

DETERMINATION OF APPEALS UNDER
Section 16 of *The Municipal Board Act* and Section 216 of *The Cities Act*

Appeal Numbers: AAC 2013-0143 (lead) and 2013-0142

Date and Location: May 26, 2015 – Saskatoon, SK

Various c/o Altus Group Limited

Appellants

- and -

City of Saskatoon

Respondent

APPEARED FOR:

The Appellant: Garry Coleman, Director

The Respondent: Travis Horne, Assessment Manager
Kirby Fesser, Senior Appraiser

HEARD BEFORE: John Eberl, Panel Chair
Felix Hoehn, Member
Ron Walter, Member

INTRODUCTION:

- [1] This decision of the Assessment Appeals Committee (the Committee) relates to appeals from decisions of the Board of Revision (the Board) for the City of Saskatoon (the City).
- [2] The role of the Committee is to review the record of the Board's hearings and decide if the Board made the correct decisions. If the Board did not make the correct decisions, the Committee must do what the Board should have done. The Appellant must show how the Board was incorrect.
- [3] The 2013 assessments for the following properties are under appeal:

Number	AAC Appeal Number	BOR Appeal Number	Appellant	Roll No.	Civic Address	Original Assessed Value	BOR's Assessed Value
1	2013-0143 LEAD	367-2013	FP Equities Inc.	505005660	375 2 nd Avenue South	\$12,137,800	\$12,137,800
2	2013-0143	364-2013	FP Equities Inc.	505005710	355 2 nd Avenue South	\$2,550,000	\$2,550,000
3	2013-0142	357-2013	Dundee Canada (GP) Inc.	505014000	265 2 nd Avenue South	\$3,625,600	\$3,625,600

- [4] The properties are vacant commercial parcels located in downtown Saskatoon. They are non-regulated properties and the taxable assessment is at 100% of assessed value.
- [5] The owners appealed their assessments on the ground that the land rate of \$206.90 per square foot is too high. The Assessor used the sales comparison approach to determine the market value of vacant land. For the current assessment cycle, the Assessor considered arm's length sales that occurred between January 1, 2008, and December 31, 2010. The Assessor stratifies vacant land sales into neighbourhoods. There were three downtown neighbourhoods and the subject properties are in the "CBD 2" neighbourhood. If purchasers demolished improvements on properties within a year of a sale, then these were considered vacant land sales after adjusting for the cost of demolition.

- [6] The Assessor used three sales to develop the land rate. On behalf of the owners, Altus appealed to the Board on more than one issue, but only argued the owners' claim that the Assessor erred by not applying a land size multiplier (LSM) to the land rate. Altus claimed that the Assessor erred by failing to apply an LSM because there was evidence of a larger parcel selling for less per square foot than smaller parcels.
- [7] The Board dismissed the appeal and left the assessed values for the properties unchanged. Altus appealed to the Committee on the grounds that the Board erred by finding that:
- a) the Assessor could exercise discretion when determining whether there was evidence of larger parcels selling less per square foot than smaller parcels; and
 - b) there was no evidence of larger parcels selling for less per square foot than smaller parcels.

ISSUE:

- [8] Did the Board make a mistake by deferring to assessor discretion and deciding that an LSM was not required?

DECISION:

- [9] The Board did not make a mistake. The Assessor was entitled to exercise discretion and did not exercise discretion unreasonably by finding that an LSM was not required. The appeals are dismissed and the properties' assessed values for 2013 remain unchanged.

PRELIMINARY MATTERS:

- [10] The Committee and the parties agreed as follows:
- a) Appeal AAC 2013-0143 regarding 375 2nd Avenue South and 355 2nd Avenue South would be heard first and is the lead appeal. The Committee hearing and decision on the issues for that property will apply to all three properties under appeal. The Committee will issue only one decision.

POSITIONS OF THE PARTIES:

- [11] Altus:
- a) The 2011 Cost Guide published by the Saskatchewan Assessment Management Agency (Cost Guide) sets out procedures for determining size adjustments. The Cost Guide states, at section 2.5, page 1:

When:

- (a) land is valued on a square foot or acreage basis; and
- (b) it is determined that the sale price of a larger parcel in a neighbourhood is less per unit than the sale price of a smaller parcel;

then a land size multiplier is applied to land parcels that are other than the standard size parcel.

- b) The adjusted sale price and rate per square foot of the three sales used to determine the applicable CBD 2 land rate are as follows, shown from smallest to largest in parcel size:

Sale	Address	Adjusted Sale Price	Size	Rate/SQFT
1	263 2 nd Avenue South	\$725,000	3,504	\$206.91
2	265 2 nd Avenue South	\$923,000	3,507	\$263.19
3	271 2 nd Avenue South	\$1,904,745	10,517	\$181.11

- c) Altus observed that the two smaller sales are almost identical in size, at 3,504 and 3,507 square feet respectively. They sold for \$206.91 and \$263.19 per square foot. The third sale is about three times the size of the two smaller sales and sold for \$181.11 per square foot, which is a lower rate per square foot than for the two smaller parcels.
- d) According to Altus, from the foregoing numbers it is a fact that a larger parcel is less per unit than the price of a smaller one. The Assessor does not have the discretion to ignore this fact without departing from the procedures in the Cost Guide.
- e) Similarly, since it is a fact that a larger parcel sold for less per unit than the price of a smaller one, the Board erred when it found there was no evidence to support the use of an LSM as described in the Cost Guide.
- f) The Board erred by deferring to the discretion exercised by the Assessor when he determined that he was not satisfied that the sales revealed that the price per square foot was declining with parcel size. Had the Board treated the evidence as a “fact” rather than as a matter of discretion, it would have determined that “the sale price of a larger parcel in a neighbourhood is less per unit than the sale price of smaller parcels” and therefore an LSM was required.
- g) Two comparable properties are located across the street from the subject and show that size is a factor. One is a 128,018 square foot parcel that sold for a rate of \$42.26 per square foot. The other was assessed at a rate of \$95.00/square foot. This comparable property is closer to the river and is part of a new river development yet receives a lower base rate.

[12] The City:

- a) The Cost Guide implies that the Assessor should perform sales comparison analysis to determine, first, whether a size adjustment is warranted, and second, to determine an appropriate LSM. Sales comparison analysis considers market data to find trends in a defined neighbourhood. It involves much more than merely identifying that one parcel sold for less than a smaller parcel.
- b) In any data set, there will always be parcels that differ in size and price per unit. Just because a larger parcel has a lower price per unit than a smaller parcel does not mean that an LSM should automatically be applied.
- c) The same page of the Cost Guide cited by Altus directs that “[w]here there are *sufficient* land sales in a neighbourhood to establish a reliable land size multiplier, the size adjustments are determined by sales comparison method” (emphasis added). The requirement to have sufficient land sales on which to establish a reliable LSM means that there must be enough sales to concretely conclude that price per unit differences are due to diminishing returns and not just due to normal market fluctuations.
- d) Altus submitted that the point where diminishing returns begin was the size of parcel in the sale of 265 2nd Avenue North; however, this is the median sale within the dataset. The sale of 263 2nd Avenue was smaller in area than the median sale and also sold for a lesser amount per square foot than the median sale. A sale larger in area than the median sale (271 2nd Avenue South) also sold for a lesser amount per square foot than the median sale. This supports the Board’s view that the Assessor did not make a mistake by attributing differences in sale price per square foot to market fluctuations and not to the size of the parcel.
- e) The Assessor’s main point in support of market fluctuation being the most likely explanation for the price variations between the three sales was that even though the two smaller parcels were almost the same size, their sale prices varied by a substantially greater amount than sale prices between the largest and the smallest parcels. The price per unit difference between these two smaller sales is \$56.28 per square foot. With the difference in size between the two parcel being only 2.36 square feet (paragraph 1, page 8, AAC – R1)

...it can be concluded that the price difference is not due to size but to natural market fluctuations. It is then also logical to conclude that the price difference between the largest sale at 271 2nd Ave S and the smallest sale at 263 Ave S, being less than half the price difference between the two smallest sales, can also be attributed to normal market fluctuations. Without additional sales of vacant parcels that are larger than the two similar sized sales at 265 2nd Ave S and 263 2nd Ave S, the Assessor cannot conclude that an LSM is warranted.

- f) The Courts and the Committee have supported assessor discretion, such that when standard appraisal methods can lead to more than one plausible outcome, the Assessor's selection should be upheld: *Various c/o Altus Group v Prince Albert (City)* (AAC 2011-0049, 0048 and 0054 at para. 17).
- g) The two comparable sales referred to by Altus are in different downtown land neighbourhoods and, therefore, they cannot be used to determine whether or to what degree size affects value in the subject's neighbourhood.

ANALYSIS:

- [13] The Cost Guide does not require assessors to provide land size adjustments for every neighbourhood. Before 2009 commercial properties received a regulated value derived from using the rules, formulas and principles in the Saskatchewan Assessment Manual (the Manual), and the Manual required the assessor to apply an LSM curve for every land neighbourhood. If there were not sufficient sales to establish a multiplier, the Manual provided a default LSM curve.
- [14] Unlike the Manual, the Cost Guide does not have the force of law; however, it sets out principles that assessors are expected to follow unless they can demonstrate a good reason to depart from those principles. In this case, Altus urged the Board to adopt a narrow interpretation of the wording of the Cost Guide. This interpretation would leave the Assessor no choice but to determine that a size adjustment is necessary if, per section 2.5 of the Cost Guide, "it is determined that the sale price of a larger parcel in a neighbourhood is less per unit than the sale price of a smaller parcel." Altus argues that because the largest sized parcel sold for less per unit than either of the two smaller parcels used to develop the land rate in the neighbourhood, the Assessor is not afforded the ability to exercise judgement or discretion about whether this fact demonstrates a trend of diminishing returns by size of parcel.
- [15] We agree with the City's arguments set out above for supporting the Board's rejection of Altus' argument that the Assessor has no discretion as soon as one parcel sells for less per unit than a smaller parcel. In particular, we agree that the wording of the Cost Guide explicitly refers to the assessor's duty to analyze sales evidence when it provides that use of the sales comparison method for determining a LSM is contingent on the having "sufficient land sales in a neighbourhood to establish a reliable land size multiplier." Answering a question of "sufficiency" requires judgement; if judgement were not required, the Cost Guide could have simply set a minimum number of required sales.

- [16] Further, Altus' argument gives no effect to the introductory words "it is determined" in the clause "[when]...it is determined that the sale price of a larger parcel in a neighbourhood is less per unit than the sale price of a smaller parcel." This introductory phrase suggests something more than just the existence of one larger sale for less per unit than a smaller parcel is needed – there must also be a *determination*. The assessor must turn his or her mind to the numbers to determine if variations in selling price indicate that diminishing returns exist and therefore an LSM should be applied.
- [17] Perhaps ironically, it appears to the Committee that Altus' argument that an LSM is warranted is itself the exercise of judgement and not just a mathematical finding. Insofar as it is true that "the sale price of a larger parcel (271 2nd Avenue South) in the neighbourhood is less per unit than the size of a smaller parcel (either 263 2nd Avenue South or 265 2nd Avenue South), the opposite is also true. That is, the sale price of a larger parcel (265 2nd Avenue South) is *more* per unit than the size of a smaller parcel (263 2nd Avenue South)." Altus dismisses this by focusing on the relatively small amount of difference in size between these latter two sales as compared to the difference between the size of these two sales and the third sale at 271 2nd Avenue South. We do not quarrel with the soundness of Altus' judgement in this regard – but the point is that determining when a size difference between parcels is large enough to be considered significant when looking for evidence of diminishing returns *is itself* a matter of judgement.
- [18] We agree with the City that the comparable sales cited by Altus are of little if any value to the analysis because they are from a different land neighbourhood. Nevertheless, and in the alternative, the Committee observes that the Cost Guide provides that when the Assessor finds that an LSM should be applied but there are insufficient land sales in the neighbourhood to establish a reliable LSM, the Assessor may use an LSM from a comparable neighbourhood. In this case, the City indicated that no LSM was applied in any of the three downtown land neighbourhoods and the other downtown neighbourhoods are probably most comparable to the subject neighbourhood. We acknowledge that this has little if any relevance to the issue in this case and we do not base our finding on it. However, it provides additional reassurance that the conclusions of the Assessor and the Board do not raise issues of equity with other downtown properties with respect to the application of size adjustments.
- [19] Finally, with respect to Altus' appeal ground that claims that the Board erred by "finding that there was no evidence of larger parcels selling for less per square foot than smaller parcels" we cannot find a clear conclusion to that effect in the Board's reasons. The Board found that the Assessor had discretion and exercised that discretion reasonably, and further, that equity has been achieved with similar properties. We have not been persuaded that the Board erred with respect to any of these conclusions.

CONCLUSION:

- [20] The Board did not make a mistake. The Board correctly decided that the Assessor was entitled to exercise judgment with respect to whether the sales evidence indicated a size adjustment was warranted. Further, the Committee sees no grounds on which to challenge the reasonableness of the Assessor's judgement.
- [21] The Committee dismisses the appeal from the Board's decision. Accordingly, there is no change in the original assessed values shown in paragraph [3].

Dated at REGINA, Saskatchewan this 18th day of June, 2015.

Saskatchewan Municipal Board – Assessment Appeals Committee

Per: 
John Eberl, Panel Chair

Per: 
Lise Gareau, Director