



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:

Canada Safeway Limited (as represented by Altus Group Ltd) COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair; J. Zezulka
Board Member; M. Grace
Board Member; K. Bickford***

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: 200613917

LOCATION ADDRESS: 600, 4915 - 130 Avenue SE

FILE NUMBER: 72983

ASSESSMENT: \$2,000,000

This complaint was heard on 21st day of October, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *B. Neeson*

Appeared on behalf of the Respondent:

- *R. Urban*
- *J-S. Villeneuve-Cloutier*

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

(1) There were no procedural or jurisdictional matters raised by either party, and the CARB proceeded to hear the merits of the complaint as outlined below.

Property Description:

(2) The property consists of a Canada Safeway gas bar, located in a power centre in the Mckenzie Towne community of SE Calgary. The property is comprised of a kiosk, and canopy, together with the appropriate appurtenances required for the operation of a gas bar. There is no convenience store or other associated facility. The building is located on a land parcel of 1.06 acres that is separately titled from the balance of the property. The subject land is designated C-R3.

Issues / Appeal Objectives

(3) The issue brought forward by the Complainant is the valuation technique, from which flows a question of equity. The subject is currently assessed using the cost approach. The City values the land at \$1,754,866, and adds the building at \$248,998. The building value is derived from the Marshal & Swift Valuation Service.

(4) The Complainant argues that the subject should be valued using the income approach, which is the approach used to value some other gas bars in the City. In doing so, the appropriate annual rent should be \$45,000, and the assessment would be reduced to \$700,000.

Complainant's Requested Value:

(5) \$700,000

Board's Decision:

(6) The assessment is reduced to \$700,000.

Legislative Authority, Requirements and Considerations:

(7) This Board derives its authority from section 460.1(2) of the Municipal Government Act

(MGA), being Chapter M-26 of the revised statutes of Alberta.

(8) Section 2 of Alberta Regulation 220/2004, being the Matters Relating to Assessment and Taxation Regulation (MRAT), states as follows;

"An assessment of property based on market value

(a) must be prepared using mass appraisal

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property"

(9) Section 467(3) of the Municipal Government Act states;

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(c) the assessments of similar property or businesses in the same municipality."

(10) For purposes of this Complaint, there are no extraneous requirements or factors that require consideration.

Position of the Parties

(11) The Respondent argues that there are two distinct types of gas bars, and each type requires that a different valuation approach be applied.

(12) Gas bars that are not located on a separate land parcel are assessed using the income approach. Properties that consist of a kiosk without any other facilities are assigned a rent of \$45,000 annually. Gas bars with convenience stores are assigned an annual rental of \$95,000. Gas bars with a convenience store and car wash are assigned \$105,000 annual rental.

(13) The Complainant does not dispute the rent rates assigned by the City. Nor does the Complainant dispute the other inputs used by the City in the income capitalization calculations.

(14) Gas bars that are located on a separately titled land parcel are assessed by way of the cost approach, a method which the Respondent maintains is prescribed by Ministerial Order.

(15) In support of the existing assessment, the Respondent presented a summary of commercial land sales, and the commercial land values rates used in the 2013 assessment (R1, pages 41 to 43). The land rates adopted by the City for C-R land is \$63.00 for the first 10,000 s.f., and \$31.00 for the area of 10,001 to 50,000 s.f.. The Complainant did not dispute the land rates.

(16) While the Complainant did not dispute the land rates, he did argue that the land beneath a gas bar is typically adversely affected due to potential contamination, and therefore the assessed land rate is likely too high. No evidence to confirm or dispel this assertion was presented.

(17) The Respondent also presented the Marshal & Swift calculations that show the depreciated cost for the building at \$248,998 after GST. This cost was not disputed by the Complainant.

(18) The Complainant submitted the 2013 Auto Convenience Store with Gas Bar Rental Rate Analysis (1000+ s.f.) that was prepared by the City of Calgary (C1, page 43). There are 10 samples in the analysis. Annual lease rental rates range from \$60,322 to \$105,605. The median is \$100,248, and the mean is \$95,412.

(19) The Complainant also submitted two tables of Service Station Market data, one of which was supplied, and then updated, by the City under section 299 of the Municipal Government Act (C1, pages 44 and 45). A summary of the rents contained on those tables is as follows;

Section 299

| <u>Facilities</u> | <u>Number of Samples</u> | <u>Annual Rent</u> | |
|---|--------------------------|--------------------|---------------|
| | | <u>Mean</u> | <u>Median</u> |
| Gas Stn, C-store, Car Wash Auto Repair | 1 | \$160,000 | \$160,000 |
| Gas Stn. C-store, Car Wash Wand Wash | 1 | \$105,605 | \$105,605 |
| Gas Stn. C-store, Car wash | 3 | \$121,721 | \$125,000 |
| Gas Stn. C-store | 8 | \$94,170 | \$99,997 |
| Gas Stn. (similar to subject) | 2 | \$62,663 | \$62,663 |

Complainant's data

| <u>Facilities</u> | <u>Number of Samples</u> | <u>Annual Rent</u> | |
|-------------------------------|--------------------------|--------------------|---------------|
| | | <u>Mean</u> | <u>Median</u> |
| Gas Stn, C-store, Car Wash | 18 | \$106,015 | \$104,490 |
| Gas Stn. C-store | 17 | \$92,455 | \$90,003 |
| Gas Stn. (similar to subject) | 4 | \$63,832 | \$62,663 |

(20) The Complainant then proceeded to perform a "reverse" income capitalization calculation that started with the assessed value of the subject, and incorporated all of the standard inputs used by the City, in order to arrive at the level of rent it would require to achieve a value indication of \$2,000,000. The required annual rent was indicated at \$129,000. That rent is higher than 53 of the 54 samples in the two groups of rent data presented.

(21) The Complainant also presented the assessment of two gas stations in the same power centre as the subject. Neither is on a separately titled land parcel, and both are assessed using the income approach. However, both are assessed as part of the power centre and a separate assessment for each is not isolated.

(22) One, with an ascribed rent of \$105,000 included a gas bar, convenience store, and car wash. The capitalized income calculates to an approximate assessed value of \$1,600,000.

(23) The second is located across the street from the subject. This property is simply a gas bar, similar to the subject. The ascribed rent is \$45,000. The capitalized income produces an indication of value of approximately \$700,000.

Board's Reasons for Decision:

(24) As for the premise that the cost approach is the required method of valuation, the respondent offered the following on page 175 of R1;

"The Municipal Government Act, related regulations, and Minister's Guidelines made by Ministerial Order and forming part of the regulations give explicit direction on how to stratify, report, record, and value gas station properties."

The Minister explicitly directs the municipality to stratify gas stations separately from all other property stratifications. The Minister explicitly directs the Ministers appointed auditor to conduct a detailed audit of assessments to test if the Municipality has used the cost approach valuation standard to value properties in the gas station stratification. The non-standard income or non-standard sales approach may only be used if the Municipality first demonstrates it is not possible to use the cost approach.

Failure to record and report all gas stations in the gas station stratification will result in inequities between municipal assessments in addition to causing inequities within the municipality.

Failure to apply the cost approach will result in failure to pass the detailed audit test for fairness of assessments."

(25) In the Board's view, much of the foregoing is unfounded opinion, and could be interpreted as misleading. The Municipal Government Act and related regulations do not provide instructions or direction on how to value gas stations. Certainly, failure to report all gas stations in the gas station stratification will result in inequities. But there are no specific instructions on which valuation approach is to be used. Failure to apply the cost approach will not result in failure to pass the audit.

(26) Having said that, this Board will not identify a preference as to which valuation approach should be used to determine the assessed value of any property. It is the assessed value that this Board is authorized to adjudicate. That is not to say that an alternative method of valuation cannot be applied. However, any alternative method must be as equally well founded in market evidence as the method already being employed. At the same time, the result must not only reflect market value, but it also must reflect the fairness and equity that is also an underlying principle of assessment.

(27) The City's practice of applying two separate approaches to value similar type properties might be correct from a technical point of view. However, the results hold significant potential for inequity in assessment. In this case, because of the large variation in assessments between two similar use properties in close proximity to each other, the entire notion of fairness comes into question.

(28) The fact that the subject is situated on a separately titled land parcel is fully recognized by this Board. However, based on the rent data submitted by the Complainant, the Board is convinced that the income required to achieve a value equal to the existing assessment is simply not achievable with the existing improvements.

(29) Section 289(2) of the Municipal Government Act states (among other things)

"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....."

(30) As of the relevant date, the subject was being occupied as a gas bar. There were no development applications or development permit in place to suggest that a change in use was forthcoming, or even being contemplated.

(31) As of the relevant date, the rent that the property was capable of generating as a gas bar was not sufficient to justify the land investment, or assessed land value. Therefore, in order for the assessed land value to have validity, there must be an alternate use forthcoming. If not, then the assessed land value is too high. That is the case in this instance.

(32) The Respondent did not submit a Highest and Best Use analysis for the subject land parcel. However, the land estimate adopted by the Respondent suggests that the property is a redevelopment site (in which case the improvements would only contribute minimal value, if any). If the site is a redevelopment site, there must be a Highest and Best Use analysis. Any suggested alternate use cannot be based on conjecture. Unless there is a proper study done, any argument that the current use is not the highest and best use can only rely on speculation and unsupported opinion that may not meet the onus test.

(33) The approximate timing of an alternative use is also critical. And, because assessment of property is an annual, or at least a periodic function, any Highest and Best Use conclusion should be one that is manifest in the relevant time frame; i.e; the immediate future. Such is not the case in this instance.

(34) If the highest and best use is, in fact, the existing use, then the assessed land value cannot be supported and should be reduced accordingly.

(35) This Board is also persuaded by the notion of fairness and equity. In this regard, the following from Stade V. Assessor #23 - Kamloops, provided some guidance;

"Questioning the relationship between assessment and the properties market value is a market value argument, with accuracy the measure of success. Equity instead relates to consistency and fairness of assessment. Consistency requires that similar properties be assessed similarly and that differences be accounted for consistently. Fairness means similar treatment under the law, which typically means that if one group of taxpayers is afforded a privilege, such as underpaying taxes, then everyone should be afforded a similar privilege."

(36) In Dutchad Bill Investments Ltd. Et al v. Area 19 (2008 PAABBC 20081270) it states;

"The Board must first be satisfied with the accuracy of the market valuation, which involves correct appraisal techniques and appropriate use of market data. Second, the Board must then be satisfied that the level of assessment is equitable, fair, and consistent, in terms of how the subject's assessment relates to other similar properties. The courts have regularly interpreted "consistency" as the portion of market value being assessed (Bramalea, Lount, supra). In other words, if an appellant can show that similar properties are typically assessed below actual value, then the subject should receive this benefit too. The need for consistency is particularly apparent for commercial properties, where an unfairly distributed tax burden can give one investor a significant competitive advantage."

(37) In Peard v. Assessor of Area #01;

"The Assessment Act and common law require that assessments be equitable as between taxpayers. A taxpayers land may not be assessed on a view of actual value which results in an assessment significantly higher than would bear a fair and just relationship to assessments on other similar properties as a whole. Where there is a difference between actual value and equity in assessment, the taxpayer is entitled to the lower of the two...."

(38) No doubt, reducing the subject's assessment will create an apparent inequity between the subject and other gas bars that are located on separately titled land parcels. However, this Board will rely on a partial quote from Mountain View County v. Alberta (Municipal Government Board), 2000 ABQB 594, wherein the Honourable Mr. Justice R.P. Fraser states; *"Where a Board is of the view that the assessed value of property under appeal is too high, and cannot be regarded as at "actual value", then it ought to reduce the assessment even though it cannot reduce the assessments on the other similar properties which are not the subject of appeal. In this way the Board will have done what*

it can, in light of its limited power; it will have enforced the rights of the taxpayer before it."

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


Jerry Zezulka
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO. ITEM

1. C1 Complainant Disclosure
2. 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.

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|-------------------------------|-------------|--------------|-------------------------|--------------|
| Decision No. CARB 72983P/2013 | | | Roll No. 200613917 | |
| <u>Subject</u> | <u>Type</u> | <u>Issue</u> | <u>Detail</u> | <u>Issue</u> |
| CARB | Gas Bar | Market Value | Income v. cost approach | Equity |