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Responding to Remittals 2023 SAAA Conference

Saskatchewan

Jeff Grubb, Allen Berriault & Shayla Klein

VANCOUVER CALGARY EDMONTON SASKATOON REGINA LONDON KITCHENER-WATERLOO GUELPH TORONTO VAUGHAN MARKHAM MONTRÉAL



Outline

1. Directions from the Committee
2. Responding to Remittals
3. Availability of Judicial Review

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Directions from the Committee



- If the Committee determines that an assessor made demonstrable and material error, the issue can be sent back to the assessor for remittal

- This can be a simple direction to use a specific cap rate, or more complex in asking for a reassessment with additional considerations

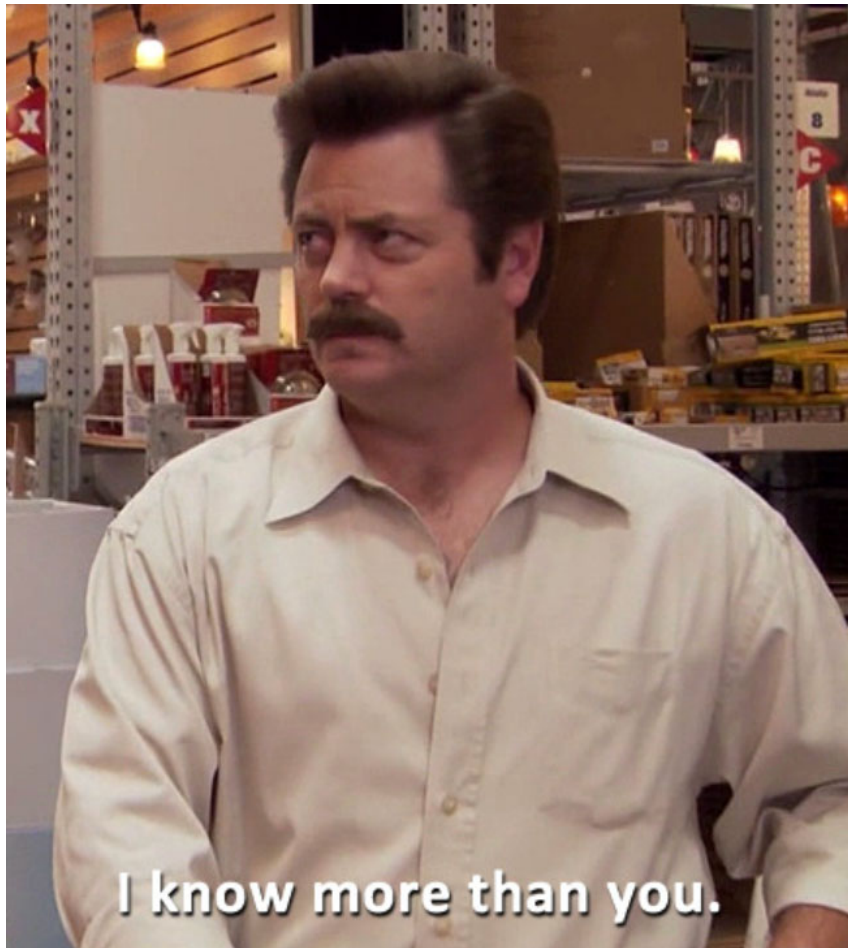
- *Altus Group Limited v Saskatchewan Assessment Management Agency*, 2023 SKKB 129 (CanLII)

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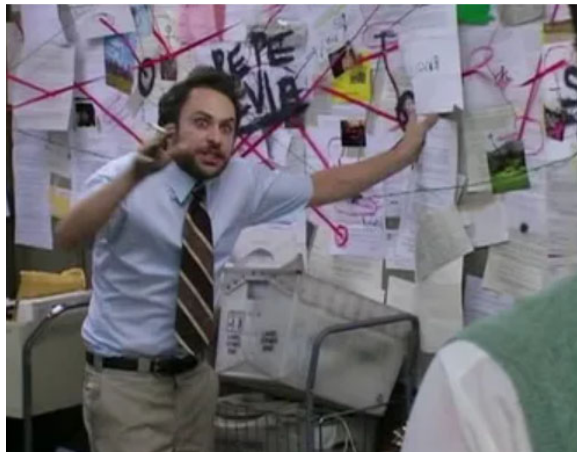
Responding to Remittals



- While Assessors are offered significant deference when coming to their determination, on a remittal, they must respond in line with what was asked in the remittal
- If a remittal requires an assessor to re-calculate using their shoe size as the cap rate, they need to use their shoe size!
- If a remittal is more open ended, the assessor should use their discretion to follow the fundamental assessment principles



- Responses to remittals should be clear, and prepared in a way that can easily be explained to a layperson



- We want to avoid responses to remittals that look like this!
- It is important to read what is being asked of us, and then answer the actual question being asked. Remember, if you are specifically asked to use your shoe size, then it should be used!



- It is the assessor's role to perform the remittals as requested by the Committee, if there are issues with the Committee's remittals, that's where the lawyers come in



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Availability of Judicial Review



- What is the purpose of judicial review?
- Judicial reviews can apply to both decisions of the Committee, as well as decisions of an assessor.
- *Altus Group Limited v Estevan (City)*, 2021 SKCA 101, 23 MPLR (6th) 9 at paragraphs 83-85
- The Court in *Altus Group Limited v Saskatchewan Assessment Management Agency*, 2023 SKKB 129 (CanLII) applied principles of judicial review to an assessors responses to remittals
- The standard of review of an assessor's response to remittals is reasonableness



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Questions?

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Future Assessment as Evidence for Prior Appeals 2023 SAAA Conference

Saskatchewan

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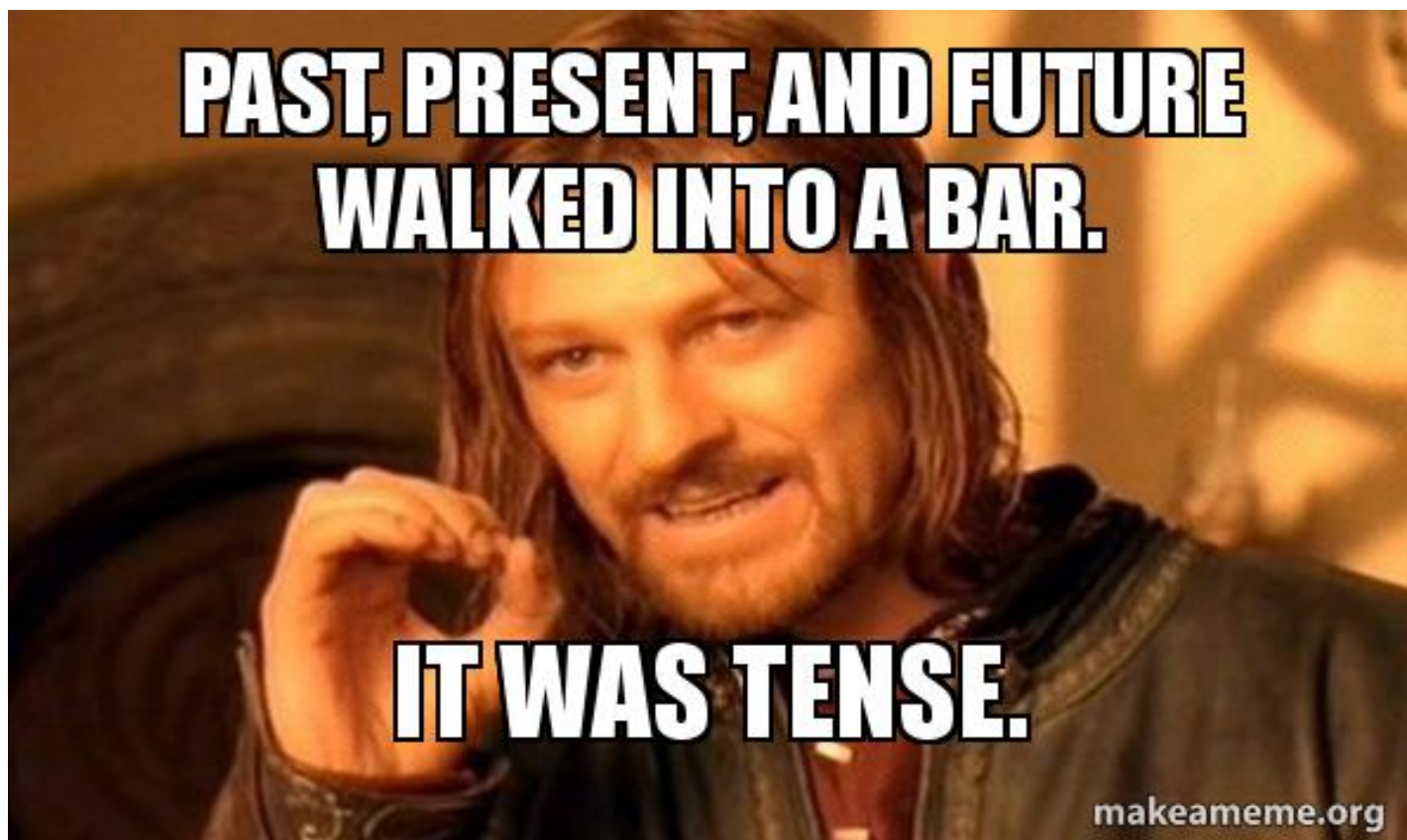
1. Subsequent Assessment as “New Evidence”
2. Commentary from the Court of Appeal
 - *Brandt Properties Ltd. v Sherwood (Rural Municipality)*, 2023 SKCA 5
 - *Service Road Industrial Ltd. v City of Moose Jaw*, 2023 SKCA (unreported)



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Subsequent Assessment as New Evidence





New evidence

223(1) The appeal board shall not allow new evidence to be called on appeal unless it is satisfied that:

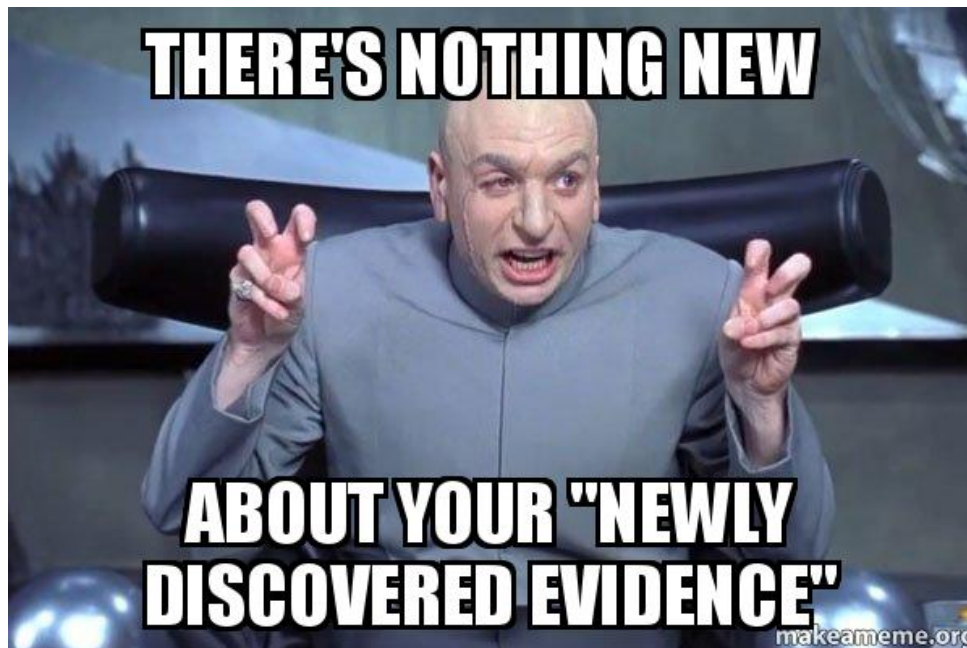
- (a) through no fault of the person seeking to call the new evidence, the written materials and transcript mentioned in section 220 are incomplete, unclear or do not exist;
- (b) the board of revision has omitted, neglected or refused to hear or decide an appeal; or
- ➔ (c) the person seeking to call the new evidence has established that relevant information has come to the person's attention and that the information was not obtainable or discoverable by the person through the exercise of due diligence at the time of the board of revision hearing.

(2) If the appeal board allows new evidence to be called pursuant to subsection (1), the appeal board may make use of any powers it possesses pursuant to *The [Municipal Board Act](#)* to seek and obtain further information.

2002, c.C-11.1, s.223; [2013, c.6, s.27](#).

Narrow Scope for New Evidence

- Appeals are to be on the record and new evidence is not to be adduced (absent narrow circumstances), in spite of these powers. Instead, the Committee is limited to the record of the proceedings before the Board.





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Commentary from the Court of Appeal



Brandt Properties Ltd. v Sherwood (Rural Municipality), 2023 SKCA 5

- Looking back instead of looking forward
- Every annual assessment is a distinct decision and every such assessment gives freestanding right of appeal.

[26] ... With some statutory qualifications not relevant here, decisions made with respect to an assessment for any particular year do not determine the result of an appeal in a subsequent year.

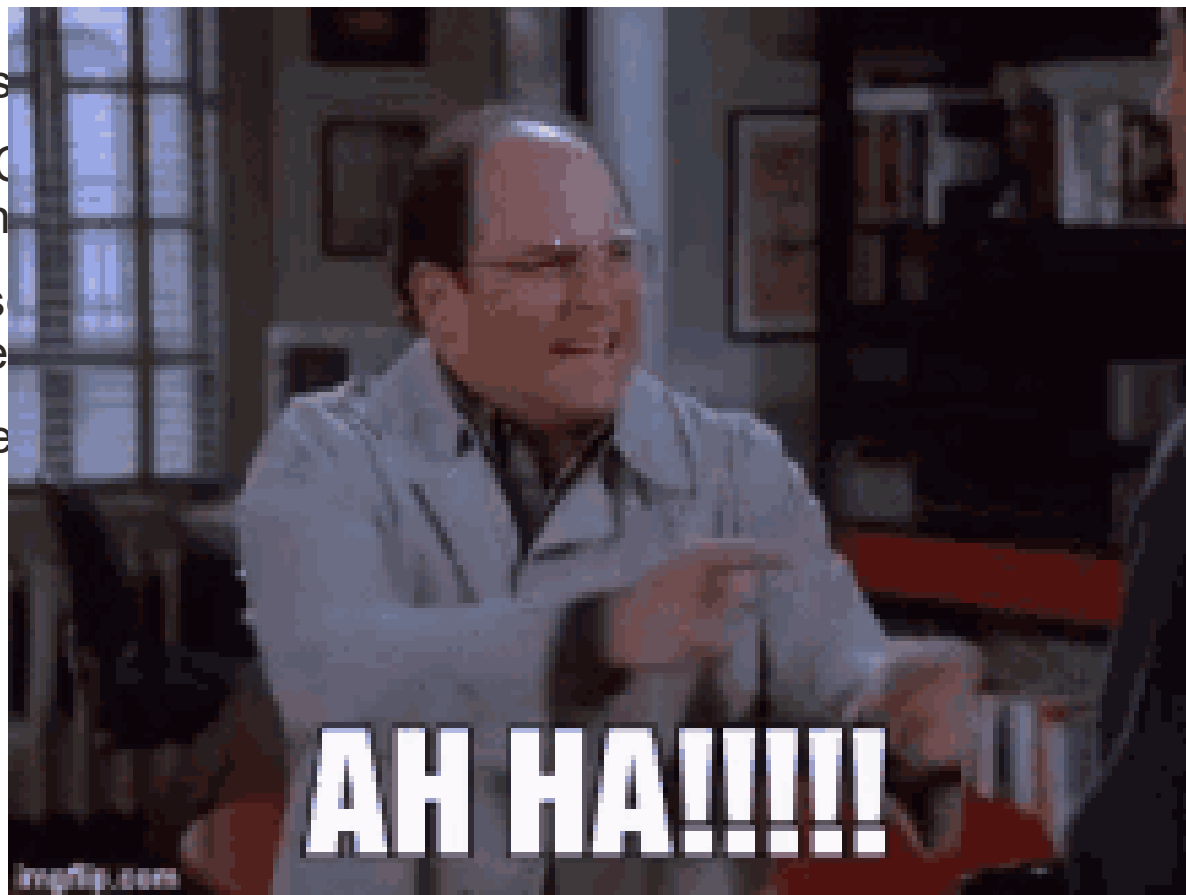
Service Road Industrial Ltd. v. City of Moose Jaw, 2023 SKCA (unreported)

Appellants

- The City of Moose Jaw
- Subsequent Appeal
- To determine

new evidence

with what the





Service Road Industrial Ltd. v. City of Moose Jaw, 2023 SKCA (unreported)

- Justice McCreary writes that she is not satisfied that the grounds of appeal raise any meaningful concern as to the correctness of the Committee's decision or raise any new or unsettled issue of law. I note at paragraph 9 on the issue of the subsequent year's assessment as new evidence:

[9] This Court recently addressed the independent nature of each annual assessment in Brandt Properties Ltd. v Sherwood (Rural Municipality), 2023 SKCA 5 [Brandt] at paras 26–29, noting that, in the great majority of cases, decisions made with respect to an assessment for any particular year do not determine the result of an appeal in other years. I am not persuaded that the argument that the Committee erred in finding that the 2022 model was irrelevant to the 2021 assessment is sufficiently important to the law in this area that leave should be granted.



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