

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:

17th AVENUE FRAMING LTD.
(As represented by Lawrence Oshane)
COMPLAINANT

and

THE CITY OF CALGARY, RESPONDENT

before:

W. Krynski, PRESIDING OFFICER
I. Fraser, BOARD MEMBER
R. Cochrane, 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:	067204701
LOCATION ADDRESS:	1232 17 Avenue SW
FILE NUMBER:	73781
ASSESSMENT:	\$1,230,000 (Amended Assessment)

This complaint was heard on 19th day of November, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 31 Avenue NE, Calgary, Alberta, Boardroom #1.

Appeared on behalf of the Complainant:

- *L. Oshaneck* *Agent for Property Owner*
- *B. Drouin* *Property Owner*

Appeared on behalf of the Respondent:

- *E. Lee* *Assessment Manager, City of Calgary*
- *L. Wong* *Assessor, City of Calgary*
- *T. Squire* *Solicitor, City of Calgary*

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

- [1] Neither party expressed concerns respecting the panel as constituted to represent the Board.
- [2] As no jurisdictional or procedural matters were raised at the outset of the Hearing, the Board proceeded to hear the merits of the complaint.

Property Description:

- [3] The subject property comprises a two storey, Class C quality retail building, located at 1232 17 Avenue SW. Constructed in 1964, the property is situated in the central community known as the Beltline District, which is adjacent to the City's downtown central core. Total net rentable area for the subject property is 4,279 square feet (sf). The improvements are situated on a 5,611 square foot parcel of land which is zoned Commercial – Corridor 1. The parcel is irregular in shape, with a twenty-five foot frontage onto 17 Avenue, SW, and the rear of the parcel having a fifty foot frontage onto 16 Avenue SW. The improvement is situated on the front (17 Avenue) portion of the lot, with the vacant rear portion providing 12 parking stalls for tenant and customer parking.

Preliminary Matters:

- [4] The following preliminary matters were brought forward at the Hearing:
 - The Complainant submitted an Affidavit titled "Affidavit of Bernard Drouin" [C-1; Tab 1; Pgs. 1-3], wherein the property owner (Bernard Drouin) provided a fourteen-point summary of his discussions with the City of Calgary Assessment Business Unit over the previous year. As it was a sworn affidavit, it was the Complainant's position that he not be required to answer questions from the Respondent, or the panel respecting the content of the affidavit. The Respondent objected to the request.
 - The Respondent raised an objection to the appearance of Mr. Oshaneck as representative of the client. The Respondent argues that an Agent Authorization Form had not been submitted to the City. Consequently, Agent representation should not be allowed.

- The Respondent raised an objection to the inclusion of portions of a Property Appraisal Report for the subject property in the Complainant's evidence. The Respondent argues that the Complainant did not submit the Appraisal Report as requested per the customary "Non Residential Property Sale Questionnaire" that was sent to the Complainant following the sale of the subject property [R-1; Pgs. 16-18]. In the Respondent's opinion, this non-compliance contravenes the legislated requirements to provide this information to the assessing authority.

Board Decisions respecting Preliminary Matters:

[5] The Board's Decisions respecting the Preliminary Matters are as follows:

- All evidence submitted by either party in an assessment complaint is subject to questioning by both the Board, and the opposing party. The Complainant's request to be exempted from questioning is denied, particularly, given Mr. Drouin's presence at the Hearing.
- The Complainant was asked to complete the appropriate Agent Authorization Form, which was subsequently submitted to the Board [Exhibit C-5]. The Complainant's chosen representative is allowed.
- The Property Appraisal Report for the subject, and any reference to it, is disallowed. The Board takes direction from the Municipal Government Act (Act) S.295 (1):

A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if a property is to be assessed.

Additionally, the Board references, the Matters Relating To Assessment Complaints Regulation (MRAC), S. 9 (3).

A Composite Assessment Review Board must not hear any evidence from a Complainant relating to information that was requested by the Assessor under Section 294 or 295 of the Act, but was not provided to the Assessor.

Complainant's Requested Value: \$1,014,408

Board's Decision

[6] The complaint is not allowed and the assessment is confirmed.

Legislative Authority, Requirements and Consideration

[7] The Act, Section 460.1(2), subject to Section 460(11), specifies a Composite Assessment Review Board has jurisdiction to hear complaints about any matter referred to in Section 460(5) that is shown on an assessment notice for property, other than property referred to in Subsection 460(1)(a).

Issues in the Complaint

[8] Following are the issues identified in this Complaint:

- The assessment is not reflective of market value, and incorrectly calculated as vacant land via the Sales Comparison Approach. The Complainant argues that the assessment should be predicated on the Income Approach.
- In the alternative, the Complainant submits that if the assessment is to be calculated as land value only, the assessment calculations should be predicated on the methodology as set out in a previous year's Assessment Review Board (ARB) Decision respecting the subject property. The *2009 City of Calgary Assessment Review Board Decision [ARB 0632/2009-P]* proposes an assessed value wherein the vacant rear (16 Avenue) portion of the subject lot be assessed at a rate 26% lower than the improved front (17 Avenue) portion.
- Is the July 31, 2013 purchase price of \$1,350,000 for the subject property indicative of the market value of the property?

Position of the Parties**Issue 1: Assessment valuation via Income Approach rather than vacant land value****Complainant's Position:**

- [9] The Complainant argues that the subject property is a commercial income-producing investment property, and as such the appropriate valuation methodology is the Income Approach.
- [10] Further to this position, the Complainant has provided an Income Approach valuation summary [C-1; Tab A; Pg. 10]. The Income Approach valuation proposes a market value of \$1,013,540, closely supporting the Complainant's requested assessment.
- [11] Upon questioning as to market support for the Income Approach coefficients used in his valuation, the Complainant advised that they were provided by investor acquaintances, and reflected typical rental rates, vacancy rates, operating costs, and capitalization rates being utilized by real estate investors for similar properties, at the time of sale.
- [12] In the alternative, if it is determined that the subject property should not be assessed via the Income Approach, the Complainant submits that the assessed land rate of \$220.00 psf. is incorrect. The Complainant references a number of assessment comparables [C-1; Tab 9], wherein assessed land rates are shown to be considerably lower. The comparables are located on Macleod Trail (6400 Block), Signal Hill, and 17 Avenue, S.W.

Respondent's Position:

- [13] The Respondent provided a document (R-1) in support of the current assessment.
- [14] In addition to various maps, photos, etc. of the subject property, Property Detail Reports and Assessment Explanation Supplements were provided for the subject property.
- [15] In response to the Complainant's request for an Income Approach based valuation, the

Respondent explained that typically, income-producing properties are valued via the Income Approach. However, in certain situations where land values are high, and improvements to the property are minimal, the full property value cannot be captured through the Income Approach. It would be contrary to legislated requirements for the Assessor to set the assessment at a value lower than typical market value, which, in this instance, is the basic land value. Consequently, the assessment is predicated on land value only, and calculated via the Sales Comparison Approach.

- [16] In support of this concept of Highest and Best Use, the Respondent provided seven Assessment Review Board Decisions upholding the City's valuation process [R-1; Pgs. 61 – 101].
- [17] The Respondent advised that the market land value for the subject district of 17 Avenue SW, is \$220.00 per square foot (psf). A chart was provided [R-1; Pg. 104], summarizing assessed land values along 17 Avenue, which ranged from \$100 to \$220 psf.
- [18] In support of the subject \$220.00 psf. land assessment, a chart titled "2013 Beltline Land Sales" was provided [R-1; Pg. 187]. A summary of four sales, occurring between September 2011 and March 2012, yielded mean, median and weighted mean sale prices per square foot of \$209.62, \$220.45 and \$248.47, respectively.
- [19] Additionally, the Respondent referenced Real Estate Listings of vacant land in the Beltline District, which support the \$220.00 psf. land rate. [R-1; Pgs. 302-306].
- [20] Emphasizing equitable treatment of similar properties, the Respondent referenced a chart of assessment equity comparables [R-1; Pg. 261]. The chart summarized the assessments of four similar properties on 17 Avenue SW, all with minimal improvements and similarly sized lots, assessed on a "land only" basis of \$220.00 psf.

Board's Reasons for Decision:

- [21] In regards to this issue, there was insufficient market evidence from the Complainant to convince the Board that a variance to the assessment is justified.
- [22] The Board is in agreement with the Respondent that, to value an improved property at less than it's vacant land value, would not only be contrary to legislated and regulated procedures, but also contradictory to basic property appraisal theory. Numerous supporting Assessment Review Board Decisions were submitted by the Respondent, in respect of this issue.
- [23] The Complainant provided no market evidence in support of the Income Approach coefficients (ie: rental rate, vacancy rate, operating costs, capitalization rate) that were applied in their valuation summary. The Board requires direct market evidence in order to accept this valuation proposal.
- [24] To the contrary, the Respondent provided market evidence in the form of arms-length vacant land transactions and property Listings, which support the assessed land rate.
- [25] The Respondent provided a list of comparable properties assessed in a similar manner, and at a level similar to the subject property, in support of equity in the assessment process.
- [26] The Complainant's equity comparables are situated in locations dissimilar to that of the Subject, (MacLeod Trail, Signal Hill). The two comparables on 17 Avenue S.W. reported assessed land values at \$351.00 and \$250.00 psf., which supports the subject \$220.00 psf. assessment.

Issue 2: Compliance with City of Calgary Assessment Review Board Decision: ARB 0632/2009-P

Complainant's Position:

- [27] The Complainant argues that the City of Calgary is not abiding by the directives of a previous (2009) Board Decision on the subject property.
- [28] The Complainant references *ARB Decision 0632/2009-P* [C-4; Tab 1; Pgs. 3-6], wherein the Board decided that the rear (vacant) portion of the property should be assessed at a rate 26% lower than that of the front (improved) portion of the property.
- [29] Following through on the Board's logic, the Complainant recalculated the subject property assessment, at the current assessed rate of \$220.00 psf. for the improved 1,861 sf., and \$161.33 psf. (\$220.00 – 26%), for the rear 3,750 sf. of the site [C-4; Tab1; pg. 2].

Respondent's Position:

- [30] The Respondent submitted an Alberta Municipal Government Board (MGB) Decision dated February 18, 2010, [Exhibit R-2], overturning *ARB Decision 0632/2009-P*, and restoring the original assessment. The Respondent argues that the MGB Decision renders the Complainant's position on this issue moot.
- [31] Notwithstanding the foregoing, the Respondent argues that, in using the City's assessed land rate of \$220.00 psf. in his calculations, the Complainant is agreeing in principle, to the City's \$220.00 psf. market land rate.

Board's Reasons for Decision:

- [32] The Board is in agreement with the Respondent. The sole evidence from the Complainant on this issue is *ARB Decision 0632/2009-P*. The Municipal Government Board Decision overturning the ARB Decision Leaves the Complainant with no evidence in this regard.

Issue 3: Purchase Price of the Subject Property

Complainant's Position:

- [33] The Complainant purchased the subject property on July 31, 2012, in what they deem not to be an arms-length transaction. The purchase was made under the provisions of a "right of first refusal" term within the lease, which the purchaser, as tenant, held with the vendor.
- [34] While the Complainant agreed to the purchase price of \$1,350,000, it is his contention that he was "held hostage" to paying a sum that represented a price of 35% in excess of the property's true market value. The Complainant argues that he was unduly motivated to purchase the property in order to preserve the permanency of his business that had

been in this location for many years. In his opinion, the prospect of possibly having to move would cost him his clientele. A sworn statement to this effect was included in the Complainant's evidence package [C-1; Tab 1; Pg.1 & Tab A; Pgs. 6-7].

Respondent's Position:

- [35] The Respondent argues that the transaction is an arms-length market transaction. Recognizing that the sale occurred after the valuation date, it was still very current, and, although the sale was not utilized in the valuation of the subject (or other) property, it could certainly be relied upon as an indicator of value.
- [36] The Respondent provided two Real Estate Industry publications (RealNet & Commercial Edge) [R-1; Pgs. 26-28], which identify the transaction as being "Market".
- [37] Furthermore, the Respondent argues that the Complainant, swore an "Affidavit Re: Value of Land" in the Alberta Government Services Land Titles Office property transfer documents [R-1; Pgs. 37-42], stating that *"The current value of the lands in my opinion, is \$1,350,000"*.

Board's Reasons for Decision:

- [38] The Board has taken into consideration, the sale of the subject property. Recognizing that the sale was not used to prepare the assessment, and, while the Complainant's arguments respecting the motivational factors in the sale may have some merit, the Board accepts that the sale was an arms-length transaction, that occurred only 30 days after the valuation date. As the sale was consummated pursuant to a "right of first refusal" clause, it is apparent that another purchaser was also willing to pay at least \$1,350,000. Furthermore, the Complainant swore an affidavit of transfer, indicating the market value of the property as being \$1,350,000. The current assessment is approximately 10% below that purchase price, which may account for any "motivational factors" that might have been present.

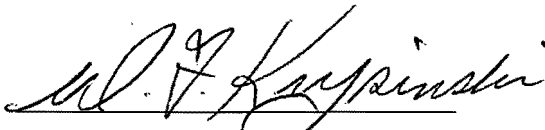
Decision Summary:

- [39] While a preponderance of information was provided by the Complainant, both orally, and in the evidence packages, this Board has commented on only that evidence which was considered to be germane to the issues.
- [40] The Valuation Standard for assessment is Market Value, as prescribed in the ***Matters Relating to Assessment and Taxation Regulation (MRATT), S.6(1)***
"When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value ..."
- [41] Further to this, market value is defined in the ***MGA S.1(1)(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".
- [42] The Board notes that the onus is on the Complainant to prove that the assessment does not reflect market value. On review and consideration of all the evidence before it in

these issues, the Board finds that ultimately, there is a lack of market evidence to justify a variance to the assessment.

[43] The assessment is confirmed at \$1,230,000.

DATED AT THE CITY OF CALGARY THIS 12 DAY OF December 2013.

A handwritten signature in dark ink, appearing to read 'W. F. Krynski', is written over a horizontal line.

Walter F. Krynski

Presiding Officer

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

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Annual Returns for Alberta and Extra-Provincial Corp.-Proof of Filing
3. C-3	Complainant Change Director/Shareholder – Proof of Filing
4. C-4	Complainant Rebuttal
5. C-5	Complainant's Agent Authorization Form
6. R-1	Respondent Disclosure
7. R-2	Respondent Municipal Government Board - Notice of Decision

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 ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Strip commercial	<ul style="list-style-type: none"> Highest & Best Use Previous Board Decision Market value of subject purchase price 	