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:

King George Masonic Temple (as represented by E. Corenblum), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
A. Wong, BOARD MEMBER
R. Cochrane, 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 2013 Assessment Roll as follows:

ROLL NUMBER:	**201833175**
LOCATION ADDRESS:	**2323 Osborne CR SW**
FILE NUMBER:	**70095**
ASSESSMENT:	**$1,630,000**

This complaint was heard on 5th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *E. B. Corenblum - Member, King George Masonic Temple*

Appeared on behalf of the Respondent:

- *M. Byrne - 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 the *King George Masonic Temple.* It is situated just east of Crowchild Trail and northwest of Richmond Rd SW on two residential-like lots – one pie-shaped, and the other more rectangular, in the residential community of Richmond. Together the parcels total 24,606 square feet (SF) or 0.56 acres (Ac). While the two parcels are separated by a civic public laneway, and appear to be two separately-titled lots, they were assessed in 2013 using the Cost Approach to Value as one parcel at $1,630,000. The Board was advised that in previous years the parcels were assessed separately.

[4] The northwesterly parcel – which appears to encompass two former pie-shaped residential lots fronting on Osborne CR SW, contains the Temple building. The Board was advised that the Temple building is a converted former church. The second parcel located immediately behind and south of it, is unimproved and used entirely for parking by the Temple patrons.

Issues:

[5] What is the correct assessed value of the subject given its Direct Control zoning which appears to restrict the use of the site?

Complainant's Requested Value:

[6] The Complainant requests an assessment of $500,000.

Board's Decision:

[7] The Board confirmed the assessment at $1,630,000.

Legislative Authority, Requirements and Considerations:

[8] Under the ***Municipal Government Act*** (MGA), the Board cannot alter an assessment which is fair and equitable.

[9] MGA 467 (3) states:

"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,

(b) the procedures set out in the regulations; and

(c) the assessments of similar property or businesses in the same municipality."

[10] The Board examines the assessment in light of the information used by the assessor and the additional information provided by the Complainant. The Complainant has the obligation to bring sufficient evidence to convince the Board that the assessment is not fair and equitable. The Board reviews the evidence on a balance of probabilities. If the original assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the Board will not alter the assessment. Within each case the Board may examine different legislative and related factors, depending on what the Complainant raises as concerns.

Positions of the Parties

(a) Complainant's Position:

[11] The Complainant argued that the market value of the subject is constrained by the current zoning on the site. He provided two copies of Bylaw 82Z89, being a Bylaw to amend City of Calgary Land Use Bylaw 2P80. He clarified that this is a Direct Control – DC bylaw written and passed by City Council specifically for the subject lands. He argued that according to section 1 of Bylaw 82Z89, the existing building on the subject is limited to only 3 uses – i.e. a church; a Masonic Temple; and meetings of the Calgary Historical Society. The balance of the

site is limited by the bylaw to off-street parking for only those three uses. Therefore he argued, by inference, the bylaw limitations restrict and diminish the market value of the site.

[12] The Complainant noted that while Section 1 of Bylaw 82Z89 is very specific in the number and type of permitted uses on the subject, the remaining sections of the bylaw reference "Development Guidelines" for Residential Districts – specifically the Permitted and Discretionary Use Rules of the R-2 Residential District of Bylaw 2P80. He argued that this section of the bylaw has created some uncertainty for the Assessor with respect to the City's assessment practices regarding the subject, and therefore incorrect annual assessments for it. He argued that the Assessor has compared the subject to other lands zoned R-2 (Low Density Residential) and this is incorrect because the Bylaw, in his view, directs otherwise.

[13] The Complainant argued that it is incorrect to compare the subject to R-2 lands and assess it accordingly for several reasons:

1. It has very limited access and egress;
2. It is an odd shaped parcel;
3. There is uncertainty over the land uses permitted;
4. The valuation should be based not on R-2 lands but "recreational" lands

[14] The Complainant argued that one cannot separate land "use" from land "value" and the Assessor has failed to do this in assessing the subject. He argued that there is no indication that City Council intends to amend the zoning on the subject to permit other uses on it. He noted that while the former use of the subject prior to the Temple was for a church, its current use is similar to a "recreational" use. Therefore it cannot be compared to either residential, commercial or industrial uses, but should instead be compared to recreational lands which have minimal value.

[15] The Complainant suggested that because the current structure on the site is older and exhibits a poor condition and configuration, its market value is impaired because costly and extensive renovations – "if permitted", would be required to accommodate uses other than its current "recreational" use.

[16] The Complainant argued that while the subject could be assessed using the Cost Approach – as the City has done in 2013, it will be difficult to depreciate the old building on the site which was built in 1957 and is about 56 years old. He argued that by using this assessment technique, the building would be depreciated by 100%. He suggested that the nature of the property and its advanced age dictates therefore that a lower assessment is warranted.

[17] The Complainant argued that while he has no specific market evidence to present in this hearing, and has "limited resources to research other properties", nevertheless the Masonic Temple, having debated the issue, considers that $500,000 is a more correct assessed value for the subject.

(b) Respondent's Position:

[18] The Respondent clarified that the subject has been assessed using the "Cost Approach to Value" valuation technique using the industry-standard and provincially-accepted Marshall and Swift (M&S) manual. She noted that the aged structure on the subject has been depreciated by 40% which is the maximum allowed under the M&S methodology. She noted that while the Complainant suggested that the depreciation should be 100% given its age and condition, the maximum permitted using M&S is 40%, and the subject was "coded" at that maximum value. The Respondent provided the detailed M&S "work sheets" to the Board and Complainant which clearly articulates the detailed inputs and calculations used by the Assessor to calculate the subject's assessment.

[19] The Respondent argued that other than suggesting that the value of R-2 lands should not be compared to the subject, and that the depreciation allowance for the building is insufficient, the Complainant has not challenged any of the City's M&S calculations as being incorrect. She noted that the Complainant has not provided any market sales, or assessment equity evidence to demonstrate precisely what the value of the subject should be in his view. She argued that while the Complainant suggests that the Temple members consider $500,000 to be a proper assessment, the Complainant has confirmed that that value is largely hypothetical and not based on any market evidence whatsoever.

[20] The Respondent argued that the provincially-mandated Mass Appraisal assessment process functions on the basis of valid market sales and market evidence in order to define fair market value for properties of all types throughout the city. She argued that as the Assessor for the subject, she has followed this process in assessing the subject, but the Complainant has not done so in his alternate estimate of value. Therefore, she argued, the Complainant's alternate extimate of value is without foundation and is unreliable.

[21] The Respondent argued that it is her understanding from researching the matter with City Planning Department representatives, that the subject "has always been zoned R-2 – Residential Low Density" in the City's Land Use Bylaw. She argued that in reading DC Bylaw 82Z89, the R-2 zoning on the subject was merely amended on a site-specific basis, specifically to allow the Masonic Temple to continue to operate there. She argued that this is contrary to the stated position of the Complainant.

[22] The Respondent argued that it was her understanding that should the Masonic Temple cease to exist there, and the lands sold for new development, the lands could be immediately developed for R-2 Low Density Residential uses, subject to the development criteria and "Guidelines" as defined in section 2 of Bylaw 82Z89. She clarified that she has relied on the City Planning Department's interpretation of Bylaw 82Z89. She also produced on page 10 of her brief R-1, a photograph of a Planning Department record showing the published "Land Use Guidelines" for the subject are "DC/R-2 – Residential One/two Dwelling"

[23] The Respondent presented a matrix containing fourteen time-adjusted market sales of R-2 (Residential Low Density) properties she considered comparable to the subject. She noted that the sizes of the parcels ranged from 3,903 SF to 12,382 SF, versus the subject's two lots having a combined 24,606 SF. She noted that the selling price values of these 14 parcels ranged from $47.11 per SF to $107.34 per SF with an average value of $84 per SF. She argued that the subject was assessed using only $52 per SF, which she considered fairly represented its current status.

[24] The Respondent argued and reiterated that while the Complainant has argued that the subject is over-assessed, he has provided no market evidence to support his request for the assessment to be reduced to $500,000. She also argued that the Complainant has provided no market evidence to demonstrate that the current R-2 zoning on the subject restricts its value in the marketplace. She reiterated that the subject is an R-2 zoned residential property which has value, and the Complainant has provided no market evidence to demonstrate that it does not.

[25] The Respondent argued that the onus is on the Complainant to demonstrate, using market and related evidence, that the assessment is incorrect and/or inequitable, and he has not met this onus. She offered that while it may be difficult, the Complainant has not provided any market evidence to compare the assessment of the subject, to the assessments or market values of other similar so-called "recreational" or "club" properties. In addition, she argued that while he has argued the point, the Complainant has provided no market evidence to demonstrate that the shape and the location of the subject impairs its market value. Consequently, she argued, in totality the "burden of proof" has not been met by the Complainant in this hearing.

[26] The Respondent requested that the Board confirm the assessment at $1,630,000.

Board's Reasons for Decision:

[27] The Board finds that the Respondent has correctly prepared the assessment for the subject using generally-accepted and provincially-mandated methodologies in concert with a select sample of valid market sales of properties zoned similar to but not identical to the subject for comparative land valuation purposes.

[28] The Board finds that the Complainant provided no market evidence to support his requested alternate assessed value for the subject of $500,000. The Complainant confirmed that the $500,000 alternate value he requested was entirely subjective and not based on any market evidence.

[29] The Board finds that the Complainant has not compared the subject to any other similar "recreational" or residential properties in the city, and has therefore prepared no alternate estimates of value which might have been forthcoming therefrom.

[30] The Board finds that it concurs with the Respondent that the Complainant erroneously relies on one specific section (i.e section 1) of Bylaw 82Z89 which he argues restricts the uses on the subject and hence its market value. The Complainant failed however to provide any market evidence to support this assertion.

[31] The Board finds that it concurs with the Respondent that when read in its entirety and in context, section 1 of Bylaw 82Z89 directs that the "existing" building on the site "on the date of passage of this bylaw" can only be used for three distinct purposes as defined in the section 1 of the Bylaw, and in concert with site development requirements in section 2. The Board agrees with the Respondent's conclusion however, that when/if the existing structure is removed, then important aspects of section 2 of Bylaw 82Z89 are applicable. Section 2, in part, establishes development criteria for R-2 one and two-family residential development – all of which has value that the Complainant disputes.

[32] The Board finds that it concurs with the Respondent that the subject, while zoned under Bylaw 82Z89 (DC R-2), has value in the marketplace. The Complainant provided no market evidence to demonstrate that it does not, or that its shape and location affect its market value.

[33] The Board finds that the time-adjusted market values of the Respondent's fourteen R-2 zoned residential market sale comparable properties, support the land value component in the Cost Approach to Value calculations prepared for the subject's assessment. The Complainant did not challenge the accuracy of any of the details specific to the fourteen market sales.

[34] The Board finds that the Respondent identified $84 per SF as a typical market value for R-2 land, but selected a lesser value of $52 per SF to assess the subject in the Cost Approach to Value calculations, thereby resulting in a lesser assessed value for the subject than would otherwise have been the case.

[35] The Board finds that the subject benefitted in the Cost Approach to Value assessment calculation prepared by the Respondent, by the application of the maximum depreciation allowance of 40% as defined in the Marshall and Swift Manual, for the existing building.

[36] The Board finds that the Complainant provided insufficient evidence to demonstrate that the subject is incorrectly, inequitably, or unfairly assessed.

DATED AT THE CITY OF CALGARY THIS 31 DAY OF July 2013.

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	Masonic Temple/Hall	Temple Hall and related parking	market value	Site-specific zoning affects value