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FURTHER GUIDELINES AND EXPECTATIONS FOR APPEAL MANAGEMENT OF COMMERCIAL AND INDUSTRIAL APPEALS

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Purpose:

The purpose of these Guidelines is to provide further direction for the management of 2020 appeals and to clarify the Board's general expectations beyond those set out in the ["Guidelines and Expectations for Appeal Management of Commercial and Industrial Appeals April 2015"](#) .

Application:

The guidelines below apply to "typical" commercial and industrial appeals where the property owner is represented by a tax agent or similar "in-house" personnel.

This is general guidance that applies to a wide variety of appeals, particularly where the issues are actual value and/or equity. However, there may be appeals where the Board and parties may need to diverge from the guidelines. The appeal manager ultimately has discretion in any appeal to institute an appeal management plan that differs from the general guidelines.

In all instances, parties should be prepared to commence dialogue on resolution early and not wait for one particular stage of the process. This is particularly the case for those appeals such as where the only issue is inventory of the land or improvements on the roll or the carrying over of a prior amendment to the roll, issues that do not require the more extensive and formal process.

Rationale:

The goal is for the parties to resolve as many appeals as possible towards the Board's published completion targets. The Board's target is to have 75%-85% of the 2020 commercial and industrial appeals resolved or scheduled for hearing by March 31, 2021.

Due to the significant increase in the volume of appeals in recent years, there have been appeal management issues for which the Board needs to provide this clarification and guidance.

Stages in Appeal Management:

How an assessment of an appealed property is arrived at:

The first stage of an appeal is for the appellant to fully understand how the assessment of the property was arrived at if this has not been done at the first level or during pre-roll consultation. This allows the appellant to determine whether to proceed with the appeal and identify their issues, or request a withdrawal.

At this stage, the Board expects the disclosure of the subject property information as follows:

i) The Property Valuation Summary (“PVS”) of the appealed property:

- Practice Directive No. 2 “Disclosure Expectations in the Management of Commercial Appeals” (or “PD2”) states that “BCA will provide to an appellant or their agent a copy of the Property Valuation Summary (PVS) (or its equivalent) for the property appealed as soon as possible upon notified an appeal has been registered, if not already produced.”
- If this PVS has not been provided earlier, the Board expects the assessor to provide to the appellant or the appellant’s agent the PVS for the appealed property no later than 14 days from BCA receiving notification of the appeal being filed.

ii) The Property Record Card (“PRC”) of the appealed property:

- The Board has heard from agents that the PVS does not provide sufficient information for certain properties including vacant land and properties that are primarily valued as land. The relevant land value calculations are contained in what is currently labelled the PRC.
- The Board has heard from BC Assessment that provision of the PRC requires adequate agency authentication as result of the operation of the *Freedom of Information and Protection of Privacy Act (FOIPPA)*. However, the Board has previously provided guidance in [Dieter Berg v. Area 26 \(2011 PAABBC 20111883\)](#)

In *Berg*, the Board held that disclosure is authorized by the *Assessment Act* and *Administrative Tribunals Act* and as such it is deemed not to be an unreasonable invasion of a third person’s personal privacy as prohibited by section 3(2) and section 22(4) of *FOIPPA*. The Board set out guidance on the production of PRCs.

- For individual appeals, appellants or their agent can request an order from the Board that that the assessor to provide the PRC or equivalent subject to the *Berg’s* guidance which the Board can issue expeditiously.
- For groups of appeals (such as land value appeals where the assessor will not produce the PRC, appellants or their agent may provide the Board with the list of the appeals for which the PRCs are requested, and the Board can issue an order such as a blanket order for the assessor to provide the PRC or equivalent for the appealed properties subject to *Berg’s* guidance.

What Possible Relevant Information should be Exchanged Prior to Issue Closure:

After an appellant receives information on the basis of the appealed property's assessment and decides to proceed with the appeal, the next stage is for the parties to identify their issues early. This requires the exchange of standard, relevant information. [Practice Directive No. 2](#) (PD2) provides general expectations for this.

Further to PD2, the Board makes the following comments and clarifications:

i) Equity Comparables: The appellant requires sufficient evidence of comparable properties to determine if they are proceeding with equity. This requires the following:

- Parties should be prepared to abide by the PD2 on the production of PVS for equity comparables. The request for PVS' of equity comparables should be made no later than 30 days after filing of the appeal; the requested PVS' should be produced by the assessor no later than 14 days after the request is made.
- PD2 does not mention PRCs for equity comparables which the agents say are also required. As in prior years, appellants can make a request to the appeal manager who can order production of equity PRCs subject to redaction provisions set out in *Berg, supra*.

ii) Financial Information: Where value is an issue for property that is income producing, tenanted and valued by the income approach:

- Parties should be prepared to abide by PD2 for appellant disclosure of financial statements, rent rolls and lease summaries.
- Given delay in producing this information in previous years, the Board now expects that the current income and expense statement, plus most recent rent roll and lease summaries should be produced by the appellant to the assessor early, but no later than the closure of issues (see below).
- If required to resolve issues raised in an appeal, the assessor may request the prior two year's historical income and expense statements which should be produced within 21 days of the request being made and if this does not occur, the assessor may apply for an order for production from the Board.

iii) Other information: Parties should work collaboratively on the exchange of other relevant information not covered by PD2 and apply to the Board for assistance when required.

All relevant documentation and information, including the provision of equity PVSs, is to be exchanged no later than August 21 unless mutually agreed by the parties and the Board. Wherever possible, parties should aim to have equity PVSs and PRCs provided by July 21.

Parties should alert the Board to any contested requests for information, so that the Board may schedule an AMC to deal with any problems and issue any necessary Board orders.

What are the Issues and How should Issues be Identified & Closed:

After the exchange of relevant information, parties should be prepared to identify and close off their issues early. It is critical for appellants to identify their issues early as failure to do so results in significant delay and barriers to resolution. It is critical for the assessor to identify any issue they have with an assessment and not simply respond to appellant's issues.

The appeal managers will ensure the early closure of issues and also how issue closure occurs, whether through the exchange of a Form X (see Appendix 1), Statements of Issues, Evidence or Analysis, or other method.

Overly complicated spreadsheets have not worked to close issues and will be used sparingly for this purpose. Incomplete SIEAs have also been problematic. The following are just examples of what the Board has received in the past:

- a) Spreadsheet under "Issues":
"██████████ (property identification) - email to ██████████ (BCA appraiser) outlining issues.";
- b) Non-compliant SIEA:
"A board decision on these properties was rendered for ██████████ (assessment year) with capitalization rates of 7% and 7.75% found to be applicable respectively for both years. The rents and vacancy/expenses are considered to be reasonable. I would submit that the capitalization rates found by the Board are also applicable for ██████████ (assessment year)".

The above communication represented the extent of what was supposed to be identifying and closing issues and analyses. This does not comply with Board expectations as set out by Rule 14 of the *Board's Rules of Practice & Procedure*.

As a result, the Board sets out some general expectations and timelines (which may be amended by the appeal manager) for 2020 appeal management:

1. Issue closure:
 - Appeal managers may order production of Form Xs:
 - The Appellant's Form X should be produced no later than July 31, 2020
 - BC Assessment's Form X should be produced no later than 30 days after filing of Appellant's Form X.
 - After the filing of a Form X, new issues cannot be raised by a party without leave of the Board.

- The appeal manager may order production of SIEAs in addition to or in place of the Form X. Rule 14 applies in this instance. Please see the Board's intentions and expectations surrounding SIEAs in the Discussion Paper, "What is the Board's Role in Appeal Management of Industrial and Commercial Appeals" of April 14, 2020 (Appendix 2).

2. Outside deadlines for issue closure:

- Wherever possible, an Appellant should ensure issues are fully identified and closed (either through a Form X or SIEA) by the deadlines above.
- For appeals where disclosure has required more time or Board assistance, the appeal manager will work with the parties to set appropriate deadlines, however, the outside deadline for the appellant's issue closure (through a Form X or SIEA) should be no later than August 31, and BC Assessment should be no later than October 30.

3. Leave to add Issues after Closure of Issues and/or the exchange of Form X/SIEAs:

- Rule 14(7) requires a party to seek leave of the board to add issues after statements are filed. This application is available to parties who believe that new issues need to be raised as a result of the exchange of the statements.

Other Appeal Management Issues:

The Board has received feedback from parties on other areas of appeal management that require clarity:

1. Triaging: Before appeal management begins, parties should "triage" appeals to identify those that are likely to resolve without a great deal of Board involvement. Parties can commence immediate dialogue towards resolution for these appeals.
2. Group Appeal Management. In prior years, appeal managers have attempted to manage large volumes of appeals through group appeal management and/or a "batching" process where appeals are placed in groups or a series of batches for appeal management conferences (AMC) or settlement conferences (SC). Generally, group appeal management works where there is adequate identification of issues. The general expectations for batching of appeals are:
 - Parties should immediately advise the appeal manager if appeals should be managed in a group. If the appeal manager believes group management is possible, they will contact and consult with the parties on whether this is efficient and on how the group(s) should be formed (i.e. based on issue, property type, or other criteria).
 - Appeal managers will work with their agents to determine the process for the group(s) which may include a "batching" process where a number of appeals are scheduled for a series of group appeal management

conferences or settlement conferences. Parties should work together with the appeal manager on identifying the appropriate “batch”.

3. Contingent Appeals:

- [Practice Directive #3 “Issue Closure in Contingent Appeal”](#) provides guidelines on when appeals will be placed in contingent status and will continue to apply.
- If there is an appeal with multiple issues with only one issue contingent, parties should be prepared to proceed on the non-contingent issue(s) whenever possible. If this does not occur, a party can bring it to the appeal manager’s attention to commence appeal management for that issue.

4. Enforcement of Board Orders:

- If parties anticipate that they will not be able to meet a timeline or Board Order, they are expected to apply for an extension and provide reasons for the extension in advance of the deadline.
- The Discussion Paper in Appendix 2 speaks to the Board’s role and the Board’s ability to apply consequences for non-compliance of a Board Order.
- Whether consequences will be applied for non-compliance is in the appeal manager’s discretion and will, in most cases, require an application from the other party.
- However, if there is a pattern of non-compliance in an appeal or across appeals, the appeal manager may consider consequences without an application.
- Consequences for non-compliance may include costs, further non-participation, or dismissal of the appeal(s).

5. Authority to Settle:

- Appeal managers will clarify parties’ authority to settle at the time of scheduling a Settlement Conference or prior to the start of a Settlement Conference.

Conclusion:

Parties should be prepared to work collaboratively to ensure appeals are resolved efficiently and early. The appeal managers will work with parties to ensure the appropriate appeal management is in place for timely and fair resolution of appeals.



Simmi K. Sandhu, Chair

APPENDIX I (Form X)

APPENDIX II

**Discussion Paper, “What is the Board’s Role in Appeal Management of Industrial
and Commercial Appeals”
April 14, 2020**