properties were correct. The Appellant seeks to overturn the Board's decision.
- [2] The role of the Assessment Appeals Committee (the Committee) is not to redo the Board's 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. If the Committee concludes 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 on the Appellant to demonstrate to the Committee where the Board erred.
- [3] The 2013 assessments for the following properties are under appeal:

Appeal No.	Appellant	Civic Address	Legal Description	Assessed Value
2013-0166	Royal Bank of Canada	220 Souris Ave	Lot 25-26, Block 3, Plan 99SE36354	\$2,302,100
2013-0167	TDL Group Corp	1060 Sims Ave	Parcel H, Plan 101867171	\$1,102,300
2013-0168	McDonald's Restaurants of Canada Ltd.	7 Allen Street	Lot A, Block 2, Plan 84R38303	\$2,212,300

- [4] The subject properties are non-regulated commercial properties and the valuation method used was the Income Approach to Value. As commercial property, the taxable assessment is 100% of the assessed value, as set out in sections 12 and 13 of *The Cities Regulations* (the Regulations).
- [5] The parties identified the property located at 220 Souris Avenue as the lead appeal.
- [6] The Appellant and Respondent both requested and the Committee agreed to carry forward the evidence and testimony from Appeal No. AAC 2013-0106 on the issue of the availability of income and rental information.

ISSUES:

- [7] a) Did the Board err in concluding that it had no jurisdiction to hear the appeal?
b) Did the Board err by not requiring the Saskatchewan Assessment Management Agency (SAMA) to provide income and rental information to the Appellant?

DECISION:

- [8] The Committee finds:
a) The Board erred in the decision that it had no jurisdiction to hear the appeal.
b) The Board did not err by not requiring SAMA to provide income and rental information to the Appellant.

POSITIONS OF THE PARTIES SPECIFIC TO APPEAL NO. AAC 2013-0166:

- [9] The Appellant:
- a) The Board “lumped” three appeals from Altus Group Limited (Altus) with five appeals from SAMA and then did not “open” the Altus appeals concluding that the Board did not have jurisdiction to hear the subject appeal. This action deprived the Appellant of their right to appeal.
 - b) The appeal was filed on June 20, 2013, which was one day before the deadline date of June 21, 2013, as published in the newspaper and posted on the City website. The agent assumed that the City had obtained approval from the provincial government to extend the appeal date.
 - c) The Notices of Assessment were mailed on April 12, 2013, and, therefore, according to Section 198 (1.1) of *The Cities Act* (the Act), the last day to appeal would be June 12, 2013; however, the June 21, 2013, deadline was stated on the Notices of Assessment. Since other property owners had until June 21, 2013, to appeal, it would be unfair to not allow Altus the same extension.
- [10] The Respondent:
- a) The Board made the correct decision in ruling that the Board did not have jurisdiction to hear the appeal.
 - b) At the time of the Board hearing, the City believed that they had legal authority to extend the appeal period beyond the 60-day deadline and were hopeful that all appeals would be heard.

- c) From the SMB Committee decision of AAC 2009-0001, it is clear that neither the City nor the Board can enlarge the appeal period.
- d) The City had a long standing practice of extending the appeal period by at least five days.
- e) Only the eight appeals which had been postponed to September 2013 were affected by the Board conclusion that the Board did not have jurisdiction to hear the appeals.

POSITIONS OF THE PARTIES CARRIED FORWARD FROM APPEAL NO. AAC 2013-0106:

[11] The Appellant:

- a) We need confidential income and rental information to determine if an error has been made in the calculations.
- b) SAMA has the authority to get rental and income information; whereas, regular citizens do not have the same authority. Therefore, it is unreasonable to expect the Appellant to research information on their own.
- c) We have the onus to prove error; however, we are unable to do so without additional information that the Respondent refuses to give us.
- d) We are willing to sign any confidentiality order if required.
- e) We believe that since 2009, SAMA's standard position appears to be that it will not release confidential information.

[12] The Respondent:

- a) The taxpayer has the option to research the information that SAMA considers confidential.
- b) Legislation does not allow SAMA to release confidential information.
- c) Confidentiality is not the issue. The Appellant believes the rents should be comparable to Regina; however, Regina uses a different model. Therefore, the rents will be different.
- d) Equity is achieved by comparing properties within the municipality not outside the municipality; however, when there is insufficient data, we compare properties in similar-sized municipalities in terms of population.
- e) We have no issue complying with a request for confidentiality when the request comes from an appeal body.
- f) We have provided the necessary information according to *Boychuk, Boychuk, Olson and Olson v. City of Saskatoon*, AAC 2012-0071 [*Boychuk*].

ANALYSIS SPECIFIC TO APPEAL NO. AAC 2013 - 0166:

[13] **Issue a): Did the Board err by concluding that it had no jurisdiction to hear the appeal?**

[14] From the Board's decision for City of Weyburn for Appeal No. 15 – 2013, the following comments are stated:

“The Board has determined to its satisfaction that the assessment notices were mailed on April 12th. This is the beginning of the 60 day period in which appeals are to be filed according to Section 198(1.1) of the Act. This would require all appeals to be filed no later than June 12th. The Board also determined that SAMA filed their appeals on June 25th and Altus Group filed their appeals on June 20th. All appeals were filed significantly later than the June 12th deadline.”

[15] The Appellant was aware of the 60-day appeal period but as indicated in a letter dated June 20, 2013, he assumed that the June 21st day as published was acceptable.

[16] The Respondent's testimony and written evidence indicated that the City had attempted to accommodate taxpayers by extending the appeal deadline. On June 24, 2013, City Council had passed a resolution extending the appeal date to July 8, 2013. Subsequently, the Respondent had become aware that the extension was not permitted in legislation.

[17] The Committee concludes that the Board ought to have considered the legal relationship which exists between the property owner such as the Appellant and the City. Once one party makes a commitment (i.e., June 21 deadline for filing an appeal), and is taken at their word by the other party, the one that gave the promise cannot reverse the commitment. In law, this relationship principle is known as Equitable Estoppel. Quoted from Lloyd Duhaime at <http://www.duhaime.org/LegalDictionary> in *Combe v. Combe*, [1951] 1 All E.R. 787, at p.770:

“The principle, as I understand it, is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted upon accordingly, then once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has introduced, even though it is not supported in law by any consideration, but only by his word.”

- [18] Sections 174(2), 186(1), and 460(4) & (9) of the Act set out conditions under which the City shall set assessment and appeal dates. The Committee concludes that once those dates have been distributed to the property owners, such as the Appellant, the City is then bound by those dates.
- [19] The Committee finds the Board erred by concluding that it had no jurisdiction to hear the appeal.

ANALYSIS CARRIED FORWARD FROM APPEAL NO. AAC 2013-0106:

- [20] **Issue b): Did the Board err by not requiring SAMA to provide income and rental information to the Appellant?**

Confidential Information

- [21] SAMA has the legislative authority to obtain information from property owners. If property owners do not provide the information, they may be charged with an offence and penalty pursuant to Section 172 of the Act.
- [22] Section 171(5) of the Act obliges SAMA to **“keep that information or document confidential [and] not make any use of or disclose that information or document without the consent of the person to whom the information or document relates.”** However, Section 171(6) permits SAMA to **“use or disclose the information or document...for the purposes of an appeal to a board of revision, the appeal board or the Court of Appeal...”** [emphasis added].
- [23] Section 171(6) does not specify that the information can only be given to the appeal body, only that the information must be **“for the purposes of”** an appeal to various appeal bodies.
- [24] It is important to differentiate sections 171(5) and 171(6) in the Act. The word **“shall”** in Section 171(5) makes an action imperative; whereas, the word **“may”** in Section 171(6) is permissive. The Act does not confer exclusive rights to confidential information to any particular person or group.
- [25] Appeal bodies sometimes require confidential information and they have the authority to issue a confidentiality order. Section 171(11) protects anyone required to produce information contemplated by Section 171. If SAMA discloses information for the purposes of an appeal or if an appeal body makes a confidentiality order, any party who breaches the confidential nature of the information is subject to legal consequences.

- [26] In addition, Section 20(2) of *The Municipal Board Act* (the MBA) gives the Committee the authority to **“require employees of the Saskatchewan Assessment Management Agency, appraisers, assessors and other municipal officials to make any returns to the board with respect to any matter affecting assessment and taxation in any form that it considers advisable.”**
- [27] Section 20(9) of the MBA gives the Committee **“all the powers conferred on a commission by sections 11, 15 and 25 of *The Public Inquiries Act, 2013* with respect to any hearing, inquiry or other proceeding before the board”** which includes the power to require the production of evidence.
- [28] Appeals to the Committee are on the record and the Committee is bound by Section 222 to review the Board’s record; however, section 222 is **“notwithstanding any power that the appeal board has pursuant to *The Municipal Board Act* to obtain other information.”** Section 223(2) of the Act permits the Committee to accept new evidence and **“make use of any powers it possesses pursuant to *The Municipal Board Act* to seek and obtain further information.”**
- [29] Sections 201 and 202 of the Act provide additional information regarding confidentiality and contain procedures to protect confidential information from public disclosure.
- [30] The Respondent told the Committee that it handles confidential information requests depending on the circumstances of each case. It is the understanding of the Committee that there was no specific request for confidential information in this appeal. There was an email exchange between Mr. Fieldgate and Mr. Weeks on May 8, 2013, and May 9, 2013, that referred to other emails but there was not a request for information in the record.
- [31] In light of the Respondent’s presentation to the Committee that it manages confidential information requests based on the circumstances of each case, it seems reasonable that the Appellant would need to make a specific request to the Respondent for this information along with reasons why the information is required and the Respondent would reply based on the circumstances of the case.

Correctness

- [32] Section 200(4) compels assessors to provide:

**“(a) a complete assessment field sheet; and
(b) a written explanation of how the assessment was determined,
including:**

(i) a statement indicating whether the assessor considered any decisions of the appeal board pursuant to subsection 165(3.2) in determining the assessment; and

(ii) if the assessor did consider one or more decisions of the appeal board in determining the assessment, a statement indicating whether the assessor decided to apply, to apply in part, to apply with modification or not to apply the decision of the appeal board to the assessment and the reasons for that decision.”

[33] The Respondent provided the Appellant and the Board with reports and data to show how the Assessor calculated the assessment for the property, including the information required under Section 200(4) of the Act.

[34] As the Committee stated in *Boychuk*:

“To comply with section 200(4) of the Act ... the assessors should explain how the assessment was arrived at, including what stratification the assessor considered appropriate, and what variables that stratification took into account ... if the assessors can give a full and coherent explanation ... and can defend the assessment with reference to the factors that are relevant to market value ... If an assessor can explain a valuation as a reasonable application of standard appraisal methods (sections 163(f.3) and 165(1) of the Act), combined with a reasonable and lawful exercise of the assessor’s discretion, then ... section 200(4) of the Act is satisfied (paras. 24-25).

[35] The Committee determined that the assessor provided an adequate explanation regarding processes in this appeal.

[36] The Appellant’s submission to the Board and to the Committee focused on the necessity to receive confidential information; however, the Appellant did not discuss the available assessment information and show how additional information was required in this case.

[37] The Appellant’s position is that confidential information is needed to determine whether or not the assessments are correct. The Appellant told the Committee that SAMA’s position has been to not release confidential information and SAMA’s submission to the Board did not appear to dispute the Appellant’s position.

[38] The Board determines from evidence whether or not there has been an error. If the Board needs more information it has the authority to issue undertakings and orders. The Board could have made an order; the Board made no orders or undertakings.

- [39] The Appellant told the Committee that because he has been unsuccessful in the past with receiving confidential information from SAMA, that this appeal appeared to be a good one to make another attempt. The Committee believes the Appellant's position is that this appeal will be a test case in an attempt to receive a ruling that whenever a party asks for income information, the information should be disclosed.
- [40] The Appellant did not present to the Committee that any part of the Assessor's data or method was incorrect or problematic. Also, the Appellant did not present anything to indicate that the Assessor's use of discretion was questionable.
- [41] Because the decision lacked adequate reasons, the Committee cannot determine whether or not the Board determined it did not need the confidential information nor if the Board determined it had sufficient evidence to make its decision.
- [42] The Committee finds that undertakings and orders are not required in every appeal. It depends on the facts and circumstances of each case. The Committee reviewed the evidence that was before the Board and cannot find reasons to suggest further investigation was required.
- [43] The Committee finds the Board did not err by not requiring SAMA to provide income and rental information to the Appellant.

CONCLUSION:

- [44] The Committee finds:
- a) The Board erred by concluding that it had no jurisdiction to hear the appeal.
 - b) Both the Appellant and the Respondent requested that the evidence and testimony would be carried forward from Appeal No. AAC 2013-0106. The Committee, therefore, has arrived at the same conclusion as Appeal No. AAC 2013-0106. The Committee finds the Board did not err by not requiring SAMA to provide income and rental information to the Appellant. The Committee believes that SAMA provided sufficient information.
- [45] The appeals listed in paragraph [3] above, are allowed for issue a). The appeals listed in paragraph [3] above, are dismissed for issue b). The assessed values remain the same as noted in paragraph [3] of this decision.

[46] The filing fee will be returned.

Dated at REGINA, Saskatchewan this 10th day of July, 2014.

Saskatchewan Municipal Board – Assessment Appeals Committee



Per: _____
Lorna Cottenden, Panel Chair



Per: _____
Lise Gareau, Director