



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:

**IAN VINER,
(represented by Altus Group), COMPLAINANT
and**

The City Of Calgary, RESPONDENT

before:

**M. CHILIBECK, PRESIDING OFFICER
D. MORICE, BOARD MEMBER
R. KODAK, 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 2014 Assessment Roll as follows:

ROLL NUMBER: 068200690

LOCATION ADDRESS: 124 – 17 AV SE

FILE NUMBER: 74510

ASSESSMENT: \$2,540,000.

This complaint was heard by the Composite Assessment Review Board (Board) on 22nd day of July, 2014 in Boardroom 3 on Floor Number 4 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- *D. Chabot, Agent of Altus Group*

Appeared on behalf of the Respondent:

- *C. Chichak, Property Assessor of the City of Calgary*

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

- [1] Neither party raised any objections to any member of the Board hearing the subject complaint
- [2] Neither party raised any procedural or jurisdictional matters.

Preliminary Matter:

- [3] At the outset of the hearing the Respondent identified that some pages of the Complainant's rebuttal should be removed. The Board decided that the best time to do deal with this matter would be prior to hearing the presentation of the rebuttal (C2).
- [4] Prior to hearing the rebuttal, both parties agreed to remove/redact the following pages.
 - 1. Pages 28 to 47 inclusive of Exhibit C2.

Property Description:

- [5] The subject property is a developed parcel of commercial land with 15,397 square feet (sq. ft.), designated City Centre Mixed Use (CC-X) and improved with one, Class C, two-storey office/retail building, constructed in 1954. The building has 5,322 sq. ft. of office area and 3,065 sq. ft. of retail area and 2,736 sq. ft. of retail area below grade level for a total building area of 11,123 sq. ft.
- [6] The subject is located in the Beltline Community on 17 AV between Centre St and 1st ST located in the southeast quadrant of the City of Calgary.

Issues:

- [7] The Complainant identified the matter of the assessment amount under complaint on the complaint form and attached a schedule listing several reasons (grounds) for the complaint. At the outset of the hearing the Complainant identified the following issues:
 - 1. The subject property should be assessed on its capitalized income value.
 - 2. The subject property assessment should be adjusted to reflect the damage caused by the June, 2013 flood.

Complainant's Requested Value: \$1,600,000.

Board's Decision:

[8] The Board Confirmed the assessment at **\$2,540,000.**

Legislative Authority, Requirements and Considerations:

[9] The Composite Assessment Review Board (CARB) derives its authority from Part 11 of the Act:

S.460.1(2): Subject to section 460(11), 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 described in subsection (1)(a).

[10] For purposes of the hearing, the CARB will consider Part 9, Division of the Act:

S.293(1) In preparing the assessment, the assessor must, in a fair and equitable manner,

(a) apply the valuation and other standards set out in the regulations, and

(b) follow the procedures set out in the regulations

[11] The Matters Relating to Assessment and Taxation Regulation (MRAT) is the regulation referred to in section 293(1)(b) of the Act. The CARB consideration will be guided by MRAT, Part 1, Standards of Assessment, Mass Appraisal:

S.2 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

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

Assessment Background:

[12] The subject property is located in Beltline District 8 (BL8) and assessed as vacant land using the direct sales comparison method at a rate of \$165 per sq. ft. of land area for an assessment of \$2,540,000.

[13] The subject property was valued on its income value at \$1,752,016 and because the land value is greater than the income value, the 2014 assessment was set at \$2,540,000.

Position of the Parties**1. Income Value versus Land Value****Complainant's Position:**

[14] The Complainant argued that the subject property should be valued at its actual use, that being a two-storey office/retail building, not at its land value. There is no demand for office space in the subject's area and therefore no new development of office property.

[15] The Complainant argued that the Respondent should have done a highest and best use study of the subject property that would meet the following criteria.

"The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value"

[16] The Complainant asserted that if a highest and best use analysis were done for the subject property, it would fail because it would not meet the test of being "financially feasible". Therefore the highest and best use is the current use as an office/retail property and therefore should be valued by the capitalized income method.

[17] The Complainant valued the subject property on the income method by applying typical Class C factors for a value of \$2,080,000 less an adjustment for flood damage of \$471,723 for a requested assessment of \$1,608,277, truncated to \$1,600,000.

[18] In rebuttal, the Complainant challenged the Respondent's post facto sales information (R1 P40 & 41). Three of the four sales are not located in the same market area as the subject. One sale is post facto to the assessment year of 2013 and three sales in the assessment year are post facto to the valuation date of July 1.

Respondent's Position:

[19] The Respondent argued that their practice is to assess property at the greater of its improved value or land value and this is supported by board decisions as recent as 2014.

[20] The Respondent provided their value calculation on the income method and land value for the subject property at \$1,752,016 and \$2,540,505 (R P21) which shows the land value is greater than the income value and therefore the 2014 assessment reflects the highest valuation.

[21] The Respondent provided four Calgary CARB decisions, 75837, 73972, 75824, and 76794, regarding 2014 property assessments of similar property supporting their position of using the higher of the income value or the land value.

[22] The subject land was valued at \$165 per sq. ft. of land area (R1 P21) and the Respondent provided a chart showing the respective land rates for each of the beltline market zones with BL 8 at a rate of \$165 per sq. ft.

[23] The Respondent supported the land rates for BL2, BL5 and BL8 of \$165 per sq. ft. with an analysis chart showing four sale comparables which have a median rate of \$166 per sq. ft. Three of the four sales are in BL2 and one sale is in BL8.

Board's Reasons for Decision:

[24] The Board is persuaded by the Respondent's argument and evidence that the subject's value is its land value and finds the improvements do not contribute any value to the land.

[25] The Board accepts that the land value acts as a threshold value. As in this case, the income valuation of the subject is below its land value and therefore the land value represents the market value of the property.

[26] Established valuation theory is based on the premise that if the improvements of a property are not capable of producing a capitalized income value that is greater than the value of the land, then the land value represents the market value of the property.

[27] Even though the Board is not bound by previous Board decisions, the Board finds the many Board decisions persuasive on this issue and finds no convincing evidence from the Complainant to make a contrary decision in this case.

[28] Even though contested by the Complainant, the Board notes the one land sale in BL8 which sold at \$158 per sq. ft. and finds this sale supports the subject's assessed rate of \$165 per sq. ft. The Complainant did not provide an analysis of land sales to support their contention to change the assessed rate.

2. Flood Damage**Complainant's Position**

[29] The Complainant provided pictures of the subject property showing the effects of the June, 2013 flood and supplied a copy of a letter from property owner stating the cost for remediation work for the building was \$253,723 and for the restoration work was \$218,000 for a total of \$471,723 and argued this amount should be deducted from the valuation of the subject.

[30] The Complainant provided a comparable property, which suffered the 2013 flood damage, showing that a "flood damage adjustment" was given and asserted that the subject should also be given an adjustment likewise.

[31] Several residential comparables were provided showing that the assessments were adjusted for the damage caused by the 2013 flood and a chart analysing the sale prices in relation to the 2014 assessment. The Complainant calculated the average difference between the adjusted sale price and the 2014 assessment at 19.42% and attributed this to the "flood adjustment"

Respondent's Position

[32] The Respondent provided four post facto sales to show that the 2013 flood did not impact the sale prices. Three sales in BL2, TA1 and BL3 (R1 P40) in the assessment year and post facto to the valuation date sold at \$230, \$236 and \$278 per sq. ft. One sale (R1 P41) in BL8 post facto to the assessment year sold at \$1,000,000 versus its 2014 assessment of \$681,500. The Respondent argued this supports the position that the subject does not warrant an adjustment for 2013 flood damage.

Board's Reasons for Decision

[33] The Board accepts that the subject property was affected by the 2013 flood.

[34] The Board does not accept the Respondent's argument and evidence that the post facto sales support the position the subject does not warrant a flood adjustment. Of the three sales in the chart in Exhibit R1, page 40, only one (a BL2 sale) falls within the BL2, BL5 & BL8 Land Rate Study. The Board is not persuaded to accept one sale to demonstrate the market was not affected by the 2013 flood.

[35] The 4th post facto sale in Exhibit R1, page 41, is in BL8 and post facto to the assessment year. The property is improved with one three-storey, residential dwelling constructed in 1910, converted to an office building. It is assessed at its land value and the chart shows a "Flood Adjustment?, To Land", which the Board finds unusual on the understanding the Respondent does not apply a flood damage adjustment to properties assessed at land value. The Respondent was not able to clarify whether a flood adjustment was or was not applied. Therefore the Board placed little weight on this sale in making its decision.

[36] In light of the Complainant's contentions that two sales were negotiated several months prior to the registration date of the land transfer date demonstrates to the Board it is unreasonable to use the sales as indicators of post-flood market values.

[37] The Board was of the understanding that flood damage adjustments were not given to those properties which were assessed at land value, however in this case the Respondent's sale post facto to the assessment year identifies a column as "Flood Adjustment - To Land", this appears to indicate that an adjustment was given in this instance, and if so, should apply to other similar properties.

[38] In this case, no cost breakdown was provided by the Complainant to identify what was repaired and therefore the Board is not persuaded to change the subject assessment accordingly.

DATED AT THE CITY OF CALGARY THIS 14 DAY OF AUGUST 2014.



M. CHILIBECK

Presiding Officer

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

NO.	ITEM
1. C1a	Complainant's Disclosure
2. C1b	Complainant's Disclosure
3. C1c	Complainant's Disclosure
4. R1	Respondent's Disclosure
5. C2	Complainant's Rebuttal

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.*

CARB Identifier Codes

Decision No. 74510P-2014			Roll No. 068200690	
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Office	Low-Rise	Sales/Income Approach	Land Value vs. Income Value & Flood Damage

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