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:

1017400 Alberta Inc. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

C. Duxbury, PRESIDING OFFICER
T. Usselman, BOARD MEMBER
B. Jerchel, 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:	**080104292**
LOCATION ADDRESS:	**1915 4 ST SW**
FILE NUMBER:	**72467**
ASSESSMENT:	**$1,640,000**

This complaint was heard on the 22nd day of August, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *A. Izard*
- *K. Fong*

Appeared on behalf of the Respondent:

- *D. Satoor*

Board's decision in respect of procedural or jurisdictional matters:

[1] The parties had no objection to the panel representing the Board as constituted to hear this complaint. No jurisdictional matters were raised at the outset of the hearing.

[2] On a point of procedure, the Respondent requested that all evidence and argument presented at the hearing of file number 73278 on August 21, 2013 be carried forward to this hearing in relation to the first issue identified below. The Complainant had no objection to the Respondent's request.

[3] On another point of procedure, the Complainant requested that all evidence and argument presented at the hearing of file number 72465 on August 19, 2013 be carried forward to this hearing in relation to the second issue identified below. The Respondent had no objection to the Complainant's request.

[4] Having not provided disclosure in advance of this hearing in relation to the second issue identified below, the Respondent advised that they were unable to request that the evidence presented at the hearing of file number 72465 on August 19, 2013, be carried forward to this hearing. However, the Respondent requested that any argument made based on previous Board and Alberta court decisions presented at the hearing of file number 72465 on August 19, 2013 be carried forward. The Complainant had no objection to the Respondent's request.

[5] The Board agreed to the parties' requests and proceeded to hear the merits of the complaint.

Property description:

[6] The subject property is a "C" quality retail building located at 1915 4 ST SW. It is situated in the Beltline District of the City's downtown core. The building has an assessed area of 3,000 square feet (sf) and the year of construction is 1969. It is situated on a 7,483 sf parcel of land.

[7] At the outset of the hearing the parties noted that the subject property is one of two bays that comprise the strip mall known as Aberdeen Market. Because Aberdeen Market straddles a property line, the City has assigned two roll numbers for the property, one for each bay. To assist the Board in understanding the layout of Aberdeen Market, the Land Title Certificate for the subject property with a schematic attached was entered as Exhibit C4. The schematic in Exhibit C4 shows the subject property shaded in green. Exhibit C5 consists of the Land Title Certificate and schematic for the second bay of Aberdeen market.

[8] The parties explained that 3/7 of the property is assessed as though the land is vacant, and 4/7 of the property is assessed using the income approach to value. Both parties agree that the entire property should be consolidated into one roll number and assessed using the same

approach to value, but disagree on which approach should be used. The property that is the subject of this complaint is the 3/7 of Aberdeen Market assessed by the City as though the land were vacant.

Issues:

[9] This complaint involved two main issues:

1. Was the City correct in treating the subject property as vacant land to determine the assessed value of the property, or should the City have used the income approach to valuation?
2. If the determination of the first issue is no, and the City should have used the income approach to valuation, is the capitalization rate applied by the City in the income approach to valuation of stand alone retail properties in the Beltline District correct?

Complainant's requested value: $1,280,000

Board's decision: The Board confirms the assessment at **$1,640,000**.

Legislative authority, requirements and considerations:

[10] The Board's authority is found in the *Municipal Government Act*, and the associated Government of Alberta legislation and regulations. Within this framework the following provisions of the Act and the Matters Relating to Assessment and Taxation Regulation were considered by the Board to be of particular relevance.

Municipal Government Act

1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

289(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.

293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,
(a) apply the valuation and other standards set out in the regulations, and
(b) follow the procedures set out in the regulations.
(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.
(3) 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.

Matters Relating to Assessment and Taxation Regulation (AR 220/2004)

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.

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

6 (1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

Position of the parties:

Complainant's position on approach to valuation

[11] Although the Complainant's written submission indicates that they take issue with the City's determination that the vacant land value of the subject property is $220 per sf [C1, p. 9], the Complainant did not make this argument at the hearing or provide evidence to support a different vacant land value. Rather, the Complainant took the position that the City was wrong in treating the subject property as vacant land to determine the assessed value of the property, because doing so resulted in an assessment that exceeds the market value of the property. The Complainant believes that the proper approach to valuation of the subject property is the income approach, which is the approach that was used to value the other 4/7 of Aberdeen Market occupied by Candela Restaurant.

[12] In the Complainant's view, by treating the land as vacant and without improvements the City used the "highest and best use" value of the subject property without first considering the test that must be applied before a highest and best use value may be considered. The Complainant argued that the highest and best use for a property must be legally permissible, physically possible, financially feasible, and maximally productive. The Complainant's position is that by failing to go through the highest and best use analysis, the City has failed to prove that the highest and best use of the subject property is vacant land.

[13] The subject property is a vacant retail property the owner is actively trying to lease [C1, p. 21]. The Complainant believes that the recent renovations and upgrades to the subject property undertaken by the owner with the intention to lease out space in the building, supports their contention that the highest and best use of the subject property is as a retail property. The Complainant argued that the subject property should be assessed in the same way as Candela Restaurant was, which was the on the basis of the typical retail income generated by B class stand alone retail properties in the Beltline District. The Complainant took the Board through its calculations for valuing the subject property using the income approach on Exhibit C1, page 17, using the same rent rate of $30 per sf used by the City for Candela Restaurant.

Respondent's position on approach to valuation

[14] The Respondent acknowledged that no highest and best use study was undertaken for the subject property prior to the 2012 assessment. That said, the Respondent argued that it did not engage in a highest and best use analysis to come to its assessment. The Respondent used a market approach to value.

[15] The Respondent noted that the while the City is legislated to derive fair and equitable assessments which reflect market value, the City is not legislated to apply any one particular approach to value to arrive at that market value [R1 from 73278, p. 7]. For the subject property the Respondent used the direct sales approach to valuation using the vacant land rate of $220 per sf [R1, pp. 17 and 24-25]. The Respondent advised that this particular approach was used because the income approach to valuation of the subject property produces an assessed value below the market value of the land if it were treated as vacant.

[16] The Respondent explained that where the bare land value estimate for a property exceeds the value of the property derived using the income approach, then the bare land value represents the market value of the property. The Respondent argued that the vacant land value acts as a threshold value. If using the income approach to valuation produces a higher assessed value, the income approach will be used. However, the income approach will not be used if it produces an assessed value below the vacant land value. The Respondent argued that it is only logical that a willing seller will be hesitant to sell their income producing property for less than its bare land value [R1 from 73278, p. 9]. Accordingly, it follows that a purchaser will pay more for a property than its income generating potential if the bare value of the land as a development property is higher.

[17] The Respondent provided evidence to support their determination that the bare land value for the subject property is $220 per square foot [R1 from 73278, pp. 76-174], referred the Board to excerpts from a number of previous decisions [R1 from 73278, pp. 7-12], and supplied copies of CARB 2294/2012-P, CARB 2296/2012-P, CARB 1129/2012-P, CARB 1392/2012-P, CARB 1260/2012-P, CARB 2293/2012-P, CARB 0801-2011-P, CARB 2536/2011-P, CARB 1838/2011-P, CARB 1612-2011-P, CARB 2620-2011-P, CARB 1974/2011-P, CARB 2382/2011-P, CARB 1973/2011-P, CARB 2486/2011-P, CARB 2372/2011-P, and ARB 1191/2010-P. The Respondent read aloud some passages from these decisions as well as some passages from the secondary sources supplied by the Complainant during the hearing of file number 73278 on August 21, 2013, and the Board has considered them.

Board's findings and reasons for decision

[18] The Board acknowledges that there are previous Assessment Review Board decisions that both support and contradict the position taken by each party at this hearing. Although they may provide guidance, the Board is not bound by these decisions and must make its determinations based on the evidence and argument presented at this hearing, just as previous Boards did in coming to their determinations.

[19] The Respondent is bound by legislation to derive fair and equitable assessments which reflect market value. The Respondent may do so using whatever methodology is appropriate in the circumstances.

[20] 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 the 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.

[21] The Board acknowledges that the subject property is a retail property that is being actively marketed for lease. The Board also acknowledges that the subject property has undergone recent renovations and upgrades. However, the fact that a property with improvements is generating income does not automatically mean that the income approach to

value must be used to determine the assessed value of that property. If that were so, even a minimal improvement that generates a small amount of income could be used to drive down the assessment of a property. This would lead to properties with minimal improvements being assessed lower than a neighbouring property sitting as vacant land. This result would be inequitable.

[22] The Respondent used the direct sales approach to valuation of the subject property using the vacant land rate of $220 per sf, a value that was not in dispute during the hearing before this Board. The Board accepts that this approach was used because the income approach to valuation of the subject property produces an assessment below the market value of the land if it were treated as vacant. The Board finds that the City was correct in treating the subject property as vacant land and using the direct sales approach to determine the assessed value of the property.

[23] Because the Board's determination on the first issue is that the City was correct in treating the subject property as vacant land to determine the assessed value of the property, it is not necessary to go into the second issue. However, the Board notes that its decision CARB 72466P-2013 details the parties' positions on the issue of whether the capitalization rate applied by the City in the income approach to valuation of stand alone retail properties in the Beltline District is correct. Decision CARB 72466P-2013 also sets out the Board's findings and the reasons for its decision that that there was insufficient evidence provided by the Complainant to convince the Board to deviate from the capitalization rates of 5.50% and 5.25% applied by the City respectively to assessments of A and B quality retail properties in the Beltline District.

Board's decision:

[24] The Board confirms the assessment at $1,640,000.

DATED AT THE CITY OF CALGARY THIS 30 **DAY OF** September **2013.**

Cathryn A. Duxbury

Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure – Evidence Submission
2. C2	Complainant Disclosure - Beltline Retail Capitalization Rate Analysis
3. C4	Land Title Certificate for subject property and drawing
4. C5	Land Title Certificate for remainder of Aberdeen Market property and Drawing
5. R1	Respondent Disclosure
6. R1 from 73278	Respondent Disclosure
7. C3	Complainant 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.

FOR ADMINISTRATIVE USE:

Appeal Type	Roll Number	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary CARB	080104292	Retail	Stand Alone	Development Land	
Calgary CARB	080104292	Retail	Stand Alone	Income Approach	Capitalization Rate