

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 20074/2022

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED: NO

A handwritten signature in black ink, appearing to read "Judge Dippenaar".

29 OCTOBER 2025

Judge Dippenaar

In the matter between:

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

FIRST APPLICANT

**THE MUNICIPAL VALUER: THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

SECOND APPLICANT

and

**THE VALUATION APPEAL BOARD FOR THE CITY
OF JOHANNESBURG**

FIRST RESPONDENT

THE OWNERS OF UNITS

SECOND RESPONDENT

**Units 1, 6, 7, 11, 12, 15, 16, 18, 22, 24, 25,
28, 29, 34, 38, 40, 45, 49, 51, 53, 59, 60,
63 and 64 (THE 24 UNITS) MELROSE SQUARE ON OAKS SS 429/1999**

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading to the electronic case file. The date and time for hand-down is deemed to be 10h00 on the 29th of OCTOBER 2025.

DIPPENAAR J:

Introduction

[1] The first applicant, the City of Johannesburg Metropolitan Municipality (the 'City') sought to review and set aside a decision of the Valuation Appeal Board for the City of Johannesburg ('Appeal Board' or 'Board'), taken on 9 December 2021, pertaining to 24 units in Melrose Square on Oaks. The second applicant is the Municipal Valuer for the City of Johannesburg (the 'Valuer'), who made common cause with the City.

[2] The first respondent, the Appeal Board and the second respondent, the owners of those units (collectively referred to as the owner respondents) opposed the application. The Appeal Board's decision was taken in respect of an appeal lodged against the decision of the Municipal Valuer by the owners of units 1, 6, 7, 11, 12, 15, 6, 18, 22, 24, 25, 28, 29, 34, 38, 40, 45, 49, 51, 53, 59, 60, 63, and 64 (the '24 units') of a sectional title property known as the Melrose Square on Oaks SS 429/1999.

[3] The applicants sought an order reviewing and setting aside the decision of the Appeal Board dated 09 December 2021, in terms of which the Board categorised the 24 units as 'sectional title residential' with effect from 1 July 2013. Costs were sought on the scale as between attorney and client. In their heads of argument, orders were sought that the decision of the Appeal Board be substituted with one dismissing the appeal before the Board and reinstating the decision of the Valuer.

[4] The background facts are not contentious. In the 2013 general valuation roll the owner respondents' properties were initially categorised as being 'sectional title residential'. In the subsequent supplementary valuation roll 5 to the 2013 roll, the properties were categorised as 'sectional title business' by the Valuer. Notification of the outcome of objection in terms of s 53(1) of the Local Government: Municipal Property Rates Act 6 of 2004 ('MPRA') was issued on 29 March 2018. Aggrieved, the owner respondents objected to that characterisation, contending that it must be characterised as 'sectional title residential'.

[5] The Municipal Valuer's decision on the objection affirmed the category as 'sectional title 'business''. The second respondents appealed to the Appeal Board against that decision on 11 May 2018 in terms of s 54(1) of the MPRA. The categorisation of the units as business formed the nub of the second respondents' objection and appeal before the Appeal Board.

[6] The difference between 'business' and 'residential' categorisation lies in the amount levied as rates, based on the tariffs applicable. The latter is lower than those of properties in the business category. It was common cause that the units in question are all utilised solely as residential units, that they all have approved building plans and that the zoning of the property accommodates residential units. The sectional title scheme in which the second respondents' properties are situate have business rights based on the zoning rights of the scheme. The applicable zone is 'special for business'. The applicants

want the rating categorisation for these units to be business, which it was undisputed is usually 2.5 to 4 times more expensive than residential rates. There are also certain rebates involved in respect of residential properties which do not apply to business properties. It was undisputed that the decision to allocate the property into a category determined by the City was that of the Valuer and not the City.

[7] The City did not participate in the proceedings before the Appeal Board. Evidence was led and argument presented by the Municipal Valuer and the second respondent. Those parties were legally represented at the hearing. The Appeal Board's decision of 9 December 2021 provided:

6. CONCLUSION 6.1 Taking the conspectus of all the relevant facts, the Board is of the view that the categorization of the 24 Units in Melrose Square on Oaks as business and commercial and the reasons advanced for the exercise by the municipal valuer, to be unjustifiable in the circumstances and palpably wrong. 6.2 the Board arrives at the inescapable conclusion therefore on the evidence, that the Units in the Melrose Scheme should be categorized as Sectional Title Residential as the use complies with the permitted use as defined in Section 8(1) of the Municipal Property Rates Act, 6 of 2004 as well as the permitted use as per Clause 5 of the 2013/2014 City of Johannesburg Property Rates Policy read with the definition of zoning. 6.3 In the premises therefore, the appeal succeeded and the Board substitutes the decision of the municipal valuer to read: 1, 6, 7, 11, 12, 15, 6, 18, 22, 24, 25, 28, 29, 34, 38, 40, 45, 49, 51, 53, 59, 60, 63, and 64 are categorised as Sectional Title Residential with effect from 1st July 2013.'

The respective parties' cases

[8] The applicants' review is squarely predicated on the Promotion of Administrative to Justice Act 3 of 2000 ('PAJA'). Seven grounds of review are raised. In their affidavit reliance on a legality review is expressly eschewed. The City's affidavits are deposed to by Ms Sihle More, the group head of the City's Property branch, who is responsible for the City's Rates Policy, implementation of the MPRA, the City's general valuation rolls and any amendments thereto, the valuations Directorate and related functions. According to the deponent she is qualified to deal with the issues as the subject matter falls within

her area of responsibility. No written authorisation from the City authorising the institution of the application was attached to the application papers.

[9] The applicants' case in sum is that the Municipal Valuer in allocating the units into the sectional title business category, considered various factors based on the criteria in the Rates Policy and the Rates Act, read with the City's land use regulations. Those factors were: (i) highest and best permitted use; (ii) more than one permitted use, including the primary rights; (iii) actual use and permitted use; and (iv) the relationship between use, value and allocation of property into a category determined by the City.

[10] According to the applicants, the Appeal Board did not properly take into account the provisions of the City's Rates Policy and the zoning of the property as business, when it ought to have done so when coming to its decision. According to the City, it was not problematic when the owners of sectional title properties used for residential purposes were treated differently as a result of the proposed application of the City's Rates Policy and that it was perfectly lawful for some such owners to pay residential rates whilst others have to pay business rates. According to the applicants, if there was inequality, a person negatively affected could apply to the City to have the tariff changed by completing certain forms which are dealt with by the City's revenue department and not by the valuation department.

[11] The applicants further contended that the Appeal Board declared the rates policy unlawful whilst it was not entitled to do so and that the Appeal Board used the wrong s 8 of the MPRA, being the amended version, rather than the one applicable in 2013.

[12] Much of the applicants' founding affidavit was devoted to the Valuer being empowered to categorise properties using the principle of highest and best use, which is a principle of international valuation standards utilised to assist valuers when deciding what category and what valuation to ascribe to a property on the roll. It was argued that

the Valuer was entitled to utilize the zoning or permitted use of a property rather than its use, to decide which category the property ought to go into and that this is in accordance with 'highest permitted use' which justifies such practice.

[13] The Appeal Board's case is that in making the decision which the applicants sought to review it acted well within the scope of its authority in terms of s 57 of the MPRA and not unlawfully. Its stance was that the grounds of review were unsustainable. It further challenged the applicants' *locus standi* in various respects.

[14] The owner respondents raised similar defences. Their case in sum was that it was not open to the City to use the 'highest permitted use right' of a property in order to allocate it into a category and that the proviso within the City's Rates Policy sectional title category for a declaration as to the purpose for which the property was being used was in conflict with the MPRA. According to them, the zoning attributable to the entire sectional title scheme may not be ascribed to each of the units as this contravenes s 10 of the MPRA and is accordingly unlawful. They submitted that the use of a property should be utilised, consistently with s 8 of the MPRA, instead of the zoning of the sectional title unit as prescribed in the City's Rates Policy to determine the category into which a property should be allocated. The owner respondents submitted that the City's Rates Policies discriminate between different categories of residential property in violation of s 191 of the MPRA, resulting in inequality in treatment and that the City conveniently ignored the precedent set by the Appeal Board and the Municipal Valuer himself in other cases where similar sectional title units were categorised as residential. It was argued that the City advanced no reason why such precedent ought not to apply in this case.

[15] The central basis of opposition by the owner respondents was based on the argument that the manner in which the applicants seek to apply the City's Rates Policy is inequitable and thus contrary to the MPRA. They emphasised that on a proper reading of the Appeal Board's decision it found that even if the Rates Policy in its impugned form

was lawful, the Valuer's decision would have been incorrectly arrived at. The applicants, despite their extensive heads of argument, did not meaningfully grapple with this argument.

In limine points raised

[16] Prior to considering the merits of the application, certain points *in limine* advanced by the respective respondents must first be considered, which in various instances overlap. Broadly speaking, they concern the *locus standi* of the City and whether it authorised the application. Ancillary thereto, the owner respondents contended that the Valuer was biased and that the applicants had failed to exhaust internal remedies, thus justifying the dismissal of the application. It is apposite to address the *locus standi* issue first.

[17] The Appeal Board submitted that it was incompetent for the applicants to approach the High Court by way of review in terms of rule 53 read with s 6 of PAJA and thus that the review constitutes a legal nullity. It was argued that the applicants should have brought an application seeking a declaratory order of legal invalidity coupled with a mandatory interdict, not a review.

[18] The applicants did not address this issue in their founding affidavit. In reply, the applicants contended that they were acting in the public interest based on the fact that the recovery of rates and other amounts due to the Municipality is in the public interest as s 96 of the Local Government: Municipal Systems Act 32 of 2000 ('the Systems Act') obliges the Municipality to 'collect all money that is due and payable to it, subject to this Act and any other applicable legislation' in order to discharge its duties under s 4(2) of the Act and other pieces of legislation and the Constitution. They contended that '*the decision of the Board has implications for the municipal fiscus beyond the interest of the second respondent*' and *there is an overriding public interest in the collection of revenue*'.

[19] Organs of state such as the applicants can only acquire such *locus standi* to review the administrative action of another organ of state in terms of PAJA where they act in the public interest, rather than in their own interest.¹ In *Mapholisa Mapholise NO v Phatoe NO and others*² the Supreme Court of Appeal held, relying on *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd*³ that PAJA did not apply when an organ of state reviewed its own decision and the pathway to review is the principle of legality. In *Gijima*, the issue was left open whether PAJA applies to one organ of state reviewing another organ of state. It held that the same reasoning applies whether an organ of state is reviewing its own decision as in *Gijima* or is reviewing the decision of another state functionary.⁴ It was held that where the principle of legality applies there is no duty to exhaust internal remedies.

[20] In response to the challenge, the applicants relied on *Compicare Wellness Medical Scheme v Registrar of Medical Schemes and Others*⁵. There, Plasket JA held that the Registrar of Medical Schemes had brought the application in the public interest and thereby had standing to bring an application for review of a decision of the Appeal Board for the Council for Medical Schemes in terms of PAJA. In *Compicare*, the appeal board had acted *ultra vires* by making the ruling and ordered the Registrar to act *ultra vires*.

[21] Considering the underpinning facts, that decision does not conflict with the earlier decision of the SCA in *Registrar of Pension Funds v Howie NO*,⁶ as contended by the Appeal Board. In *Howie*, Wallis JA held that the Registrar of Pension Funds did not have *locus standi* when it sought to review the decision of the Board of Appeal established in terms of s 26A of the Financial Services board Act 97 of 1990. The argument that it was

¹ *Mapholise NO v Phatoe NO and others* [2022] ZASCA 166 (30 November 2022) para 20.

² *Ibid* para 17.

³ *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA 23 (CC) ('*Gijima*')
⁴ *Ibid* para 18.

⁵ 2021 (1) SA 15 (SCA) para 20.

⁶ [2016] 1 All SA 694 (SCA)

acting in the public's interest in attempting to safeguard the correctness of the registrar's decisions, was rejected.⁷ It was held:

'My difficulty with this is that the existence of the Appeal Board presupposes that the legislature was of the view that some of the decisions by the Registrar might be incorrect, and that there needed to be a mechanism to challenge and correct those decisions. The view of the legislature was that when an appeal against a decision of the Registrar succeeds, the Registrar is wrong and the Appeal Board right, or expressed more charitably, as between the appeal board and the Registrar, the Appeal Board's decision is to be taken as correct. In considering the nature of the registrar's interest which it sought to be vindicated, the purpose behind the establishment of the appeal board and its powers was considered. It was held: the purpose is clear. It is to enable persons affected by decisions of the registrar to challenge those decisions before a specially constituted body...

Recognising that the registrar has locus standi to challenge the decision by the appeal board would upset the statutory relationship between the two as set out in the FSB Act. It would be inconsistent with the purpose of creating the appeal board and has the potential to undermine it in performing the function. If one of the parties affected by it is unhappy with the decision by the appeal board they are free to review it.. recognizing an independent right in the registrar would permit of challenges to a decision accepted by the parties affected thereby.... '

[22] Although the Court in *Compcare* was not referred to *Howie*, it must be borne in mind that each case is fact specific. The facts in *Compcare* and *Howie* are distinguishable, specifically insofar as those surrounding the issue of public interest is concerned. I am further not persuaded that the cases are at odds with each other. Insofar as it pertains to the City, I am not persuaded that the Board's reliance on *Howie* avails it. As held expressly in *Howie*, if one of the parties affected by the decision of the Appeal board is unhappy with it, they are free to review it.⁸ The City is such a party.

[23] Considering all the facts, the charging of higher rates is primarily in the City's interests in order to receive more revenue in its coffers. There is merit in the owner respondents' contention that to create a precedent where owners of residential units are

⁷ *Registrar of Pension Funds v Howie NO* [2016] 1 All SA 694 (SCA) para 16.

⁸ *Howie*, para 24

arbitrarily charged rates as though they were business does not serve the public interest. However, inasmuch as the City has challenged the Board's decision on the basis of it being unlawful and outside of its powers, even if that challenge is ultimately unsuccessful, that would place the present matter squarely within the ambit of *Compcare*. If the Board has not acted *ultra vires*, the findings in *Howie* would be compelling. To reach a conclusion on the issue, the merits of the review must be engaged.

[24] Whilst the City can only pursue revenue legitimately due to it, the conclusion cannot reasonably be reached that the City acted exclusively in its own interests, rather than in the public interest. As such, albeit on a somewhat tenuous basis, the City has in my view established its *locus standi*. A contrary finding in any event would not have non-suited the City entirely, as it would still have been able to pursue review proceedings on the principle of legality, albeit not in the present proceedings.⁹ It follows that the challenge to the *locus standi* of the City must fail.

[25] The position of the Valuer is less complicated. In his confirmatory affidavit, the Valuer stated: *I agree with and support the grounds upon which a review and setting aside of the decision of the board is sought*. He thus formally entered the fray and effectively sought to defend his valuation in the review application.

[26] However, the Valuer is '*functus officio once the valuation roll is completed. He is not a party to the lis and his only function is to stand by in the event of him being required to give evidence as a witness in appeal board proceedings*'.¹⁰ In *City of Johannesburg v Chairman Valuation Appeal Board and Another* it was held:¹¹

⁹ Ibid, paras 20, 21

¹⁰ *Bethal Holdings (Ppk) v Waarderingshof Bethal* 1970 (1) SA 179G-H 176 (TPD). *Gold General Investments Ltd v Claassen NO and Others* 1959 (3) SA 664 AD at 672G

¹¹ 2014 (4) SA 10 (SCA) para 28

'The appointment of an independent valuer, together with the right of objection against such valuer's compilation of the valuation roll and the right of appeal to the valuation appeal board against any decision made by the municipal valuer in respect of an objection, provides a bulwark between the interests of the municipality on the one hand and the owner of the rateable property on the other. It results in the municipality being able to levy rates against the value of a property only where the valuation had been done impartially and after the voice of the taxpayer has been heard'.

[27] The independence of the Valuer is thus paramount. In the present instance, the Valuer has made common cause with the City and is cited independently as the second applicant in the proceedings. Considering the facts, there is merit in the submission that the Valuer was not independent and was tainted with bias in favour of the City.

[28] The reasoning and conclusion in *Howie*¹² is apposite and is determinative of the position of the Valuer. Here, the Valuer is in a similar position to that of the Registrar in *Howie*. The Valuer is an independent party acting as bulwark between the interests of the City and those of the owner respondents. It would be problematic if the Valuer has *locus standi* in his own right to challenge the decision of the Appeal Board on review. If the Valuer is free to challenge decisions made against his decisions, it would serve to undermine public confidence in the Appeal Board. The Valuer would further be acting in his own interest to defend his valuation. The Valuer has not contended that he is acting in the public interest. It is hardly open to him to do so, given the circumstances.

[29] In any event, as in *Howie*, the view of the legislature was that when an appeal against a decision of the Valuer succeeds, the Valuer is wrong and the Appeal Board right and the Appeal Board's decision is taken to be correct. It cannot be concluded that the Valuer has a legal interest in the proceedings. He was not and could not be prejudiced. It is unclear why the Valuer's valuing function should give him *locus standi* to bring review proceedings in his own name. No such case was made on the papers. Importantly, it does not fall within exception to the principle that once a public functionary has exercised its

¹² Paras 12, 13, 14, 16, 22-24

powers he is *functus officio* and the decision may only be set aside by a court at the instance of a third party with a legal interest in the decision. As held in *Howie*: ‘*The question whether a party has locus standi will vary depending on the nature of the interest that the party seeks to vindicate*’.¹³

[30] By parity of reasoning and with consideration to the legislative provisions here in issue, once the Appeal Board has spoken, either the Valuer’s decision stands because it has been confirmed or it is substituted by the Appeal Board’s decision. In the latter event the Appeal Board’s decision stands in the place of the decision of the Valuer. In effect it becomes the Valuers decision. The Appeal Board directs that its own order be given effect.

[31] Here, as in *Howie*,¹⁴ recognising the Valuer’s *locus standi* to challenge the decision by the Appeal Board would upset the statutory relationship as set out in the MPRA and would be inconsistent with the purpose of creating the Appeal Board. It would have the potential to undermine it in performing its function. It must be concluded that the Valuer does not have *locus standi*.

[32] As appears from the judgment and order of the Appeal Board, it was held that the Valuer favoured the City’s Rates Policy over the MPRA. Even if the Valuer supported the City’s version, he should have kept out of the fray and not joined the proceedings as an applicant. At most he should have provided a supporting affidavit confirming facts within his knowledge. There is merit in the owner respondents’ contention that the Valuer’s conduct illustrated bias. That of itself is not however a cogent reason to dismiss the application on that ground alone, as they submitted.

¹³ Para 22.

¹⁴ Para 24.

[33] Ultimately, the Valuer lacks the necessary *locus standi* to challenge the decision of the Board and seek its review. The challenge against his *locus standi* must thus succeed. It is relevant in relation to the issue of costs, a matter to which I later return.

[34] I turn to consider the remaining issues raised. The issue whether the applicants failed to exhaust internal remedies and whether the review should be dismissed as a result, can be disposed of succinctly. At this juncture there are no other internal remedies which the City can pursue. Whilst the City elected not to participate in the proceedings before the Appeal Board, this is not fatal to the review, as was submitted. This challenge thus lacks merit.

[35] Regarding authority, the owner respondents submitted that the deponent, Ms More, did not assert that she was duly authorised to depose to the founding affidavit and that no resolution or delegation of authority was provided from the City authorising her to institute the proceedings. In argument, the Appeal Board also took up the challenge to Ms More's affidavit and an argument as to why the Valuer did not depose to the founding affidavit. The challenge to Ms More's authority ultimately includes a challenge to her personal knowledge of the facts.

[36] In argument, reliance was placed on *Molefe v Dihlabeng Local Municipality*¹⁵. There, a point *in limine* objecting to the Municipality's deponent was dismissed as the decision was later ratified. The Court dealt with a review of the suspension of a municipal employee. The court analysed rule 18(c) of the system of delegated powers adopted by the Municipality in terms of s 59 of the Systems Act. Those issues did not arise here nor were they canvassed in the present case. *Molefe* is factually distinguishable.

¹⁵ *Molefe v Dihlabeng Local Municipality* 2008 JOL 22365 (O) paras 15, 27 and 37.

[37] It was further submitted that Ms More lacked personal knowledge. Reliance was placed on *Sibani Group (Pty) Ltd v Doves Group (Pty) Ltd*¹⁶ in arguing that the deponent could not claim personal knowledge purely by her position and that her evidence constituted inadmissible hearsay evidence. I am not persuaded that the argument bears scrutiny, given that the Valuer provided a confirmatory affidavit. It was not disputed that he had personal knowledge of the relevant facts. He confirmed reading Ms More's founding affidavit and confirmed its contents '*in all material respects the accuracy of the contents of the founding affidavit in relation to his decisions and proceedings before the Board*'.

[38] The confirmatory affidavit of the Valuer cannot simply be ignored, as the owner respondents urged me to do. Despite being somewhat terse, it does confirm from the perspective of the individual in possession of the relevant facts, the averments made by Ms More in her founding affidavit. I agree with the point made by the applicants that the respondents did not in their affidavits allege that the facts in Ms More's affidavit were within the exclusive knowledge of the Valuer, Mr Eloff. This point was raised for the first time in the hearing and in the heads of argument this Court directed the Appeal Board to provide during the hearing.¹⁷

[39] I am further not persuaded that, given the facts which are by and large common cause between the parties, the owner respondents' reliance on *Kalil NO*¹⁸ and *Drift Supersand*¹⁹, avails them. The present issues pertain, not as much to the facts which are

¹⁶ *Sibani Group (Pty) Ltd v Doves Group (Pty) Ltd* [2022] ZAGPJHC 770 paras 13 to 27.

¹⁷ As the Appeal Board raised its supplementary issues orally at the hearing, it was directed to provide supplementary heads of argument on such issues after the hearing and the other parties were afforded the opportunity to respond thereto. The applicants provided supplementary heads of argument in response.

¹⁸ *Kalil NO and Others v Manaung Metropolitan Municipality and others* 2014 (5) SA 123 (SCA) par 32.

¹⁹ *Drift Supersand (Pty) Ltd v Mogale City Local Municipality and Another* 2017 (4) All SA 624 (SCA) para 31.

mostly common cause, but to how those facts were applied by the Board. The challenge to Ms More's knowledge must thus fail.

[40] The Appeal Board sought to draw the inference that had the Valuer deposed to affidavits he would in reply have been constrained to adduce evidence adverse to applicants' case. It was submitted that the applicant's reliance on the evidence of Ms More rendered the whole application fatally defective and that it should be dismissed with costs on scale C. I am not persuaded that such inference can safely or reasonably be drawn from the facts. Whilst the applicants' affidavits are not beyond criticism, they are not so defective as to justify dismissal of the application on that basis alone.

[41] On a factual level, the conduct of the Valuer fell short of the level of independence expected from him.²⁰ I have already dealt with his position in some detail. There is merit in the respondents' submission that the approach adopted by the Valuer was misguided. Despite the issues with the Valuer already alluded to, the submission that the proceedings fall to be dismissed as a result, does not pass muster.

[42] Had the respondents intended to challenge the authority to institute the proceedings, the remedy in rule 7 was available.²¹ That remedy was not pursued. I am also not persuaded that *Millu v City of Johannesburg Metropolitan Municipality and Another*²² assists the owner respondents. It is distinguishable on the facts. It cannot be concluded that the present application seeks to shield anonymous officials from accountability.

²⁰ *City of Johannesburg Metropolitan Municipality v Chairman of the Valuation Appeal Board* 2014 (4) SA 10 (SCA) paras 26-28 and 32; Code of Conduct of Municipal Valuers, clause 5(d) as prescribed by the South African Council for Professional Valuers.

²¹ *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) - para 19.

²² *Millu v City of Johannesburg Metropolitan Municipality and Another* (25039/202) [2024] ZAGPJHC 419 par 45.

[43] For these reasons I am not persuaded that these additional issues are dispositive of the application or that the application falls to be dismissed on these grounds.

[44] The owner respondents' fourth point *in limine* pertaining to the failure to make the full record available and non-compliance with PAJA was abandoned by the time the matter was heard as the full record was belatedly provided by the City. It remains relevant only in the context of costs.

[45] I turn to consider the merits of the review application.²³ As previously mentioned, the applicants raised seven grounds of review under PAJA. There is merit in the criticism levied against the applicants by the owner respondents that their case has morphed over the period of the litigation. It was incumbent upon the applicants to plead their case in their founding affidavit and not to do so for the first time in reply or in argument.²⁴ The City's supplementary heads of argument substantially expounded on the issues raised in the founding papers. The applicants must thus stand or fall by the case made out in their founding affidavit.

The applicants' grounds of review

[46] First s 6(2)(a) of PAJA, in that the Appeal Board was not authorised to take the decision by the empowering provision of the MPRA as it embarked on a judicial review of the City's Rates Policies and in doing so, took a decision not authorised by s 57 of the MPRA. There is a dispute between the parties regarding whether the Board declared certain provisions of the City's Rates Policy unlawful. The Applicants contended that the Appeal Board did so. The respondents contended the opposite.

²³ Having concluded that the Valuer lacks *locus standi*, any reference hereafter to the applicants is a reference to the City.

²⁴ *Wilkinson & Another v Crawford NO and Others* [2021] ZACC para 31.

[47] The Appeal Board found that the City's Rates Policies conflicts with the Act. The applicants contended that in doing so, the Board went beyond its function to hear and decide appeals against the decisions of a municipal valuer concerning objections to matters reflected in or omitted from the valuation roll of a municipality.

[48] Under s 57, the Appeal Board has wide powers, irrespective of whether it is considering a review or appeal against the decision of a municipal valuer.²⁵ The powers of the Appeal Board are set out in s 57 as read with ss 52 and 54. It may hear appeals against the decisions of the municipal valuer concerning objections to property valuations and may review such decisions where the municipal valuer adjusts the property by more than 10%. I agree with the Appeal Board that its judgment was based on an appeal. That much appears to be common cause between the parties. The Appeal Board comprised of the chairman and two professional valuers. The parties agreed that it was a *de novo* hearing. The Appeal Board did not claim to exercise review jurisdiction.

[49] There is merit in the Appeal Board's submission that any statement in its judgment and order that would appear to invalidate the City's Rates Policy would be mere *obiter dicta* and could not have the effect of invalidating the Policy.

[50] The Appeal Board's order must be interpreted in its terms in the well-established triad of language, context and purpose.²⁶ In interpreting the judgment and order of the Appeal Board, the starting point was stated in *Eke*:²⁷

'to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in

²⁵ *Atholl Developments (Pty) Ltd v Valuation Appeal Board for the City of Johannesburg and Another* 2014 (5) SA 485 (GJ) para 43.

²⁶ *Department of Transport and Others v Tasima (Pty) Ltd and Others; Tasima (Pty) Ltd and Others v Road Traffic Management Corporation and Others* 2018 (9) BCLR 1067 (CC) (*Tasima*) para 42-56

²⁷ *Eke v Parsons* 2016 (3) SA 37 (CC) para 29.

the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole to ascertain its intention'.²⁸

[51] In applying those principles to the judgment and order of the Appeal Board, its purpose was the determination of the owner respondents' objection aimed at the category allocated to the respective units in the general valuation roll for the period 2013 to 2018 in terms of s 48(2)(b) of the MPRA as sectional title business. It was uncontentionous that before the market value of a property can be determined, the Valuer must first decide the appropriate category. The owner respondents had argued that the category of sectional title residential should be assigned to the 24 units in accordance with the 2013/2014 Rates Policy. This informs the context of the Appeal Board's judgment and order.

[52] In its judgment and order, the Appeal Board recorded that it was common cause that the Rates Policy must be read in conjunction with the MPRA. The Valuer, Mr Eloff, applied primary or highest permitted use. It was recorded in the judgment that the owner respondents' attack was not aimed at the rates policy *per se*, but at how it was applied.

[53] The judgment recorded that it was put to the Valuer in cross examination that the MPRA was supreme or overrides the Rates Policy which he conceded. He further conceded that there was ample case law to the effect that the Rates Policy could never override the MPRA. The Valuer also conceded that the MPRA would triumph over the Rates Policy in the event of a conflict. Those facts were thus common cause before the Appeal Board and cannot be revisited in these proceedings. There is merit in the submission that the applicants are attempting to revisit these issues in the review and distort the context of The Appeal Board's findings.

[54] The Appeal Board found: *'it was clear from his [Mr Eloff's] evidence that the emphasis was aimed at elevating the criteria set out in the rates policy to be superior or*

²⁸ Quoted in *Tasima*, para 42-56.

overriding the provisions of the Act, not taking into account the peremptory words in Section 8(1) of the Act which stipulates that ‘the rates for different categories of rateable property must be determined according to the Act.’

[55] On a grammatical level, in its judgment the Appeal Board interpreted the relevant provisions and set out its reasoning in detail in the text of the judgment. The Appeal Board in my view acted within the ambit of its powers under s 57 of the MPRA , which included the powers to ‘*make a fresh determination on the merits of the matter with or without additional evidence*’, in circumstances where it was not restricted by the approach adopted by the Valuer. That included the power to conduct an exercise in legal interpretation when it found a conflict between two legal instruments. Upon a proper interpretation of the judgment and order, this appears to be what the Appeal Board did.²⁹

[56] Given the factual matrix and the fact that the Appeal Board was considering the matter *de novo* as it was entitled to do in the appeal, it was not untoward that it embarked on the process of interpretation of the relevant provisions. In doing so, it cannot be concluded that it sought to declare the City’s Rates Policy unlawful. On a proper interpretation of the judgment and order, the reasoning of the Board was targeted at why the Valuer’s interpretation of the relevant provisions and his valuation was wrong. It did not amount to declaring the City’s Rates Policy unlawful.

[57] Whilst I agree with the applicants that the Appeal Board has no power to set aside the Rates Policy of the City due to its legislative character,³⁰ I do not agree that this is what the Appeal Board did. The applicants’ contentions based on the alleged error of law on this issue thus lacks merit. The judgment and order of the Board did not seek to nor did it declare the City’s rates policy unlawful. In considering the matter, the Board

²⁹ Judgment Appeal Board paras 5.9-5.11 and 5.28.

³⁰ *Gillyfrost 54 (Pty) Ltd v Nelson Mandela Bay Metropolitan Municipality* [2015] 4 All SA 58 (ECP) para 43.

considered the parties' respective submissions in light of the applicable legislative provisions and the City's Rates Policy, in determining whether the Valuer's valuation should stand, or the objections of the second respondent upheld.

[58] On a grammatical, purposive and contextual interpretation of the judgment and order of the Board, it did not, as the applicants contend, commit any error of law nor declare the City's Rates Policy unlawful. It follows that this ground of review must fail.

[59] Second, s 6(2)(d) of PAJA in that the Appeal Board committed a material and reviewable error of law. The applicants contended that the Appeal Board did not correctly interpret s 8 of the MPRA, alternatively interpreted the wrong s 8 further alternatively failed to consider s 93B of the Rates Act as inserted by s 10 of Act 29 of 2014. It was further submitted that the Appeal Board failed to consider and apply the pre-amended s 3(3)(b)(i) read with the old s 8(2) of the Rates Act which did not create a closed list of categories which may be determined by a Municipality. It was argued that the Appeal Board further erred with regard to the import of s 2(3) of the Rates Act, which prescribes the parameters within which the Municipality must exercise its rating powers, and in so doing did not correctly interpret the City's Rates Policies and By-laws.

[60] The Appeal Board's decision was based on the permitted use of the property read with clause 5 of the City's 2013/2014 rates policy read with the definition of 'zoning'. The Appeal Board formed the view from the evidence that 'it was clear from his [the Valuer's] evidence that the emphasis was aimed at elevating the criteria set out in the rates policy to superior or overriding the provisions of the Act and not taking into account that the peremptory words in s 8(1) of the Act. The Appeal Board took into account the amended version of s 8(1).

[61] Section 8 of the MPRA was substituted by s 6 of the Local Government: Municipal Property Rates Amendment Act 29 of 2014 which came into effect on 1 July 2015.

According to the applicants the 2013 general valuation roll which came into effect on 1 July 2013 could not be determined by the Appeal Board on the basis of s 8(1) which came into effect on 1 July 2015, given that in terms of s 93B of the MPRA, the provisions of s 8 must be applied by a municipality within 7 years from 1 July 2015 when the amendment came into operation. On this basis, the applicants submitted the old s 8 applies, rather than the new s 8 applied by the Board. They submitted that its reliance on the provisions of s 8 of the MPRA as amended during 2014, was central to its conclusion and that without this error, the Board would not and could not have reached the decision it reached, thus constituting a reviewable irregularity.

[62] It was only in the applicants' heads of argument that it was submitted that the City only implemented the new s 8 from 1 July 2022. That case was not made out by the applicants in their founding papers. It is trite that an applicant must make out its case in its founding affidavit. It is not permissible to do so in reply or in heads of argument.

[63] Of significance is that during the hearing before the Appeal Board, wherein both the Valuer and the owner respondents were legally represented by attorneys and senior counsel, there was no dispute on the issue. The parties accepted that the provisions of s 8, as amended applied and presented their respective cases on this basis. The City elected not to participate in those proceedings. The applicants now seek to challenge the judgment and order of the Appeal Board on a basis which was never raised at the hearing before it.

[64] The old s 8(1) did not authorise highest permitted use. In relevant part it provided:

'8 Differential rates. (1) Subject to section 19, a municipality may in terms of the criteria set out in its rates policy levy different rates for different categories of rateable property, which may include categories determined according to the (a) use of the property, (b) permitted use of the property; or (c) geographical area in which the property is situated.

(2) Categories of rateable property that may be determined in terms of subsection (1) include the following: (a) residential properties (c) business and commercial properties; (r) properties used for multiple purposes, subject to section 9. ‘

[65] The amended s 8(1) in relevant part provides:³¹

“8(1) Subject to section 19, a municipality may, in terms of the criteria set out in its rates policy, levy different rates for different categories of rateable property, determined in subsection (2) and (3), which must be determined according to the- (a) use of the property; (b) permitted use of the property; or (c) a combination of (a) and (b).

(2) A municipality must determine the following categories of rateable property in terms of subsection (1): Provided such property category exists within the municipal jurisdiction: (a) residential properties; (c) business and commercial properties; (i) properties used for multiple purposes, subject to section 9.

(3) In addition to the categories of rateable property determined in terms of subsection (2) the municipality may determine additional categories of rateable property, including vacant land. Provided that, with the exception of vacant land, the determination of such property categories does not circumvent the categories of rateable property that must be determined in terms of subsection 2.”

[66] The main changes relied on by the applicants were the change of the word ‘may’ to ‘must’ and the deletion of ‘geographical area’ to a combination of (a) and (b). Permitted use of the property can in both versions of s 8 (1) be used to determine the category of rateable property. Neither version of s 8 refers to ‘highest and best permitted use’, being what the Valuer applied and the applicants contend for.

[67] Ultimately it is not necessary for present purposes to determine which version of s 8 applies. Even if the applicants are correct that the old s 8 was applicable, I am not persuaded that it avails them. That section does not sustain its case. The test under

³¹ S 8 of the rates Act was substituted by s 6 of the Local Government: Municipal Property Rates Amendment Act 29 of 2014. The commencement date of that Act was 1 July 2015.

s 6(2)(d) of PAJA involves materiality. An error of law will be material if it distorts the exercise of the discretion of the decision maker, if the decision maker asked itself the wrong question, or applied the wrong test or based its decision on some matter not prescribed for its decision or failed to apply its mind to the relevant issues in accordance with the behests of the statute.³²

[68] In the present instance, it cannot be concluded that any error of law was material on the grounds as required, given that the basis contended for by the applicants was not authorised under either version of s 8. Thus, even if the old s 8(1) was applicable, it cannot be concluded that the Appeal Board's decision was materially affected by an error of law. Any error did not result in the Appeal Board not taking the relevant criteria into account. The facts are such as to justify its decision even on an incorrect interpretation of the statutory criterion, therefore there is no ground for interference.³³ It follows that this ground of review must fail.

[69] Third, s 6(2)(e)(i)(iii) and (iv) of PAJA in that the Board placed reliance on the COGTA³⁴ Circular of 14 December 2014 in the manner it did. It submitted that the Circular may not derogate from legislation which has a binding force, as it is just a guiding document, as conceded by the Appeal Board. It was argued that the Board erred in applying the COGTA Circular as a binding effect contrary to the provisions of the Rates Act.

[70] It is clear from the Appeal Board's judgment that whilst the COGTA circular was considered a guiding document to inform the Board's approach to interpretation, the Board ultimately based its decision on the MPRA. From the record, it cannot be concluded that the Appeal Board considered the COGTA circular as binding. The

³² *Afriforum NPC v Minister of Tourism and others and a related matter* 2022 (1) SA 359 (SCA) para 53, referring to *Hira and Another v Booysen and Another* 1992 (4) SA 69 (A) 93G-I, para 5.

³³ *Hira* para 5.

³⁴ Circular from the Department of Cooperative Governance and Traditional Affairs (COGTA).

judgment expressly states that it is not binding and is merely a guiding document. Upon a proper interpretation of the judgment, the COGTA circular was merely the basis of the criticism levied by the Board of the City's approach. It can thus not be concluded that the Board relied on irrelevant information in respect of the COGTA circular in coming to decision, as submitted by the applicants.

[71] There is in my view no merit in this ground of appeal which was not strenuously advanced in the applicants' heads of argument or at the hearing. It follows that this ground of review must fail.

[72] Fourth, s 6(2)(e)(iii) of PAJA in failing to have regard to the proviso, within the description of 'sectional title business' category, which prescribes criteria to be complied with by the owner respondents. By so doing, it is submitted that the Board failed to consider relevant considerations prescribed by the City's 2013/2014 Rates Policy. This ground ties in to the second ground, already referred to.

[73] The Applicants placed reliance on a proviso in its Rates Policy and argued that the owner respondents had the opportunity to submit a declaration which could have been considered to determine the fitness of their property into the sectional title residential category but failed to do so, failing to comply with the requirements of the Rates Policy in this regard.

[74] The applicants further relied on *City of Tshwane v Marius Blom and GC Germishuizen Incorporated and Another*,³⁵ which dealt with s 8 as it was prior to its amendment. There the Supreme Court of Appeal held that as the categories listed in s 8(2) were optional, it was competent for a municipality to add to the list of categories. It

³⁵ *City of Tshwane v Marius Blom and GC Germishuizen Incorporated and Another* 2014 (1) SA 341 (SCA) para 16.

was further held: ³⁶ *'Rates policies entail, by definition policy choices which lie at the core of municipal autonomy, and as long as the rates policy treats ratepayers equitably and is consistent with the provisions of the Constitution and the Rates Act, there can be no basis for questioning the choices it makes with regard to properties that may be differentially rated with respect to different categories of property'*. The City's policy choices are thus not untrammelled.

[75] As pointed out in *City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd and Others*, in terms of s 3(1) of the MPRA the council of a municipality must adopt a policy consistent with this Act, in the levying of rates on rateable property'.³⁷

[76] S 3 of the MPRA deals with the adoption of the contents of rates policies. It enjoins the council of a municipality to adopt a policy for levying rates on rateable property which must be consistent with the Act. In terms of s 3 of the MPRA, the council of a municipality must adopt a policy consistent with the Act on the levying of rates on rateable property in the municipality. The adopted rates policy must, *inter alia*, treat persons liable for rates equitably and determine the criteria to be applied by the municipality if it levied different rates for different categories of properties, determined in terms of s 8 or it increases or decreases rates. Importantly s 3(3) of the MPRA provides that a rates policy must treat persons liable for rates equitably.

[77] As pointed out by the owner respondents, the City's rates policies discriminate between different categories of residential property in violation of the impermissible differentiation provisions of s 19 of the MPRA and does not treat all persons equally.

³⁶ Para 18.

³⁷ *City of Tshwane Metropolitan Municipality v Lombardy Development (Pty) Ltd and Others* [2018] ZASCA 77 para 2.

[78] The City elected in its Rates Policy to require that: *'(ii) where a property not zoned residential has been developed and is used exclusively as residential, the residential tariff will be applicable. The property owner must submit a declaration as to the purpose the property is being used for, so that it can be rated accordingly. The scale of residential property value reductions and rebates will be applicable to such property.'*

[79] This militates against the applicants' argument in that the City's Rates Policy itself specifies: *"where a property not zoned residential has been developed and is used exclusively as residential, the residential tariff will be applicable"*. The City's reliance on the proviso thereto, which provides that the property owner must submit a declaration as to the purpose the property is being used for, so that it can be rated accordingly, also does not bear scrutiny.

[80] The contention that a party can file an application or declaration to the City's billing or revenue department for it to change the tariff applicable, disregards the very structure of the MPRA in providing for an expert such as the valuer with expertise in property categorisation determining the category for rating purposes. It ousts the power of the valuer to make this decision whilst the MPRA expressly places it in the hand of a valuer, instead placing it in the hands of some unknown other employee of the City. That was found to be unlawful in the *City of Johannesburg Metropolitan Municipality v the Chairman of the Valuation Appeal Board for the City of Johannesburg*.³⁸ There it was held that only the municipal valuer has the authority in law to determine the proper category. This function cannot be outsourced to other municipal officials.

[81] The Appeal Board considered the proviso and concluded that it creates an onerous obligation not sanctioned by the MPRA and moreover, had the effect of transferring the

³⁸ *City of Johannesburg Metropolitan Municipality v the Chairman of the Valuation Appeal Board for the City of Johannesburg* [2014] ZASCA 5 para 28.

valuer's responsibility in terms of the MPRA to a non valuer, which could not be countenanced by the Board.³⁹

[82] The City's reliance on *Blom* thus does not avail it. The wording of the City's own Rates Policy also does not support its case, given that it does not refer to or include 'highest permissible use' or 'highest and best permissible use' and expressly designates the properties as residential. The proviso to the policy also does not save it.

[83] The City's argument further loses force as it also disregards the equal treatment provisions in the MPRA. Even if the City was allowed to differentiate in the categorisation between actual use and permitted use, the City has not established that highest and best permissible use, which underpinned the Valuer's case before the Board was appropriate and was in consonance with the MPRA.

[84] The applicants' argument provides no answer to the submissions based on the inequality that would result from the applicants' interpretation of the law. It also does not deal with the contention that even if the Valuer could apply the highest and best use principle, he did not do so correctly. The declaration process, although allowing for residential tariff still has the effect of categorising the subject property a business and negates the application of the rates rebates available to residentially categorised properties. I agree with the owner respondents that this very process unlawfully conflates City's billing and valuation functions despite which the City argued that this is what cures the inequality. The argument does not pass muster.

[85] The applicants' arguments regarding the declaration are thus doomed to failure. The applicants further did not illustrate that the Appeal Board had not taken the proviso

³⁹ Appeal Board judgment para 5.28.

in the City's Rates Policy into account. There is in my view no merit in the applicants' submissions. This ground of review must fail.

[86] Fifth ss 6(2)(f)(i), (ii)(a), (ii)(b), (ii)(c) and (ii)(d) of PAJA in that the Board disregarded the information before it on the zoning of the property as 'special for business' and contravened the provisions of ss 45 and 46 of the Rates Act in holding at paragraph 5.21 that the 'subject property was to develop the property with residential units that are sold under Sectional title and that these units are used for residential purposes. The applicants contended that this finding was irrational as it is not in harmony with s 48(2)(b) of the Rates Act which prescribes that the valuation roll must reflect 'the category determined in terms of s 8 in which the property falls'.

[87] The argument advanced by the City to justify the basis on which the Valuer valued the property on highest and best permissible use, does not bear scrutiny. It cannot be concluded that the Appeal Board did not adhere to the prescribed principles drawn from ss 45 and 46 of the MPRA.⁴⁰ The Appeal Board was entitled to adopt a method of property valuation different from that employed by the Valuer. That much was common cause.

[88] The finding of the Appeal Board was that the correct categorisation of the subject properties ought to be residential and not business for purposes of the MPRA. That decision is a finding of law. In reaching such conclusion, the Board's reasoning cannot be faulted in taking the MPRA into account. As also pointed out by the owner respondents, although that may have an impact on the rates, it would not have an impact on the rebates allowed. I am not persuaded that the Appeal Board failed to take relevant considerations into account in reaching its conclusion.

⁴⁰ *Eskom v Kruger NO and others* 1991 (3) SA 557 (T).

[89] Considering the reasoning and conclusion reached by the Appeal Board, it cannot be concluded that it failed to consider relevant considerations, such as that the property was zoned for business, or that its findings were irrational or were not in harmony with s 48(2)(b) of the MPRA which prescribes that the valuation roll must reflect 'the category determined in terms of s 8 in which the property falls'. From the Appeal Board's judgment it appears that all the relevant considerations were indeed taken into account. Highest and best permitted use, was not such a category, either in the City's Rates Policy or in s 8 of the MPRA, irrespective of whether the old or the amended version of s 8 was appropriate. The City did not add such a category in its Rates Policy. It follows that this ground of review must fail.

[90] Sixth, s 6(2)(f)(ii)(cc) of PAJA in neglecting the information on the permitted use of the properties. Considering the judgment and order of the Board, it considered the issue of permitted use. It found, correctly in my view, that neither the City's rates policy, nor s 8 of the MPRA, refers to the standard of highest permitted use, which was what the Valuer used. Those issues have already been addressed.

[91] It cannot in my view, be concluded that the Board misdirected itself or neglected to consider the facts placed before it. It follows that this ground of review must fail.

[92] Seventh s 6(2)(i) of PAJA in that the decision is otherwise unlawful and unconstitutional as it strikes at the heart of the Rates Act which ordains a distinction between the rating function and the valuation function of the Municipality. The applicants submitted that the Board failed to appreciate that the zoning of a property underlying a sectional title scheme is attributable to the units therein. That is the case made in the founding affidavit. The issue was not strenuously pursued either in the applicants' heads of argument or at the hearing.

[93] On the available facts, it cannot be concluded that the Appeal Board disregarded the zoning of the property. I have already concluded that the decision of the Board was not unlawful as it did not declare the City's Rates Policy unlawful. I am not persuaded that this ground has merit.

[94] For these reasons it follows that the application must fail.

Costs

[95] In the proceedings before Wright J on 18 April 2024, costs were reserved. In terms of that order, the parties were authorised to deliver supplementary affidavits by certain dates and directed to file fresh heads of argument. Pursuant thereto, no further affidavits were filed. Both the applicants and the owner respondents delivered extensive supplementary heads of argument in due course. As further heads of argument were delivered, it is appropriate that those costs should be costs in the cause.

[96] The normal principle is that costs follow the result. Given the issues raised by it, the City's criticism of the Appeal Board's conduct in opposing this application does not pass muster and there is no basis to deprive the Board of its costs. The issue arises as to what scale of costs would be appropriate.

[97] The Appeal Board sought a punitive costs order against the applicants on a joint and several basis on the grounds that neither applicant has the requisite *locus standi* to launch the application and as organs of state should have known better. It was argued that the proceedings are vexatious, given the lack of merit and unsubstantiated nature of the grounds of review.

[98] The owner respondents similarly sought a joint and several costs order on a punitive scale. They submitted that they were ‘unnecessarily dragged to court’ justifying an indemnification against the expenses incurred from the legal proceedings.⁴¹

[99] They further contended that the City was not a reasonable participant in the proceedings by initially delaying the filing of an incomplete record and the subsequent filing of a further record on 9 September 2024 after the initial hearing of the matter. The City did not dispute such conduct.

[100] According to the owner respondents the City had, as from 2018, re-categorised the units as sectional title residential and thus tacitly agreed that such categorisation was correct, notwithstanding which it persisted in the present review proceedings. Those facts were not disputed and bolster the contention that such conduct was unreasonable and is relevant to costs.⁴² They further submitted that the applicants substantially expanded on the issues advanced in their initial heads of argument, resulting in extensive supplementary heads of argument being delivered by the second respondent, which increased the costs and required substantial additional reading. This too was undisputed.

[101] It was further undisputed that substantial expense has been incurred by the respondents in opposing an application which ultimately lacked merit. The applicants in turn have expended substantial public funds in launching and persisting with the review.

[102] The consideration behind punitive costs is to punish a litigant who is in the wrong due to the manner in which he or she approached litigation or to deter would-be inflexible and unreasonable litigants from engaging in such inappropriate conduct in the future.⁴³ This is apposite to the present case. The relevant principles were reiterated by the

⁴¹ *Texas Co (SA) Ltd v Cape Town Municipality* 1926 AD 467.

⁴² *Nolte v Pate* 1909 TS 353 at 356.

⁴³ *Maribatsi v Minister of Police & Another* 2020 JOL 47646 (GJ).

Constitutional Court in *Public Protector v South African Reserve Bank*⁴⁴ and it is not necessary to repeat them.

[103] I have taken all the factors raised by the respondents into account as they have merit. In addition, two further factors have relevance. Given the conclusion reached that the Appeal Board did not act *ultra vires* or unlawfully, the City's *locus standi* to launch the review proceedings is tenuous. Considering all the facts, its bald contention in reply that it was acting in the public interest in launching the present proceedings, does not bear scrutiny. Its reliance on s 96 of the Systems Act in relying on its obligation '*to discharge its duties under s 4(2) of the Act, other pieces of legislation and the Constitution*' and the contention that '*the decision of the Board has financial implications for the municipal fiscus beyond the interest of the second respondent*' and '*an overriding public interest in the collection of revenue*', disregards that the obligations of the City extend to collecting revenue due to it. An organ of state, such as the City, should not seek to extract revenue which is not due to it.⁴⁵ Given that the City was primarily acting in its own interest in seeking to enforce higher tariffs on the owner respondents, its conduct is open to criticism and supports the granting of a punitive order.

[104] The same applies to the Valuer, who lacked *locus standi* to seek the review relief. His conduct extended beyond the boundaries of his duties as independent functionary and witness to make common cause with the City.

[105] In considering fairness to the parties in light of the relevant facts and the conduct of the applicants, viewed cumulatively, I am persuaded that a punitive costs order is warranted. I reach this conclusion on the basis that the respondents should not be left out

⁴⁴ 2019 (6) SA 253 (CC)

⁴⁵ *Capitec Bank Ltd v Commissioner South African Revenue Service* [2024] ZACC 1 at para 94, in the context of the collection of tax.

of pocket in relation to the litigation⁴⁶ and on the basis of the conduct of the applicants in relation thereto. Despite the legitimate criticism levied at the Valuer, I am not persuaded that he should be personally held liable for the costs or that costs should be awarded on a joint and several basis. A joint costs order would be appropriate.

[106] In the result, the following order is granted:

The application is dismissed with costs on the scale as between attorney and client, including the reserved costs of 24 April 2024.



**EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG**

HEARING

DATE OF HEARING : 11 JUNE 2025

DATE OF JUDGMENT : 29 OCTOBER 2025

⁴⁶ *Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging* 1946 AD 597 at 607; *Swartbooi and Others v Brink and Another (2)* [2003] ZACC 25; 2006 (1) SA 203 (CC) para 27.

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