



## **Calgary Assessment Review Board**

### **DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Community Natural Foods Ltd. (as represented by MNP LLP), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***T. Helgeson, PRESIDING OFFICER***

***Y. Nesry, BOARD MEMBER***

***J. Kerrison, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

**ROLL NUMBER: 067233502**

**LOCATION ADDRESS: 1300 10 Avenue SW**

**FILE NUMBER: 70596**

**ASSESSMENT: \$4,230,000**

This complaint was heard on the 12<sup>th</sup> day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *W. Van Bruggen*

Appeared on behalf of the Respondent:

- *D. Zhao*

**Board's Decision in Respect of Procedural or Jurisdictional Matters:**

No procedural or jurisdictional matters were raised before the Board.

**Property Description:**

The subject property is located in Calgary's "Beltline". On the subject property is a building that was constructed in 1968. The total area of the building is 16,745 square feet (hereinafter, "sq. ft."). The building is used as a food store. The area of the parcel of land on which the building is situated is 22,650 sq. ft.

The Respondent has classified the building as a "B+" class building, but the subject property has been assessed as land only. The assessor has applied a negative adjustment of 15 percent due to proximity of the subject property to the railway tracks.

**Issue:** Do the Complainant's sales comparables support a reduction in the assessment?

**Complainant's Requested Value:** \$3,850,000

**Summary of the Complainant's Position**

[1] The assessment amount is incorrect because it does not comply with the *Municipal Government Act* ("the Act") or the requirements of AR 220/2004, the *Matters Relating to Assessment and Taxation Regulation* ("MRAT"). Section 289(2)(a) of the Act requires that each assessment *must* reflect:

(a) *the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*

(b) *the valuation and other standards set out in the regulations for that property.*

The physical characteristics of the subject property at December 31 of the assessment year are not reflected in the assessment. This is so because the subject property has been assessed as

vacant land.

[2] Section 293(1) of the Act stipulates that in preparing an assessment,

*"... the assessor must, in a fair and equitable manner,*

*(a) apply the valuation and other standards set out in the regulations, and*

*(b) follow the procedures set out in the regulations."*

If there are no procedures in the regulations for preparing assessments, s. 293(2) provides that, *"... the assessor must take into consideration assessments of similar property in the same municipality in which the property being assessed is located."*

[3] Nor does the assessment reflect the correct application of the range of key factors and variables relied on in assessing property, e.g., location, parcel size, improvement size, land use, and influences. Furthermore, the assessment does not reflect a correct application of the comparison or income approach as a primary or secondary approach to value.

[4] The assessment is neither fair nor equitable relative to similar properties in Calgary. In particular, the assessment does not properly consider the location, zoning, building area, physical condition, or parking of the subject property. The assessment does not recognize negative influences, in particular the negative influence of the railway tracks that abut the subject property.

[5] The assessment was incorrectly calculated based on an unfounded assumption that the highest and best use for the subject property is as land for redevelopment. This error has resulted in an assessment in excess of market value, also an assessment that is inequitable compared to comparable properties.

[6] There is no reasonable probability that redevelopment of the subject property is financially feasible, physically possible or legally permissible as at December 31 of the assessment year. The result of the error is an assessment for the subject property that is neither fair nor equitable.

[7] Previous decisions of the Board have been based on equity, demand, and significantly, the true cost of redevelopment. Our requested assessment, formerly \$3,490,000 as based on the income approach (C-1, page 28), is now \$3,850,000 based on the land sales approach at a land rate of \$200 per sq. ft. (C-1, page 38).

### **Summary of the Respondent's Position**

[8] The Complainant has abandoned its income approach. The approach they rely on now is the land sales approach, but at a value of only \$200 per sq. ft. The Complainant is using information for the income approach of properties dissimilar to the subject, all the while ignoring more comparable indicators in close proximity.

[9] The Respondent will reveal the land sales and supporting information relied on to derive the rate of \$220 per sq. ft. (R-1, pages 31 – 111) that is used to arrive at market value for vacant parcels as well as improved properties where the income approach does not reach land value,

as in the case before the Board. The governing legislation does not require the Respondent to apply only one approach to arrive at market value.

[10] In response to the Complainant's notion that an income producing property must be valued using the income approach, there is the example of an improved property in the Beltline that sold for more than its assessed value (at p. 6 of R-1). When the Direct Sales approach was applied using the vacant land rate, the assessment became much more reflective of market value, thus proving that purchasers have paid more for properties than their income generating potential would indicate.

[11] Due to this and other reasons to yet be explained, Beltline income parameters at the valuation date have exhibited an effect whereby the improvements to the subject property were exposed to a market-driven influence that resulted in an inability to produce a capitalized income value that exceeds the established land value in the area. More importantly, this has resulted in a capitalized income value that is incapable of reflecting market value. Clearly, the improvement on the subject property is not the value-driver, thus the income from it cannot be capitalized to represent market value.

[12] The City of Calgary must assess properties at market value. In cases where an estimate of land value exceeds the capitalized income value, the Composite Assessment Review Board ("CARB") has established that the land value of the property best represents market value. In Board decision ARB 1191/2010-P, the Board had this to say at paragraph 6:

*"The Assessor went on to say that the value derived through application of the Income Approach as applied by the Complainant was less than the bare land value estimated for the subject property and that is precisely why the land value has been applied. The reasoning of the assessor is clear to the CARB and it is based upon well founded valuation theory. If the improvements to a given property are of such an age or design or other influence that results in the property being incapable of producing a capitalized income value that exceeds the established land value, then the land value represents the market value of the property."*

[13] The logical notion is that any willing seller would hesitate to sell their property for less than its land value. Neighbouring properties have been valued in the same manner as the subject property when their income values are less than their established land value. This creates and maintains equity.

[14] The land use designation of the subject property under the Land use Bylaw is CC-X, with an FAR of 5.0. The maximum buildable area of a new improvement is much greater than the building area of the existing improvement. It is reasonable to suggest that the income approach cannot represent market value for the subject property. Instead, the most reasonable representation of market value is the land value of the parcel. It is inequitable to have improved parcels assessed for less than unimproved parcels of comparable form.

[15] Applying land value to both improved and unimproved parcels would establish equity, supporting the Respondent's implementation of land only as the lower threshold for assessment value. Point 9 in ARB 0105/2007-P supports this concept:

*"The Board accepts that there are instances where the 'highest and best use' principle is appropriate. These instances occur where the market value for the land only establishes a threshold for value, that is, a value established by the market in which values*

above the threshold will occur but values below will not."

To lower the assessment of the subject property to the complainant's requested value would create inequity with other commercial properties in the Beltline, both improved and unimproved, and would also set the assessment well below market value of July 1, 2012.

[16] While the assessments of property must reflect the characteristics and physical condition of the property pursuant to s. 289(2) of the Act, there is nothing in the legislation that stipulates that the characteristics and physical condition must contribute to market value. When a property with improvements is of such age, design, or subject to an influence that the property is incapable of producing a capitalized income value that exceeds the established land value, the land value represents the market value of the property.

**Board's Decision in Respect of Each Matter or Issue:**

[17] The Board notes that the Complainant abandoned its argument in support of the income approach to value, and now relies instead on the sales approach. Of the six sales in MNP's land rate analysis (C-1, page 38), one of the sales, that of 1002-14 Street SW, is a court ordered sale, hence a forced sale. The Board cannot accord that sale any weight.

[18] The sales of 901 - 10<sup>th</sup> Avenue SW, 633 - 15<sup>th</sup> Avenue SW, and 614 - 10<sup>th</sup> Avenue SW are also in the land rate analysis, and were brought to the attention of the Board earlier in MNP's material in decision CARB 70592 P/2013. As in the earlier case, certain amounts have been deducted from the sale values, i.e., \$700,000 from 901-10<sup>th</sup> Avenue SW, \$18,000 from 633-15<sup>th</sup> Avenue SW, and \$90,000 from 614-10<sup>th</sup> Avenue SW.

[19] These deductions were made on grounds that *The Appraisal of Real Estate - Third Edition* states that the value of an improvement must be estimated and "stripped off" the sale price to arrive at land value. In regard to the improvement values "stripped off" the properties at 910-10<sup>th</sup> Avenue SW, 633-15<sup>th</sup> Avenue SW, and 614-10<sup>th</sup> Avenue SW, the Complainant's evidence is that in deriving replacement costs for the improvements on the property, *Marshall & Swift* was followed, and the resultant values are \$5,495,000, \$195,000, and \$2,058,000, respectively.

[20] What is not known is how the values "stripped off" the sale prices of 901-10<sup>th</sup> Avenue SW, 633-15<sup>th</sup> Avenue SW and 614-19<sup>th</sup> Avenue SW were derived. From the Board's view, the "stripped off" values could have been guesses at depreciated value. More than guesses are needed to support an adjustment to an assessment.

**Board's Decision:**

The assessment of the subject property is confirmed.

DATED AT THE CITY OF CALGARY THIS 22<sup>nd</sup> DAY OF October 2013.

  
  
Presiding Officer

**Exhibits****C-1, Complainant's Disclosure Package.****C-2, Complainant's Second Disclosure Package****C-3, Complainant's Rebuttal Package****R-1, Respondent's Assessment Brief**

For Administrative Use:

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<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Retail	Stand Alone	Land Sales	Property Value

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*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

*An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*