



Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint filed with the Composite Assessment Review Board as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the "Act").

between:

Mancal Industrial Developments Inc. (as represented DuCharme, McMillen & Associates Ltd.), COMPLAINANT

and

City of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER

A. Zindler, MEMBER

R. Deschaine, 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: 070026992

LOCATION ADDRESS: 1939 Centre Avenue SE

FILE NUMBER: 71763

ASSESSMENT: \$9,250,000

This complaint was heard on Friday, the 28th of June, 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:

- *M. Pierson*

Appeared on behalf of the Respondent:

- *B. Brocklebank*

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

- [1] No procedural or jurisdictional matters were raised during the hearing.

Property Description:

[2] The subject property is a single-tenant industrial property of 8.7 acres located at 1939 Centre Avenue SE in the Mayland Industrial Park. Designated "Industrial General" pursuant to the Land Use Bylaw, the subject property is used entirely for the production of dairy products. In addition to storage tanks and other equipment related to the production of dairy products, there are two warehouses on the subject property. The larger warehouse, constructed in 1973, is 75,754 sq. ft. in area. The smaller warehouse was constructed in 1970, and is 7,108 sq. ft. in area.

[3] The subject property sold in April, 2011 for \$5,700,000. The subject property was formerly the Beatrice Foods Inc. plant, and it is now leased by Parmalat Dairies. The 2012 assessment was \$8,280,000 based on the cost approach to value.

Issues:

- [4] The Board finds the issues in this matter to be:
- i. whether the sale of the subject property is a valid sale, and
 - ii. whether the sale is evidence of market value.

Complainant's Requested Value: \$5,700,000

Summary of the Complainant's Position

- [5] The subject property is a special purpose property, and the assessment is not

representative of market value as indicated by a recent sale of the subject property. The subject property sold in April, 2011 for \$5,700,000. The sale price is the best evidence of fair market value. This is because the subject property is unique, hence not as affected by market trends because there are few prospective purchasers.

[6] There are several Court of Queen's Bench decisions and CARB decisions that support sales of individual properties as indicators of their market value for assessment purposes. One such court decision is *Mountain View (County) v. Alberta (Municipal Government Board) and Keiver*, 2000 ABQB 594. In that decision, Justice Fraser dismissed an application by Mountain View County to quash MGB Board Order No. 172/99 on grounds that the Municipal Government Board ("MGB") was wrong in reducing assessments based on market sales rather than values derived from mass appraisal. The Court found that the MGB was entitled to reduce assessed values based on market sales:

[29] *To summarize, I am of the view that the Board was entitled in law to reduce the land assessment under review to market value as it did, notwithstanding the resulting value was not determined by the use of mass appraisal and notwithstanding that the revised assessment may not have been fair and equitable at the time having regard to other assessments in the County. The application of the County to have Board order MGB 172/99 quashed is therefore dismissed.*

[7] In another case before the Court of Queen's Bench, *697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512, Justice Acton set aside MGB Board order 129/02 on grounds that the MGB did not appropriately consider evidence of a market sale of the property under complaint:

[24] *In my view, the MGB's failure to rely on the evidence of value provided by the recent sale of the Property fails to meet the test of reasonableness. I agree with the following comments from Re Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd. et al. (1984), 47 O.R. (2d) 766 (Ont. H.C.J. Div. Ct.) at p. 767:*

It seems to me worth remembering that where the Assessment Act, R.S.O. 1980 c. 31 requires the determination of what a property might be expected to realize if sold on the open market by a willing seller to a willing buyer (s. 18(2)), the price paid in a recent free sale of the subject property itself, where, as in this case, there are neither changes in the market nor to the property in the interval, must be very powerful evidence indeed as to what the market value of the property is. It is for that reason that the recent free sale of a subject property is generally accepted as the best means of establishing the market value of that property.

.....

... I think that generally speaking the recent sales price, if available as it was in this case, is in law and, in common sense, the most realistic and most reliable method of establishing market value.

[8] The Composite Assessment Review Board heard a complaint regarding the subject property in 2012. The assessment was 8,280,000. In *Mancal Industrial Developments Inc. (as represented by Ducharme, McMillen & Associates Canada Ltd.) v. The City of Calgary*, CARB 0902/2012-P, the Board found that the best indication of value for the subject property was the recent market sale price. Market evidence supported that no time adjustment was necessary. The Board reduced the assessment to \$5,700,000.

[9] As seen in the *Mountain View* and *697604 Alberta* cases and numerous CARB decisions, a market sale is the most realistic and reliable indicator of market value. In April, 2011, the subject property sold in an arm's-length transaction for \$5,700,000.

[10] The sale occurred 15 months prior to the July 1, 2012 valuation date. Industrial real estate market reports indicate that the Calgary industrial market experienced changes during that period. Colliers International Canada Cap Rate Reports for Q2 2011 and Q2 2012 indicate a slight decrease in Calgary industrial cap rates during that time (Exhibit C-1, p. 31). CBRE Calgary Industrial Reports for Q2 2011 and Q4 2012 indicate a decrease in vacancy rate, a marginal increase in net asking rental rates, and a decrease in average sale prices during that period (C-1, p. 33).

[11] Included in Calgary Assessment's listing of non-residential industrial sales is the subject property's sale of \$5,700,000, along with a corresponding time-adjusted sale price of \$6,414,506. The Complainant does not dispute the Respondent's time adjustment methodology, nor does the Complainant dispute that industrial real estate experienced changes from the time of the sale of the subject property to the July 1, 2012 valuation date.

[12] The main plant building on the subject property supports a very specialized production process. Many of the storage tanks are integrated into the building structure itself. Throughout the processing plant there are several process areas demised by concrete walls and changes in floor and ceiling levels. The main plant building suits a very specialized use as an integrated dairy facility. At paragraphs 9 and 17 of *CARB 0902/2012-P*, the Assessor is noted to agree that the building is "specialized".

[13] It is submitted that because the plant is atypical, typical market forces will not affect its value to the same degree as other industrial plants or warehouses. Accordingly, the sale price of \$5,700,000 may still be the best indicator of market value. The subject property in *2012 ECARB 2223* sold 13 months prior to the valuation date, and the subject property in *CARB 0302-10/2011* sold 16 months prior to the valuation date. In both cases, the Board amended the assessment to reflect the sale price.

[14] The jurisprudence in the *Mountain View* and *697604 Alberta* court cases indicate that the assessment should be set to the subject property's sale price of \$5,700,000. Based on the understanding that a sale of the subject property is the best indicator of market value, the Complainant's requested assessment is \$5,700,000. Alternatively, should the Board conclude that a time adjustment is warranted, the Complainant would not object should the Board amend the assessment to reflect the Respondent's time-adjusted sale price of \$6,410,000 (rounded).

Summary of the Respondent's Position

[15] Our submission includes sales of land to illustrate that the subject property was sold below vacant land rates. The subject property sold in 2011 and the building is in use in 2013, which suggests there is also value to the improvements. It is agreed that the subject property is unique.

[16] The problem with the sale of the subject property is that there is no evidence that the

sale was brokered. Vacant land sales show that were the subject property to sell again, the land alone has significant value. Seven sales of industrial land in north-east Calgary indicate an average value of \$790,000 per acre. Equity comparables are also included in our submission.

[17] A recent review of the assessment resulted in a land value of \$6,216,000 and an improvement value of \$1,824,396, for a revised assessment of \$8,040,000, as rounded.

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

[18] The subject property is a plant that produces dairy products, and it has been doing this for quite some time. It is clearly a special purpose property, and would not easily be converted to other uses. The Respondent has agreed that the subject property is a unique property, but nevertheless seems inclined to value it as though it were vacant land. At page 4 of the Respondent's Assessment Brief (Exhibit R-1), the Respondent states: *"Sales – Several vacant land sales have been included to show that if the property were to sell again the land alone has significant value."*

[19] However the assessment was arrived at, the assessed value is approximately 62 percent above the sale price of April, 2011. As for vacant land value, the Board is of the view that a purchaser considering the subject property for redevelopment might very well be daunted by the prospect of breaking the lease with Parmalat, not to mention removing or otherwise dealing with the buildings and integrated storage tanks, piping and other dairy paraphernalia on the property. It would be far simpler to purchase vacant land. That finding excludes a plethora of prospective purchasers, and leaves the subject property to be valued as it is, a dairy plant. It also implies that the valuation of the subject property be based on the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed, as required by s. 289(2)(a) of the Act.

[20] The Board notes that in pages 10 through 13 of Exhibit R-1 there is a "cost approach summary" that combines both land value and depreciated improvement value "to show the valuation of the property" at \$8,040,000. In the *Mountain View* case, Justice Fraser had this to say about depreciated replacement cost combined with land value:

[28] The problem with which we are dealing originated because section 3(b) of the Regulation permitted improvements to be assessed on the basis of depreciated replacement cost. Everyone involved in the assessment appears to concede that the depreciated replacement cost of the improvements involved is lower than market value. Notwithstanding this, the lower figure is used in conjunction with a market valuation of the combined land and improvements to determine what should be a market value for the land. Therefore this appears to be an exercise which mixes the values of apples and oranges to justify a value placed on the apples.

[21] Nevertheless, the Respondent argues that the sale of the subject property does not meet the definition of "market value" in s. 1(1)(n) of the Act:

(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.

The Respondent does not object to the description of the sale of the subject property as arm's-length, but insists that the property was not brokered, hence not sold on the "open market".

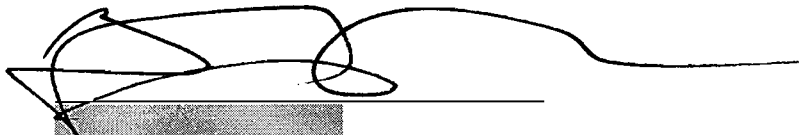
[22] The Respondent does, however, agree that the subject property is unique. One can but wonder just how many willing buyers are out there with a burning desire for a special purpose property like the subject property. In the Board's view, the answer is not very many. The paucity of the market for the subject property supports the view that market forces won't affect its value to the same degree as other properties, industrial or otherwise. That is why the Board accepts the sale of April 11, 2011 as an arm's length sale and valid, notwithstanding that there is no evidence that the sale was brokered.

[23] As did the Composite Assessment Review Board in *CARB 0902/2012*, this Board finds that the sale of the subject property is the best evidence of market value. Nevertheless, the sale occurred 15 months before the July, 2012 valuation date, and in the view of the Board, a time adjustment is warranted. The Board finds that the time-adjusted sale price of \$6,414,506 mentioned in paragraph [11] is an appropriate time-adjusted value.

The Board's Decision:

[24] The assessment is reduced to the amount of the aforementioned time-adjusted value as rounded to \$6,410,000.

DATED AT THE CITY OF CALGARY THIS 29th DAY OF August 2013.



Presiding Officer

Exhibits

C-1, Complainant's Evidence Submission.

R-1, Respondent's Assessment Brief.

For Administrative Use

<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Specialty Property	Plant	Land Sales & Cost Approach	Land Value

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.*