



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:

Enjay Holdings Alberta LTD. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER

R. Deschaine, BOARD MEMBER

K. Farn, 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: | 068134501 |
| LOCATION ADDRESS: | 344 – 12 AV SW |
| FILE NUMBER: | 75837 |
| ASSESSMENT: | \$2,880,000 |

This complaint was heard on 11th day of June, 2014 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:

- *W. Van Bruggen – MNP LLP*

Appeared on behalf of the Respondent:

- *L. Wong – Assessor, City of Calgary*
- *C. Chichak – 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] The Complainant withdrew his proposed Rebuttal document.

Property Description:

[3] The subject is a 10,500 square foot (SF) land parcel, improved circa 1956 with a single-storey commercial building in the Beltline 3 (BI 3) district of downtown Calgary. The site contains a "C" class building with a total 6,965 SF of office space (1,326 SF is below grade), and is located at 344 – 12 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 \$2,880,000. A 1,120 SF area leased to the Royal Thai Consulate-General is tax exempt. This portion of the building was assessed - erroneously according to the Respondent, on the Income Approach to value.

Issues:

[4] The Complainant raised the following two issues:

- a) Was the subject incorrectly assessed as "Land Value" instead of using the "Income Approach to Value", contrary to Section 289(1)(2) of the Municipal Government Act (MGA), and, Part 1 Section (2) of "Matters Relating to Assessment and Taxation Regulation" (MRAT)?

- b) Was the subject assessed inequitably compared to other similar properties in the Beltline 3 area?

Complainant's Requested Value: \$1,130,000.

[5] The Complainant requested an assessed value of \$1,130,000 instead of the assessed \$2,880,000.

Board's Decision:

[6] The Board accepted the recommendation of the Respondent to reduce the assessment to \$2,750,000 which includes a revised exempt portion of \$236,500.

Legislative Authority, Requirements and Considerations:

[7] The Complainant referenced Section 289(1)(2) of the MGA 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 3 (a);

[9] The Complainant argued that the Respondent had violated Section 289(1)(2) of the MGA 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 the subject is not. He clarified in questioning from the Respondent that he was not directly challenging the City's \$285 per SF land value used in assessing the subject, but rather that the land value technique should not have been used at all, the Income Approach to Value methodology should have been used instead.

[10] The Complainant affirmed that the owner has no plans to re-develop the site. 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 presented marketing data from CBRE Richard Ellis for 18 existing and proposed "AA" and "A" and Mixed-Use buildings in downtown and beltline Calgary to suggest that a considerable amount of new office/retail space would be coming onstream in 2014, and therefore the subject's owner may or may not consider re-developing his site. Therefore, he argued, the subject should have been assessed using the Income Approach and not the Land Value 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 largely ignored this factor. He noted that the Respondent assessed the exempt portion of the building using the Income Approach, and questioned why all of the building was not done in this manner. 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 for the entire building. He noted that some of his inputs to the calculation (e.g rent; op costs; vacancy rate; etc) were "typical" values taken from the City's market studies (for each variable), which he then applied to his calculation. He also referenced the rent roll for the subject, arguing that it supports lower input values for the lower rents he espoused. He also identified one market sale which he used to support his suggested Capitalization Rate (cap rate) of 7.25% used in his calculation. He confirmed that he had applied certain other "typical" City values, gleaned from selected City market studies, to his calculation.

[13] The Complainant identified his calculations of alternate assessed value on pages 78 (taxable portion) and 79 (exempt portion) of his Brief C-1. He clarified that he changed City "typical" values for upper floor office rents; office vacancy rates, operating costs; office below

grade rents; and the Cap Rate (6% to 7.25%) because his own examination of the City's data determined that alternate rates were warranted. The Complainant ultimately concluded that the assessed value of the subject should be reduced to \$1,130,000.

Respondent's Position:

Issue 3 (a);

[14] The Respondent clarified that indeed the City had erred in assessing the Exempt portion of the subject using the Income Approach to Value methodology. He offered that the correct assessment of the subject – using the land Value Approach for the entire site, should be \$2,750,000 (exempt portion included). He noted that the value of the exempt portion would now increase to \$236,500 from \$112,500 – however, the overall value of the site should be reduced to \$2,750,000 from the assessed \$2,880,000.

[15] The Respondent confirmed that he visited the site on May 28, 2014. He clarified that he had not used the "Highest and Best Use" technique at all when assessing the subject. He noted 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 Direct Sales Comparison (Land Value) approach.

[16] The Respondent 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 since 2010, particularly since several Composite Assessment Review Board (CARB) Decisions had criticized it for not doing so. He referenced several CARB decisions, and in particular CARB 176/2010-P, to emphasize this principle.

[17] The Respondent clarified that initially he prepared an assessment for the site using the "Income Approach to Value" methodology using "typical" value inputs from recent City studies for the BL3 market zone. He argued that the subject is under-improved as per allowed zoning, and its current income stream is insufficient to value the subject (for assessment purposes) at market value. Therefore a "land only" evaluation was completed. This resulted in the current assessed value of \$2,880,000.

[18] The Respondent challenged the Complainant to identify exactly where in the MGA or MRAT it states that the City cannot choose its methodology. In support of his position he referenced ARB 0522/2010-P. He also questioned the Complainant as to how an intent to develop (or not) affects land value under this, or a "Highest and Best Use" methodology? In support of his position, the Respondent referenced CARB 73278P-2013 on page 49 of R-1.

[19] 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 him to conclude that \$285 per SF is an appropriate land rate for properties similar to, and located similarly to the subject in Beltline 3. He argued that the Complainant's methodologies would produce a value that was less than land value in the market, and this was improper.

[20] The Respondent noted, and the Complainant confirmed, that the latter did not necessarily object to this \$285 per SF value, which resulted from an analysis of the City's market sales in both BL3 and BL4. He noted that while the Complainant had previously suggested considering only BL3 sales, (separating out BL4 sales) the BL3 sales would have produced a typical land value of \$320 per SF – much higher than the \$285 per SF applied by the City in calculating the assessment before the Board.

[21] The Respondent noted that the "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 previous CARB "directives" and departmental Policy, this value (\$2,880,000) 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. On pages 34 – 36 inclusive of R-1, the Respondent provided relevant sections of the legislative authority in the MGA and MRAT as support for the City's use of this methodology.

[22] The Respondent also clarified that by legislation under the MGA 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 MGA or Part 1 (2) of MRAT as alleged by the Complainant, since it was clear that the Income Approach valuation he calculated (\$1,820,000) did not reflect market value. Hence the land value calculation of \$1,940,000 was applied as the subject's assessment.

[23] The Respondent also clarified that the Complainant's use of the assessment for the Nellie McClung Home at 803 – 15 AV SW as a demonstration that the City assesses properties for less than market, is seriously flawed. He noted that the McClung site is a formally designated Historic Site whose "air rights" were sold to an adjacent property, and its development rights are curtailed by its formal designation. Therefore, its value in the marketplace is diminished as a result, and it cannot be compared to the subject, or properties similar to the subject.

Board's Reasons for Decision:

[24] With respect to Issue 3 (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 extensively 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) While the Complainant prepared an Income Approach to Value valuation for the subject to support his position on this point, he confirmed that he relied on "typical" values gleaned from City studies because he was unable to conduct his own studies. The Board accepts the position of the Respondent that the Complainant has misinterpreted several of the City's valuation studies, and used incorrect City values in his Income Approach to Value calculation of alternate value for the subject. This erroneous calculation appears on Page 78 of C-1. Therefore the Board finds this evidence from the Complainant to be unreliable.
- d) The Board 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 correctly and appropriately applied to methodologies used to assess the subject, thereby leading to a correct, fair, and equitable assessment.
- e) The Complainant's inputs and resulting calculations relied on a Cap Rate derived from one market sale whereas the Respondent's Cap Rate was a "typical" value derived from several market sales of comparable properties, all of which were presented to the Board. The Board considered the Respondent's "typical" Cap Rate value to be more representative of market activity in the beltline. The Board therefore placed little weight on the Complainant's calculations of alternate value using his "sole-sourced" Cap Rate.

- f) The Board, having carefully examined the Respondent's valid market sales, concurs that the \$285 per SF land value is an accurate reflection of land value for BL3 and BL4 and the subject. The Complainant, in large part, did not entirely dispute this \$285 per SF value. Moreover, the Board was not persuaded by the Complainant's arguments as to the relevance of the \$320 per SF BL3 land value he calculated from his data because it was calculated using the area of the improvement rather than the land.
- g) 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.
- h) The Complainant provided insufficient information to demonstrate to the Board that the assessment is incorrect.

Complainant's Position:

Issue 3 (b);

[25] The Complainant argued that the City has in fact assessed similar beltline properties for less than apparent market value and this is inequitable. He provided City Assessment Explanation Supplements for several beltline properties he considered were good examples, one being 803 – 15 AV SW (Nellie McClung House) to support his position on this point. He also offered details on two market sales he argued were sold for less than market value. Therefore, he argued, the Respondent's argument that he must not assess the value of properties less than market value is erroneous.

[26] The Complainant also argued that the assessment of the subject is not equitable when compared to other similar properties in BL3. On page 22 of C-1 he provided a matrix of seven "C" Class properties from BL3, 4, and 5. He divided the building (improvement) area only (not the land) into the assessment for each property, and concluded from examination of the results that an average value of \$235.92 per SF and a Median value of \$247.25 per SF indicated the subject was inequitably assessed.

Respondent's Position:

Issue 3 (b);

[27] The Respondent argued that the Complainant's equity analysis is flawed and the results could not be compared to the assessed value of the subject because the latter had been valued on the basis of the market value area of the land – not the improvement. He also clarified that while the subject has been identified as being of potential historic significance by the Beltline Heritage Group on their website, it has not been formally evaluated or designated by the City. Therefore, it is not in the same "developmentally restrictive" category as the McClung House.

[28] The Respondent clarified that of the seven equity comparables used by the Complainant, none have exempt spaces in them like the subject, therefore they are basically not comparable to the subject. He also argued that all of the equity properties used by the Complainant are in fact valued at more than their land value, not less, and therefore there is no inequity. He provided evidence to this effect on page 61 of his Brief R-1. He also noted that in any group of property sales, some parcels will sell for more, and some for less and that is why a group of sales (a range) is selected when doing an analysis of them.

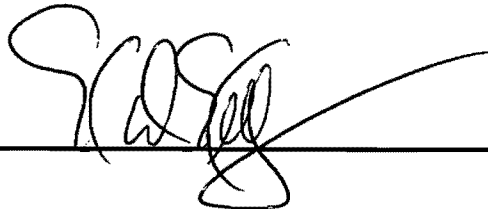
[29] The Respondent argued that the subject is therefore equitably assessed.

Board's Reasons for Decision:

[30] With respect to Issue 3 (b) the Board finds that;

- a) It concurs with the Respondent that the Complainant's equity analysis is flawed because the analysis depends on the square foot area of the improvement rather than the square foot area of the land. The land and its market value is a constant whereas the improvement is not. Therefore the results of the Complainant's equity analysis cannot be readily compared in any meaningful way to the Respondent's equity comparables.
- b) The Respondent provided information and argument in his Brief R-1 (page 61) to demonstrate to the satisfaction of the Board that the Respondent does not, as a matter of Policy, assess properties at less than market value. Therefore the Board considers the subject's assessment to be fair and equitable.
- c) The Board concurs with the Respondent that the subject is assessed equitably with other similar properties which have been assessed in the same manner as the subject in BL3. The Complainant's information demonstrates that a value less than market value would be produced using his data, and this would produce a resulting value that would be inequitable with other similar properties.
- d) The Complainant provided insufficient information to demonstrate to the Board that the assessment is not fair and equitable.

DATED AT THE CITY OF CALGARY THIS 11th DAY OF July 2014.



K. D. Kelly
Presiding Officer

APPENDIX “A”

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

| NO. | ITEM |
|--------|------------------------|
| 1. C1 | 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 | Beltline offices | Offices | market value | Equity and Assessment parameters |