

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

Appeal Number: AAC 2015-0157
Date and Location: April 6, 2016 - Saskatoon, SK

Rural Municipality of Corman Park No. 344
(as represented by the Saskatchewan Assessment Management Agency [SAMA])

Appellant

- and -

Saskatoon Wildlife Federation

Respondent

APPEARED FOR:

The Appellant: No one appeared

The Respondent: Brad Ashdown, Executive Director
Galen Richardson, McKercher LLP

SAMA: Michelle Fuhr, Appraisal Agrologist
Darwin Kanius, Manager, Quality Control

HEARD BEFORE: Lorna Cottenden, Panel Chair
Gord Androsoff, Member
Peter Stroh, Member
Don Molesky, Observer

INTRODUCTION:

[1] The 2015 assessment for the property under appeal is:

Roll Number	Legal Description	Original Assessed Value	Board's Assessed Value
344-001310402	SW 10-38-4-W3 Parcel A	\$555,200 (Land \$518,800 Improvements \$36,400)	\$32,300 (Land \$25,900 Improvements \$6,400)

[2] The property is non-regulated and commercial. The Assessor used the cost approach to value the property. The land is 4.89 acres located north of Saskatoon. The improvements are identified as sheds, a canopy/A frame and other utility structures.

[3] The Board lowered the original assessed value to \$32,300. SAMA asks the Committee to reinstate the original assessed value to \$555,200.

ISSUES:

- [4] a) Did the Board make a mistake when it classified the property as a *Special Purpose Property*?
- b) Did the Board make a mistake when it applied a 75% economic obsolescence adjustment to the assessed value of the land?
- c) Did the Board make a mistake when it applied a 20% functional obsolescence factor for wetlands/ponds to the assessed value of the land?

DECISION:

[5] The Committee finds:

- a) The Board made a mistake when it classified the property a *Special Purpose Property*.
- b) The Board made a mistake when it applied a 75% economic obsolescence adjustment to the assessed value of the land.
- c) The Board made a mistake when it applied a 20% functional obsolescence factor for wetlands/ponds to the assessed value of the land.

[6] The Committee allows the appeal for all three issues identified in paragraph [4]. The Committee reinstates the original 2015 property valuation of \$555,200.

PRELIMINARY MATTERS:

[7] The Panel Chair clarified the issues with the parties and they agreed the issues are as stated in paragraph [4].

New Evidence

[8] SAMA submitted a two-page property report that included three aerial photographs to the Committee. This evidence was not before the Board.

[9] The Committee has the legislative authority to accept new evidence under *The Municipalities Act, SS 2005, c M-36.1 (Act)* [ss. 222-223] and *The Municipal Board Act SS 1988-1989, c M-23.2* [s. 20(7)-(8)].

[10] There was sufficient time for SAMA to have provided the report at the Board hearing. Normally, the Committee will not accept new evidence when this is the case. Mr. Ashdown had no issues with the Committee accepting the report so we accepted it on the grounds it may be relevant.

POSITIONS OF THE PARTIES:

[11] SAMA:

- a) SAMA based the valuation of the subject property on land sales of similar zoning within the Rural Municipality of Corman Park (RM). Adjustments were made for size, location and other attributes as indicated by sales evidence.
- b) Saskatoon is not a good comparison to land in the RM.
- c) There is no valid evidence to show that the land rates used by the Assessor are incorrect. The Board did not make any changes to the land rate.
- d) The subject should not be called special purpose. *Special Purpose Property* refers to buildings only, not land. If the subject were deemed a *Special Purpose Property* the correct method to determine value would be the cost approach, which is already being applied.
- e) The Respondent has not provided any evidence to show that the tax classification is incorrect. Tax classification is under the jurisdiction of the RM and was properly applied by SAMA.
- f) The Board considered wetlands as topography and without evidence applied a 20% reduction. The maximum topography adjustment is 10%.
- g) SAMA cannot apply an environmental contamination adjustment without the appropriate report.

- [12] Saskatoon Wildlife Federation (Federation):
- a) The Board was correct to apply a 75% economic obsolescence to the land without a “contaminated property risk assessment report” or an “estimated cost-to-cure contamination report”.
 - b) SAMA’s Cost Guide does not have the force of law. The Board was not obliged to follow the Cost Guide and, therefore, could adjust the assessed value.
 - c) The Board was correct to apply a 20% functional obsolescence for wetlands/ponds. The Board found the wetlands/ponds to be a cause of dissimilarity and appropriately adjusted the value of the land to achieve equity. The Board recognized that land which is under water is not usable and should not be assessed full commercial value. The adjustment was reasonable in the circumstances and should not be interfered with.
 - d) SAMA’s argument that the Board erred by applying the 20% obsolescence factor without market evidence and without related land rate factors is an attempt by SAMA to reverse the burden of proof.
 - e) The Federation only has the onus to show the assessment was incorrect.
 - f) There is no legal basis for reversing the burden of proof from one stage of an appeal to another.
 - g) The property is not commercial use. Its use is seasonal and has no income potential.

ANALYSIS:

- [13] Subsection 256(1) of the *Act* defines the actions the Committee may take after hearing an appeal. The Committee finds the Board made a mistaken error when it allowed the appeal. The Committee sets aside the decision of the Board and, therefore, must do what the Board ought to have done.
- [14] The Committee finds three reasons to set aside the decision:
- a) The Board appears to have done its own research at paragraph [41] of its decision, which is not permissible under the *Act*.
 - b) The Board used a test to determine if the subject property was a *Special Purpose Property*. The Board cited the SAMA Cost Guide as the basis and reference for their test. The Committee could not determine how the Board applied their test, which uses a description of improvements, to the land valuation.
 - c) The Board provided no legal basis or reference for arbitrarily choosing an economic obsolescence reduction of 75%.
- [15] The *Act* states the application of the Market Valuation Standard (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 base date” [s. 195(7)].

[16] The application of the MVS occurs when the assessment:

- 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. 193(e.1), the Act].

[17] Further, mass appraisal is “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” [s. 193(e.2), the Act]. In addition, “... a non-regulated property assessment shall not be varied on appeal using single property appraisal techniques” [s. 256(3), the Act]. This means not only may an assessor not use a single property appraisal technique to value property under a mass appraisal system, but also that the Board cannot vary the assessment completed by the assessor in the face of evidence regarding single property appraisal techniques.

[18] The cost approach used to value the subject property estimates the replacement cost of improvements less depreciation plus land value. The Assessor applied the same method to all properties in the RM. The valuation of similar properties must meet the MVS and be treated the same because property assessment must be equitable (s. 195(5), the Act). Only the land value was at issue in this appeal. The cost approach for the land required the Assessor to use vacant land sales data. The land was assessed as commercial using a base land rate of \$95,750 per acre with a standard parcel size of 5.01 acres and a Land Size Multiplier curve of 180%.

Issue a): Did the Board make a mistake when it classified the property as a *Special Purpose Property*?

[19] SAMA used the Market Value Assessment in Saskatchewan Handbook (Handbook), Special Purpose Properties Valuation Guide to determine the classification of the subject land. In the Guide, “A special purpose property is characterized as a ‘property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built’” (Section 2.0, page 11). While the Federation argued that the Handbook does not carry the force of law, the Committee agrees with SAMA that the Cost Guide in the Handbook provides consistency.

[20] The Committee can find no mistake in SAMA’s interpretation that *Special Purpose Property* refers to buildings such as grain elevators and not to land. The recommended approach to valuing special purpose properties is the market adjusted cost approach, which is already the method used to value the subject property.

[21] Although the Federation has described special features and unique circumstances of the subject land, the Committee finds that the Board made a mistake in classifying the land as special purpose.

Issue b): Did the Board make a mistake when it applied a 75% economic obsolescence adjustment to the assessed value of the land?

[22] The Board noted there is a significant cost to remediate the environmental damage to the land if the property were to be sold in the future; however, the Board provided no legal basis for arbitrarily choosing an economic obsolescence reduction of 75%. The Board did its own research on costs incurred by police forces, the military, the RCMP, and private gun clubs to cure environmental damage from gun ranges.

[23] SAMA is required to use sales evidence to calculate any adjustments for environmental damage. Environmental contamination as referenced in SAMA's Cost Guide (Section 1.4, pages 9-12) requires a "contaminated property risk assessment report" or an "estimated cost-to-cure contamination report" before SAMA can calculate any adjustment. The Board did not have either report before it on which to calculate a 75% economic obsolescence adjustment.

[24] The environmental cleanup report from other gun ranges is not transferable to another property because costs are property specific.

[25] The Committee finds that the Board made a mistake by using costs from other gun ranges to arbitrarily apply a 75% economic obsolescence adjustment.

Issue c): Did the Board make a mistake when it applied a 20% functional obsolescence factor for wetlands/ponds to the assessed value of the land?

[26] The Board did not adequately explain the origin of the 20% functional obsolescence. The Committee was left with doubt whether the supplied aerial photos show that the intermittent ponds are in fact on the subject property. The Board ought to have requested an undertaking to clarify if the ponds form part of the property and, if so, how much of the total area of the land they cover.

[27] The Board designated the ponds as a topography issue. SAMA pointed out that the maximum adjustment available for topography is 10%.

[28] The Committee finds the Board made a mistake by arbitrarily applying a 20% functional obsolescence.

CONCLUSION:

[29] The Committee allows the appeal for all three issues identified in paragraph [4]. The Committee reinstates the original 2015 property valuation of \$555,200.

Dated at REGINA, Saskatchewan this 9th day of June, 2016.

Saskatchewan Municipal Board – Assessment Appeals Committee

Per: 
Lorna Cottenden, Panel Chair

Per: 
Lise Gareau, Director