

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

Appeal Number: AAC 2014-0016
Date and Location: January 27, 2016 - Regina, SK

101143561 Saskatchewan Ltd.
(as represented by Altus Group Limited [Altus])

Appellant

- and -

City of Regina

Respondent

APPEARED FOR:

The Appellant: Archie Fieldgate, Senior Consultant
Ryan Simpson, Senior Analyst

The Respondent: Gerry Krismer, Assistant City Assessor
Mike Schulkowsky, Assessor

HEARD BEFORE: Lorna Cottenden, Panel Chair
Lee Fuller, Member
Brandee Murdoch, Member

INTRODUCTION:

- [1] The 2014 assessment for the property under appeal is:

AAC Appeal #	Appellant	Civil Address	Legal Description	Account #	Original Assessed Value
2014-0016	101143561 Saskatchewan Ltd.	2101 Fleming Road	Block D, Plan 102076309	10247034	\$52,118,800

- [2] The property is non-regulated and commercial. The Assessor used the income approach to value the property with a capitalization (cap) rate of 9.92%, based on four improved property sales. The sales are of warehouse properties with buildings of 25,000 square feet and larger.
- [3] The parties disagreed about whether or not the cap rate calculation should include the sale of 1500 - 5th Avenue. The Board agreed with the City that the cap rate calculation should exclude the sale of 1500 - 5th Avenue because it is an atypical sale. The Board agreed with the City that only revising the analysis of 1500 - 5th Avenue would be incomplete and not provide equity to all warehouse owners. The Board decided not to order a decrease in the cap rate, which would have increased the appealed properties assessments, and upheld the original 9.92% cap rate. The reasons for this were fairness and the authority granted under subsection 210(3) of *The Cities Act*, SS 2002, c C-11.1 (the Act).
- [4] The City sent an amended 2014 assessment notice to the property owner of 1500 - 5th Avenue, reflecting the correct amount of unheated space.
- [5] Altus appealed to the Committee alleging that the Board erred in agreeing with the City that the Market Adjustment Factor (MAF) sales group should not include the sale of 1500 - 5th Avenue as it is atypical. Altus asks the Committee to overturn the Board's decision and order a 10.41% cap rate.

ISSUE:

- [6] Did the Board make an error when it excluded the sale of 1500 - 5th Avenue from the sales group used to calculate the cap rate for warehouses of 25,000 square feet and larger?

DECISION:

- [7] The Committee finds that the Board did not make an error when it excluded the sale of 1500 - 5th Avenue from the sales group used to calculate the cap rate for warehouses of 25,000 square feet and larger.

PRELIMINARY MATTERS:**Grounds of Appeal**

- [8] Altus appealed on seven grounds. At the hearing, the Panel Chair asked the parties to confirm that the first issue to be decided is whether or not the Board erred in excluding the sale of 1500 - 5th Avenue from the cap rate calculation. Altus also alleged that the Board exceeded its authority in dealing with issues outside the grounds. The parties agreed that these were the two items to be decided. Since the matters are interrelated, the Committee will address both under the single issue stated in paragraph [6].

Irrelevant Reference

- [9] Paragraphs 30 and 31 of Altus's submission to the Committee include references to the Board's 2015 hearing and decision. A 2015 decision is not relevant because it was not known at the time of the 2014 appeal.

Argument and Presentation

- [10] The City believed Altus's position and argument from a previous Committee decision (AAC 2010-0090) was contrary to their position and argument for the current case. Parties are free to argue their positions independently of other cases.

BACKGROUND:

- [11] The main issue is the cap rate sales and the contention by Altus that 1500 - 5th Avenue should be included in the calculation. A summary of the four sales originally used by the City is as follows:

Address	Econ Cap Rate	Applied Cap Rate	ASR
1735 Francis St	8.99%	9.92%	0.906
144 Henderson Dr	9.43%	9.92%	0.951
1135 8th Ave	10.41%	9.92%	1.049
290 Henderson Dr	11.49%	9.92%	1.158
Medians	9.92%		1.000
		COD (ASR)	8.77%

The “Econ Cap Rate” is the cap rate determined for each individual sale using the City’s rent and expenses. The “Applied Cap Rate” is the median rate for the group and used in establishing the assessments. An assessment to sales ratio (ASR) above 1.00 indicates that the assessment is higher than the sale price. The coefficient of dispersion (COD) indicates how close the assessments are to the sales prices. The lower the COD the closer the relationship between assessments and selling prices.

- [12] Altus argued for the sale of 1500 - 5th Avenue to be included in the group to establish a cap rate for warehouses larger than 25,000 square feet. With the unheated rents correctly applied, the sale has an economic cap rate of 11.20%. The median cap rate increases to 10.41% when calculated as follows:

Address	Econ Cap Rate
1735 Francis St	8.99%
144 Henderson Dr	9.43%
1135 8th Ave	10.41%
1500-5th Ave	11.20%
290 Henderson Dr	11.49%
Median	10.41%

The City responded to Altus’s point about incorrect calculations of sold properties’ rents and reviewed all warehouse sales, including those initially screened out due to extreme economic cap rates. This examination revealed that four sales had unheated space, so the City conducted a study comparing the percentage of unheated space to ASRs. This study is summarized below:

Address	% Unheated	Calculated Cap Rate Reflected % Unheated	ASR
335 E Dewdney	13.50%	6.68%	0.99
290 Henderson Dr	28.46%	10.22%	1.08
1500 - 5th Ave	85.85%	11.20%	1.19
290 Henderson Dr	28.46%	15.73%	1.67

The City interpreted this data as showing the current income and cap rate model produces excessive assessments for warehouses with more than 25% unheated space. In the City’s view, such sales are atypical and should not be included when assessing warehouses with very little or no unheated space. The City believes that an adjustment of -16% is warranted for buildings with more than 25% unheated space.

POSITIONS OF THE PARTIES:

[13] Altus:

- a) The Board was wrong in dismissing the appeal even though the City admitted an error that, when corrected, results in an increase in the cap rate. When the City admitted an error, the burden of proof fell to the Assessor.
- b) The Board's notice of appeal only pointed out an error in the analysis of the sale of 1500 - 5th Avenue. Previous decisions of the Committee have made it clear that the authority of the Board is limited to the issues raised in the grounds and their supporting facts. The Board did not have authority to consider the sales of 290 Henderson Drive and 335 East Dewdney Avenue.
- c) The Board should not have agreed with the City that there was sufficient evidence to support separate treatment of warehouses with 25% or more unheated space. The City provided a simple ASR analysis, which is not sufficient to show an error. The City could have done a Mann-Whitney or an outlier test but did not do so.
- d) The City's analysis of sales of warehouses with significant unheated space was included in their 10-day submission. This amounts to a new assessment, so 30 days should be given to review the material and respond.
- e) The warehouse rent model includes a rent for unheated space and an array of other adjustments. The model itself considers unheated space, so there is no need to treat properties with unheated space as a special case. There are various types of warehouses in the city wide model such as storage, transit, distribution, mega, industrial heavy and light manufacturing, prefabricated storage sheds, and unheated warehouses, none of which are treated as special.
- f) The corrected rent calculation on 1500 - 5th Avenue should be made and the sale itself should remain in the cap rate group. The result is a median cap rate of 10.41%. This rate should be applied in assessing the property under appeal.

[14] The City:

- a) The Board heard testimony and evidence that unheated warehouses were not typical in Regina. 1500 - 5th Avenue has 86% of its floor area as unheated. This is atypical and such sales should not be used to value properties that are typical. Evidence was also presented to show that warehouses with 25% or more unheated space required an adjustment for obsolescence of -16%.
- b) When faced with the error pointed out by Altus, the City investigated the potential for other similar mistakes. The Assessor found that some additional property sales had a significant amount of unheated space and a study was done. Comparable obsolescence analyses were done for other property types.

- c) In AAC 2009-0154 and AAC 2009-0143 the Committee agreed that when an error is found in the calculations leading to the determination of the cap rate, the rate can be changed.
- d) The Committee dealt with “white” and “black” assets in AAC 2009-0068 and 0073. In this case, Altus wants a typical unheated warehouse sale (white asset) included with typical heated warehouse sales (black asset). In the case quoted above, the Committee found that white assets should not be used to assess black assets.
- e) The rent model considers unheated space and a number of other factors. This does not mean that this is fully addressed in the cap rates. There are a number of cap rates in Regina, yet if all market influences were considered in the rent model there would be one cap rate. Tenants and property owners determine rents. Vendors and purchasers arrive at sales prices and cap rates. The interests of the various parties are different.
- f) The grounds of appeal to the Board included allegations that the Market Valuation Standard (MVS) was not met and that equity had not been maintained. These issues are always before the Board. This opened the grounds up for the Board to consider. The MVS includes the requirement that assessments should reflect typical market conditions for similar properties. This allowed the Board to consider whether or not 1500 - 5th Avenue was typical.
- g) The Board has authority to deal with issues stated in the appeal grounds. The grounds alleged that the cap rate was wrong, so this gives the Board authority to correct the errors found. Section 197 of the *Act* makes it clear that an appeal is against the valuation of the property. When errors are found they need to be corrected, regardless whether or not they are in the grounds of appeal. To only change the sale of 1500 - 5th Avenue without addressing the obsolescence issue would not meet the requirements of the MVS.
- h) The correct cap rate is 9.43% based on the sales at 1735 Francis Street, 144 Henderson Drive, and 1185 – 8th Avenue. In this situation, the Board and Committee cannot increase the assessment, so the original cap rate of 9.92% should remain.

ANALYSIS:

Including the Sale of 1500 - 5th Avenue in the Cap Rate Calculation

- [15] The *Act* states the application of the MVS “bear a fair and just proportion to the market value of similar properties as of the applicable base date” [s. 165(5)]. The base date ordered by the Saskatchewan Assessment Management Agency (SAMA) Board is January 1, 2011.

- [16] The MVS is achieved when the assessed value of property:
- i. is prepared using mass appraisal;
 - ii. is an estimate of the market value of the estate in fee simple in the property;
 - iii. reflects typical market conditions for similar properties; and
 - iv. meets quality assurance standards established by order of the agency [SAMA] [s. 163(f.1), the Act].
- [17] Altus alleges an error was made in the sales analysis on 1500 - 5th Avenue and that it should have been included in the sales used to determine the cap rate. Including the sale would improve the ability of the assessment model to reflect typical market conditions for similar properties.
- [18] The City agreed there was an error in the sales analysis calculation, but contended that use of the sale would inappropriately include an atypical property in the assessment of typical properties. In other words, including the sale would contravene subsection 163(f.1)(iii) of the Act.
- [19] The Board acted within the grounds when it considered the City's obsolescence study. The Board was not asked to approve the analysis for use in assessments. The study was presented in part to show that 1500 - 5th Avenue was atypical. Altus did not present evidence to refute the analysis even though they had the opportunity to do this by filing a rebuttal. Altus had most of the information required to review the City's analyses. In the appeal to the Board, Altus represented three of the four properties originally included in the cap rate calculation. Altus also represented 290 Henderson Drive and was well aware of 1500 - 5th Avenue. These two properties account for three of the four sales used in the City's obsolescence analysis. Furthermore, Altus did not ask the Board to postpone the hearing to allow for additional time to rebut the City's evidence.
- [20] The Board ruled that the correct cap rate was 9.43% and indirectly found that 1500 - 5th Avenue was an atypical sale. The evidence for this finding was:
- a) the property itself has 86% unheated space; and
 - b) the analysis of four sales had a significant amount of unheated space.
- [21] The Committee concurs with the Board. There is a reasonable basis for the Board's conclusion that 1500 - 5th Avenue is an atypical sale.

- [22] The Committee finds the Board exceeded its authority in removing 290 Henderson Drive from the sales array. This sale was not part of the grounds and their supporting facts, only 1500 - 5th Avenue was. The Board found that the correct cap rate was 9.43%, thereby accepting, in its entirety, the City's obsolescence analysis and removal of 290 Henderson Drive from the cap rate sales group. The Board only had authority, through the grounds and supporting facts, to address 1500 - 5th Avenue. Because the Board ruled the original cap rate (9.92%) should be maintained for reasons of equity, the error does not affect its conclusion.
- [23] Altus argued that the grounds to the Board did not allow it to exclude the sale of 1500 - 5th Avenue from the cap rate calculation. The City disagrees. The ground stated that the cap rate was too low and pointed to an error in the analysis of the sale of 1500 - 5th Avenue. Altus's grounds went further in stating that the sale should be included in the 25,000 square foot and larger warehouse grouping.
- [24] Prior to the correction of the sales analysis, the cap rate calculations did not include 1500 - 5th Avenue. It was originally trimmed because it indicated an extremely high cap rate. The large warehouse group had only four sales. With a small number of sales, it is especially important that each sale is appropriately included. The Committee finds that it was "within bounds" for the City to examine the suitability of the sale once the Assessor determined the sale should not be trimmed and for the Board to consider this evidence. Altus was aware that the sale was originally excluded and that it had a large proportion of unheated space. Altus' appeal before the Board included 24 other warehouse properties. It would not have been difficult to see that 1500 - 5th Avenue had an unusually high percentage of unheated space.
- [25] Both parties pointed to previous Committee decisions with respect to the limitations that grounds and supporting facts place on the authority of boards of revision and the Committee. Each case has its own set of facts and circumstances. In the present case, 1500 - 5th Avenue was originally excluded from the cap rate sales. The Board found that it was atypical. It is unreasonable to expect, having made that finding, that the Board should have ordered the inclusion of 1500 - 5th Avenue in the cap rate calculation. When an error is found in the application of the rent model, it follows that the cap rate calculations should be revisited. This is particularly relevant when it is being argued that a sale that was originally excluded should be included.
- [26] The Court of Appeal has limited the authority of appeal bodies to increase assessments. The Board recognized this and upheld the original cap rate. The Board did so because what it considered to be the correct rate would have resulted in an increase in the assessment. The Committee finds no fault with the Board upholding the original cap rate. It is the City's responsibility to make appropriate amendments to its assessments through amended notices or changes in a subsequent assessment year.


- [27] The Board dismissed the appeal, but it is not clear whether Altus's appeal fee was refunded. In this instance, Altus pointed out an error in the City's analysis and the City agreed. In this situation, Altus is entitled to a refund of the appeal fee, as they proved an error.

CONCLUSION:

- [28] The Committee dismisses the appeal with respect to the inclusion of 1500 - 5th Avenue in the cap rate sales group. The Committee allows the appeal with regard to the Board exceeding its authority in removing the sale of 290 Henderson Drive from the cap rate sales. The 2014 assessment on the property shall remain at \$52,118,800.

Dated at REGINA, Saskatchewan this 15th day of March, 2016.

Saskatchewan Municipal Board – Assessment Appeals Committee

Per: 
Lorna Cottenden, Panel Chair

Per: 
Lise Gareau, Director