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## RECORD OF DECISION

### CITY OF PRINCE ALBERT – BOARD OF REVISION

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**Appeal No.:** 2024-84  
**Roll No.:** 220011570  
**Hearing Date:** May 31, 2024, at 9:00 a.m.  
**Location:** 2<sup>nd</sup> Floor, Main Boardroom, City Hall  
1084 Central Avenue, Prince Albert, SK

**Appellant** Walmart Canada Corporation

**Respondent** City of Prince Albert

**Board of Revision** Jackie Packet, Chair  
Ralph Boychuk, Vice-Chair  
Cherise Arnesen, Member

Terri Mercier, Secretary

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#### Representation

**Appellant** Allison Graham, Counsel to the Appellant, MLT Aikins LLP

**Witness** Charles Johnstone, Principal, Property Tax Complex, Team Lead Expert Witness Services, Ryan ULC

**Respondent** Troy Barill, Procido LLP (Legal Representation)  
Aden Ritter, Procido LLP (Legal Representative Support)  
Vanessa Vaughan, City Assessor  
Dale Braitenbach, Assessment Appraiser  
Darcy Lees, Assessment Appraiser

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#### Property Appealed

**Civic Address** Unit 100 800 15<sup>th</sup> Street East  
Prince Albert, Saskatchewan

**Legal Description** Lot 2, Block/Parcel 3, Plan 09PA04265 Ext 0

**Assessed Value** \$21,272,900

**Tax Class** Commercial – Improved-T (85% of value)

**Taxable Assessment** \$18,081,900

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## Role of the Board of Revision

- [1] The Board of Revision (Board) is an Appeal board that rules on the assessment valuations for both land and buildings that are under Appeal. The basic principle to be applied by the Board in all cases is set out in *The Cities Act*, which states the dominant and controlling factor in the assessment of property is equity. The Board's priority is to ensure that all parties to an Appeal receive a fair hearing and that the rules of natural justice come into play.
- [2] The Board may also hear Appeals pertaining to the tax classification of property or the tax status of property (exempt or taxable). This does not mean the Board can hear issues relating to the taxes owed on property.
- [3] Upon hearing an Appeal the Board is empowered to:
- (a) confirm the assessment; or,
  - (b) change the assessment and direct a revision of the assessment roll by:
    - a. increasing or decreasing the assessment;
    - b. changing the liability to taxation or the classification of the subject; or,
    - c. changing both the assessment and the liability to taxation and the classification of the subject.

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## Legislation

- [4] Property assessments in Saskatchewan are governed by *The Cities Act*, *The Cities Act Regulations* and/or by board order of the Saskatchewan Assessment Management Agency (SAMA).
- [5] The dominant and controlling factor in assessment is equity. (*The Cities Act*, 165(3))
- [6] Equity is achieved by applying the market valuation standard. (*The Cities Act*, 165(5))
- [7] The market valuation standard is achieved when the assessed value of property:
- (a) is prepared using mass appraisal;
  - (b) is an estimate of the market value of the estate in fee simple in the property;
  - (c) reflects typical market conditions for similar properties; and,
  - (d) meets quality assurance standards established by order of the agency.  
(*The Cities Act*, 163(f.1))
- [8] Mass appraisal means preparing assessments for a group of properties as of the base date using standard appraisal methods, employing common data and allowing for statistical testing. (*The Cities Act*, 163(f.3))

## Preliminary Matters

[9] At the request of the Appellant, and in accordance with Section 208 of *The Cities Act*, the Board ordered that this hearing be recorded by court reporting services, Living Skies Reporting, with the costs of the recording being charged to the Appellant.

[10] With respect to the Board's internal process, this hearing will be recorded for use of the Board only in rendering its decision.

[11] The Appellant requested that Appeal 84-2024 be considered a Lead Appeal and all evidence and testimony from both parties for this Appeal be carried forward and applied to Appeal 83-2024. The Respondent agreed.

[12] The Board ruled Appeal 84-2024 to be the Lead Appeal and all evidence and testimony from the Agent and Respondent will be carried forward and applied to Appeal 83-2024. The Board will render a decision on the Lead Appeal and apply that decision to the appeal noted above.

[13] The Respondent indicated a preliminary issue regarding the Appellant's Application to Amend the Notice of Appeal, which was included in the 20-day submission received on May 13, 2024. The Board recessed and determined that the Application by the Appellant would be granted as it was included in the 20-day submission and the Respondent responded to the amended Grounds as outlined in their submission. Therefore, the Board granted an Order to accept the amending Grounds as outlined in the Appellant's submission.

[14] It was noted for the Appellant's submission and rebuttal submission, as submitted by the Agent to the Appellant, were not page numbered or effectively grouped for the Board's records, creating inefficiencies and confusion in navigating through the appeal documents. The Agent for the Appellant apologized and noted future submissions will be page numbered accordingly.

[15] The Agent requested clarification of the legal distinction between the Assessor's Explanation and the City Submission, as outlined in the Appellant's 5 day submission.

[16] The Board indicated that the Assessment Team has traditionally provided Appeal submissions on behalf of the City (the Respondent). That Assessment Team includes the City Assessor, whose role is legislated in *The Cities Act*. Therefore, the Board considers all parts of the City's submission in their review of the appeal documents.

## **Exhibits**

[17] The following material was filed with the Secretary of the Board of Revision:

- a) Exhibit A-1 – Notice of Appeal received March 1, 2024
- b) Exhibit A-2 – Response to Notice to Perfection Letter dated February 13, 2024, regarding Appeal No. 84
- c) Exhibit A-3 – 20 day written submission received May 10, 2024
- d) Exhibit A-4 – 5-day rebuttal submission received May 27, 2024
- e) Exhibit A-5 – Request to Record Hearings dated May 28, 2024
- f) Exhibit R-1 – 10 day written submission received May 21, 2024, which includes Part A, Part B and Part C
- g) Exhibit B-1 - Acknowledgement of Appeal No. 83 & 84 & Notice to Perfect Letter for Appeal No. 84 dated March 11, 2024
- h) Exhibit B-2 – Notice of Hearing Letter dated April 8, 2024
- i) Exhibit B-3 – Revised Notice of Hearing Letter dated April 16, 2024

## **Appeal**

[18] Pursuant to *The Cities Act*, section 197(1), an Appeal has been filed against the property valuation of the subject property. The Lead Appeal property is a non-regulated property with a total land size of 522,905 square feet. A one-story building of 158,936 sq. ft. contains the following: a 319 Discount Store, a 340 Market, a 349 Fast Food Restaurant, and a 471 Lt. Commercial Utility Building.

[19] The Appellant's grounds state:

1. The Assessor erred in assessment law and assessment practice and reached an unreasonable decision by preparing the assessment based on a belief that applying a Market Adjustment Factor is required or always preferable.
2. The Assessor erred in assessment law and assessment practice and reached an unreasonable decision by failing to consider the physical and value-generating characteristics of the properties when determining comparability of the sales used in the Market Adjustment Factor grouping.
3. The Assessor erred in assessment law and assessment practice and reached an unreasonable decision by developing and applying a Market Adjustment Factor based on a grouping of sales that includes properties that are not comparable to the Subject Property.
4. The Assessor erred in assessment practice by double-counting the refrigeration equipment in its costing calculation.
5. The Assessor erred in assessment practice or acted unreasonably by applying a Saskatchewan Cost Factor of 106% when Current and Local Cost Multipliers had

already been applied.

## **Appellant**

[20] In the Agent's written submission and testimony to the Board, the Appellant states:

### **Ground One – No MAF Required**

1. Concerning assessment law: *Estevan* 2021 para 32 confirms that a MAF is not required; *Walmart Canada Corp v Prince Albert (City)*, 2021 SKCA 158 para 19 states "A MAF is appropriate and possible only if there are an adequate number of sufficiently comparable properties to warrant its calculation."
2. Concerning assessment practice: *Affinity* para 82 (a), (c), (f) The Committee confirmed that a MAF is not required nor preferable. This is supported by *Estevan and Weyburn (Cities) v Walmart Canada Corp and Canadian Tire Corporation Lt.* 2022 SKMB 65 para 38 (*Weyburn* 2022) and *Prince Albert (City) v Various (AEC Property Tax Solutions)*, 2022 SKMB 55 (*Prince Albert* 2022). The Committee states that a MAF is not mandatory and there is "no point" using non-comparable properties.

### **Ground Two and Three – Characteristics of Properties & Comparability**

3. Comparability is the foundation for establishing a MVS using mass appraisal. As indicated in *Affinity* para 208 properties must have similar physical and value-generating characteristics to be grouped together. Property use, building size/area, construction style/materials, condition of improvements, building configuration, site size, location, supply and demand and zoning are considerations under physical characteristics.
4. It appears that the Assessor relied on location and property type (retail) when determining the MAF grouping. Other factors/characteristics were ignored. This is an error in assessment law and assessment practice.
5. Mr. Johnstone, expert witness for the Appellant, after reviewing the MAF sales in comparison to the physical and value-generating characteristics of the Subject Property concludes that one of the MAF sales is similar to the Subject Property in legal restrictions and all of the Sales Properties differ from the Subject Property in use, function, market, and size.
6. Dissimilarities of Sale Properties to Subject Property include:
  - a. Age - the oldest Sale Property is 46 years older than Subject Property.
  - b. Size – the Subject Property is 15.2 times bigger than largest Sales Property and 103 times larger than the smallest Sales Property. The sum square

footage of all the sales properties is 78,084 and the size of the Subject Property is 158,963.

- c. Site Size – the Subject Property is 13.5 times larger than the largest Sales Property and 71 times larger than the smallest Sales Property.
  - d. RCNLD'S – Subject Property RCNLD is 16.2 times larger than largest Sales Property and 113 times greater than smallest Sales Property
  - e. Assessments – Subject Property assessment is 9.5 times higher than highest Sales Property assessment and 425 times higher than smallest Sales Property
7. *Prince Albert 2022, Prince Albert 2024, Affinity, CP Reit* referenced as supporting the need to have comparable sales.
8. Mr Johnstone clarified understanding of supply and demand as it relates to this appeal. Concerning supply and demand between the Sales Properties and Subject Property, they have some commonalities: same general vicinity, similar uses - commercial functions - retail. They are smaller and cater to a small income property for revenue. The tenants or buyers of the sales properties would not be the same as the Subject Property.
9. Mr Johnstone's conclusion regarding size: "0/16 sales are comparable in terms of size and therefore, the MAF study is for a different market and inappropriate for the subject property."
10. Mr Johnstone referred to legal restrictions which involves zoning, land use etc. In his judgement only 1 of 16 MAF sales is similar to the Subject Property in regard to legal restrictions.

#### **Ground Four – Double Counting of Refrigeration Equipment**

11. Walmart opted to put coolers and freezers in an area that was no longer required for its original purpose. These coolers and freezers contain items required for either the Market or the Fast-Food Restaurant. This new location is not in the vicinity of either the Market or Restaurant, but options were limited to build a cooler/freezer near these entities.
12. Coolers and freezers are costed when assessments of Markets and Fast-Food Restaurants are done. The Assessor costed them in relation to the area they are located. This is double counting and is an error in assessment practice.

#### **Ground Five – Saskatchewan Cost Factor**

13. *Marshall Valuation Service* accounts for time and location through the application

of multipliers. The Current Cost Multiplier (CCM) brings costs “up to date” and the Local Multipliers (LM) cover “local cost conditions” to “adjust basic costs to each locality.”

14. Mr Johnstone concludes that the SCF 1.06 seems to be an applied factor that has no explanation as to where it is derived, what it is or why it is necessary. The SAMA Guide has no explanation of its significance, and the City Assessor does not explain why it is used in assessment.
15. Further Mr Johnstone states that the application by the Assessor of a 1.06 Sk Cost factor is wrong as time and location are accounted for in the CCM and LM. Use of a SCF is an error in assessment practice.

### **Further Agent Disclosure**

16. An air photo of Subject Property in comparison to Sales Properties 1 through 16 was referenced. Rhetorical question posed each time, “Is this Sales Property comparable to the Subject Property?” Mr Johnstone emphasizes that none of them compare in size, construction, ceiling heights, age, market demand. Further, a buyer would not debate between purchasing any of the 16 properties and a Walmart. Lastly, statistical modelling does not address the fact that none of the 16 Sales Properties trade in the same market as a Walmart.
17. Mr Johnstone’s conclusion concerning photos: “In terms of logic through physical comparability based on simple photo evidence, the MAF sales are highly incomparable [to Subject Property].” Mr Johnstone has not personally been in any of the sales properties but has driven by ‘a few’.
18. *Harvard Property Management Inc. v Saskatoon (City)*, 2017 SKCA 34 para 24 and 25 is repeatedly cited as supporting that statistical testing is not a substitute for comparability. The quality of stratifications is determined once comparable properties are identified.

### **Rebuttal Document Arguments**

19. On each of the Sales Properties, the Assessor provided the raw data used when developing the MAF model. The photo evidence alone (physical characteristics) shows that the sales are highly incomparable. The MAF sales may be like each other but are not at all like the Subject Property.
20. Sales Properties range from less than 500 sq. ft. to 500,000 sq. ft. The Subject Property is 103 times larger than the smallest Sales Property. Because both properties are retail, does not make them comparable.
21. Mr Johnstone provided an ASR chart of the sales properties. The chart contains ASRs outside IAAO standards for the CODs and ASRs within the acceptable

range. When graphed there is an abnormal bell-shaped curve which indicated that most of the assessed values are inaccurate and do not reflect the sale price. 3 of the 16 sales fall in the range of +/-10% and 2 of 16 fall within +/- 20%, leaving 11 of 16 beyond 20% accurate. Conclusion, the model is inaccurate.

22. In relation to Price Related Differential (PRD), the provides a PRD of 1.6 and the IAAO standards recommend PRDs of 0.98 to 1.03. A higher PRD indicates higher value properties are inequitably valued. The Subject Property assessment is approximately \$21 million - likely inequitably valued.
23. The box plot diagrams provided by the Assessor support the lack of equity as the 'whiskers' have long outliers, showing disparity in relation to CODs and PRDs. Mr Johnstone's conclusion: "S COD of 75 statistically indicate that the PA outside downtown retail model does not provide consistent, uniform, or equitable assessments and cue to "poor uniformity within a property group' cannot be corrected with MAFs. Both the PRD and COD support this conclusion of inaccurate and inequitable assessments."
24. SAMA Handbook Section 1.1 General Commercial Properties closely aligns with the Sales Properties in the MAF grouping. Some of the characteristics listed are orientation to street, exposure, commercial activities on ground floor, upper floor activities (residential, office, or commercial). Section 1.1 states, "From an assessment point of view, the critical element affecting the value of a general commercial property is the income generating potential of the real estate."
25. Rhetorical question, "Why not use the income approach in assessments?"
26. The Assessor's conclusion that various characteristics such as building size, construction material, condition rating, occupancy type, size of land parcels etc. as presented in box plots are 'not significant' is incorrect. The Assessor needed to compare the physical and value-generating characteristics of sales properties to the physical and value-generating characteristics of the Subject Property.

[21] Questions for Agent by either Respondent or the Board and subsequent answers:

1. Mr Johnstone confirmed that a SCF is not required by law in Saskatchewan as the Cost Guide does not have to force of law. The SCF is arbitrary and unsupported as an explanation of why it is used cannot be found in the Manuel and was not explained by the Assessor.
2. The Board questioned Mr Johnstone of his understanding concerning suggesting an alternative method of assessment. Mr Johnstone affirmed that he referenced the Income Approach, and he wonders why the Assessor did not explain in their submission why they did not use the Income Approach in this assessment.



## Assessor

[22] In the Assessor's written submission and testimony to the Board, the Assessor states:

1. Classification/Stratification of properties, and the cost approach were clarified.
2. Classification is a six-step process:

- a) identify valuation parameters
- b) collect appropriate data
- c) analyse collected data
- d) develop guidelines for applying valuation parameters
- e) apply valuation parameter, and
- f) test results

The Valuation Parameters Guide Section 1 outlines common characteristics of properties, namely physical characteristics (use, building size/area, construction style/materials, condition, building configuration, site size, location), supply and demand conditions of the marketplace, and legal restrictions such as zoning.

3. The Cost Approach requires three major parts:

- a. - part one is determining the value of land based on vacant land sales and applying a land size multiplier curve for larger parcels of land.
  - In this case a BLR was adjusted. \$0.95 per sq. ft. was applied to the Subject.
- b. -part two a RCNLD is determined using the Cost Guide of *Marshall & Swift Manual*.
  - Section 3.2 provides calculation procedures. The Property has a 319-discount store, a 340-market, a 349-fast-food restaurant, a 341-medical office. These and building quality are considered here.
  - Section 3.4 lists cost factors. The commercial Saskatchewan Cost Factor of 1.06 is accounted for here. This is a mandated factor and applied across the province.
  - Section 3.8 on valuation procedures addresses physical deterioration. Following the steps outlined, with consideration to age-life expectancies and conditions, a depreciation percentage is attained.
- c. -part three is to determine a MAF.
  - 59 sales from January 1, 2014, to December 31, 2018, were stratified by property use, district, and/or location. A MAF of 1.70 was derived from the stratification group Retail Outside the Downtown – 16 sales.
  - Application of a MAF is required to cover things not costed by SAMA

- signage, landscaping, drainage, parking lot surfacing, parking lot lighting etc. These are things not considered in raw vacant land evaluation.
- Also, a MAF accounts for economic obsolescence and any loss or gain in the value of the building due to any difference in replacement costs and any difference in the amount of physical deterioration or functional obsolescence not accounted for in the RCNLD.

### **Ground One – No MAF Applied**

4. As state above [28] 3.c A MAF captures those things not accounted for in vacant land evaluation and economic obsolescence, loss or gain in value of buildings due to difference in replacement costs and the difference in physical deterioration or functional obsolescence not accounted for in the RCNLD.
5. SAMA developed the application of a MAF as it was not able to accurately cost out, across the province, such things as signage, drainage, parking lot developments etc.
6. The Cost Approach modified with the use of MAF gets assessments closer to local market and to determine the correct replacement costs for all improvements including site improvements. A MAF is not mandatory but is preferable.
7. Rhetorical question, “If no MAF, where would site improvements be taken into consideration when assessing?”

### **Ground Two and Three – Characteristics of Properties & Comparability**

8. 16 sales of 59 sales were used to develop the Retail Outside Downtown MAF grouping and with the Subject Property, in chart form, they are compared under the following qualities: land area, land value, effective year built, total building area, occupancy, quality, class, building height, building RCNLD, building value, Total assessed value, Average per square foot, adjusted sale price and MAF. (Subject Property does not have a MAF or adjusted sale price)
9. The Assessor asserts that there is no such thing as perfectly comparable properties. Some are more comparable than others. The sales need to be sufficiently comparable. Correct grouping of properties is essential to the whole process.
10. Several characteristics are examined when determining comparability: property use, building size/area, construction style/materials, condition of improvements, building configuration, site size, location.
11. A bar graph for each characteristic was presented and the Assessor’s conclusion of this stratification analysis was:

- a. property use and location influence MAFs
  - b. MAFs increase as building size increase - larger sized buildings overlapped
  - c. MAFs overlap due to construction materials
  - d. MAFs change depending on condition rating - there is an overlap
  - e. MAFs change depending on occupancy type - retail have similar market demands and are found in similar locations
  - f. MAFs increase as land parcel sizes increase - law of diminishing returns is accounted for in land valuations. ( larger parcels have a lower rate per square foot applied)
  - g. MAFs overlap based on neighbourhoods
  - h. MAFs overlap based on zoning
12. Supply and demand condition in the marketplace and legal restrictions are also examined.
13. Important to note that all characteristics are reviewed based on the goal of determining which are value-generating characteristics. To focus solely one characteristic does not do justice to the analysis. All factors /characteristics must be considered.
14. A close look at comparability in regard to size indicates that the Property is not being over-valued based on site coverage, despite being 13.5 times larger than the largest sale and 71 times larger than the smallest sale. The Property has an applied BLR rate of \$0.95 and the Sales Properties' BLRs range from \$5.72 to \$6.51. In fact, 14 of the 16 sales have a BLR of \$6.51. The property is not being overvalued based on size.
15. Also, in relation to size, the following are the averages or ranges between the Sale Properties and the Subject Property:
- a. RCNLD/SQFT:
    - Sale Properties - Average \$70.20
    - Subject is \$75.68
  - b. Building Value/SQFT:
    - Sale Properties Range from \$57.01 to \$187.18
    - Subject actual is \$128.66
  - c. Residual Sale Price/SQFT:
    - Sale Properties - Average \$113.69
    - Subject RCNLD - \$75.60
  - d. Average/SQFT:
    - Sale Properties - Range from \$1.28 to \$230.81

- Subject actual is \$131.72

e. Site Coverage:

- Sale Properties - Average 4.55
- Subject is 3.24

16. The comparisons above indicate that the Subject Property is like the Sales Properties. It does not stand out or stand alone.

17. Concerning supply and demand (local versus national versus international), the Assessor indicated that they had no evidence to show the Appellant that the Subject would trade in a different market or on a different level than the Sales Properties. Without actual sales, Assessors would only be making assumptions, and Assessors base decisions on facts of the trading market.

#### **Ground Four – Double Counting of Refrigeration Equipment**

18. The two freezers and coolers are in the area costed as 319-Discount Store and must be accounted for in that area. The 340-Market and the 349-Fast-food Restaurant have built-in refrigeration costed in their base rate costs.

#### **Ground Five – Saskatchewan Cost Factor**

19. The SCF is a single provincial factor used to adjust the differences in local costs plus differences in time between M&S Valuation Service (October 2018) and the base date of January 1, 2019.

20. Cost Guide Section 3.4 indicates that Assessors apply the M&S Valuation Service multipliers from Section 99 – the current cost multiplier for 'Central' dated 10/2018 and the local cost multiplier for 'Saskatchewan' dated 10/2018. In addition to these multipliers, the SCF is also applied.

[23] Prior to questions in relation to Assessor's submission:

1. The Agent questioned the validity of Mr. Braitenbach being able to answer questions and his neutrality from the City. Mr. Braitenbach indicated that he is part of a team who prepared the assessment and as a team they stand by what has been presented. The Board also recognized that they consider team approaches regarding submissions and testimony from both the Appellant and Respondent. All members were sworn in at the beginning of the hearing. The point of the Agent's questioning is to emphasize that the Assessor and team must be separate entities from the City.

2. The Assessor replied to further questions that Part B and Part C of the submission are supplements to Part A and act as supports to Part A; they are components of a unit. The Agent's position is that the Assessor must disclose all information relevant

to the assessment in Part A of the submission; that it is a neutral record. Anything in Part B is argument and subject to correctness.

3. After several minutes of legal 'manoeuvring' by the Agent to have Parts B and C of the Respondent's submission declared as having no deference, the Board intervened. The Board emphasized that it is responsible to render a decision on what is on the NOA; the Board is not here to rule on how the City structures its assessment department or on how the City assessors present their material. Similarly, we do not rule on how Appellant's prepare, and present their material.

4. As requested by the Agent, it is recorded that the Agent questions the neutrality and correctness of the Assessor's material in Part B and C of the submission and requests that the Board not consider it valid in its decision making.

5. For the record, the Board disagrees with the Agent and emphasized that as a Board we are focused on rendering a fair and just decision based on the grounds stated in the NOA.

6. The Board chair suggested closing the hearing based on the possibility that evidence presented was not be considered when rendering a decision for this appeal. The Agent agreed to move forward with questions relating to the Assessor's submission.

[24] Questions from Appellant and the Board and Subsequent Answers of Respondent:

1. The Assessor reaffirmed how the 59 sales from the valuation years were classified and stratified and confirmed that the City used the Cost Approach modified by a MAF when doing the Property assessment.
2. The Assessor confirmed that he was aware that the Committee has ruled in various cases that a MAF is not required when making an assessment. The Assessor confirmed that all decisions, not just specific decisions, are 'in the backs of our minds as we do our assessments'.
3. The Agent questioned why the City assessors don't cost out site improvements instead of applying a MAF. In Saskatchewan, the Cost Guide does not have costing on such things as asphalt, curbing, lights, signs etc.
4. When questioned about what the Cost Guide says about site improvements and MAFs the Assessor referred to Section 2.8 of the Guide which indicates that MAF is in relationship to replacement cost new. A buyer does not buy a property with raw land; a property purchase comes with site improvements included. Technically, the Guide does not say a MAF covers such and such site improvements.
5. The Agent questioned if the Assessors looked at all the value-generating

characteristics of the sales properties or just the characteristics they thought were comparable. And, if they did look at them, where is evidence that they did so. The Assessor confirmed that all characteristics were examined and all spread sheets, charts, notes etc. are not in Part A of their submission.

6. When queried by the Agent regarding supply and demand in the market place the Assessor reaffirmed that there were no sales to examine and gain evidence. Further to that, the Agent asked if the Assessor considered looking at information that Mr Johnstone had provided. The Assessors considered Mr Johnstone's information as his professional opinion.
7. The Agent asked when the comparison chart of Sales Properties to Subject Property in Part B of Respondent's submission was created. The Assessor indicated that it was from their analysis file. The Subject Property was added at the bottom of the chart for reference during this appeal. The main part of the chart was developed prior to this appeal and when preparing for the appeal used it to compare the sale properties to the Subject Property.
8. The Assessor agreed when the Agent asked if he compared value-generating characteristics of the Sale Properties to the Subject Property.
9. Through several questions the Agent continued to push which evidence was done at the time of assessment, (Part A of the submission) and which evidence was done in preparation of this appeal (Parts B and C of the submission). The Respondent emphasized that in future they will put everything in Part A to avoid confusion.
10. The Board expressed understanding that technically this is a time to ask questions of the Assessor's submission, but the purpose of the hearing was getting lost in the legal 'wrangling' of the Agent to have certain information discredited. As stated in every hearing, the Board is legally bound to make decisions on the grounds stated in a NOA based on the verbal testimonies and written submissions of both the Respondent and the Appellant.
11. When questioned about the high COD factor and IAAOC standards referred to by Mr Johnstone, the Assessor agreed that it was not the best for this model, meaning this MAF grouping. The COD is outside the ranges set by the IAAOC The Assessor stated that use of a COD factor is not a legal requirement in the *Cities Act*. The high COD shows inequity in the model.
12. The Assessor also agreed that he was aware that the IAAOC has standards of PRD factors as well and yes, he testified that one can have a high PRD and still achieve comparability. This high PRD shows inequity in the model.
13. The Assessor acknowledged that no expert from SAMA was present to explain how the SCF was calculated or determined. Assessors are instructed to follow the

Cost Guide. Further, the Assessors follow the Cost Guide instead of using the factor set out by the Prince Albert Market Area Cost Factor. SAMA is the governing body of the Cost Guide. The Handbook also a SAMA document that the Assessors must follow.

14. The Agent questioned if the Assessor knew the Handbook recommends that assessments for general commercial properties be done using the Income Approach. The Assessor responded that the Income Approach was not part of this appeal. The Board Chair reminded the Agent that earlier she stated she understood that recommending an alternative method of assessment did not prove error on the Assessor's part. Further, the Board emphasized that as a Board we cannot rule that the Assessor use an alternative method of assessment; the Board can only rule on what is in the NOA.
15. The Agent referred to three sale pictures and asked the Assessor how he determined they were comparable to the Subject Property. The Assessor responded that through Section 13 of M&S the sales were determined to be retail and fit into the Retail Outside Downtown MAF grouping.
16. The Agent asked if the Assessor deducted any coolers from the costing of the fast-food restaurant and the market. The answer was no.
17. The Board asked if anywhere in the Cost Guide does it say not to use a MAF. The answer was "no" the Courts have ruled in certain appeals that a MAF need not be applied. A MAF is not mandatory, but preferable. It helps to show what the local market is doing.
18. The Board asked if there was a weighting, (one more important than the other) regarding the value-generating characteristics of a property. Nothing in the Handbook designate weighting of the characteristics by percentage values. Sales evidence shows what characteristics are value generating.
19. In sale groupings, outliers are carefully examined. Market values, willing seller, willing buyer etc are also factor examined.

**[25] Final Comments by Agent for Appellant**

1. Mr Johnstone was the only expert on tax assessment who testified today, and he was not challenged on most or really any of his testimony.
2. The information in Part A of the Assessor's submission is the part that should hold any influence on the Board regarding this appeal.
3. *Walmart Canada Corp v Prince Albert (City)*, 2021 SKCA 158 para 18 states "a MAF is appropriate and possible only if there are an adequate number of sufficiently comparable properties to warrant its calculation." *Estevan 2021* para

33 supports this. Affinity para 82(a),(b),(c) indicates that a MAF is not required nor preferable. *Weyburn 2022* and *Prince Albert 2022* stated this as well. *Various (Ryan ULC) v Prince Albert (City), 2024 SKMB 14* stated that the Sale Properties were not comparable to the Subject Property.

4. During the assessment process the Assessor asked the question "What are the most comparable sales to the Subject Property that I can use for the MAF calculation?" Rather the following question should have been asked: "Are there sufficiently comparable sales that warrant the calculation of a MAF for the Subject Property?"
5. The Assessor did not consider the physical characteristics of the Sale Properties in comparison to the Subject Property. Each property must be compared to the Subject. There is no evidence that this was done.
6. By looking at the Sale Properties one can see that they are not comparable to the Subject. They do not trade on the same markets. They do not have similar characteristics. Size alone shows that they are different. Common sense is required. Written explanations must support how sales are comparable to the Subject.
7. The remedy for errors pointed out is to apply no MAF.
8. The coolers were double costed in the assessment. They were costed in fast-food restaurant and the market of the Subject and again in the discount store of the Subject.
9. The SCF has no justification for application and should not be applied.
10. If the Board rules that the Assessor erred by applying a MAF, double costing coolers and applying the SCF the revised assessment total would be \$11,796,900.
11. If the Board rules that the Assessor erred by applying the MAF, but costing of coolers was correct and application of SCF was correct the revised total assessment would be \$12,717,528.

**[26] Final Comments by Respondent**

1. The Agent's insistence that parts of the Assessor's submission are prepared and presented by non-neutral parties, cover pages indicate non neutrality, and requests to disregard material in certain parts of the submission etc can deflect from the purpose of this hearing.
2. The City is clear and exact on the processes they used to determine this assessment - classifications, stratification, calculating RCNLDs, developing a MAF, etc. They examined characteristics. They followed the data. They used the



Cost Factors. The did statistical testing. Common sense indicates that the Assessors know what they are doing and can defend their judgements. There is a logical process of reasoning here and in regard to Assessor discretion.

3. The City explained rational for and the purpose of using a MAF. Without a MAF certain aspects of a property would not be assessed. This is common sense.
4. Cost Guides cannot be ignored. Assessors are bound by law to correctly do assessments.
5. The Board's jurisdiction is to rule on grounds on NOA. Facts must prove that the Assessor errored when doing the assessment. Opinions and speculations cannot be relied upon when making a ruling.
6. The Agent asking the Bboard to fully accept Mr Johnstone's supply and demand arguments without any presentation of fact for those arguments is wrong. Mr Johnstone's expertise is not being called into question. The Assessor's job is to assess properties based on fact, not speculation or opinion.
7. Presentation of an alternative method of assessment does not demonstrate an error on the Assessor's part.
8. The Assessor's submission does solidly challenge Mr. Johnstone's report.
9. There was not 'back door' reasoning by this Assessment team. Post fact reasoning should not be considered as an issue.

**[27] Closing Comments by Agent for the Appellant**

1. *Affinity* decision referenced again concerning that only Part A of Assessor's submission can be presumed correct, and Part B and C do not have the same status.
2. 'Reasonable explanations', (Agent's words) are not law. Assessor's explanations must be justified and justifiable. They must be correct in law and practise.
3. Part A does not contain information on comparability was achieved or how the value-generating characteristics were compared to the Subject Property.
4. If the Assessor followed data and used statistical testing to prove comparability, this is also an error in law and practise.
5. Concerning common sense: size comparisons, and inflated assessments (\$7.5 million) because of an unrealistic MAF application also require common sense. The Court of Appeal and Committee both support the use of common sense.

6. Size does indeed affect value. No evidence was provided that refutes this.
7. Appropriate is not a synonym for preferable. They are not the same thing. Cases cited in rebuttal.
8. Last year's decision, the Board does not have to adopt the ruling of last year's Committee decision.
9. Mr Johnstone's 20-day report and the 5-day submission has costing based on M & S for several site improvements/yard works.
10. Remedy: take the MAF off, apply zero MAF.

### **Board Analysis**

[28] After careful deliberation and reviewing *The Cities Act* and other referenced material, the Board considered:

11. Four times the Agent requested or inferred that the Board must only consider what is presented in Part A of the Assessor's submission and Parts B and C should hold 'no deference'. Neutrality of the Assessment team in relation to the City was also presented at length by the Agent. The Board considers these as attempts to discredit the Assessment team, discredit the process of a municipal hearing, and persuade the Board to rule on something that is not in the Board's jurisdiction to do so. Stated several times by the Board, the hearing can be adjourned based on these issues or the hearing can proceed with the understanding that the Board's purpose is to rule on grounds in NOA; this ruling happens after hearing oral testimony and reading written submissions by both the Appellant and the Respondent. Both parties, that of the Appellant and that of the Respondent, were sworn in at the beginning of the hearing. The Board trusts their truthfulness.
12. Exhibit A-3 Retrospective Mass Appraisal Report. The first point under 'AREAS OF DISAGREEMENT' in this document, the Agent states that the Subject Property would be, "more aptly costed as a 533 – Warehouse Food Store as it encompasses the entirety of the big box." This opening statement leads the Board to the following conclusions:
  - a. The Agent wants the Board to consider that the classification of the Subject is incorrect.
  - b. Agent evidence supporting 533-Warehouse Food Store discredits evidence supporting other classifications.
  - c. The Agent has a mindset of incorrect classification when considering

possible errors in assessment.

13. Concerning the a. b. and c. listed above the Board is bound to rule on what is in the NOA. Classification of the Subject Property is not in the NOA.
14. Also, not in the NOA is the way assessments are completed. The use of the Cost Approach for assessments versus the Income Approach for assessments often comes up in relation to appeals. Assessors are not required to justify use of one method over another; they present rational for processes used to determine assessments, facts concerning assessments, and justification for the method they used. Of note, concerning one method over another, Prince Albert Walmart, assessed by the Cost Approach is this appeal and the three Walmarts in Regina assessed by the Income Approach are currently under appeal as well.

### **Ground One – No MAF Applied**

15. In relation to the use of *Various (Ryan ULCA) v Prince Albert (City), 2024 SKMB 14* to support no applied MAF: as a Board, we are waiting for a final ruling on this decision as it is before the Court of Appeal.
16. SAMA developed the use of a MAF in recognition that developed sites have site improvements not covered in the costing models. Why would a MAF be developed, if it was not required?
17. The Board does not think anyone would argue that site improvements (lighting, drainage, landscaping etc) do not increase the value of a property. If there is no costing model for each type of improvement, and there is no MAF, how does a city account for their value? Buyers buy buildings on developed sites.
18. The Board agrees with the Assessor's statement, "If no MAF is applied the addition of site improvements would result in an increase in the overall property valuation which would be higher than the RCNLD plus land valuation."
19. The Board agrees that the Cost Approach modified by a MAF helps assure that assessments are closer to local markets. The Board acknowledges that the Cost Approach is more time consuming.
20. The Board does not support that no MAF should be applied. The matter of comparability is covered in Ground Two and Three below.

### **Ground Two and Three– Characteristics of Properties & Comparability**

21. The City is bound by law to follow guidelines when assessing properties using a modified Cost Approach. The SAMA Guide was repeatedly used, and followed when classifying properties, forming stratification groupings, and developing a MAF; supporting evidence of the correct use of the Guide was documented and

presented as evidence.

22. The Agent's insistence that size is not considered when comparing properties, is countered when demonstrated that larger site size properties have lower BLRs than smaller properties. Size is considered and justly accounted for in valuations.
23. The chart comparing averages or ranges of various characteristics between the Sale Properties and Subject Properties (point 15 of Appellant submission) affirms that the Subject Property is similar to the Sales Property grouping. The Subject Property "fits" and does not "stand out". In relation to any of the characteristics.
24. In relation to use and location being the clearest value-generating characteristics, the Board discussed an analogy comparing commercial retail businesses to grain farming. Grain farms in Saskatchewan vary in size from small to very large. Some farms continue to be family operations and others are large corporations. The purpose of each is profit for the farmer/corporation while feeding the world. Certain crops are better suited for farms in the very south of the province and others are more suited for northern climes. Success in all instances is dependent on weather and good farming practises. Operation of a municipality (roads, schools, hospitals, recreational facilities etc.) is largely dependent on a tax base.
25. Urban centres have large and small retail businesses, some are locally owned, and others are national/internationally owned. Regardless of size and ownership, the goal is profit while serving customers. Businesses are area dependant, and the success of any business is knowing the market area and good business practises. City amenities (streets, schools, hospitals, recreational facilities etc.) are largely dependent on a tax base.
26. To conclude the analogy. Should "corporation" farms not pay the same mill rate as smaller farms because they don't compare in size, age, supply/demand or trading markets when they enjoy the same amenities? Should large urban retail businesses not pay the same MAF as smaller retail businesses when they enjoy the same amenities? Of note, the Board agrees that the word 'enjoy' can be replaced with the word 'expect' in these concluding statements.
27. The Assessor is correct in stating that without evidence, namely sales in the local market, he cannot make judgements about how larger properties sell, where they sell, and who buys them. Supply and demand variables must have proof based on sales just as comparable characteristics have proof, sales proof.
28. The Board is aware that at least two comparable sales are required to develop a MAF, and respects that in this assessment there are 16 sales in the MAF grouping.

#### **Ground Four – Double Counting of Refrigeration Equipment**

29. The Assessor understood that occupancies 340-Market and 349-Fast-Food Restaurant include refrigeration in their base rate costs. Additional costs for refrigeration were entered following M&S costing guide as there are refrigeration units in occupancy 319-Discount Store. 319-Discount Store does not have refrigeration in its base rate costs.
30. The Agent's argument that the market and fast-food restaurant store perishables in the Discount Store refrigeration units and, therefore, the units should be considered under the base rates costs for the market and restaurant is wrong. The Board could not find reference in any M&S documents that indicate assessors must examine contents of refrigeration units. The units are in a Discount Store which has no allotment for refrigeration in costing.
31. The description of 533-Warehouse Food Store reads, "These structures are large markets of warehouse construction offering limited perishable products, excluding any built-in coolers or refrigerated storage." The Board finds this description interesting because Walmart Market is heavily reliant on the sale of perishables and a McDonald's (Walmart's fast-food restaurant) requires refrigeration for most of their sale items.
32. If the Board reads the above definition correctly, in costing a 533-Warehouse Food Store, refrigeration would not be included in the base cost. The Agent supports our understanding when it again refers to the use of a 'singular occupancy' with an adjusted HVAC to packaged A.C.
33. The Board does not support that the Assessor double-costed refrigeration units in the Subject Property.

#### **Ground Five – Saskatchewan Cost Factor**

34. The Board supports the City's application of the SCF as it is a mandated factor applied across the province of Saskatchewan: the M&S Guide in Section 3.4 lists cost factors. The commercial Saskatchewan Cost Factor of 1.06 is accounted for here.

[29] The Board rules that the Assessor did not err in assessment law and assessment practice and did not reach an unreasonable decision by preparing the assessment based on a belief that applying a Market Adjustment Factor is required or always preferable.

[30] The Board rules that the Assessor did not err in assessment law and assessment practice and reached a reasonable decision by considering the physical and value-generating characteristics of the properties when determining comparability of the sales used in the Market Adjustment Factor grouping.

[31] The Board rules that the Assessor did not err in assessment law and assessment practice and reached a reasonable decision by developing and applying a Market Adjustment Factor based on a grouping of sales that includes properties that are comparable to the Subject Property.

[32] The Board rules that the Assessor did not err in assessment practice in the costing calculation of the refrigeration equipment in the Subject Property.

[33] The Board rules that the Assessor did not err in assessment practice or act unreasonably by applying a Saskatchewan Cost Factor of 106%.

**Decision**


[34] The Board dismisses the Appeal on all grounds.

[35] The assessment will remain at \$21,272,900 total assessed value.


[36] The filing fee shall be retained.

DATED AT PRINCE ALBERT, SASKATCHEWAN THIS 10<sup>TH</sup> DAY OF JULY, 2024.


CITY OF PRINCE ALBERT BOARD OF REVISION

  
\_\_\_\_\_  
Jackie Packet, Chair

I concur:

  
\_\_\_\_\_  
Ralph Boychuk, Member

I concur:

  
\_\_\_\_\_  
Cherise Arnesen, Member