

Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Elks Club of Calgary, COMPLAINANT
(as represented by Wilson Laycraft)***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
J. Lam, BOARD MEMBER
A. Maciag, 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	047040001
ADDRESS	2502M 6 Street NE
2014 ASSESSMENT	\$7,270,000
FILE No.	76295

This complaint was heard on 23rd day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *B. Dell, Agent\Legal Counsel – Wilson Laycraft*
- *S. Lavoie, Witness – General Manager, Elks Golf Club*

Appeared on behalf of the Respondent:

- *B. Brocklebank, Assessor – City of Calgary*
- *H. Chan, Legal Counsel – City of Calgary*

Procedural or Jurisdictional Matters:

[1] Neither party objected to the Board as constituted to hear and decide on this matter.

[2] During questioning of the Respondent by the Complainant, the Complainant asked the Respondent to provide the detailed calculation of the City's golf course quality rating for the subject property. The Respondent stated that they provided the total score used to prepare the 2014 Assessment (896 points as indicated on page 41, Exhibit R1) and a sample chart showing the categories considered and values available for each category (page 64, Exhibit R1). The actual calculation of the quality score is not in evidence. The Respondent stated that they did not intend to put the detailed calculation in evidence because they consider this a coefficient. The Respondent relied on Section 27.3 of Matters Relating to Assessment and Taxation Regulation (MRAT) which states that coefficients need not be provided to tax payers. The Board notes that "coefficient" is defined in Section 27.1(a) of MRAT as "a number that represents the quantified relationship of each variable to the assessed value of a property when derived through a mass appraisal process". The Board was not persuaded to compel the Respondent to provide that information. The Board notes that a tax payer has a number of avenues to obtain such information during the assessment review period, or under a Section 299 request for information. If the classification of the golf course quality is in dispute, this is best resolved by a site visit where both parties can make decisions on each category mindful of the actual development in place. The purpose of questions or cross-examination is to clarify and understand what the Respondent presented. While the Board acknowledges the Complainant's ability to present its case via direct evidence and via questions of the Respondent, seeking new information via questions (information that was consciously not disclosed by the Respondent) also raises the issue of the introduction of new evidence, and whether that evidence was properly disclosed under Section 8 of Matters Relating to Assessment Complaints Regulation (MRAC) (and whether the Board then has the ability to hear that evidence subject to Section 9 of MRAC).

Preliminary Matters:

[3] No preliminary matters were raised by either party.

Property Description:

[4] The subject property is a golf course located in northeast Calgary on the escapement and within the Nose Creek valley, referred to at the Elks Club. The golf course was originally constructed in the 1920's. The Elks purchased the club in 1967. The property has an assessed area of 180 acres, with the actual area being about 181 acres. The land is leased from the City of Calgary via a "Ground Lease" signed in July 2011 for a period of fifty years, with a provision to have the lease rate renegotiated every ten years. The lease rate was renegotiated in July 2013 for a rate of \$141,199.50 per year for the period July 1, 2011 to June 30 2016. As part of this lease agreement, "not less than fifty (50%) per cent of the playing time shall be available to members of the public". The buildings are owned by the Elks Club

[5] The golf course consists of eighteen holes, a driving range, a 12,126 square foot (SF) club house (lockers, pro shop, restaurant, banquet facilities and offices) and seven other small buildings used primarily for storage. The length of the course is up to 7037 yards and is rated as a Class 4 golf course by the City. The restaurant and banquet facilities in the club house are used year round. In mid 2000's, a portion of the slope on which the club house is located slumped by about a foot. This slumping episode also caused the relocation of one green. A slope stability study was done by Golder Associates and a dewatering program was instituted to reduce the risk of further slumping.

[6] The 2014 Property Assessment is done using cost approach. The land value is based on sales of similar properties, with a land value of \$15,000/acre applied to the subject property carried over from previous Board Decisions. The building characteristics used to prepare the Marshall & Swift cost estimates are based on the information provided in the building permit application, updated as necessary (in response to new information provided to the Assessment Department). The improvements associated with the golf course proper are based on Marshall & Swift cost estimates for golf courses and are a function of the quality score or rating of the course. The table below sets out a summary of the details of the assessment as shown on the 2014 Assessment Explanation Supplements.

Size	\$/Acre	Land Value	Value of Course Dev.	Assessed Value of Improvements	2014 Assessment
73.261 Hac 180 acres	15,000	\$2,700,000	\$3,954,086 (\$219,671/hole)	Club house \$433,427 Other \$90,380 Driving Rge \$96,000	\$7,270,000

The assessed value of the golf course improvements receives a 40% depreciation over the Marshall & Swift cost estimate because of the seasonal use, based on previous Board Decisions and the policy of the municipality. The buildings receive an additional 50% depreciation over the Marshall & Swift cost estimate, apparently to recognize the age of the building and the slope stability issues.

Issues:

[7] The Complainant's position is that the 2014 Property Assessment is too high. The Complainant presented an Income Approach calculation to demonstrate the correct assessment. The Complainant also challenged the Assessment calculation based on the quality score assigned to the golf course development by the City and used as the basis of the Marshall & Swift cost calculation..

Complainant's Requested Value:

\$2,800,000

Board's Decision:

[8] The 2014 Property Assessment of \$7,270,000 is confirmed.

Legislative Authority, Requirements and Considerations:

[9] 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.

[10] The Board notes that the words "fair" and "equitable" are not defined in the Act or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard applied to all properties in that property category.

Issue 1: Is the Income Approach a better indicator of the market value of the subject property?**Complainant's Position:**

[11] The Complainant took the position that a negotiated lease rate between unrelated parties for the subject property contemporary with the valuation date is the best indication of the market value of that property. Three court decisions indicating that a recent sale of a property is the best indicator of the market value of a property were presented in Exhibit C1 supporting this position. The Complainant argued that the concept of a recent sale applies to a recent lease rate and therefore using this value in an Income Approach is superior to the Cost Approach used by the City in preparing the 2014 Assessment.

[12] The Ground Lease signed in July 2001 was presented in Exhibit C2. A letter from the City of Calgary to the Elks Club dated July 23, 2013 confirming the lease rates for the next ten year period commencing on July 1, 2011 is also presented in Exhibit C2. Mr. Lavoie, the General Manger of the golf club, testified that the negotiations spanned a period of some two years and were conducted by a committee of club members, with information on lease rates provided by Colliers International. Mr. Lavoie was not a member of the negotiating committee nor party to the negotiations, although he was keep apprised of the negotiations. The Complainant characterized the new lease rate as being an indication of the market value of the property, and therefore could be used to derive the market value of the subject.

[13] The Complainant applied a capitalization rate of 5% to the current annual lease rate of \$141,199.50 to calculate the requested assessment of \$2,800,000 (truncated). The 5% capitalization rate was characterized as being very conservative, therefore a reasonable estimate of the market capitalization rate.

[14] The Ground Lease agreement presented did not include Schedule A, which apparently defines the "demised lands". Rather, the Complainant discussed the Ground Lease Agreement and interpreted the "demised lands" to include the land and the golf course development, but not the buildings. The buildings were referred to in the Ground Lease Agreement as "Improvements".

[15] It is the Complainant's position that the Ground Lease refers to the demised lands, therefore the lease rate of \$141,199.50 includes the land and golf course development. The capitalized value of \$2,800,000 therefore reflects the value of the entire property except for the buildings.

[16] Mr. Lavoie testified that the club house was old and in poor condition, having mould issues, certain materials that contain asbestos, and just being generally poorly constructed. The slope above the club house has slumped and there is still a concern related to the potential for further slumping of the slope which may result in damage to the club house. He stated that in his opinion, the club house contributed nothing to the value of the property. The club is apparently exploring options to replace the club house, but that will not occur for some years.

[17] In response to questions, Mr. Lavoie stated that the club house was needed for the operation of the golf course and that the golf course would not be functional without the club house.

Respondent's Position:

[18] The Respondent presented assessment literature and previous Board Decisions that indicated that the Cost Approach is an appropriate method to assess the value of a golf course. Because few golf courses sell, there is a paucity of market data required to do an Income Approach or a Sales Comparison Approach assessment calculation.

[19] The Respondent stated that there was no evidence presented to support the 5% capitalization rate proposed by the Complainant, nor any evidence that the lease represents a market rate.

Findings of the Board

[20] The Complainant presented an interpretation of the Ground Lease agreement to establish that the Elks Club was leasing the land and the golf course improvements, and that the lease rate reflects the value of these components of the property. The Board notes that the term "demised lands" used in the agreement is defined in Schedule A of this agreement, but that Schedule A was not included in evidence (although Schedule B, C and D were included and were referenced during the hearing). It would seem that including Schedule A would have been a more direct way to establish what "demised lands" mean and therefore establish what the annual lease payment includes.

[21] The determination of a capitalization rate is a key factor in applying an Income Approach calculation. The resulting capitalized value is very sensitive to the capitalization rate used. The Board notes that no capitalization rate study was presented. The Complainant justified the 5% capitalization rate as being conservative therefore appropriate. The Board does not accept the application of an arbitrary capitalization rate; a rate that is not based on or supported with some market evidence. The Board notes that the valuation standard is market value, therefore it is imperative that an Income Approach calculation be supported with market data.

[22] The Complainant presented MGB Decision *McKenna Enterprises and the City of Calgary* (Roll No. 161003371 and 200175669) in Exhibit C1 to demonstrate that the Board can determine a capitalization rate in the absence of other evidence and apply that rate in an Income Approach calculation. In the McKenna and City of Calgary Decision, that Board stated that the only reliable information before it was the lease rate for a parcel of crown land used for a driving range (a lease that could be cancelled with six months notice). In this situation, the Board notes that it has other valuation data, therefore need not arbitrarily determine a capitalization rate value.

[23] The Income Approach estimate of the market value of the subject property as presented by the Complainant fails on the basis that the capitalization rate is not derived from or supported by market data. The proposed 5% capitalization rate is a purely arbitrary value, therefore the resulting capitalized value (the requested assessment) has no relationship to market value.

[24] The Board also notes that the Income Approach presented by the Complainant did not recognize any value for the buildings, specifically the club house. While Mr. Lavoie's testimony is that the club house has no value, the Board notes that he has no appraisal or valuation expertise. Furthermore, Mr. Lavoie stated that the course is not functional without a club house, which suggests that the club house must have some value. This is another weakness in the Income Approach as presented by the Complainant, but this point is moot as the Income Approach fails due to the capitalization rate issue discussed above.

Issue 2: Is the Cost Approach used by the city to prepare the 2014 Assessment correct?

Complainant's Position:

[25] The Complainant did not dispute the value assigned to the land component in the City's Cost Approach calculation of \$2,700,000 (\$15,000/acre) summarized on page 31, Exhibit R1. The Complainant presented Mr. Lavoie's testimony to support the position that the club house has no value. In the closing statement, the Complainant stated that the other seven storage buildings have some value and therefore the requested assessment should be rounded up to \$2,900,000.

[26] The Complainant presented Mr. Lavoie as a witness, who is the current General Manager and formerly the golf professional at the subject golf course. Mr. Lavoie testified that the course should be rated as Class 3 not Class 4. Mr. Lavoie did not present any specific details regarding the course, nor compare the characteristics of the course to any rating system to support that opinion. The Complainant noted that the course was rated as Class 3 until some time in late 2000's when its quality rating was changed to Class 4. Mr. Lavoie was not sure exactly when this occurred nor the circumstances as to why and how the rating was changed (he was the golf professional at the time and therefore not involved in this aspect of the business).

[27] Via questions of the Respondent, the Complainant attempted to deduce the score assigned to each of the factors in the Golf Course Quality Index (page 64, Exhibit R1) to support the City's index score of 896 points. This score results in the subject course being rated as a Class 4, which then attracts certain cost rates used in the Marshall & Swift Cost estimate. The Respondent did not reveal any of the details regarding how the subject was scored and how the score of 896 was achieved. The Complainant did not present its own detailed ranking of the course.

Respondent's Position:

[28] The Respondent presented information on the subject course taken from the subject's website, that indicated the amenities of the course, the length of the course, slope ratings, and that thirteen holes were remodelled by Mr. Les Furber, who is apparently a renowned golf course architect. Some of this information is directly used in the calculation of the quality rating index.

[29] The Respondent took the position that the detailed quality score index for the subject property is a "coefficient" used in the assessment model and therefore was not prepared to provide the details of the quality scoring.

[30] In response to questions from the Board, the Respondent stated that when a new course is built or at the request of an operator of an existing course, an assessor will do a detailed inspection of the property, including calculating a quality score. The Respondent noted that the City has not receive a request for an inspection of the subject course for a number of years.

Findings of the Board

[31] The Complainant did not dispute the \$2,700,000 valuation of the land component in the Cost Approach.

[32] The Complainant did not dispute the specific cost calculation of the club house, other than to take the position that the club house has no contributory value. The Board notes that the City applies an additional depreciation of 50% to the value calculated by the Marshall & Swift Cost software to recognize undefined additional depreciation, to arrive at an assessed value of \$433,427 for the club house. The Board was not presented with any specific details regarding issues with the club house other than the building is old and not well constructed. Mr. Lavoie indicated in his testimony that the club recently had an engineering report done regarding the structural integrity of the building, but this was not presented in evidence. Mr. Lavoie stated that the club house is required for the golf club to function, therefore the Board concludes that the club house must have some value. The Board was not provided with any evidence by the Complainant to support the position that the club house has no market value or any evidence indicating the market value of the club house is less than the assessed value. The only quantification of the value of the club house is the 2014 Assessment, which the Board finds is the best evidence it has.

[33] Regarding the seven small storage/outbuildings, in its Closing Statement, the Complainant agreed they have some value and that the requested assessment of \$2,800,000 should be rounded up (instead of down as was the case) to \$2,900,000 to recognize some value for these buildings. The Board notes that the cost of these buildings as calculated in the Marshall & Swift Cost estimates is small, and that the City applied a further 50% depreciation to these buildings to arrive at the assessed value. The Board finds that the value assigned to these seven buildings in the Assessment is correct.

[34] The Complainant disputed the value of the cost assigned to the golf course development, via the quality rating or score assigned by the City. The Board notes that this score determines the cost rates assigned by the Marshall & Swift Costing software, and therefore the assessed value is sensitive to this rating. The Board understands that the rating is meaningful because it determines the range of cost rates used based on the Class of the course. A score between 725 and 1000 (maximum score available) results in a Class 4 rating. The actual score is also used to determine the quantum of the cost rates within each cost range factor. The Respondent provided little detail concerning the score of 896 assigned to the subject course in the evidence disclosed. The Board finds that considerable factual (i.e. number of holes, length of course, number of bunkers) and qualitative (i.e. course conditions, elevated tees and greens) inputs are needed to do the quality score. These are best done as part of a site inspection, with both parties present to discuss and determine the rating especially for the qualitative inputs.

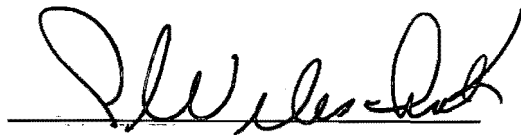
[35] The Complainant presented Mr. Lavoie's opinion as to the general quality of the golf course, and the Board accepts this as the opinion of an expert. However, this opinion was not supported by a quality score using the City's criteria or by any other quantitative scoring system. Without some quantitative evidence, the Board is not able to determine if the City's quality score of 896 is correct, and if not correct, what the correct score should be. Without quantification, the Board is not in a position to make any adjustments to the Assessment, if it finds that the City's quality score is incorrect. In other words, regardless of whether the details of the City's quality score were in evidence, the Board could have found that it preferred the Complainant's quality score and made the appropriate adjustment to the assessment, but no such quantitative evidence was presented by the Complainant or its expert.

[36] The Complainant also raised the issue of cost to cure in questioning the Respondent and in the Closing Statement, but the Board did not find this issue to be well developed by the Complainant. The Board understands that the cost to cure the slope stability issue is estimated at \$2,000,000 (2007 Golder Report), but is not sure how this was to be applied in the Cost Approach calculation. Because this issue was not presented in any detail, the Board puts no weight on this evidence.

Board's Reasons for Decision:

[37] The Board does not accept the Income Approach calculation as presented by the Complainant, because the capitalization rate is arbitrary (there is no market support or justification for the 5% rate proposed). Regarding the calculation of the 2014 Assessment using the Cost Approach, the Complainant did not dispute the land value component, and seemed to agree with the cost assigned to the seven storage/out buildings. As the Complainant did not present any evidence to support the position that the club house has no value, the Board accepts the value assigned to the club house in the 2014 Assessment. The Complainant disputed the value assigned by the City to the golf course development, but did not provide any evidence as to the quantum of the correct quality score or value of the golf course development. Based on the evidence before the Board, the 2014 Assessment of \$7,270,000 is confirmed.

DATED AT THE CITY OF CALGARY THIS 13 DAY OF August 2014.



I. Weleschuk

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure – Legal Cases
2. C2	Complainant Disclosure
3. R1	Respondent Disclosure
4. C3	Complainant Rebuttal 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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Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Golf Course		Market value	Income Approach Cost Approach