



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:

Deerfoot/64th Holdings Ltd. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member, D. Morice
Board Member, P. McKenna***

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 2014 Assessment Roll as follows:

ROLL NUMBER: 009003096

LOCATION ADDRESS: 930 - 64 Avenue NE

FILE NUMBER: 74337

ASSESSMENT: \$14,400,000

This complaint was heard on the 131st day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- G. Langelaar, Agent, MNP LLP

Appeared on behalf of the Respondent:

- F. Taciune, Assessor, City of Calgary

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

(1) At the outset of the hearing, the Complainant objected to the Respondent's use of three comparable sales on the grounds that the sales had not been provided in response to an information request under Section 299 of the Municipal Government Act. The facts and arguments in the case, as the Board understood them, are these;

(2) During the fall of 2013, the City published a complete list of valid non-residential sales transactions within the City of Calgary. This list was supplied to the Complainant at their request. The three transactions in question were included on that list. On January 15, 2014, the Complainant made a second request for information in accordance with Section 299 of the Act. In response to the second request, the City provided a list of valid sales that contained the following introductory statement; *"The following Table displays the sales that were used in the subject valuation model."* The three sales in question were not included on that list.

(3) The Respondent countered by asserting that the City did not use the three sales in the valuation of the subject, but chose at a later date to use them in defence of the subject assessment. As such, the City should not have been required to provide the sales in the Section 299 response. The City argued that the Complainant did in fact receive the sales in response to the initial 2013 request and was aware of their existence. Moreover, the City asserted that the sales were, in fact, contained in the city's initial disclosure that was prepared and submitted in accordance with section 8(2)(b)(1) of the Matters Relating to Assessment Complaints Regulation, and therefore the Complainant should have had ample time to research the sales and respond in a rebuttal document.

(4) The Complainant and the Respondent also called the Board's attention to the decision of the Court of Appeal of Alberta, Canadian Natural Resources Limited (CNRL) v. Wood Buffalo (Regional Municipality) 2014 ABCA 195, paragraph (19) which states, in part; *"The central issue on appeal is whether the CARB reasonably interpreted s.9(4) by allowing evidence which defends an assessment on a different basis to that disclosed in response to a s.299 request."* In paragraph (20) it states *"The central purpose of taxpayer information rights is to provide taxpayers with information about the preparation of their tax assessments. In deciding whether to make a complainant and, if so, on what grounds, the taxpayer must know what it can rely upon....."* Reliance is defeated if the Municipality is permitted to defend a tax assessment on a basis different from that disclosed before the complaint was brought.

(5) The Board considers the situation before it to be analogous to the CNRL decision quoted. Furthermore, from a layman's point of view, it seems reasonable for a person to

conclude that the three sales in question must have been faulty if they were included in the first list of valid sales, and then excluded from the final, presumably more refined, list that was actually used in the valuation. This comment reflects the comment by the Alberta Court of Appeal in the 2014 CNRL decision. Certainly, no reasonable person would have expected the sales to "crop up" in the defence.

(6) It seems incongruous that the City would not use the same data to defend an assessment as the data that it used to prepare it. To do otherwise seems to contravene the principle of natural justice that Section 299 was intended to protect.

(7) Finally, the Board recognizes that the Complainant probably had ample time to consider the three sales and address them in rebuttal prior to the actual hearing. However, Section 299 of the Act makes no exceptions because of "time" and this Board will also make no exceptions.

(8) The Board finds that Section 299 has not been adhered to by the Respondent City in the manner intended by the legislation and excludes the three sales from the Respondent's evidence.

Property Description:

(9) The subject is a multi tenant warehouse, located in the Deerfoot Business Centre in NE Calgary. The building contains 118,402 square feet (s.f.) of rentable space, in three units. The building was built in 1997, and is classified as a class "B" building. The assessable land area is 6.40 acres. Site coverage is 42.49 per cent.

Issues:

(10) The property is currently being assessed by the sales comparison approach. It is the Complainant's position that properties such as the subject are most often bought and sold for investment purposes and are therefore best valued by income capitalization. The Complainant also applied a sales comparison test of value. The Complainant did not put forward any argument or discussion on equity.

(11) The current assessment reflects a rate of \$121.65 per s.f. The Complainant contends that that rate is not equitable with similar properties, and that the rate does not properly reflect market values.

(12) The Complainant also argues that the subject property sold in March, 2011, at a time adjusted selling price of \$14,128,380.

Complainant's Requested Value: \$12,470,000 or \$14,120,000

Board's Decision:

(13) The assessment is reduced to \$14,120,000.

Legislative Authority, Requirements and Considerations:

(14) This Board derives its authority from section 460.1(2) of the Act.

(15) Section 2 of 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"

(16) 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."

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

(18) The Board notes that the assessment has increased from \$14,130,000 in 2013, to \$14,400,000 in 2014.

Position/Evidence of the Parties

(19) In support of the income calculations, the Complainant submitted a capitalization rate study that contained ten sales comparables that were analysed to derive a capitalization rate. The Complainant's conclusion from the analysis is that a rate of 7.00 per cent is appropriate. The Complainant also relied on third party reports to support the capitalization rate conclusion.

(20) The Complainant submitted ten comparables that were used to derive typical market rents. According to the Complainant, the rents used were typical rents applicable to the time of sale for each comparable. That assertion was not disputed by the Respondent.

(21) For the remaining capitalization inputs, the Complainant relied on third party reports, and a single sale on Aero Drive that was used in support of the Complainant's adopted vacancy rate of 5.0 per cent. The Respondent objected to the use of the comparable, on the grounds that airport related property is not the same as typical warehouse space, and is treated differently in the marketplace. The Complainant did not disagree.

(22) The Complainant incorporated operating costs of \$3.00 per s.f. into the income capitalization calculations. These costs are unsupported in the evidence presented.

(23) The Complainant submitted two comparable sales, including the time adjusted selling price of the subject. During testimony, the Complainant stated that, in his opinion, the time adjusted selling price of the subject was the best indication of value.

(24) In the evidence submission, the Respondent states "a. *Sale of the property itself is one of the best indicators of value.*"

(25) The Respondent submitted five sale comparables, three of which the board has excluded from evidence. The remaining two comparables are the same as the Complainant's comparables, including the sale of the subject property.

(26) The Respondent also submitted four equity comparables that supported the current

assessment, or an amount close to the current assessment. In this regard, the Board notes that the current assessment is within two per cent of the time adjusted 2011 selling price.

Findings and Reasons for Decision:

(27) Neither party offered any market evidence that would lead the Board to a conclusion other than the existing assessment, or the 2011 selling price. In this regard the Complainant referred the Board to the "Acton" decision of the Court of Queen's Bench, 2005 ABQB 512, in which it states;

"it seems to me to be 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 is this case, there are neither changes in the market nor to the property in the interval, must be very compelling 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."

(28) This Board is of the opinion that the key phrase in the Acton decision is *"where.....there are neither changes in the market nor to the property in the interval...."*. It is a commonly accepted fact that Calgary has a fluid real estate market where property values are either increasing or decreasing at any given time. However, except for the time adjustment, neither party provided any evidence of any market changes since the 2011 sale of the subject.

(29) Both parties essentially agreed that the 2011 time adjusted selling price is the best indication of market value for the subject, and the Board also agrees.

DATED AT THE CITY OF CALGARY THIS

2

DAY OF September, 2014.

Presiding Officer



Jerry Zezulka

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

NO.	ITEM
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| 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 74337P/2014			Roll No. 009003096	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Warehouse	Market Value	Sales Comparison	Selling price as value