



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:

***R & N Properties Ltd., One Extreme Ltd. (as represented by Altus Group Limited),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
J. Kerrison, BOARD MEMBER
D. Morice, 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:	200163400
LOCATION ADDRESS:	3420 17 Avenue SE
FILE NUMBER:	72420
ASSESSMENT:	\$1,590,000

This complaint was heard on 23th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- K. Fong (agent)
- G. Lane (owner)

Appeared on behalf of the Respondent:

- C. Yee

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

- [1] The Board noted the file included a completed copy of the Assessment Review Board Complaint form and an Assessment Complaints Agent Authorization form.
- [2] Neither party objected to the members of the Board, as introduced, hearing the evidence and making a decision regarding this assessment complaint.
- [3] No preliminary issues were raised by either party.
- [4] Both parties stated that the evidence related to the Highest and Best Use and capitalization rate issues for this file is the same as was heard by this Board for Complaint File No. 72684 on July 22, 2013, and asked that the evidence, questions and argument related to these two issues be carried forward from that hearing. The Board agreed.

Property Description:

- [5] The subject property is located on 3420 17 Avenue SE, in the Albert Park/Radisson Heights District. The lot is 32,599 square feet (SF) with a 7,837 SF improvement built in 1971. The building is an automotive repair shop, with six overhead doors and an office area facing 17 Avenue SE. The 2013 Assessment is \$1,590,000 as calculated using the Sales (land only) Approach.

Issues:

- [6] What is the correct assessment of value? The following specific issues were addressed:
 1. Is the subject property equitably assessed? The subject should be assessed using the Income Approach similar to other freestanding retail properties in NE Calgary.
 2. What is the correct rental rate to use in the Income Approach calculation?
 3. What is the correct capitalization rate to use in the Income Approach calculation?
 4. Does the 2013 assessment reflect the market value?

Complainant's Requested Value: \$1,250,000

Board's Decision:

- [7] The Board confirms the 2013 Assessment of \$1,590,000.

Legislative Authority:

- [8] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) of the Act defines "market value" as the amount that a property, as defined in Section 284(1)(r) of the Act might be expected to realize if it is sold on the open market by a willing seller to a willing buyer. Section 467(3) of the Act states that an assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the valuation and other standards set out in the regulations. The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

Issue 1: Is the subject property equitably assessed?

Complainant's Position:

- [9] The Complainant referred to Section 289(2)(a) of the Act, which states that each assessment must reflect the characteristics and physical condition of the property as of the condition date for that assessment year. The Complainant stated that the subject property is a freestanding retail property generating an income, therefore the Income Approach must be used to derive the assessment. This would ensure equity with other freestanding retail properties in the subject area. The City used a Sales (land only) Approach to calculate the assessment, which does not reflect the current characteristics and physical condition of the property as of the December 31, 2012 condition date. To use the Sales (land only) Approach, the City must first demonstrate that the current use is not its Highest and Best Use.
- [10] To support the position that an assessment must reflect the characteristics and physical condition of the property as of the condition date, the Complainant presented two CARB Decisions (page 29-41, Exhibit C1). The Complainant presented excerpts from various documents that discuss the contents of a Highest and Best Use analysis (page 42-86, Exhibit C1) to demonstrate the sort of analysis that is required by the City to demonstrate that the current use is not the Highest and Best Use.

- [11] No equity comparables were presented by the Complainant.

Respondent's Position:

- [12] The Respondent stated that the City does both an Income and Sales (land only) assessment calculation for all properties and uses the higher of the two as the assessed value of the property. This has been the procedure for a number of years. Three CARB Decisions were presented to support this statement (page 60-84, Exhibit R1). The Respondent also presented two CARB Decisions (page 85-97, Exhibit R1) to support the position that a municipality is not required to do an exhaustive Highest and Best Use study within the context of mass appraisal.
- [13] The Respondent presented the assessed value for that property using both the Income (page 17-18, Exhibit R1) and Sales (land only) Approaches (page 14, Exhibit R1) to show that the City was equitably applying their policy. There are a number of factors that result in the Income Approach understating the value of a property, including rentable area. If the bare land is worth more than the income stream being generated from that property, the owner will not sell the property for less than the land value. This is the basis of the City's policy.
- [14] No equity comparables were presented by the Respondent.

Findings of the Board on this Issue

- [15] Section 284 of the Act states that market value is the test applied to an assessment. Section 467(3) states that an assessment review board must not alter any assessment that is fair and equitable, taking into consideration valuation standards set out in regulations, procedures set out in regulations and the assessment of similar property in the same municipality. While equity is not defined in either the Act or its regulations, the Board understands the concept or test of equity to mean that one property does not bear a greater or lesser tax burden due to how it is assessed, as compared to similar properties in that municipality; and since the assessment must reflect market value, all properties in a property class are assessed at a value that reflects the market value of each property. Equity becomes an issue if, and only if, the assessment for a class of property is not reflecting market value. Equity is therefore a subordinate standard to that of market value. Equity is a principle derived from natural justice, and similar to the concepts of fairness, impartiality and evenhanded treatment. (Black's Law Dictionary, Seventh Edition, West Group, St. Paul, Minnesota. 1999)

- [16] Regarding the issue of mass appraisal reflecting typical conditions of a property, the Board notes Section 2 of Matters Relating to Assessment and Taxation Regulation (MRAT) which addresses mass appraisal and states that an assessment must be based on market value, prepared using mass appraisal, must be an estimate of the fee simple estate and must reflect typical market conditions for properties similar to that property. The Board notes the reference to mass appraisal incorporating typical market conditions for an assessed property. Section 289(2) of the Act does not require the assessor to specifically address the characteristics of each assessed property unless the assessed property is somehow atypical of others in that property class.
- [17] The Board does not find that the assessor is required to provide a detailed Highest and Best Use analysis for each property assessed, to determine what assessment approach is appropriate for each assessed property. Clearly, mass appraisal does not contemplate detailed treatment for each and every assessed property. The Board is not persuaded that a detailed Highest and Best Use analysis is required if the municipality intends to apply a Sales (land only) Approach.
- [18] The municipality has the discretion to determine how to conduct its assessments, as long as the assessments reflect market value. Equity is not an issue related to how an assessment is done. It relates to whether the subject is assessed at a similar value to other similar properties in a property class in that municipality.
- [19] As there was no equity evidence presented by either party, the Board cannot make a finding regarding whether the subject assessment is equitable.

Issue 2: What is the correct rental rate to use in the Income Approach calculation?

Complainant's Position:

- [20] The Complainant presented the 2013 Auto Repair Rental Rate Analysis (page 100-101, Exhibit C1) prepared by the City, showing all the lease comparables used to derive the \$14.00/SF rental rate for this class of property. The Complainant focused on five of these lease comparables, all located along 17 Avenue, and stated that they support the \$14.00/SF rate used by the Complainant in calculating the requested assessment.
- [21] The Complainant noted that the property and the tenant are somewhat related parties, but that the current lease was negotiated as if between separate parties, as the ownership of the land and business are not identical. The property is currently leasing at \$19.00/SF, which the Complainant stated was probably higher than market.

Respondent's Position:

- [22] The Respondent did not specifically address this issue.

Findings of the Board on this Issue:

- [23] There did not appear to be any dispute regarding the rental rate of \$14.00/SF.

Issue 3: What is the correct capitalization rate to use in the Income Approach calculation?**Complainant's Position:**

- [24] The Complainant presented a summary of the three sales used by the City to derive their 2013 Freestanding Capitalization Rate (page 6, Exhibit C2).
- [25] The Complainant presented their freestanding retail capitalization rate analysis (page 120-141, Exhibit C1) and the details of that study (Exhibit C2) summarized on page 8 of Exhibit C2. The Complainant presented nine sales in its study, including the three used by the City in its capitalization rate study (page 140, Exhibit C12). The Complainant argued that the City's capitalization rate study, which determined a capitalization rate of 7.0% for this class of building, is not done in a consistent manner. Apparently, the City uses factors derived for the July 1 to July 1 period (the valuation year) and applies those factors to sales that occur in that calendar year to determine the typical capitalization rate for that sale. For example, the factors are derived for the period July 1, 2011 to July 1, 2012 and then applied to all sales of that property type that occur in the 2012 calendar year (January 1, 2012 to December 31, 2012). The Complainant argued that the correct approach is to apply the factors derived in an assessment year to sales in that assessment year. For example, factors derived in the July 1, 2011 to July 1 2012 period are applied to sale in that same time period, and factors derived in the July 1, 2012 to July 1 2013 period are applied to sales in that period.
- [26] The Complainant demonstrated that using their approach to calculate the capitalization rate results in a much better Assessment to Sale Ratio (ASR) than using the City's approach (page 140, Exhibit C1 or page 10, Exhibit C2). Using this approach, the Complainant derives a capitalization rate of 7.50%, which is used in calculating the requested assessment.

Respondent's Position:

- [27] The Respondent did not rely on the Income Approach for the 2013 Assessment of the subject. A capitalization rate of 7.00% was used in the Income Approach calculation used for comparison to with the Sales (land only) Approach (page 17-18, Exhibit R1). The Respondent did not comment on the evidence presented by the Complainant.

Findings of the Board on this Issue:

- [28] The Board notes that in deriving a capitalization rate, it is necessary to first establish a number of other factors used in the analysis, including rental rates, vacancy rates, operating costs, and non-recoverable allowance. While the Complainant presented evidence to demonstrate the correct rental rate for the subject property, this rental rate was not used or applied to any of the sales used in the capitalization rate analysis.
- [29] The Board understands that the Complainant accepted the rates used by the City in its capitalization rate analysis, and just used a different set of factors for some of the sales, in keeping with the Complainant's assertion that factors derived for a particular period should be applied to sales that occur in that same period.
- [30] While this "tweak" to the methodology presented by the Complainant appears to result in better ASR's, the Board notes that the sample size used by the Complainant is nine sales, compared to the City's sample size of three sales. Presumably, the "typical" rates used by the City were derived from the three sales it used in calculating its capitalization rate. No evidence was presented to indicate that the "typical" factors for the three sales analyzed by the City are appropriate for the nine sales analyzed by the Complainant. In deriving a typical capitalization rate, typical factors must be used in the analysis, derived from the same dataset. The Board cannot determine that this is the case, as such evidence was not presented. For this reason, the Board is not persuaded that the Complainant's capitalization rate is "more correct" than that produced by the City for the 2013 Assessment calculation.

Issue 4: Does the 2013 assessment reflect the market value?**Complainant's Position:**

- [31] The Complainant presented the 2013 Non-Residential Commercial Land Rates table (page 96, Exhibit C1) that sets out the rates for C-COR land, and the 2013 Non-Residential Commercial Land C-COR Sale Analysis (page 94, Exhibit C1) table that is the basis for the land rates table. The Complainant argued that the sale at 2020 34 Avenue SW is an infill residential property and is the lone sale supporting the \$122/SF rate applied to the <3,000 SF size strata. The Complainant then demonstrated that the eight remaining sales comparables did not support the size strata used by the City, or the rates assigned to these size strata.
- [32] The Complainant argued that since the Sales (land only) values used by the City in preparing the 2013 Assessment are not supported by the data used to derive the rates, the rates do not reflect the market information, therefore this approach should be disregarded.

- [33] The Complainant presented a table summarizing five sales of similar properties located along 17 Avenue SE (page 114, Exhibit C1), with support information (page 115-119, Exhibit C1). The Complainant noted that the average sale price for these five sales was \$148.70/SF of building area and the median was \$106.67/SF of building area. The assessed value of the subject is \$202.88/SF of building area. The Complainant argued that this demonstrated that the subject assessment was both incorrect (did not reflect market value) and inequitable.

Respondent's Position:

- [34] The Respondent presented the 2013 Commercial Land Values table (page 15, Exhibit R1) and noted that the subject property is assessed using the C-COR rates in that table. The Sales (land only) calculation is presented on page 14, Exhibit R1.
- [35] To support the assessment of \$202.88/SF of building area, the Respondent presented two sales of property located along 17 Avenue SE (page 25, Exhibit R1), which were also presented in the Complainant's evidence (page 114, Exhibit C1), showing a time adjusted average of \$240.82/SF of building area and time adjusted median rate of \$230.13/SF of building area. The Respondent presented evidence (page 32-38, Exhibit R1) and argued that the other three sales comparables used by the Complainant were not similar to the subject and should be ignored.

Findings of the Board on this Issue:

- [36] The Board notes that property size is a significant factor in the price paid for a property, and certainly influences the price paid for the five sales comparables presented by the Complainant. Neither party adjusted the comparable sales for size, so that they could be compared directly to the subject property.
- [37] The Board finds that none of the Complainant's five sale comparables, for a number of reasons, are really similar to the subject. The most similar of these sales, based on size of lot and site coverage, is the sale at 3111 17 Avenue SE which sold for \$230.13/SF of building area or \$80.25/SF of site area. The subject is assessed at \$202.88/SF of building area or \$48.77/SF of site area.
- [38] The Complainant specifically argued that the property at 3301 17 Avenue SE is about twice the size of the subject (assessed at \$1,590,000) and has almost three times more building area than the subject, yet sold in December 2011 for a total price of \$1,861,650. The Board considered this sale and notes that if the City's assessment model is applied, the indicated value of this sales comparable is:

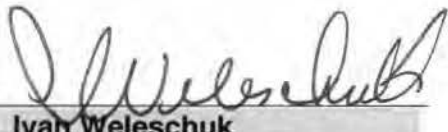
<3,000 SF	3,000 SF	x \$122/SF =	\$ 366,000
3,001-20,000 SF	16,999 SF	x \$ 65/SF =	\$1,105,000
20,001+ SF	43,163 SF	x \$ 10/SF =	\$ 431,630
	63,162 SF		\$1,902,630

The calculated value is 2.2% higher than the actual price paid. The Board concludes that the algorithm used by the City to calculate the 2013 Assessments using the Sales (land only) Approach reflects market value.

Board's Reasons for Its Decision

- [39] The Board concludes that a detailed Highest and Best Use analysis for a subject property is not a prerequisite for the City to use a Sales (land only) Approach to calculate an assessment. Equity is not based on the approach or methodology used to prepare an assessment. Equity refers to whether the assessed value is fair and reflects market value for all the properties in a particular property class.
- [40] The Board concludes that it does not have confidence in the Income Approach calculation, as presented by the Complainant. Specifically, the capitalization rate analysis did not establish that the other factors used in that analysis are appropriate and typical for the nine sales analyzed by the Complainant. The Board dismissed the Income Approach in determining the 2013 Assessment.
- [41] The sales evidence presented supports the subject 2013 Assessment. The Board confirms the 2013 Assessment of \$1,590,000

DATED AT THE CITY OF CALGARY THIS 28th DAY OF August 2013.



Ivan Weleschuk
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. R1	Respondent Disclosure

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.*

For MGB Administrative Use Only

Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Income vs Sales (land only) Approach	Equity, Rental rates Capitalization rate Sales