



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:

ASI 17th Avenue Corp. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER

Y. Nesry, BOARD MEMBER

J. Kerrison, 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: 079123600

LOCATION ADDRESS: 1705 Macleod Trail SE

FILE NUMBER: 70581

ASSESSMENT: \$597,500

This complaint was heard on Thursday, the 11th of July, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *W. Van Bruggen*
- *G. Worsley*

Appeared on behalf of the Respondent:

- *D. Zhao*

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

No procedural or jurisdictional matters were raised before the Board during this hearing.

Property Description:

The subject property is a parcel of 3,558 square feet ("sq. ft.") located on the corner of 17th Avenue SE and Macleod Trail SE. There is a one-storey building on the property that was constructed in 1988. The building's floor area is 1,150 sq. ft., and it is accessible from both Macleod Trail and 17th Avenue.

Issues:

1. Did valuation of the subject property based on sales of vacant land result in an assessment that is excessive?
2. If the answer to the first issue is yes, what is the appropriate assessed value?

Complainant's Requested Values: Option 1: \$510,000 (based on a shape adjustment)
Option 2: \$400,000 (based on highest and best use)

Summary of the Complainant's Position

[1] The assessed amount is not reflective of correct application of the assessment range of key factors and variables, including location, parcel size, improvement size, land use, and influences. The assessed amount does not reflect the application of the income approach to value as a primary or secondary approach to value, nor does it reflect land use, economic characteristics, and physical characteristics. Further, the Respondent has failed to recognize negative influences that impinge on the subject property.

[2] The valuation model is not indicative of the correct relationship between the characteristics of the subject property as at December 31 of the assessment year, and their

value in the real estate market. The assessed amount is neither fair nor equitable relative to similar properties in the jurisdiction. Specifically, the assessed amount does not consider the location, zoning, building area, physical condition, or parking on the subject property. Sale comparables provided on the Respondent's website are not a comprehensive list of properties that sold between July 1, 2010 and July 1, 2012.

[3] The assessment does not account for atypical deficiencies in the subject property. In particular, the assessment shows no adjustment for the negative impact to the subject property's market value resulting from the shape of the parcel. The result is an assessment for the subject property that is neither fair nor equitable.

[4] The Complainant requests a shape adjustment for the subject property. Through use of the survey plan (C-1, page 9), it has been determined that the land component of the subject property is only 9.88 meters (32.4 ft.) in width, and 34.34 meters (113 ft.) in length. The subject property is presently zoned "DC 6Z2008" (C-1, pages 26 - 49), which requires a minimum of 1.5 meters (4.92 feet) of yard space for properties located off Macleod Trail. Because the property is 34.34 meters in length, that would result in 51.51 square meters (554 sq. ft.) of yard space.

[5] Further, the zoning requires that 30% of the property be landscaped, not including areas for setbacks. Since the area of the subject property is only 331 square meters (3,558 sq. ft.), when the 51.51 square meters of lawn and the 99 square meters (1,070 sq. ft.) for landscaping are subtracted, only 180 square meters (1,940 sq. ft.) are left for development (C-1, pages 7 & 8).

[6] Given the size of the subject property, there are severe restrictions on the kind of development that can take place on it. The Complainant is requesting a 15% negative site influence to be applied to the subject to account for the development restrictions. If a 15% negative shape influence were applied, it would reduce the assessment to \$510,000 (C-1, pages 10 & 12).

[7] The Respondent determines highest and best use of a property based on whether the value of the parcel as land exceeds the value of the parcel as currently developed. The problem is that this type of analysis fails to take into account whether or not the subject property can be developed any other way.

[8] The first consideration is that the land of the subject property is oddly shaped, and is only 3,558 sq. ft. in area. Given the requirements of the Land Use Bylaw, the developable area is even less. Although the DC zoning does allow an FAR of 5 for commercial development or an FAR of 8 for residential, it is unlikely that a developer could develop the site to these FARs given the developable area.

[9] MNP suggests two options. Option one recognizes that in view of the parcel size of the subject property and the requirements of the Land Use Bylaw, development potential is limited.

To account for this limited potential, MNP requests a shape influence factor of -15% be considered for the subject property, for an assessment of \$510,000.

[10] Option two considers the highest and best use for the subject property. Given the diminutive size of the parcel and the effect of the Land Use Bylaw, MNP is of the view that the subject property is already at its highest and best use, and should be valued as such. That is the first of MNP's suggested options for valuing the subject property. When the Respondent's income parameters are applied to the subject property, the value of the property becomes \$400,000 (C-1, page 13).

Summary of the Respondent's Position

[11] The question is this: what is the value of the subject property? The Complainant is suggesting that the valuation of the subject property should be derived by means of the income approach and assessed as a "C" class retail building, or be valued on the land sales approach but with a 15% negative influence adjustment for shape.

[12] The Respondent will provide land sales and other information that support the assessed \$160 per sq. ft. used to arrive at market value for vacant parcels as well as improved properties where the income approach does not reach land value, as in the case before us (C-1, pages 6 – 11).

[13] The Respondent will also review previous CARB decisions that deal with land valuation of improved properties, and provide examples of other small developed properties in the area that show that the size or shape of the subject parcel does not restrict what the site can be used for (R-1, pages 128 – 199).

[14] In response to the Complainant's contention that an income-producing property must be valued using the income approach, a sale of an improved property in the Beltline (1515 8th Street SW) sold for more than its assessed income value. When the direct sales approach using a vacant land rate is applied, the aggregate assessment is much more reflective of market value. Thus it is proven that purchasers have paid more for properties that their income generating potential at the time of sale.

[15] In sum, the improvement on the subject property is not the value-driver, thus the income from it cannot be capitalized to represent market value. The Respondent must assess properties at market value.

[16] The land use of the subject property is DC/CM-2 with a floor area ratio (FAR) of 5.0 for commercial development or an FAR of 8.0 for residential/mixed use development with bonus potential. This indicates that the maximum buildable improvement size is much greater than the size of the building on site.

[17] To lower the assessment of the subject property to the Complainant's requested value would create inequity with other commercial parcels, both improved and unimproved, and would set the assessment at an amount well below market value as of July 1, 2012.

The Complainant's Rebuttal

[18] At p. 6 of R-1 (the Respondent's evidence package), the sale of 1515 8 Street SW is tendered as proof that valuing property as vacant land better reflects the market value of the property. The Complainant has determined that the purchaser of 1515 8 Street SW also purchased all the other properties along that same block, and as such the Complainant believes that this was a motivated purchase, hence not indicative of market value.

[19] There is no indication that the owner of the subject property intends to redevelop the site over the course of next year. The Respondent says it must assess properties at market value, but MNP has found that the smallest comparable sale in the Respondent's BL 2 Sales Analysis is 25,240 sq. ft. in area (R-1, pages 33 – 133), seven times larger than the area of the subject property at 3,558 sq. ft.

[20] At pages 23 to 25 of R-1, the Respondent has provided three examples of small lots with buildings that have been valued based on the improvement, not as land. The Complainant is requesting the same treatment for the subject property.

[21] In rebuttal to p. 32 of R-1, MNP has determined that the sale of 209 12 Avenue SE is a non-arms length that occurred between two affiliated parties, and should not be considered as part of the land sales analysis. Eliminating this sale reduces the average to \$147.39 sq. ft.

[22] In further rebuttal to p. 32 of R-1, the sale of 214 11 Avenue SW has been included to indicate that the assessed BL 2 land rate is correct. MNP has determined there was a building permit taken out in 2011 for the development of a commercial project with an estimated value of \$36,699,880. Clearly, there was more involved in the sale of this property than just land value, and because of this the sale is not indicative of market value.

Board's Decision in Respect of Each Matter or Issue:

[23] The Board finds it odd that the Respondent's Assessment Brief (R-1, pages 23 to 26) includes a property, 744 4th Avenue SW, that appears to be valued based on income, and two properties valued by the sales approach i.e., 223 17th Avenue SE and 1501 Macleod Trail SE. Unfortunately, it is not clear whether the properties used in the sales approach were vacant parcels or improved properties.

[24] The assessable land area of 223 17th Avenue SE is 4,132 sq. ft., and the assessable land area of 1501 Macleod Trail SE is 3,373 sq. ft. These areas compare well with the land area of the subject property at 3,558 sq. ft. The rest of the Respondent's comparables have land areas that range from 25,000 to 84,087 sq. ft.

[25] The Board finds that due to the small size of the subject property combined with the strictures imposed by the Land Use Bylaw, redevelopment of the subject property in a way that would reach an FAR of 5 would be difficult, if not impossible. It is much more likely that the subject property would be redeveloped in combination with an adjacent parcel or parcels, but there is nothing of that nature on the horizon.

[26] In the view of the Board, the limited potential of the subject property is best recognized by applying a negative 15% shape factor. With respect to the Complainant's option two, the Board is not persuaded that the building on the subject property comprises highest and best use.

The Board's Decision:

[27] The assessment of the subject property is reduced to \$510,000.

DATED AT THE CITY OF CALGARY THIS 11th DAY OF October 2013.



Presiding Officer

For Administrative Purposes

<u>Property Type</u>	<u>Property Sub-type</u>	<u>Issue</u>	<u>Sub-Issue</u>
Retail	Stand Alone	Income/Sales Approach	Land Value

Exhibits

C-1, Complainant's Evidence Submission.

R-1, Respondent's Assessment Brief.

C-2, 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.