

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

Appeal Number: AAC 2016-0118
Date and Location: December 13, 2016 – Regina, SK

City of Moose Jaw
(as represented by the Saskatchewan Assessment Management Agency [SAMA])

Appellant

- and -

Jordan Properties Inc.
(as represented by Altus Group Limited [Altus])

Respondent

APPEARED FOR:

The Appellant: Nancy Wollner, Regional Manager
Archie Robertson, Senior Market Commercial Appraiser

The Respondent: Archie Fieldgate, Senior Tax Consultant
Ryan Simpson, Senior Analyst

HEARD BEFORE: Lorna Cottenden, Panel Chair
Holly McFarlane, Member
Brandee Murdoch, Member

INTRODUCTION:

- [1] The 2016 assessment for the property under appeal is:

Roll Number	Legal Description	Original Assessed Value	Board's Assessed Value
485015800	Block B, Plan 01MJ07548	\$ 1,935,700	\$ 1,465,000

- [2] The property is non-regulated and classified commercial. The Assessor used an income approach to value the property.
- [3] The Board of Revision (Board) for the City of Moose Jaw (City) requested the SAMA Appraiser calculate a new assessed value for the subject property as an Open Mall Quality 5 – Best. In response to the undertaking, the SAMA Appraiser provided a new assessed value of \$1,465,000. SAMA asks the Committee to reinstate the original assessed value.

ISSUE:

- [4] Did the Board make a mistake when it found the subject property best fits the definition of an open mall as defined by SAMA's model in the income approach market summary?

DECISION:

- [5] The Committee finds the Board did not make a mistake when it found the subject property best fits the definition of an open mall as defined by SAMA's model in the income approach market summary. The Committee upheld the Board's decision that the property shall be assessed as an Open Mall Quality 5 - Best. The property valuation for 2016 shall be \$1,465,000.

POSITIONS OF THE PARTIES:

- [6] SAMA:
- a) The Board made a mistake when it applied the incorrect income model to the subject property. It did not consider the facts and conditions of the subject property relating to the largest and dominant building on the property.
 - b) The Board made a mistake by disturbing equity within the municipality when it valued Burger King differently than other comparable fast food restaurants. The Board disturbed equity by valuing a property without proper consideration of the attributes and characteristics of the dominant improvement on the property.

[7] Altus:

- a) SAMA did not provide any form of statistical testing to justify the original subject assessment's deviation from the market model. The Board was correct with the evidence before it to find the assessment did not meet the Market Valuation Standard (MVS).
- b) The model provides the definition of open malls and the subject meets the definition as determined by the Board in its decision. The Board was not provided with the rents from SAMA used in its analysis. SAMA's assertion that it grouped specific rents with specific categories was not supplemented with any tangible evidence.
- c) The Respondent provides the following summary of evidence:
 - Open malls consist of two or more tenants (units) each having direct access to an open parking area pursuant to the model.
 - SAMA stated through testimony the SaskTel outlet is an open mall because of the number of units on the parcel and did not object when Altus testified to its definition.
 - The subject property has two tenants which meet the definition of an open mall.
 - SAMA testified that criteria typically used to derive quality were not being applied to determine property type classification while ignoring the definitions from its own model.
 - The rent statistics for the open mall category include 10 Quality 5 Fast Food rents.

ANALYSIS:

Background

- [8] The subject property is a commercial property located at 1230 Main Street North in the City. The property is owned by one owner and has two tenants. The property is commonly known as Burger King and SaskTel.
- [9] The parties presented no evidence the market rental rates, quality rates, or capitalization rates were calculated incorrectly in the 2011 Base Year - Income Approach Market Summary for the City of Moose Jaw and Rural Municipality of Moose Jaw No. 161 (Income Summary).

Property Valuation

- [10] *The Cities Act*, SS 2002, c C-11.1 [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. 165(5)].
- [11] 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].**
- [12] The income approach was used to value the subject property and requires market rental data. The Assessor applied the same method to all income producing commercial properties in the City. The valuation of similar properties must meet the MVS and be treated the same because property assessment must be equitable [s. 165(3), the Act].
- [13] We find there is no evidence to indicate the Assessor used incorrect data. The Income Summary identifies that standard appraisal methods have been used and the data employs common data which allows for statistical testing. Neither party alleges there is a mistake in any of these areas.

Classification, Location and Zoning

- [14] *The Cities Regulations*, RRS c M-36.1 Reg 1 determine classes of property based on land use (s. 12). The subject property is non-regulated. The classification for non-regulated properties is either commercial or residential.
- [15] A non-regulated property includes improvements, such as a house or buildings, and land. The land of a non-regulated property is described as urban land, regardless of location.
- [16] The property classification used for the subject property is the matter the Board considered in error in achieving market valuation. In addition to land classification, zoning is a relevant part of assessment. Municipalities are responsible to determine zoning and SAMA uses their information.

- [17] Both SAMA and Altus agreed on the definition of an open mall as identified in the Income Summary “For SAMA’s purposes, an open mall is either a strip mall or power centre. A strip mall refers to..... Strip malls consist of two or more units (tenants), each having open access onto an open car parking area. These malls can vary in size.” This definition suggests there is no open mall with only one tenant.
- [18] The SAMA property report of February 2016 identifies the two tenants of the open mall. One tenant is listed under the income category of Restaurant Fast Food – 5. The other tenant is listed under the income category of Retail Open Mall – 5. The report also includes a storage warehouse.
- [19] The assessment is presumed correct unless an assessor makes an error of fact, law or assessment principles [*Regina (City) v Laing Property Corp.* (1994), 128 Sask R 29 (CanLII 4690) (Sask CA)].
- [20] Altus suggests there is an error in assessment principles based on the following information contained in the Income Summary:

All Open Mall rental spaces are combined into Open Mall category and are separated from the Retail and Office group. Therefore the same quality open mall retail, open mall restaurant, open mall office will receive the same rent rate.

The parties agree on the quality ratings and physical characteristics of the property.


- [21] SAMA states the Income Summary is only a guide and that assessor discretion is required in valuing some properties. SAMA presented this opinion to the Board and indicated predominant use of a building, advantage in the market place, how the building functions, and other factors needed to be considered.
- [22] SAMA indicated to us it felt the Board was confused in its approach to the classification of the Burger King tenant. In reviewing the transcript of the Board’s hearing, we have determined the Board was seeking clarification about what factors determined whether the property was classified open mall.
- [23] The Board was not convinced the issue was related to discretion and believed Altus met their burden of proof showing the Burger King portion of the property should be assessed in the open mall category.

- [24] Written reasons provide accountability, procedural fairness, and comply with subsection 210(5) of the *Act*. Written reasons promote transparency and show people how decision makers made their decisions [*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 (CanLII 699) (SCC) at paras 38-40 and *Northwestern Utilities Ltd. v City of Edmonton*, [1979] 1 SCR 684 (CanLII 17) (SCC) at 706].
- [25] In making a decision, we have to follow these steps in analyzing the Board's record:
- Identify the issues being appealed and identify the legal tests that will be applied to the evidence presented.
 - Sort and weigh the evidence by the appropriate legal tests.
 - Apply the appropriate legal tests to the evidence to reach a conclusion.
- [26] The Board believed the property met the definition of open mall and requested SAMA recalculate an assessment value for the Burger King property based on that classification. The Board identified the Assessor deviated from this classification during the assessment process.
- [27] The Board believed it had maintained equity because there was a significant number of fast food restaurants used to develop rental rates within the open mall classification.
- [28] We find the Board reasonably believed the MVS was met and Altus met their burden of proof, on a balance of probabilities. We further find the Board did not make a mistake when it found the property should be assessed as an Open Mall, Quality 5 – Best.

CONCLUSION:

- [29] The Committee dismisses the appeal. The 2016 property valuation determined by the Board was \$ 1,465,000. The Committee confirms this property valuation.

Dated at REGINA, Saskatchewan this 8th day of February, 2017.
Saskatchewan Municipal Board – Assessment Appeals Committee

Per: 
Lorna Cottenden, Panel Chair

Per: 
Lise Gareau, Director