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:

Libtel Investments Ltd., Aviva Holdings Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER
J. Kerrison, BOARD MEMBER
D. Morice, 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:	**048054118**
LOCATION ADDRESS:	**1904 19 Street NE**
FILE NUMBER:	**72684**
ASSESSMENT:	**$1,020,000**

This complaint was heard on 22nd day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *K. Fong*

Appeared on behalf of the Respondent:

- *C. Yee*
- *N. Domenie*

Procedural or Jurisdictional Matters:

[1] The Board noted the file includes a completed copy of the Assessment Review Board Complaint form and an Assessment Complaints Agent Authorization form.

[2] Neither party objected to the members of the Board, as introduced, hearing the evidence and making a decision regarding this assessment complaint.

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

Property Description:

[4] The subject property is located on a corner lot at 1904 19 Street NE, in the Vista Heights District. The lot is 21,313 square feet (SF) with a 2,100 SF stand-alone retail building constructed in 1987. The property is currently occupied by a Mac's Convenience Store. The property had a gas bar in front of the existing building, but the gas bar was removed about six years ago. The 2013 Assessment is $1,020,000 as calculated using the Sales (land only) Approach .

Issues:

[5] The Complainant raised the first three specific issues. The Respondent raised the fourth specific issue below.

1. Is the subject property equitably assessed? The subject should be assessed using the Income Approach similar to other freestanding retail properties in NE Calgary.
2. What is the correct rental rate to use in the Income Approach calculation?
3. What is the correct capitalization rate to use in the Income Approach calculation?
4. Does the 2013 assessment reflect the market value?

Complainant's Requested Value: $700,000

Board's Decision:

[6] The Board confirms the 2013 Assessment of $1,020,000.

Legislative Authority:

[7] 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) of the Actdefines "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.

Issue 1: Is the subject property equitably assessed?

Complainant's Position:

[8] The Complainant referred to Section 289(2)(a) of the Act, which states that each assessment must reflect the characteristics and physical condition of the property as of the condition date for that assessment year. The Complainant stated that the subject property is a freestanding retail property generating an income, therefore the Income Approach must be used to derive the assessment to ensure equity with other freestanding retail properties in the subject area. The City used a Sales (land only) Approach to calculate the assessment, which does not reflect the current characteristics and physical condition of the property as of the December 31, 2012 condition date. To use the Sales (land only) Approach, the City must first demonstrate that the current use is not its Highest and Best Use.

[9] The Complainant argued that an assessment must reflect the characteristics and physical condition of the property as of the condition date, and presented two CARB Decisions (page 29-39, Exhibit C1) in support. If the assessment approach does not reflect the current characteristics and physical condition of the subject property, a Highest and Best Use analysis is required. The Complainant presented excerpts from various documents that discuss the contents of a Highest and Best Use analysis (page 41-84, Exhibit C1) to demonstrate the sort of analysis that should have been presented by the City as part of their evidence.

[10] Regarding equity, the Complainant presented a Property Assessment Summary Report and Non-Residential Properties-Income Approach Valuation document for the adjacent retail strip property located at 2066 18 Avenue NE (page 24-28, Exhibit C1). The Complainant noted that the assessment is done using an Income Approach. Furthermore, the assessed value of the neighbouring property is \$186/SF of building area compared to the subject property which is assessed at about \$486/SF of building area.

Respondent's Position:

[11] The Respondent stated that the City does both an Income and Sales (land only) assessment calculation for all properties and uses the higher of the two as the assessed value of each property. This has been the procedure for a number of years, as supported by three CARB Decisions (page 74-92, Exhibit R1). The Respondent also presented two CARB Decisions (page 99-111, Exhibit R1) to support the position that a municipality is not required to do an exhaustive Highest and Best Use study within the context of mass appraisal.

[12] In response to the Complainant's equity comparable (adjacent retail strip), the Respondent presented the assessed value for that property using both the Income and Sales (land only) Approaches (page 23, Exhibit R1) to show that the City continues to equitably apply their policy. There are a number of factors that result in the Income Approach understating the value of a property, including rentable area. If the bare land is worth more than the income stream being generated from that property, the owner will not sell the property for less than the land value. This is the basis of the City's policy.

[13] A table of five equity comparables were presented (page 32, Exhibit R1) with support information on each equity comparable (page 33-45, Exhibit R1) to demonstrate that when the Sales (land only) Approach results in a higher value than the Income Approach, the Sales (land only) Approach calculation is the assessed value used for that property.

Findings of the Board on this Issue

[14] Section 284 of the Act states that market value is the test applied to an assessment. Section 467(3) states that an assessment review board must not alter any assessment that is fair and equitable, taking into consideration valuation standards set out in regulations, procedures set out in regulations and the assessment of similar property in the same municipality. While equity is not defined in either the Act or its regulations, the Board understands the concept or test of equity to mean that one property does not bear a greater or lesser tax burden due to how it is assessed, as compared to similar properties in that assessment class in that municipality; and, since the assessment must reflect market value, all properties in a property class are assessed at a value that reflects the market value of each property. Equity becomes an issue if, and only if, the

assessment for a class of property is not reflecting market value, therefore it is a subordinate standard to that of market value. Equity is a principle derived from natural justice, and similar to the concept of fairness, impartiality and evenhanded treatment. (Black's Law Dictionary, Seventh Edition, West Group, St.Paul, Minnesota. 1999)

[15] Section 2 of Matters Relating to Assessment and Taxation Regulation (MRAT) addresses mass appraisal and states that an assessment must be based on market value, prepared using mass appraisal, must be an estimate of the fee simple estate and must reflect typical market conditions for properties similar to that property. The Board notes the reference to mass appraisal incorporating typical market conditions for an assessed property. Section 289(2) of the Act does not require the assessor to specifically address the characteristics of each assessed property unless the assessed property is somehow atypical of others in that property class.

[16] The Board does not find that the assessor is required to provide a detailed Highest and Best Use analysis for each property assessed, to determine what assessment approach is appropriate for each assessed property. Clearly, mass appraisal does not contemplate detailed treatment for each and every assessed property. The Board is not persuaded that a detailed Highest and Best Use analysis is required if and when the municipality intends to apply a Sales (land only) Approach.

[17] The municipality has the discretion to determine how to conduct its assessments, as long as the assessments reflect market value. Equity is not an issue related to how an assessment is done. It relates to whether the subject is assessed at a similar value to other similar properties in that municipality. The Respondent provided evidence to demonstrate that they applied their approach in an equitable manner.

[18] The equity evidence presented by the Complainant consists of one comparable, the neighbouring property. The Board notes that this property is assessed at a rate of \$53/SF of land, compared to the subject which is assessed at \$48/SF of land. The Board is not persuaded that the subject is inequitably assessed, nor that the City must use the Income Approach to achieve equity.

Issue 2: What is the correct rental rate to use in the Income Approach calculation?

Complainant's Position:

[19] The Complainant presented the subject Assessment Request for Information (ARFI) dated September 4, 2012 (page 90-92, Exhibit C1) showing that the lease for the subject property was renewed in October 2012 at a rate of \$28.00/SF for a five year term. The Complainant also presented "B" Quality Freestanding Leases information (page 94, Exhibit C1) to demonstrate that the mean and median of this data set is \$27.00/SF. Based on this evidence, the Complainant concluded that the correct rental rate for the subject property is \$28.00/SF, and used that to calculate the requested assessment.

Respondent's Position:

[20] The Respondent indicated that the rental rate that is applied in the Income Approach calculation for the subject property type is $21.00/SF (page 10-11, Exhibit R1), based on their market study, which is not in evidence. This Income Approach calculation results in an assessed value of $563,000, which is less than the assessment of $1,020,000 calculated using the Sales (land only) Approach. Therefore the Income Approach was not used by the City to prepare the 2013 Assessment for this property.

Findings of the Board on this Issue:

[21] Limited evidence was presented by the Complainant. No evidence was presented by the Respondent to dispute the Complainant's position that the rental rate that should be applied in calculating the assessment using the Income Approach for the subject property is $28.00/SF.

Issue 3: What is the correct capitalization rate to use in the Income Approach calculation?

Complainant's Position:

[22] The Complainant presented a summary of the three sales used by the City to derive their 2013 Freestanding Capitalization Rate (page 6, Exhibit C2).

[23] The Complainant presented their freestanding retail capitalization rate analysis (page 95-115, Exhibit C1) and the details of that study (Exhibit C2) summarized on page 8 of Exhibit C2. The Complainant used nine sales in its study, including the three used by the City in its capitalization rate study. The Complainant argued that the City's capitalization rate study, which determined a capitalization rate of 7.0% for this class of building, is not done in a consistent manner. Specifically, the City uses factors derived for the July 1 to July 1 period (the valuation year) and applies those factors to sales that occur in that calendar year to determine the typical capitalization rate for that sale. For example, the factors derived for the period July 1, 2011 to July 1, 2012 are then applied to all sales of that property type that occur in the 2012 calendar year (January 1, 2012 to December 31, 2012). The Complainant argued that the correct approach, and the approach they used, is to apply the factors derived in an assessment year to sales in that assessment year. For example, factors derived in the July 1, 2011 to July 1 2012 period are applied to sales in that same time period, and factors derived in the July 1, 2012 to July 1 2013 period are applied to sales in that period.

[24] The Complainant demonstrated that using their approach to calculate the capitalization rate results in a much better Assessment to Sale Ratio (ASR) than using the City's approach (page 10, C2). Using this approach, the Complainant derives a capitalization rate of 7.50%, which they then use in calculating the requested assessment using their Income Approach.

Respondent's Position:

[25] The Respondent did not rely on the Income Approach for the 2013 Assessment of the subject. A capitalization rate of 7.00% was used in the Income Approach calculation used for comparison to the Sales (land only) Approach (page 10-11, Exhibit R1). The Respondent did not comment on the evidence presented by the Complainant.

Findings of the Board on this Issue:

[26] The Board notes that in deriving a capitalization rate, it is necessary to first establish a number of other factors used in the analysis, including rental rates, vacancy rates, operating costs, and non-recoverable allowance. While the Complainant presented evidence to demonstrate the correct rental rate for the subject property, this rental rate was not used or applied to any of the sales used in the capitalization rate analysis.

[27] The Board understands that the Complainant accepted the rates used by the City in its capitalization rate analysis, and just used a different set of factors for some of the sales, in keeping with the Complainant's assertion that factors derived for a particular period should be applied to sales that occur in that same period.

[28] While this "tweak" to the methodology used by the City appears to result in better ASR's, the Board notes that the sample size used by the Complainant is nine sales, compared to the City's sample size of three sales. Presumably, the "typical" rates used by the City were derived from the three sales it used in calculating its capitalization rate. No evidence was presented to indicate that the "typical" factors for these three sales analyzed by the City are appropriate for the nine sales analyzed by the Complainant. In deriving a typical capitalization rate based on a set of data, typical factors derived from that dataset must be used in the analysis. The Board cannot determine that this is the case, as such evidence was not presented.

Issue 4: Does the 2013 assessment reflect the market value?

Complainant's Position:

[29] The Complainant presented the 2013 Non-Residential Commercial Land Rates table (page 88, Exhibit C1) that sets out the rates for C-COR land, and the 2013 Non-Residential Commercial Land C-COR Sale Analysis (page 86, Exhibit C1) table that is the basis for the land rates table. The Complainant argued that the sale at 2020 34 Avenue SW is an infill residential property and is the lone sale supporting the $122/SF rate applied to the <3,000 SF size strata. The Complainant then demonstrated that the eight remaining sales comparables did not support the size strata used by the City, nor the rates assigned to these size strata.

[30] The Complainant argued that the Sales(land only) rates used by the City in preparing the 2013 Assessment are not supported by the data used to derive the rates, therefore the assessment does not reflect the market. Therefore, the Sales (land only) Approach to assessment should be dismissed.

Respondent's Position:

[31] The Respondent presented the 2013 Commercial Land Values table (page 27, Exhibit R1) and noted that the subject property is assessed using the C-N rates on that table. The Sales (land only) Approach calculation is presented on page 23, Exhibit R1.

[32] The Respondent noted that the subject is assessed at $47.86/SF. Four sales comparables for C-N2 properties are presented on page 130, Exhibit R1. These sales range in size from 10,193 to 89,124 SF, with a time adjusted sale price between $24.68 and $83.48/SF. The median price is $53.90/SF. Support data for each of these sales is presented on page 41-57, Exhibit R1. The Respondent argued that this evidence demonstrates that the subject assessment reflects market value.

Findings of the Board on this Issue:

[33] The Board notes that Complainant addressed the C-COR property type, which is not the type of property before the Board at this hearing. The subject property type is C-N. Therefore, no relevant evidence or argument was presented by the Complainant on this issue.

[34] The Board finds that the subject assessment is supported by the sales comparables presented by the Respondent. The Board notes that the comparable sale at 13 Southland Crescent SW is a 22,216 SF property that sold in December 2011 at a time adjusted price of $45.01/SF. This sale is very similar in size to the subject property, which is assessed at $47.86/SF.

[35] The Board finds that the subject 2013 assessed value reflects market value.

Board's Reasons for Its Decision

[36] The Board concludes that a detailed Highest and Best Use analysis for a subject property is not a prerequisite before the City uses a Sales (land only) Approach to calculate an assessment. Equity is not based on the approach or methodology used to prepare an assessment. Equity refers to whether the assessed value is fair and reflects market value for all the properties in a particular property class in that municipality.

[37] The Board concludes that it does not have confidence in the Income Approach calculation, as presented by the Complainant. Specifically, the capitalization rate analysis did not establish that the other factors used in that analysis are appropriate and typical for the nine sales used to derive the capitalization rate. The Board therefore dismissed the Income Approach in determining the 2013 Assessment.

[38] The sales evidence presented by the Respondent supports the subject 2013 Assessment. The Board confirms the 2013 Assessment of $1,020,000

DATED AT THE CITY OF CALGARY THIS 28th **DAY OF** August **2013.**

Ivan Weleschuk
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
2. R1	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 MGB Administrative Use Only

Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Sales (land only) vs Income Approach	Rental rate Capitalization rate Market value