



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:

Community Natural Foods Ltd. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER

J. Pratt, BOARD MEMBER

J. Mathias, 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:	067233908
LOCATION ADDRESS:	1003 – 11 ST SW
FILE NUMBER:	75069
ASSESSMENT:	\$8,930,000

This complaint was heard on 25th day of August, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *W. Van Bruggen – MNP LLP*

Appeared on behalf of the Respondent:

- *R. Ford – Assessor, City of Calgary*

Regarding Brevity

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None.

Property Description:

[3] The subject is a 29,871 square foot (SF) land parcel, improved circa 1978 with a 22,460 SF two-storey commercial building in the Beltline 4 (BL4) district of downtown Calgary. The site contains a "B" class building, and is located at the SW corner of 1003 – 11 ST SW and 10 AV SW. The subject was assessed using the market approach to value – "land value only" at a typical \$285 per SF, for a total assessment of \$8,930,000.

Issues:

[4] The Complainant raised the following issues:

- a) Was the subject incorrectly and inequitably assessed as "Land Value" instead of using the "Income Approach to Value", contrary to Section 289(1)(2) of the Act, and, Part 1 Section (2) of "Matters Relating to Assessment and Taxation Regulation" (MRAT)?
- b) What is the correct value per square foot to be applied when calculating the market value of the subject using the "Land Value Only" approach?

Complainant's Requested Value:

[5] The Complainant requested one of the following two values:

- a) \$7,182,000 based on land value only, using a rate of \$229 per SF, or,
- b) \$5,570,000 based on using an Income Approach to Value calculation

Board's Decision:

[6] The Board confirmed the assessment at \$8,930,000.

Legislative Authority, Requirements and Considerations:

[7] The Complainant referenced Section 289(1)(2) of the Act in his presentation. This Section states:

"289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

(2) 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 under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for that property."

[8] The Complainant referenced Part 1 of "MRAT" in his presentation. This Part states:

"Mass appraisal

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, and
- (c) must reflect typical market conditions for properties similar to that property."

Positions of the Parties**Complainant's Position:**

Issue [4] (a);

[9] The Complainant argued that the Respondent had violated Section 289(1)(2) of the Act and Part 1, Section (2) of MRAT when it assessed the subject because it allegedly ignored the onsite improvement and improperly used a "Highest and Best Use" analysis to assess it. He posed that the use of this technique implies that a property is likely to be imminently developed, which it is not. He argued that the City's methodology is inconsistent because it does not consider any onsite improvements, or the costs to remove them should the property be redeveloped. Moreover, he argued tenants have "rights", and there can be significant costs if an owner seeks to remove them. He posed that these factors were not considered by the City when it assessed the subject.

[10] The Complainant affirmed that the owner has no plans to re-develop the site, and to suggest that it is to be redeveloped, is speculative. He also argued that there are no current Development Permits, either applied for or issued for the site, all of which demonstrates that the Respondent has erred in the methodology presumably used to assess it. He noted that the improvement on the subject was occupied with tenants as of December 31, 2013. Therefore, he argued, the subject should have been assessed using the Income Approach to Value methodology and not the Land Value Only approach.

[11] The Complainant argued that Section 289(1)(2) of the MGA and Part 1 (2) of MRAT requires the respondent to consider the onsite improvements as of December 31, 2013 when preparing an assessment, and the Respondent has ignored this factor. Therefore he considered the Respondent to be in violation of the identified parts of the MGA and MRAT.

[12] The Complainant provided the Board with his own calculation of value using the "Income Approach to Value" methodology. He suggested that many of his inputs to the calculation (e.g rent; cap rate; op costs; non-recoverables; vacancy rate; etc) were "typical" values taken from the City's market studies (for each variable), which he then applied to his calculation. The Complainant identified and carefully explained his Income Approach to Value calculations on pages 8 and 55 of his Brief C-1. The Complainant concluded that the assessed value of the subject should be reduced to \$5,570,000.

[13] The Complainant provided three City Property Assessment Summary Reports for three separate properties which he used as examples to illustrate that the City was being inconsistent in its assessment of Beltline properties. He identified an improved BL4 property at 1215 – 14 AV SW, noting that it was assessed as "Land and Improvement" at \$720,000, notwithstanding its land value alone is calculated to be \$927,960 at a typical \$285 per SF.

[14] The Complainant also identified a BL4 property at 803 – 15 AV SW and similarly argued that its land value of \$3,716,000 at \$285 per SF is significantly greater than its assessed land and improvement value of \$1,950,000. The Complainant provided similar arguments for a Royal Bank property at 1313 – 10 AV SW. The Complainant concluded therefore that these three examples demonstrate that the City is inconsistent in its application of methodologies used to assess properties in the Beltline district and this is inequitable.

[15] The Complainant provided a lengthy inventory of vacant land parcels in the Beltline. He argued hypothetically that if all of these parcels were brought to the market at the same time, the value of the Beltline lands as a whole, would decline dramatically. Therefore he reiterated that the City's approach to valuing the subject, and indeed other Beltline improved and unimproved lands, is a flawed and inequitable methodology which does not consider the actual market dynamics at play there.

Respondent's Position:

Issue [4] (a);

[16] The Respondent clarified that he had not used the "Highest and Best Use" technique at all when assessing the subject. He clarified that by departmental Policy, he was required to, and had in fact conducted two evaluations on the subject, and indeed all similar properties in all of the Beltline. One evaluation is conducted using the Income Approach to Value, and the second using the Land Value Only approach. He clarified and confirmed that whichever valuation method produces the highest value is therefore the one used for assessing a beltline property. He clarified that the department has consistently used this approach for some time, particularly since several Composite Assessment Review Board (CARB) Decisions had criticized it for not doing so.

[17] The Respondent clarified that initially he prepared an assessment for the site using the "Income Approach to Value" methodology – but using different, and more applicable "typical" value inputs from recent City studies than those "typical" City inputs used by the Complainant. He argued that the Complainant had misinterpreted certain City data, some intended for beltline zones other than BL4.

[18] The Respondent further clarified that according to Policy, he prepared a second assessment evaluation of the subject on the basis of its marketable land value. This evaluation relied on selected recent valid beltline market land sales which he provided in considerable detail to the Board. He clarified that detailed studies by the department of these valid market sales, led to conclusions that \$285 per SF is an appropriate land rate for properties similar to, and located similarly to the subject in Beltline 4.

[19] The Respondent noted that his second "land only" valuation led him to conclude that the value of the site as "land" was greater than its value as determined by the income approach that he had previously calculated. Therefore, and also pursuant to departmental Policy, this value (\$8,930,000) was assigned to the subject as its assessed value. He clarified that previous

CARB decisions had posed that a "willing seller would not likely sell his property for less than the land's market value", and therefore this methodology was endorsed by the Boards. The Respondent provided relevant sections of legislative authority in the Act and MRAT for the City's use of this methodology.

[20] The Respondent also clarified that by legislation under the Act and MRAT, it is required to use Mass Appraisal to assess properties pursuant to certain mandated principles – all of which were applied in assessing the subject. Moreover he noted, the methodologies used by the City are subject to annual review by Alberta Municipal Affairs. Therefore, the Respondent argued, the City did not violate Sections 289(1)(2) of the Act or Part 1 (2) of MRAT as alleged by the Complainant, since it was clear that the Income Approach valuation the Complainant calculated (\$5,570,000) did not reflect market value. Hence the land value of \$8,930,000 was correctly applied by the Respondent as the subject's assessment.

Board's Reasons for Decision:

[21] With respect to Issue [4] (a) the Board finds that;

- a) the Complainant has misinterpreted Sections 289(1)(2) of the MGA and Part 1 Section 2 of MRAT, and accordingly the Respondent has not violated these legislative Sections as alleged by the Complainant. On the contrary, the Board finds that the Respondent has employed methodologies to assess the subject which are not only permitted under legislation, but also endorsed and encouraged by many Municipal Government Board and CARB decisions. ARB Decision 0522/2010-P states in part:

"The legislation and attendant regulations do not identify the valuation approach chosen by an assessment authority to prepare assessments for non-residential property.....Assessors routinely use any and/or all of the three generally accepted valuation approaches to property assessment (i.e. the direct sales comparison approach, the capitalized income approach or the cost approach.) to establish values."

- b) the Respondent did not use a "Highest and Best Use" methodology to assess the subject, as was erroneously assumed by the Complainant, and argued before the Board. Therefore, the Board finds that the Complainant's fundamental argument regarding this point alone, is unsupported and invalid. The Board considers the following from CARB 73278P-2013 to be relevant:

"The Board accepts that the Respondent did not engage in a highest and best use analysis to come to its assessment of the subject property. The Board finds that the Respondent used the direct sales approach to valuation using the vacant land rate. Based on the evidence and argument presented to the Board during this hearing, the Board accepts that the vacant land value acts as a threshold value. Where, as here, using the income approach to valuation of a property produces an assessed value below the market value of the land if it were treated as vacant, then the bare land value represents the market value of the property."

- c) it is satisfied from the detailed evidence presented during the hearing that the data produced from the Respondent's studies is relevant and valid. The Board is also satisfied that this data was consistently, correctly and appropriately applied to methodologies used to assess the subject and similar properties using Mass Appraisal, thereby leading to a correct, fair, and equitable assessment for the subject.
- d) the methodology employed by the Respondent to value the subject has been repeatedly endorsed by various decisions of the Municipal Government Board (MGB). The Respondent referenced CARB 0522/2010-P; CARB 73278P-2013; CARB 2536/2011-P; CARB 1612-2011-P; CARB 2434/2011-P; and CARB 1838/2011P which support this principle.

Complainant's Position:

Issue [4] (b);

[22] The Complainant argued that the base rate of \$285 per SF used by the Respondent to calculate the subject's assessment, should be reduced to \$229 per SF. The Complainant's argument was based on his review and analysis of nine Beltline market land sales relied upon by the Respondent to produce the subject's assessment. He noted that the Respondent had combined market sales from BL3 and BL4 but should have used only BL4 sales to assess the subject. He argued that the Respondent's methodology produced erroneous and inflated values that were then used to improperly assess the subject and similar properties.

[23] The Complainant provided a matrix containing six of the Respondent's nine market sales, all of which were from BL3. He calculated that the six sales demonstrated a median value of \$323.79 per SF and an average value of \$313.66 per SF. He reiterated that the subject had been assessed using \$285 per SF. He argued therefore that while the subject is in BL4, it is over-assessed because the Respondent used higher BL3 market values in doing so. He also provided the Commercial Edge information sheets, and Alberta Land Titles documents for each of the sales.

[24] The Complainant provided a second matrix containing the remaining three of the Respondent's nine vacant land market sales, all three of which were from BL4. These three sales demonstrated a median value of \$229.13 per SF and an average value of \$192.72 per SF. The Complainant reiterated that the City has therefore erred by combining the market sales from BL3 and BL4 because a higher per SF value results. He argued that as one "moves outward" (east, south, and west) in the beltline from the City core, property values decrease. The Complainant argued therefore that the subject should be assessed using \$229 per SF, which is the median value of the Respondent's own sales data for BL4 properties.

Respondent's Position:

Issue [4] (b);

[25] The Respondent argued that in the current assessment cycle, there was a distinct lack of market sales in the Beltline overall, and certainly none in BL6 and BL7 that the City could use to help it determine land values for assessment purposes. He clarified that the City decided therefore to combine the market sales of BL3 and BL4 to identify a broader range of land values that could reasonably be applied to other beltline properties for assessment purposes. He clarified that the City has consistently followed this practice from year to year, whenever it was faced with a limited number of transactions in any sector of the city.

[26] The Respondent noted that while some BL3 market sales appeared to be higher in value than those in BL4, nevertheless he considered that on a broader scale, the range of sale values from both BL3 and BL4 reasonably and fairly represented beltline market values. He suggested that "all sales contribute to market value".

[27] The Respondent argued that even if one discards the highest and lowest sale values from his list of nine property sale comparables, the resulting value is still \$285 per SF. He also argued that three of the market sales used by the City to assess the subject, but rejected by the Complainant, are on the same block and same street as the subject, and therefore cannot be ignored. The Respondent noted that the median value of these four sales was \$281 per SF. He argued that the three BL4 sales relied on by the Complainant are nearly five blocks away further south from the subject, and the Respondent considered them to be less relevant.

[28] The Respondent noted that the Complainant had offered no independent market data of his own, but instead relied upon selectively re-worked aspects of the City's data. The Respondent also provided the RealNet and Alberta Land Titles documents for each of his nine sales, all to support their indicated market values. He further provided copies of previous Calgary Composite Assessment Review Board (CARB) decisions which he argued support his position in this appeal.

Board's Reasons for Decision:

[29] The Board finds from the evidence and argument presented, that the Respondent has not erred procedurally by combining nine valid market sales from BL3 and BL4 in order to identify a reasonable and representative range of values for assessment purposes. The limited number of market sales in the Beltline area generally, effectively dictates that this procedure be implemented under the Mass Appraisal process that the Respondent is mandated by legislation to use.

[30] The Board finds that the Respondent has not erred in applying the \$285 per SF median sale value of its nine market sale transactions to the subject, because analysis of the nine market sales presented into evidence before the Board, supports this value.

[31] The Board finds that the detailed market evidence (RealNet; Commercial Edge; Land Titles documents) provided to it by both parties in this hearing, confirms that the nine property sales relied on by both parties are valid and representative market sales, and support the \$285 per SF used to assess the subject.

[32] The Board finds that the Respondent has consistently and equitably applied the \$285 per SF value to other similar and comparable properties in BL3 and BL4 when assessing those properties.

[33] The Board finds that of the nine market sales advanced by the Respondent, three are in BL3 in close proximity to the subject, whereas the three sales relied upon by the Complainant are remote from the subject. The Board concurs with the Respondent that the property sales in close proximity to the subject are more relevant to valuing the subject, and also display a median value of \$281 per SF which supports the \$285 per SF assessed.

[34] The Board finds that the Complainant provided insufficient information to demonstrate to the Board that the assessment is not correct, fair, or equitable.

DATED AT THE CITY OF CALGARY THIS 18th DAY OF September 2014.



K. D. Kelly,
Presiding Officer

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

NO.	ITEM
1. C-1	Complainant Disclosure
2. R-1	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 Administrative Use Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	commercial	Assessed as vacant land	market value	Process, Equity and land value