

DETERMINATION OF AN APPEAL UNDER
Section 16 of *The Municipal Board Act* and Section 246 of *The Municipalities Act*

Appeal Number: AAC 2015-0146
Date and Location: February 24, 2016 - Regina, SK

Resort Village of Saskatchewan Beach
(as represented by the Saskatchewan Assessment Management Agency [SAMA])

Appellant

- and -

Kerry McInnis

Respondent

APPEARED FOR:

The Appellant: No one appeared
The Respondent: Kerry McInnis
SAMA: Vanessa Vaughan, Regional Manager
Shaneen Cooper, Assessment Appraiser

HEARD BEFORE: Gordon Hubbard, Panel Chair
Lee Fuller, Member
Earl Warwick, Member

INTRODUCTION AND BACKGROUND:

[1] The 2015 assessments for the property under appeal are:

Assessment ID Number	Civic Address	Legal Description	Land or Improvements	Original Assessed Value	Board's Assessed Value
505116450	200 & 202 Rigby Road	Lots 1 & 2, Block 1, Plan 03242	Land	\$288,400	\$201,600
			Improvements	\$219,200	\$219,200
			Total	\$507,600	\$420,800

[2] The property is non-regulated and classified as residential. The site is 4.01 acres and abuts the shore of Last Mountain Lake. The land has recently experienced soil instability. The property was valued using a market adjusted cost approach. The land assessment includes a 25% reduction on Lot 1 and 50% reduction on Lot 2, both due to soil instability. Improvements consist of a 1094 square foot single-family dwelling with an attached 168 square foot porch built in 2006. There is a 468 square foot boathouse (2002), decks, and various old outbuildings. The Market Adjustment Factor (MAF) applied to the residential improvements is 1.00. The base assessment date for 2015 assessments is January 1, 2011. Assessments for 2015 are to reflect market conditions as of the base date. Sales that occurred up to December 31, 2010, can be used for the 2013 to 2016 assessments. The next general reassessment will be 2017; at which time sales that took place on or before January 1, 2015, can be used.

[3] Mr. McInnis filed a simplified appeal to the Board of Revision (Board) on the following:

- Soil movement
- Boathouse value
- Removal of old cottage / garage
- Riprap on waterfront

The Board focused on two issues, the soil movement (slumping) and the detached garage (boathouse).

[4] SAMA inspected the property prior to the July 17, 2015, Board hearing. In its Board submission, SAMA noted the boathouse was damaged and was only suitable for storage. SAMA recommended that the boathouse costing be revised to a "C" quality shed in below average condition and the 50% functional obsolescence allowance be continued. SAMA also noted that the old summer cottage and open verandah had been demolished and should no longer be assessed.

- [5] Mr. McInnis submitted a July 15, 2015, geotechnical inspection report as part of his materials to the Board at the July 17, 2015, hearing. In the document, the engineer stated that their inspection was done on March 2, 2015, and that previous site inspections were done on May 29, 2014, and June 14, 1999. Some relevant quotes in the report are:

... new tension cracks have formed between the new cottage and the lake and additional landslide movement has occurred. The most recent landslide movement was caused by shoreline erosion during high lake levels The shoreline is still being actively eroded by high lake levels and wave action. Retrogressive landsliding is occurring up-slope ... and is now starting to effect the house. The boathouse has been severely damaged by the recent movement. Once a landslide becomes active, it is very difficult to completely stop it. Shoreline protection is recommended No additional developments are recommended ... until the shoreline has been stabilized and there is evidence that the active landslide movement has abated.

- [6] At the hearing, the Board asked SAMA to calculate the effect of their recommended changes (due to the inspection) to the improvement values. SAMA's reply, dated July 29, 2015, indicated a \$5,000 reduction as follows:

Improvement	Old Assessment	Recommended Assessment	Assessment Change
1956 Shed	1,390	0	-1,390
1956 Open Verandah	2,050	0	-2,050
2002 Detached Garage (Boathouse)	7,640	6,050	-1,590
Totals	11,080	6,050	-5,030

The Board did not order changes to the improvement assessment as a result of SAMA's recommendations. There were no reasons given for this. It may have been an oversight.

- [7] SAMA also recommended a change in the land assessment in their July 29, 2015, letter. SAMA suggested a 50% reduction in the assessment of Lot 1 based on information in the geotechnical report. The foundation of this was that the engineer stated that no additional development should occur without work being completed to stabilize the shoreline and there is evidence that the land has stopped moving. SAMA based the 50% reduction on sales of sites that have steep slopes and are heavily bushed. In other words, land sales where there is no buildable area without a considerable investment. Applying the 50% adjustment results in a \$56,700 decrease in the assessment on Lot 1 (from \$170,000 to \$113,300) and a revised total assessment on the land of \$231,700. The Board did not accept SAMA's recommendation. On Lot 1, the Board applied a 30% reduction (.70), calculated the amount, and then applied an additional 25% reduction

(.75) and achieved a net of \$118,790. The Board used a similar method for Lot 2, except it used 30% and 50%. The Board's revised total land assessment was \$201,600.

- [8] SAMA appealed to the Committee on the basis that the Board erred by double counting the obsolescence on the land. SAMA also believes the Board should not have placed weight on a previous decision by the Committee (AAC 0028-1997).

ISSUE:

- [9] Did the Board make an error when it increased the obsolescence applied to the land assessment above what was recommended by SAMA?

DECISION:

- [10] The Committee finds the Board made an error when it increased the obsolescence applied to the land assessment above what was recommended by SAMA.

PRELIMINARY MATTERS:

- [11] As a part of the normal process, the Panel Chair asked the parties to confirm the contents of the Board record and to indicate whether submissions to the Committee were received. Mr. McInnis did not recall getting SAMA's notice of appeal or their Committee submission. This material was sent electronically. He has had some trouble opening documents attached to his email. The Committee provided Mr. McInnis with paper copies of the information at the hearing and offered him time to review the material. The Panel Chair asked Mr. McInnis if he would like the hearing postponed. Ultimately, he was okay with the hearing proceeding without requesting a lengthy adjournment.
- [12] When documents are being sent electronically, it is incumbent on the sender (SAMA) to ask for confirmation of receipt. Technical problems can arise and it is only the sender who knows what and when items are sent. To ensure that proceedings are fair, it is essential for the parties to have timely access to all material.
- [13] The Panel Chair also noted that SAMA's submission to the Committee included references to an undertaking dated July 29, 2015. This document was not included in the Board record. Further, the Board's decision makes no reference to its request for an undertaking or the results of that request. The Committee Director emailed SAMA prior to the hearing asking for a copy of the document. SAMA emailed a copy to the Committee on February 22, 2016. Mr. McInnis and the Panel were provided with copies at the hearing. The Board Secretary should have ensured that the undertaking was included in the materials she sent to the Committee's Director. It is also important that,

when the Board asks for additional information, it is noted in the decision. In this instance, the Committee might have been unaware of an important document.

- [14] Part way through the hearing, Mr. McInnis showed a series of photographs to the Panel. The pictures were taken at the time of the most recent geotechnical report. These were presented to the Board although there is no indication from the record that photos were submitted. SAMA confirmed that photos were submitted at the Board hearing. The Panel Chair accepted the photos in order to complete the record. It is critical that the Board record be complete. In this instance, the Board could have used the photos at their hearing, borrowed them and used a colour photocopier or scanner to reproduce them for the record.

POSITIONS OF THE PARTIES:

- [15] SAMA:

- a) Land slumping around Last Mountain Lake is quite recent, generally in late 2014. This is long before the regulated sales cutoff date of December 31, 2010, for the 2013 to 2016 assessments. SAMA is taking the issue of soil instability in the area seriously and is monitoring the situation on an ongoing basis. There have been many recent assessment appeals based on soil slumping. SAMA asks property owners for geotechnical reports or cost to cure information before considering reductions in assessments due to land instability.
- b) SAMA's obsolescence adjustment was made based on sales evidence. In this instance, there were no directly comparable sales, so sites without buildable areas were studied. These lots cannot be built on without substantial land changes being completed. This is a similar circumstance to lots with significant soil slumping. Using sales evidence is in concert with mass appraisal and the need for statistical testing. Other similar properties in the Resort Village of Saskatchewan Beach receive this adjustment. Mr. McInnis did not provide any evidence to show that the adjustment was insufficient. When SAMA has reliable information about the cost to cure in this sort of situation, an adjustment can be made. The practice is to use the greater of the cost to cure or the sales-based obsolescence in reducing the land value. No cost to cure data was provided by the property owner. It is SAMA's intention to retain these obsolescence adjustments into the future until there are sales of properties that have experienced slumping.

- c) The Board used an added adjustment (i.e., 30%) from a previous (1997 tax year) decision. There is no current market evidence to support the 30% adjustment. This is a violation of the mass appraisal requirement. Furthermore, the application of the additional obsolescence makes the subject property's land assessment different from other properties with similar conditions. This is not equitable.
- d) The Board should not have relied on the 30% adjustment that originated from the 1997 decision. That adjustment was based on sales that occurred from 1991 to 1994. The market as of the base date for the 2015 assessments is very different than sales that occurred up to 20 years earlier. The market has changed substantially. The 1997 decision only applies to the corresponding assessment cycle.
- e) Every four years there is a reassessment, and new, more current, sales are used. This means that obsolescence calculations can change over time. Market activity was high from 2007 to 2010, and sales showed similar prices for sites that were relatively flat and those with "lots of topography" so long as there was a buildable area. Sales of properties with no buildable area showed a 50% obsolescence. All properties with historical adjustments were inspected and in many cases those adjustments were removed for the current assessment cycle. The only adjustments that remain are those without a buildable area and have a 50% deduction.
- f) When SAMA did the inspection, the property was being used. The engineering report did not indicate that the dwelling had structural damage. It did show that there were new soil tension cracks between the dwelling and the lake, and that there was additional land sliding. SAMA responded to the geotechnical report and recommended changes to the assessments based on mass appraisal.
- g) The Board was wrong when it double counted the obsolescence. The 50% adjustment applies. Adding the historical 30% is not correct for reasons already stated.
- h) SAMA asks the Committee to reinstate the recommended value of \$445,900 as outlined in the July 28, 2015, undertaking.

[16] Mr. McInnis:

- a) Mr. McInnis is frustrated with the whole appeal process. He has gone through this four times in the last 19 years, and being self-employed, the time taken has been costly. He was satisfied with the Board's decision and does not see why he must go through this again. He understands the issues.
- b) The geotechnical report shows that the soil movement is quite recent. High water levels in the last few years have eroded the bank and caused slumping. Past sales are not useful. No one would buy the property in its current state.

- c) Mr. McInnis has already spent approximately \$25,000 on riprap to try to stabilize the shoreline. Based on the most recent report, additional riprap costing another \$25,000 will be needed shortly to try and save the house. Even with this work, there is no guarantee that the slumping will stop. The cost to cure is in the neighbourhood of \$100,000 to put the property back into its original state. The drywall in the dwelling is already showing signs of cracking. The boathouse's pilings have been eroded and it cannot be saved. The property was built as a retirement home and Mr. McInnis's life savings have gone into it. He has worked very hard to try to reduce the risk of slumping including pumping water from low lying areas and demolishing old buildings to reduce the load on the soil.
- d) The property is not lakefront; it is only a lake view lot. Mr. McInnis's house is approximately 100 feet higher than the lake and 150 feet from the shore. About 80% of the land is bush and ravines. Landslides have destroyed his access to the lake.
- e) Mr. McInnis does not see any reason why the previous 30% reduction cannot be used for the 2015 assessment. There needs to be consistency over time in order for the assessments to be fair.
- f) The Panel asked Mr. McInnis if he had indicated to the Board what sort of reduction he was seeking. He is not sure that the Board ever asked. It should be considered agricultural land or back lot recreational land. Until the slumping is stopped, it is unclear what the value of the property is.

ANALYSIS:

- [17] The Committee is very sympathetic to Mr. McInnis's situation. His planned retirement property has been damaged due to forces beyond his control and for which there is no insurance or assistance available. The soil slumping and high lake water levels are recent and significant. He has invested a considerable amount of money and effort trying to protect the property from further damage, but there is no end in sight. One can only hope that the additional work scheduled to be done will stabilize the land and his family can enjoy their lake property without further worry and expense.
- [18] Mr. McInnis is in a difficult position in trying to make his case to the Board and in supporting the Board's decision to the Committee. No one knows what the effect of the soil instability will have on market prices – there is no sales data. He has done what he can by providing the geotechnical report to SAMA and facilitating their inspection. Mr. McInnis's suggestion that the land should be assessed as agricultural or back lot has not been supported by evidence. Assessments can be adjusted, but any changes need support.

- [19] The Board and the Committee exist because of provincial legislation and are limited in their powers by law. The Board and the Committee must review assessment appeals on the basis of the Market Valuation Standard (MVS) and equity, and within the grounds of appeal.
- [20] *The Municipalities Act*, SS 2005, c M-36.1 (the *Act*) states the application of the MVS achieves equity for non-regulated property assessments when assessments “bear a fair and just proportion to the market value of similar properties as of the applicable base date” [s. 195(7)]. The base date ordered by the SAMA Board is January 1, 2011. The SAMA Board also has ordered a market data information cutoff of December 31, 2010.
- [21] 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]**
- [22] Mass appraisal in the *Act* [s. 193(e.2)] is defined as “... the process of preparing assessments for a group of properties as of the base date using standard appraisal methods employing common data and allowing for statistical testing.”
- [23] SAMA became aware of the problems with the land from a site inspection and the recent geotechnical report. They recommended a reduced assessment founded on that information. The basis of the 50% obsolescence for the land is a sales analysis that SAMA considers the most appropriate, bearing in mind the regulated sales cutoff. Ideally, there would be sales of actively slumping lots, but since the problems only became apparent in late 2014, no information within the window of time allowed by regulation is available. The Board decided that this “best available” evidence was not sufficient and drew from an historical ruling to increase the deduction. There was no evidence before the Board that showed that market conditions were similar for the 1997 tax year assessments and the 2015 tax year assessments. Without such evidence, it is only prudent to consider the 1997 tax year decision as outdated. The MVS and mass appraisal require that assessments reflect market conditions as of the base date (i.e., January 1, 2011).
- [24] The Court of Appeal in *Bison Properties Limited v Regina (City)*, 2008 SKCA 158, 314 Sask R 249 (*Bison*) ruled that assessors could use their knowledge of past trends in determining assessments (see paragraphs 16 and 17). However, in *Bison*, data from the current assessment cycle was used and past experience was employed where there was a lack of recent information. The Court did not rule that historical information could supplant or be “stacked” onto more current data.

- [25] In the case before us, the Board discussed assessor's discretion at some length in the ruling and believed that the subject property had unique characteristics that warranted the application of the historical 30% reduction. The Board does not seem to have considered whether market conditions have changed, or whether current information supplants the old 30% adjustment. Further, the Board did not deliberate whether or not the market evidence supported stacking the 30% adjustment on top of the current 25% or 50% adjustments. The more current sales would not have supported piling the old adjustment on to the newer one. The Committee finds that the Board erred by "double deducting" the obsolescence. The Committee finds that the Board should have accepted SAMA's recommended decrease of \$56,700 in the assessment on Lot 1 (from \$170,000 to \$113,300) and a revised total assessment on the land of \$231,700.
- [26] The Board appears to have missed SAMA's recommended decrease in the improvement assessment. SAMA's inspection and the engineer's report supported those reductions. The grounds of appeal gave the Board the authority to order the changes. The Committee is able to act in situations when the Board did not do what it ought to have done. Therefore, the Committee orders a reduction in the improvement assessment by \$5,030 as outlined in paragraph [6] above.
- [27] The law requires reassessments every four years, with base and market information cutoff dates set some time before the tax years. This makes it difficult for assessments to address recent and significant factors like the high water levels and soil slumping at Last Mountain Lake. SAMA, the Board, and the Committee must work within the existing laws. The Committee is sympathetic to Mr. McInnis's situation, but there is no lawful way to further reduce his assessment beyond what SAMA has already recommended with the evidence presented to the Board.
- [28] The Committee encourages SAMA to continue to endeavour to address the slumping problems around Last Mountain Lake. As far as possible, SAMA should work co-operatively with property owners to gain a comprehensive understanding of the issue and to ensure that relevant sales information is verified and documented.


CONCLUSION:

[29] The Committee allows the appeal. The total assessments for the property shall be as follows:

Land or Improvements	Committee Ordered Assessed Value
Land	\$231,700
Improvements	\$214,200
Total	\$445,900

Dated at REGINA, Saskatchewan this 31st day of March, 2016.

Saskatchewan Municipal Board – Assessment Appeals Committee

Per: 
Gordon Hubbard, Panel Chair

Per: 
Lise Gareau, Director