Court of Appeal for Saskatchewan
Docket: CACV4134

Citation: *Pillar Properties Real Estate Corp. v Saskatoon (City)*, 2024 SKCA 75
Date: 2024-07-30

Between:

Pillar Properties Real Estate Corp.

Appellant
(Appellant/Respondent by Cross-Appeal)

And

City of Saskatoon and
Saskatchewan Assessment Management Agency

Respondent
(Respondent/Appellant by Cross-Appeal)

Before:	Caldwell, Tholl and Drennan JJ.A.
Disposition:	Appeal allowed
Written reasons by: In concurrence:	The Honourable Mr. Justice Tholl The Honourable Mr. Justice Caldwell The Honourable Madam Justice Drennan
On appeal from: Appeal heard:	2022 SKMB 130, Saskatoon June 13, 2024
Counsel:	Allison Graham for the Appellant Alan Rankine for the Respondent

Tholl J.A.

I. INTRODUCTION

[1] Pillar Properties Real Estate Corp. [Pillar] is the owner of a parcel of land in Saskatoon. Dissatisfied with the assessment of the property for tax purposes in 2022, Pillar appealed to the Board of Revision for the City of Saskatoon [Board]. The Board agreed with a portion of Pillar's assertions but rejected others and remitted the matter to the assessor: *Altus Group Limited v Saskatoon (City)* (25 May 2022) Saskatoon, 151-2022 [*2022 Board Decision*]. Both Pillar and the City of Saskatoon [City] appealed the *2022 Board Decision* to the Assessment Appeals Committee of the Saskatchewan Municipal Board [Committee], asserting, inter alia, that the Board did not have the power to remit the matter to the assessor. The Committee allowed portions of each appeal, determined that the *2022 Board Decision* was a nullity, and reinstated the original assessment: *Pillar Properties Real Estate Corp. v Saskatoon (City)*, 2022 SKMB 130 [*2022 Committee Decision*].

[2] Pillar appeals to this Court on the basis that the Committee erred in law by nullifying the *2022 Board Decision* and by conducting a first instance review of the assessment. It further asserts that the Committee erred by finding that the Board was required to follow the Board's and Committee's decisions from the previous year regarding the same property. The City concedes that the appeal must be allowed and admits that the Committee erred by finding the *2022 Board Decision* unreasonable on the basis that it did not follow the previous year's decisions and further erred by nullifying the entirety of the *2022 Board Decision*. However, the City disagrees with Pillar on the direction and relief that should be provided by this Court.

[3] For the reasons that follow, the appeal should be allowed to the extent set out below.

II. BACKGROUND

A. Facts

[4] Pillar owns a 261,336 square foot parcel of vacant, non-regulated, commercial land in the Marquis Industrial neighbourhood on 60th Street East in Saskatoon. In 2021, it unsuccessfully

appealed that year's assessment of the property to the Board: *Altus Group Ltd. v Saskatoon (City)* (25 October 2021) Saskatoon, 422-2021 and 409-2021 [*2021 Board Decision*]. Pillar further appealed the *2021 Board Decision* to the Committee, which dismissed the appeal: *Pillar Properties Real Estate Corp. v City of Saskatoon*, 2022 SKMB 29 [*2021 Committee Decision*]. That decision was not further appealed to this Court.

[5] For 2022, the property was assessed by the assessor using the cost method, as had been done in 2021. The cost approach involves determining a base land rate [BLR] and adding the cost value of any improvements. The concept of a BLR was described by Caldwell J.A. in *Consumers Cooperative Refineries Limited v Regina (City)*, 2020 SKCA 111 [*CCRL 2020*]:

> [12] For non-regulated property, to which the market valuation standard typically applies (s. 164.1(2)), an assessment is a principled approximation of what a property would sell for based on the actual sale prices of comparable properties adjusted for the specific characteristics of the subject property. This approach requires an assessor to examine information about the properties that have sold in the neighbourhood of the subject property (or, where there are an insufficient number of such sales, in a comparable neighbourhood) and to calculate a price per unit of comparison (where a unit of comparison may be land area, land frontage, land unit, building unit or condominium unit). The price per unit of comparison is known as a base land rate or BLR. For property used for industrial purposes, the unit of comparison is land area as measured in square feet or acres ([Saskatchewan Assessment Management Agency, *SAMA's 2011 Cost Guide*, version 1.1 (April 2012)], s. 2.2).

[6] This was vacant land with no improvements. Therefore, the assessor used the direct comparison approach to valuation. In arriving at the assessment, the assessor looked at 83 vacant land sales in Market Area 4, where the property is located. Using those sales, the assessor calculated a BLR of $12.30 per square foot. Thirty-nine of those same sales were then used to develop four site adjustments for Market Area 4. Site adjustments are upward or downward changes that are used to account for characteristics of specific parcels of land, such as poor exposure or location on a corner: *CCRL 2020* at para 13. No site adjustments were applied to the subject property.

[7] The assessor also examined whether a land size multiplier [LSM] should be applied but declined to do so, leaving the BLR of $12.30 per square foot to be utilized without adjustment for size. The concept of an LSM was also described in *CCRL 2020*:

> [15] Section 2.5 of the *Cost Guide* contains the valuation procedures for determining size adjustments, which apply where a property is being valued on the basis of square footage or acreage. … If the assessor determines that the sale price of a larger parcel in a neighbourhood is less per unit (i.e., per square foot or acre) than the sale price of smaller parcels, then the assessor must apply a land size multiplier (or LSM) when assessing the market value of a property that is "other than the standard size parcel", which may be a specific parcel size or a size range.

[8] The assessor set the assessed value for Pillar's property at $3,214,400.

B. *2022 Board Decision*

[9] Pillar appealed the 2022 assessed value, submitting that the assessor had erred by declining to apply an LSM and by using the same sales to develop the BLR as it had used to develop the site adjustments. Regarding the LSM, Pillar argued that the smallest parcel size in the 83 sales sold for $21.90 per square foot, while the largest parcel sold for $9.00 per square foot, with the range in prices requiring that an LSM be applied. The property in question is larger than the largest one in the 44 sales used by the assessor that were not subject to any site adjustments. Turning to the second issue, Pillar contended that the assessor erred by using a subset of the 83 sales to determine the site adjustments because a BLR should be based on typical parcels whereas site adjustments should be based on atypical parcels. It asserted that a parcel of land cannot be considered both typical and atypical when calculating site adjustments.

[10] In the *2022 Board Decision*, the Board agreed with Pillar that the assessor had erred by not applying an LSM but disagreed with Pillar regarding its BLR and site adjustment arguments. The Board remitted the matter to the assessor to reassess the value of the property using an appropriate LSM, without determining itself what that LSM should be. The following portions of the *2022 Board Decision* are relevant to the appeal at hand (at 8–9):

> 3. The Appellant's evidence showed that larger parcels typically sold for lower price per sq. ft. leading to the conclusion that by not applying a land size multiplier, the Assessor was overvaluing such larger parcels. The Appellant further contended that the subject property being one such large parcel has been valued inequitably due to the non-application of a land size multiplier. The Assessor had no specific evidence to counter this other than reiterating that in their model, size was not a value-influencing variable. After carefully considering the evidence presented by both parties, the Panel concludes that the Assessor did not have sufficient justification for not following the [Saskatchewan Assessment Management Agency, *SAMA's 2019 Cost Guide*, version 1.1 (January 2020)] and as such, did not arrive at a valuation process where equity was attained. In particular, in its base land rate calculation, there were parcels included that were not all typical. The available option for accounting for atypical parcels by using a land size multiplier was not followed and this is an error that needs to be remedied.

> 4. The evidence of both parties as to whether 39 sales on which site adjustments were made should have been excluded from the calculation of base land rate provided two different perspectives of valuation. The Assessor was able to demonstrate that by determining base land rate first and applying site adjustments subsequently did not constitute using same sales twice. Furthermore, given the Panel's conclusion above on the application of land size multiplier, the Panel concludes that at best, the Appellant has drawn attention to an alternative method, but not necessarily an error. Accordingly, the Panel concludes that once a land size multiplier is used, the issue of using 39 sales twice in the determination of base land rate becomes moot. There is no need to order an exclusion of 39 sales from the base land rate calculation.
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> 5. The Panel concludes that the base land rate used in the assessment of the subject property is correct, but it should be combined with the application of a land size multiplier. The Appellant has suggested a range of 160% and 172%. The Panel leaves it to the Assessor to determine the actual LSM value after a full analysis of all the applicable sales in the Market Area 4.
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> **DECISION:**
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> The Appeal is granted. The Assessor is asked to reassess the value of the subject property by applying a land size multiplier appropriate to its size while applying the base land rate of $12.30 per sq. ft.

C. *2022 Committee Decision*

[11] Both Pillar and the City appealed the *2022 Board Decision* to the Committee. They agreed that the Board erred by remitting the matter to the assessor instead of confirming or modifying the assessment. Pillar further asserted that the Board had erred by finding that the assessor did not use sales twice when it developed the BLR and the site adjustments and by finding that Pillar only provided an alternative method rather than demonstrating error. The City additionally argued that the Board erred by relying on dissimilar datasets in finding an LSM error, in ordering the application of an LSM, in determining that the issue of the number of sales used in the analysis was moot, and by finding that the assessor had not followed the Saskatchewan Assessment Management Agency, *SAMA's 2019 Cost Guide*, version 1.1 (January 2020), and included parcels that were not typical.

[12] The following comments of the *2022 Committee Decision*, regarding the reasonableness of the *2022 Board Decision*, are relevant:

> [9] The Court of Appeal (Court) established that boards of revision do not have the authority to remit matters back to an assessor. They have the jurisdiction to either uphold the assessment or adjust the assessment. In this case, the Board remitted the matter back to the Assessor to determine an appropriate LSM. In other words, the Board was not convinced what the correct LSM should be.

> [10] The fact the Board did not have the authority to remit the matter back to the Assessor is enough to make its decision unreasonable. Further, the fact the Board was not convinced what the appropriate LSM should be, it was inappropriate to remit the matter to the Assessor. We say this as the Assessor could have returned with an LSM of 1.00, which is what it had applied. As well, the assessment is presumed correct and the fact the matter was remitted to the Assessor is evidence the Board was not convinced of the actual error. Based on the Court's decision in *Affinity Holdings Ltd. v Shaunavon (Town)*, 2022 SKCA 83, if a Board is left in doubt by the evidence, the evidentiary burden of an appellant will not have been met.
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> [11] In this case, we find the Board's decision is not reasonable as it does not have the authority to remit matters back to the Assessor. As a result, we will review the record to determine if the Assessor had erred based on the grounds before the Board. …
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> **DECISIONS:**
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> [12] The Committee finds the Board's decision is unreasonable on the basis that the Board made a decision on the subject property in 2021, with similar grounds of appeal, and cannot stray from an earlier decision without evidence and analysis to support a change.
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> [13] The Committee finally finds the Assessor did not err by not applying an LSM to larger parcels nor did it use sales twice to determine a BLR and subsequent site adjustments.
>
> [14] The Committee upholds the original assessed value determined by the City.

[13] After referring to the standard of review and addressing other preliminary issues, the Committee then presented its analysis in support of these conclusions. Given the scope of this appeal, the following portions of the *2022 Committee Decision* are sufficient to understand the issues at stake. For the reader's benefit, the reference to Altus means Pillar:

> **Issue a): Did the Assessor err by not applying an LSM as instructed in section 2.5 of the *Cost Guide*?**
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> **ANALYSIS:**
> [20] Altus argued the Assessor failed to apply a site adjustment for size when the sales evidence suggests one is required. The subject property is 261,336 square feet and was assessed at a land rate of $12.30 per square foot. The Assessor used 44 of the 83 sales in Market Area 4 to determine a BLR of $12.30 per square foot. The subject property is the largest of the 44 sales, only two parcels being greater than 177,000 square feet, and was purchased for $9.00 per square foot. The four largest properties, including the subject property, sold for significantly less than $12.30 per square foot.
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> …
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> [27] … Altus has not demonstrated error by the Assessor not applying an LSM.
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> [28] The Committee finds that Altus is relying on 44 of the 83 sales to reach its conclusion that an LSM should be applied to larger parcels. When all 83 sales are analyzed, the evidence shows that there is no clear trend that property size affects equity between smaller and larger parcels. Appendix D for Market Area 4 (pages 27–30 of the City's submission) shows no clear ASR [Assessment to Sales Ratios] trend for larger parcels being overvalued. We find the Assessor did not err by not applying an LSM on larger parcels and we dismiss this ground of appeal.

Issue b): Did the Assessor err by using the same sales to develop the BLR and a site adjustment?

ANALYSIS:

[29] Altus indicated the City used 44 of the 83 sales in Market Area 4 to determine a BLR of $12.30 and that the remaining 39 sales were used to develop four site adjustments but that it failed to apply a site adjustment for size.

[30] Altus alleges that if 39 of the 83 sales were used to develop site adjustments because these 39 sales 'vary from the typical' then these same 39 sales cannot be used to develop the BLR used to value the 'typical parcel'. This becomes a conflict of the guidance provided in the *Cost Guide* and the City erred by not following the direction in section 2.5 of the *Cost Guide*.

[31] The City responded that it did not use sales twice. Once location was determined, sales in each location were used to determine if site adjustments had to be applied. The City identified five characteristics, which could have an effect on property values (corner location, high traffic accessibility, high traffic visibility, zoning group, restrictive industrial zoning) and tested with ASR analysis to determine if a site adjustment was required.

[32] The City used the Sales comparison method to determine site adjustments because there were enough sales to calculate the variation in sale price that can be attributed to each site adjustment characteristic.

[33] The Committee concurs with the City analysis, as was demonstrated with the 2021 decision on the same property. The Committee finds the analysis valid and confirms that atypical parcels were not used when the City used 83 sales to develop the BLR of $12.30. Altus has not demonstrated that the Assessor erred by using all 83 sales to develop the BLR. We dismiss this ground of appeal.

[14] At the end of its decision, the Committee reiterated and expanded slightly on its conclusions:

CONCLUSION:

[34] Based on the Notice of Appeals to us, one common ground was that the Board erred by remitting the matter back to the City to calculate a new LSM. It is clear the Board does not have the authority to remit matters back to the City. As such, we agree with both the City and Altus, the Board's decision cannot stand.

[35] The Committee finds the Board's decision is unreasonable on the basis that the Board made a decision on the subject property in 2021, with similar grounds of appeal, and cannot stray from an earlier decision without evidence and analysis to support a change.

[36] The Committee also agrees with the City and finds the Assessor did not err by not applying an LSM to larger parcels nor did it use sales twice to determine a BLR and subsequent site adjustments.

[37] The Committee dismisses Altus' appeal and allows the City's appeal. The Committee upholds the original assessed value of $3,214,400.

III. ISSUES

[15] Leave to appeal the *2022 Committee Decision* was granted to Pillar by Leurer J.A. (as he then was) on the following two questions of law:

(a) Did the Committee err in law by finding that the Board was required to follow its decision from a previous year?

(b) Did the Committee err in law or jurisdiction when it found that the entirety of the Board's decision was unreasonable or "nullified" because the Board lacked jurisdiction to remit the matter to the assessor, and when it proceeded to conduct a first-instance review of the assessment on that basis?

[16] These are questions of law that are subject to review on a standard of correctness: s. 33.1 of *The Municipal Board Act*, SS 1988-89, c M-23.2, and *Gary L. Redhead Holdings Ltd. v Swift Current (Rural Municipality)*, 2017 SKCA 47 at para 88, 415 DLR (4th) 218.

IV. ANALYSIS

A. The value of previous year's decisions

[17] While the parties agree that the Committee erred in treating the *2021 Board Decision* and the *2021 Committee Decision* as determinative of the 2022 appeal, they disagree on the precedential value that should be accorded to such decisions in a subsequent year's appeal. Pillar argues, and the City agrees, that prior decisions are not *binding* on the Board or Committee and are never *determinative* of the subsequent year's appeal. Pillar further contends that there is no threshold that must be crossed before the Board can reach a different conclusion in the current year than it reached in a previous year, relying on *SBLP Town N Country Mall Inc. v Moose Jaw (City)*, 2023 SKCA 94 [*Town N Country*]:

> [21] … we reject [Saskatchewan Assessment Management Agency's] argument that there is a threshold to be crossed before a board of revision undertaking a review of an assessment in a particular year can deviate from a previous year's assessment. The question, in each year, is one that must be undertaken based on the evidence presented to the board of revision in that year. For the same reasons, we cannot accede to [Saskatchewan Assessment Management Agency's] argument that we could infer that the Committee found that the records were substantially the same. Moreover, *SBLP* points out that there were significant differences between the record in the 2017 assessment appeal, which was

> at issue in *TNC 2020* [2020 SKCA 99], and the records before the Committee in the 2019 and 2020 assessment appeals. Most notably, the record in the 2017 assessment appeal did not include evidence that the [general-commercial capitalisation rate] properties were not similar to the Mall or a time adjustment analysis of shopping centre sales in Weyburn and Humboldt (*TNC 2020* at paras 36, 64–65). In the 2019 and 2020 appeals, SBLP put forward that evidence as well as two alternative methods for assessing the Mall that employed that evidence and that used the [shopping-centre capitalisation rate], which had been derived from it. In its 2019 decision, the [board of revision] accepted this new evidence when setting aside the 2019 assessment and granted a remedy that was based on the [shopping-centre capitalisation rate].

[18] Pillar also notes the uncontroversial principle that questions of assessment law and assessment practice are reviewed on a standard of correctness: *Affinity Holdings Ltd. v Shaunavon (Town),* 2022 SKCA 83, 474 DLR (4th) 71 [*Affinity*].

[19] As a last statement leading up to its position, Pillar observes that *stare decisis* does not generally require administrative tribunals to follow their own prior decisions, referencing *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd*., 2013 SCC 34 at paras 78–79, [2013] 2 SCR 458, *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 129, [2019] 4 SCR 653 [*Vavilov*], and *Arumaithurai v Canada (Citizenship and Immigration)*, 2022 FC 604 at para 16. It recognizes, however, what this Court wrote about *stare decisis* in *Affinity*:

> [120] … although administrative decision-makers are not usually bound by their own prior decisions (*Vavilov* at para 20), the nature of the assessment regime under the municipal Acts and the attendant process for appealing against those decisions (see *E.Z. Automotive* [2021 SKCA 109] and *City Centre* [2018 SKCA 43]) means that boards of revision must, in the absence of distinguishing features, have court-like regard for the consistency of their own decisions and the consistency of their decisions with decisions of the Committee. Whether a particular board decision is consistent with its own past decisions, or with those of the Committee, is a question of law. In this regard, the Committee may resolve issues of *stare decisis* and settle differences in the interpretation of assessment law and practice arising as between the decisions of different boards of revision.

[20] Relying on these foregoing propositions as the foundation for its arguments, Pillar submits that boards of revision and Committee decisions must be consistent with past decisions only with respect to issues of assessment law and assessment practice. It asserts that findings on questions of fact or on questions of mixed fact and assessment law or assessment practice have little meaning for a subsequent board because questions of this nature will heavily depend on the evidence and the arguments that are put forward in each individual case.

[21] The City submits that Pillar is attempting to inappropriately limit the application of previous boards of revision and Committee decisions as applying only to assessment law and practice. It notes that these categories are already subject to a correctness review upon appeal. The City argues that a previous year's decision, regarding a specific property, is relevant and ought to be accorded precedential value like any other decision in the common law system. It contends that prior year's decisions should have persuasive value, with such persuasiveness diminishing as distinguishing features emerge between the two years.

[22] It is appropriate for this Court to provide some guidance and direction on this issue. However, the value of previous decisions in a subsequent year can be expressed by stating a few foundational concepts that, for the most part, have been recently canvassed by this Court.

[23] First, it is uncontroversial that an appeal from an assessment in any given tax year is a fresh appeal. Each annual appeal is grounded in a different assessment decision. A taxpayer is permitted to challenge an assessment every year and to have a decision made based on the merits of that specific year's appeal without clearing any hurdles or crossing a threshold with reference to previous years' assessment decisions: s. 165(3.1) of *The Cities Act*, SS 2002, c C-11.1, and *Town N Country* at paras 20–21. This principle is well described by Richards C.J.S. in *Brandt Properties Ltd. v Sherwood (Rural Municipality)*, 2023 SKCA 4 [*Brandt 4*]:

> [48] It is evident, therefore, that a new right of appeal arises each year. Every annual assessment is a distinct decision made by the assessor and every such assessment gives rise to a fresh right of appeal. Property owners who challenge their assessments year after year are not challenging the same decision repeatedly. They are serially taking issue with new decisions and exercising fresh rights of appeal. With some statutory qualifications not relevant here, decisions made with respect to an assessment for a previous year do not automatically determine the result of an appeal in a subsequent year.

[24] Second, the outcome of a previous year's appeal is not determinative of the current year's appeal or binding on a board of revision or Committee in its deliberations regarding the current year: *Brandt Properties Ltd. v Sherwood (Rural Municipality)*, 2023 SKCA 5 at para 29 [*Brandt 5*]. This includes the proposition that the findings of fact from a previous year do not determine the facts for the current year.

[25] Third, in Saskatchewan, a four-year cycle is utilized for property assessment. The market data does not change throughout this cycle, absent rulings that affect the data. While a taxpayer is permitted to appeal each and every year, it may be that, from a tactical and practical standpoint, absent some jurisprudential change, it will be difficult to succeed if the same argument is made on virtually the same evidence in a subsequent year: *Brandt 5* at para 29. In such a case, while the previous year's board of revision or Committee decision is not binding, it would be persuasive, and it would likely be difficult for an appellant to obtain a different ruling. As stated by Noël C.J. in *Apotex Inc. v Pfizer Canada Inc.*, 2014 FCA 250 at para 115, 465 NR 306, leave to appeal to SCC refused, 2015 CanLII 20820 and 2015 CanLII 20821, uncertainty is created when two judges of the same court reach different results on the same question of law without explanation. Similarly, if two boards of revision reach different conclusions on the same facts and arguments, difficulties can arise because the stability and predictability of the system will be damaged. Both the boards of revision and the Committee should strive to not render inconsistent decisions. As noted in *Affinity*, boards of revision must, "in the absence of distinguishing features, have court-like regard for the consistency of their own decisions" (at para 120). The Committee should treat its own previous decisions in a like manner.

[26] Fourth, a previous year's decision, if it involves the same property and issues, will likely have some precedential value and should not be ignored. However, it is not uncommon for a taxpayer to appeal the same issue for the same property in a subsequent year with different (i.e., better) evidence and new or refined arguments. Additionally, an assessment may have been altered or the facts, conditions, or circumstances affecting the property may have changed. As an illustration of these concepts, see the discussion in *Western Eagle Lodge Management General Partners Inc. v North Battleford (City)*, 2022 SKCA 53 at paras 25–28, 469 DLR (4th) 549. As the facts become more distinguishable, the precedential value of the previous year's decision is correspondingly reduced. Likewise, when a new or refined argument is raised, even if it relates to the same issue, the prior decisions may not have much persuasive worth.

[27] Fifth, the persuasive value or authoritative force of a previous year's board of revision or Committee decision on the same property is not narrowly limited to issues of assessment law or practice. As noted above, determinations of that nature are already subject to review for correctness. The value of the previous year's decision on the same property must be greater than

that. For example, if a subsequent year's appeal within the four-year cycle is based on the exact same evidence and argument as the previous year, absent jurisprudential shifts in the landscape, the previous year's decision would be persuasive on all aspects of the appeal. This is consistent with this Court's determinations in *Brandt 4*, *Brandt 5*, and *Affinity*. However, as previously stated, as the facts become more distinguishable (assuming that the previous year's factual matrix is available in sufficient detail to make a comparison) or the arguments are modified, the precedential value of the previous year's decision may become minimal or disappear entirely. When a new issue is raised, the previous year's decision is likely to be irrelevant.

[28] Lastly, I wish to be clear that a board of revision or the Committee should not simply take the prior year's decision as a starting point and then engage in an exercise of comparing the situations from year to year. As noted in *Brandt 5*, "It will never be appropriate to approach a year 2 appeal as if the property owner has the burden of overcoming the Board's or the Committee's year 1 decision" (at para 29): similarly, see *Town N Country* at paras 17–22. Each year's appeal is based on its own evidence and arguments and requires its own fresh findings of fact and analysis. It is an independent examination every year. However, the deliberations should take account of a prior year's appeal decision for the same property if the same or similar issue is raised and give appropriate consideration to its precedential value based on the principles described above.

B. Remitting the *2022 Board Decision* to the Committee

[29] In the matter at hand, the Committee erred by treating the *2021 Board Decision* and the *2021 Committee Decision* as determinative of the 2022 appeal. As such, at a minimum, the LSM issue must be remitted to the Committee for reconsideration.

[30] Both parties agree that the Committee erred by nullifying the entirety of the *2022 Board Decision* as a result of finding a single error in the remedy granted by the Board rather than exercising its corrective powers or remitting the matter with regard to the error. They are correct: see *Corman Park (Rural Municipality) v 618421 Saskatchewan Ltd.*, 2018 SKCA 29 at para 67, 73 MPLR (5th) 1, and *City Centre Equities Inc. v Regina (City)*, 2018 SKCA 43 at para 99, 75 MPLR (5th) 179, as authority for this conclusion. A finding of one discrete error of the nature found by the Committee does not nullify the entirety of the *2022 Board Decision*. The Committee

should have granted a remedy in relation to the specific error, rather than declaring the entirety of the *2022 Board Decision* to be a nullity. Flowing from this, both parties say that the LSM issue should be sent back to the Committee, a position with which I agree. The question becomes whether the BLR issue should also be remitted.

[31] Pillar asserts that this Court should remit all issues to the Committee for reconsideration. It contends that the Committee put it to the task of disproving the *2021 Board Decision* and imposed an erroneous burden on it to put forward new evidence or analysis in 2022. Compounding that problem, in Pillar's view, is that the Committee did not identify which aspects of the *2021 Board Decision* it considered to be binding and did not analyze that decision. It also points out that there were findings of fact made by the Board in the *2022 Board Decision* that should have been treated deferentially by the Committee.

[32] In response, the City submits that the BLR issue has already been determined by the Board and the Committee in their respective 2022 decisions, without influence by the 2021 decisions and without contamination by the Board's error in remitting the LSM issue to the assessor. It argues that both the Board and the Committee conducted de novo hearings on the BLR issue and came to the same conclusion. The City says that the outcome would be inevitable upon remittal – particularly given that the Committee already upheld this portion of the *2022 Board Decision* after applying the higher standard of correctness – so nothing would be gained by having that issue sent back to the Committee.

[33] I agree with the City that no controverted issue was raised in the 2021 appeals regarding the BLR, although there was some limited discussion of that aspect of the 2021 assessment. A challenge in relation to the BLR issue was not engaged in 2021 like it was in 2022. As such, in 2022, the Committee could not give much weight – probably none – to the 2021 precedent for this property on this issue. However, it appears that the Committee may have done just that. As urged upon this Court by Pillar, it seems to me that the Committee's view of the 2021 decisions may have tainted the *2022 Committee Decision* to the point that it affected the determination of the BLR issue. I come to this conclusion because of the Committee's statements at paragraphs 12, 33, and 35 of the *2022 Committee Decision*.

[34] In those paragraphs, the Committee relied on the 2021 decisions to find that the entirety of the *2022 Board Decision* was unreasonable. The analysis in paragraph 33, which is found under the heading "Issue b): Did the Assessor err by using the same sales to develop the BLR and a site adjustment?", contains only a discussion of the BLR issue yet references "the 2021 decision on the same property". Coupled with the general statements in paragraphs 12 and 35 that "the Board made a decision on the subject property in 2021, with similar grounds of appeal, and cannot stray from an earlier decision without evidence and analysis to support a change" (at para 35), a valid concern has been raised regarding the analysis of the BLR issue being tainted by unwarranted adherence to the result in the 2021 decisions.

[35] Additionally, having declared the entire *2022 Board Decision* a nullity, the Committee set aside all the Board's findings of fact. It did not review them on a reasonableness standard: *Affinity* at paras 147 and 149. Given that many of the facts found by the Board regarding the LSM issue are not excisable from its findings of fact related to the BLR issue, it becomes more difficult to send back the LSM issue and leave the conclusion on the BLR issue undisturbed.

[36] In *Vavilov*, the majority recognized that it may be appropriate to decline to remit a matter when doing so would serve no useful purpose:

> [142] However, while courts should, as a general rule, respect the legislature's intention to entrust the matter to the administrative decision maker, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended: [references omitted]. An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose: [references omitted]. Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources may also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed: [references omitted].

[37] The concerns expressed in this excerpt from *Vavilov* do not arise in any substantial way in this matter. The parties agree that there should be a partial remittal in any event, assuaging concerns about delay, fairness to the parties, cost, and the efficient use of public resources. Additionally, I cannot say that the outcome on the BLR issue is inevitable or that remittal of the entire matter will serve no useful purpose.

[38] Taking these factors into account, it is my view that the entire matter should be remitted to the Committee.

V. CONCLUSION

[39] The appeal should be allowed, the *2022 Committee Decision* quashed, and the entire matter – both Pillar's and the City's appeals to the Committee – remitted to the Committee to be dealt with afresh and in accordance with this judgment. The City shall pay Pillar the costs of the appeal and the leave application, calculated in the usual manner.

"Tholl J.A."

Tholl J.A.

I concur. "Caldwell J.A."

Caldwell J.A.

I concur. "Drennan J.A."

Drennan J.A.