



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:

***Claret Corp. (as represented by Cushman Wakefield Property Tax Services),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
J. Lam, BOARD MEMBER
J. Massey, 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:	068096205
LOCATION ADDRESS:	534 9 Avenue SE
FILE NUMBER:	73782
ASSESSMENT:	\$1,760,000

This complaint was heard on 12th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *J. Goresht*

Appeared on behalf of the Respondent:

- *L. Wong*

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

- [1] Neither party objected to the members of the Board, as introduced, hearing the evidence and making a decision regarding this assessment complaint.
- [2] The Board noted that the file included a completed copy of the Assessment Review Board Complaint form and Assessment Complaints Agent Authorization form.
- [3] No preliminary issues were raised by either party.

Property Description:

- [4] The subject property is located at 534 9 Avenue SE, in the Downtown East Village District (subarea DT3). The land area is 6,500 square feet (SF) with a multi-story office building having about 5,000 SF of office space on the main and upper levels, with some office and storage space on the lower level. The upper level has direct access from street level, while the basement level has access only from the main level of the building. The building was constructed in 1952 as a vegetable warehouse, and is currently used as a printing shop. Both the upper and lower levels are essentially open space with support posts regularly spaced throughout. The property is assessed using an Income Approach for a value of \$1,760,000.

Issues:

- [5] The Complainant disputed the assessed value of \$1,760,000.

Complainant's Requested Value:

\$975,000

Board's Decision:

- [6] The Board reduces the 2013 assessed value to \$975,000.

Legislative Authority:

- [7] 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) 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: What is the correct assessed value?**Complainant's Position:**

- [8] The Complainant disputed the City's assessment on the basis that the Income Approach resulted in an incorrect and inequitable assessed value. The Complainant requested that the assessed value be based on the Sales (land only) Approach, which is the predominant approach used in the Downtown East Village (DT3) area. The Sales (land only) rate used by the City is \$150/SF and results in the requested assessed value of \$975,000 (when multiplied by the land size of 6,500 SF).
- [9] To support this position, the Complainant presented a table of seventeen equity comparables from DT3 and DT4 all assessed using the Sales (land only) Approach (page 2, Exhibit C1). Support information was presented (page 21-67, Exhibit C1) for each of the equity comparables, including a map showing the location of each comparable, the 2013 Property Assessment Summary Report, and in some cases a photograph of the property. The Complainant argued that the subject property was very much like many of the improved comparable properties and so should be treated equitably by being assessed using the Sales (land only) Approach.

- [10] A number of photographs of the exterior and interior of the building were presented (page 7 and 14-20, Exhibit C1). These photographs showed the finish and use of each level. The main level was essentially all open space with three rows of support posts down the length of the building. The lower level was also essentially open space, and was used as an office in the front portion of this level, with storage at the back portion of the level. The upper level was also essentially all open space, with steel "teleposts" spaced down the length of the building under the support beams supporting the roof structure. The owner of the building (Claret Corp.) operates the printing business that occupies the lower and main level (First on Color). The upper level was not occupied as of the condition date (December 31, 2012) but was actively being marketed. The Complainant referred to these photographs to argue that the main and lower levels were not at an "office" finish, nor was the building demised into office space. The Complainant agreed that there were some desks in this space, but that did not constitute an "office" use as is typically applied by the City for assessment purposes. The main and lower levels were essentially open space used for a printing shop, a light industrial use. Likewise, the upper level was essentially an open space and not demised into offices. Since this was not an "office" property, the use of an Income Approach by the City applying "office" rental rates is inappropriate.
- [11] The Complainant did not present any evidence or directly address the Income Approach used by the City to prepare the 2013 Assessment, other than to argue that it was the wrong approach and resulted in an inequitable assessment. The Complainant questioned the application of one rental rate to all three levels, especially the lower level. The Complainant did not disclose any rebuttal evidence.
- [12] With regard to the April 2010 sale of the subject property presented by the Respondent (page 15-17, Exhibit R1), the Complainant argued that the sale was to the occupant, Claret Group. The vendor provided the financing, with a down payment and interest rate that was not typical of market rates. Therefore, the sale price did not reflect market value as of the sale date.
- [13] The City measured the building in 2011 and this is the basis of the assessed area (page 9, Exhibit C1). Page 10-13 (Exhibit C1) presents building measurements done by a contractor on behalf of the building owner. The Complainant indicated that there was an issue reconciling the two sets of measurements and the information presented in the Assessment Request for Information (ARFI) documents (page 34-36, Exhibit R1) with the assessed area shown in the Non-Residential Property-Income Approach Valuation sheet (page 4, Exhibit C1), but did not indicate what the area values were in error or what the correct size of these areas.

Respondent's Position:

- [14] The Respondent stated that in developing the 2013 assessment, the City did both an Income Approach and Sales (land only) Approach calculation, and then based the assessment on whichever approach results in a higher value. Most of the properties in DT3 are assessed on the Sales (land only) Approach because the size of the building is relatively small compared to the total land size. In the subject situation, the building covers most of the lot footprint (building footprint about 5,000 SF on a 6,500 SF lot), and there are three levels of assessable area, which results in the Income Approach giving the higher value. Therefore, the City has done the 2013 assessment in a standardized and equitable manner.

- [15] Three equity comparables were presented (page 43, Exhibit CR1) to support the approach used by the City, and showing that where Income Approach value exceeds the Sales (land only) Approach value, the assessment is based on the Income Approach value. Support information for each of these sales, including photographs, was presented on page 44-56, Exhibit R1.

- [16] The Respondent stated that the original assessment calculation (Income Approach) used an office rental rate of \$13/SF, resulting in the subject assessment of \$2,310,000 (page 11-13, Exhibit R1). The City then modified the assessment by changing the rental rate to \$10/SF, resulting in the subject 2013 assessment of \$1,760,000 (page 14, Exhibit R1).

- [17] The Respondent presented a RealNet Retail Transaction Summary (page 15-17, Exhibit R1) indicating that the subject property sold in April 2010 for a price of \$1,675,000. No time adjustment or other adjustments were applied, and the Respondent stated that the City was not relying on this sale to support the 2013 assessment. However, the 2010 sale does appear to support the 2013 assessed value.

- [18] The Respondent stated that the \$13/SF rental rate was initially applied to all buildings in DT3, and that this rate was then changed to \$10/SF to produce the 2013 assessments. This rental rate applies to all uses of buildings in DT3, regardless of whether in a retail or office use.

- [19] Regarding the assessed area, the Respondent stated that at the request of the building owner, an Assessment Field Officer visited the building in 2011 and measured all the areas, as is presented on page 9, Exhibit C1. The assessed area on each floor does not include the area occupied by the stairs or ramp. The total office area includes the office area on the upper, main and lower levels. The City does not use the areas indicated in an ARFI, but relies on its actual measurements, unless shown to be wrong. No evidence was presented by the Complainant showing what areas are in error.

Findings of the Board on this Issue:

- [20] With regard to the assessed areas, the Board understands how the values used in the Non Residential Property-Income Approach Valuation form (page 4, Exhibit C1) were obtained. The Complainant did not present any evidence to show that the assessed office area of 10,923 is incorrect. The Board accepts the assessed office area, used by the City to prepare the 2013 assessment as correct. The area indicated as storage was not directly discussed or disputed.
- [21] The Board notes that the test it must apply is whether the assessment reflects the market value of the subject property as of the valuation date. Neither party presented any market value evidence, therefore the Board has no evidence on which to determine whether the assessed value or the requested value better reflects the market value. (The Respondent presented some information regarding the April 2010 sale of the subject property but stated that they were not relying on this sale. The Complainant presented some argument to indicate that the sale price did not reflect market value. The Board therefore puts no weight on this sale evidence.) Therefore, the only issue that the Board can address is equity.
- [22] The Board understands the City's used the Income and Sales (land only) Approaches in preparing the 2013 assessment, and that the assessed value is based on the approach that results in the higher value. The application of this methodology (a comparison of the two approaches to determine the 2013 assessment) is not in dispute. The Board also understands the dynamics of such calculations, whereby if the rentable area within a building is sufficiently large, it triggers the Income Approach. Therefore, the assessment is dependent upon the factors used in the Income Approach calculation. The Complainant essentially dismissed the Income Approach and only made some passing comment regarding the rental rate used, and that it was applied to all three levels of "office" space when in fact there were no "offices" on either level.
- [23] In considering the evidence presented by the Complainant, the Board was persuaded that some of the equity comparables represented properties and property uses similar to the subject, supporting the Sales (land only) Approach to determine the assessed value. Therefore, the Board turns its attention to the Income Approach calculation, and specifically the factors used in the calculation.
- [24] The Respondent stated and presented evidence (page 11-13, Exhibit R1) that initially a rental rate of \$13/SF was applied to all the office space in the subject building. This rental rate was then changed to \$10/SF and it was the \$10/SF rate that was used to calculate the 2013 assessment. The Respondent did not provide any reasons as to why the rental rate was changed, nor any market based evidence for either rate. The evidence was not clear as to whether the rental rate was changed in the calculation done for all properties in DT3 or just for the subject. Page 45-46, Exhibit R1 which presents the Non-Residential Properties-Income Approach Valuation for a comparable property located at 428 6 Avenue SE shows a rental rate of \$13/SF applied to the "office" space.

- [25] The Respondent argued that the ARFI information presented on page 34-36, Exhibit R1 supports the office rental rate used and this rate being applied to all three levels. The Board notes that this is an owner occupied building on the main and lower levels, so puts no weight on the rental rate indicated in the ARFI. The Board also notes that the ARFI presented on page 36, Exhibit R1 is *post facto* (information obtained after the December 31, 2012 condition date), therefore will not be considered by the Board.
- [26] The Board finds that the Respondent did not present any market evidence to support the \$13/SF or \$10/SF rental rate, or any of the other factors used in the Income Approach calculation. Without any evidence to determine if the assessed value reflects the market value of the subject property, and without any market evidence to support the use of any of the factors used in the Income Approach calculation, the Board is not persuaded that the Income Approach results in an assessed value that reflect market value.
- [27] The Board finds that the \$150/SF land only rate used by the City in its 2013 DT3 Sales (land only) Approach (page 38-40, Exhibit R1) and supported by the seventeen equity comparables presented by Complainant (page 2, Exhibit C1) is the better evidence. The Board finds the Sales (land only) Approach as being the most equitable approach, and concludes that the requested assessment of \$975,000 is correct.

Board's Decision:

- [28] The Board was not presented with any market evidence to support either the assessed value or requested value, or to support the factors used in the Income Approach calculation used by the City to prepare the 2013 assessment. The Board concludes that the Sales (land only) Approach evidence is the better evidence. The assessed value using the Sales (land only) Approach is \$975,000. For these reasons, the Board reduces the 2013 assessment to \$975,000.

DATED AT THE CITY OF CALGARY THIS 1 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. 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	Office	Low rise	Income vs. Sales (land only)	Rental rate Capitalization rate