



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:

Calgary Co-operative Association Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

P. Petry, PRESIDING OFFICER

B. Jerchel, BOARD MEMBER

E. Bruton, 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:	LOCATION :	FILE NUMBER:	ASSESSMENT:
046254900	612 16 Avenue N.E	73792	\$584,000
046254801	616 16 Avenue N.E.	73791	\$349,500

This complaint was heard on the 9th day of August, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- K. Fong, Altus Group

Appeared on behalf of the Respondent:

- L. Wong, City of Calgary

Property Description:

- [1] The subject is a former Turbo gas station site located at 5th Street and 16th Avenue in the North East (N.E.) quadrant of the City. This site consists of the two roll numbers referred to above and the improvements have been removed from both parcels. Both parties asked the CARB to consider the complaints together, as the same evidence applies to each parcel. Over the past year or more this site has been used for overflow and staff parking by Calgary Co-operative Association Limited.
- [2] The subject properties were most recently owned by Shell Canada Limited but sold to Calgary Co-operative Association Limited on December 12th 2012. The site has confirmed contamination issues. The dispute centres on whether the best indicator of market value is the recent sale of the subject or sales of comparable properties.

Issues:

- [3] Which sales provide reliable indicators of market value for the subject property?
- [4] Does the sale of the subject property provide the best indication of the market value for the subject?

Complainant's Requested Value:

- [5] The Complainant's request is that the assessments be reduced to a combined value of \$727,700. The Complainant proposed that \$486,700 be assigned to roll number 046254900 leaving \$241,000 to be assigned to roll number 046254801.

Board's Decision:

- [6] The CARB reduces the assessments as follows: For roll number 046254900 the

assessment is reduced to \$486,700; and for roll number 046254801 the assessment is reduced to \$241,000.

Legislative Authority, Requirements and Considerations:

- [7] The Composite Assessment Review Board (CARB), derives its authority from Part 11 of the Municipal Government Act (MGA) RSA 2000:

Section 460.1(2): Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

For purposes of the hearing, the CARB will consider MGA Section 293(1):

In preparing an assessment, the assessor must, in a fair and equitable manner, apply the valuation and other standards set out in the regulations, and follow the procedures set out in the regulations

- [8] The Matters Relating to Assessment and Taxation Regulation (MRAT) is the regulation referred to in MGA section 293(1)(b). The CARB consideration will be guided by MRAT Part 1 Standards of Assessment, Mass appraisal section 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

Summary of the Party's Positions

Complainant

- [9] The Complainant presented documentation showing that both of the subject properties were transferred under one transaction between Shell Canada Limited and Calgary Co-operative Association. This sale occurred on December 12, 2012 for a total selling price of \$727,700 or \$47.67 per square foot (sq. ft.).
- [10] The Complainant acknowledged that these properties are contaminated due to their previous use as a gas station. Both parties to the sale of these lands are sophisticated corporations with considerable knowledge of the contamination issue and the applicable legal framework. Therefore it is reasonable to assume that whatever the contamination issues may be, the parties would have factored those concerns into the agreed upon sales price of \$727,700.
- [11] The subject parcels had been listed and on the market for at least two years prior to this sale and the sale is an arms length transaction between two sophisticated

and unrelated parties with professional agents representing them.

- [12] The Complainant referred the CARB to CARB decision 70276/P-2013, wherein the Board concurred with the findings of Madame Justice L.D. Acton in ABQB 512 which states: *"it is for that reason that the recent free sale of the subject property is generally accepted as the best means of establishing the market value of that property."* and further ... *"I think that generally speaking the recent sales price, if available as it was in this case, is in law and, in common sense, the most reliable method of establishing market value."*
- [13] The Complainant argued that the subject case is very much in parallel with Madam Justice Acton's decision and requested that the CARB adopt the value of the subject's sale as the basis for the 2013 assessment.

Respondent

- [14] The Respondent indicated that it had already provided a 30% reduction to the assessed value due to contamination. There is no question that contamination is present, however, the Respondent indicated that it did not have any professional report showing the cost to remediate the site and perhaps adjacent lands.
- [15] The Respondent presented an "Alberta Environment, Record of Site Condition" document. This document provided information on the ground water monitoring and sampling program. There appears to be significant focus on the perimeter of the site to determine whether or to what extent contaminants may be moving from the subject lands to adjacent lands. The Respondent suggested that because Calgary Co-operative owns the lands across 5th Street from the subject site; there may be some joint agreement between Shell Canada and the Calgary Co-operative regarding the contamination issues that could be present on both sites.
- [16] The Respondent also made reference to the original owner's responsibility under The Environmental Protection and Enhancement Act, arguing that Shell Canada cannot escape its ultimate responsibility to remediate the site and would be unsuccessful in attempting to do so through shifting this responsibility to Calgary Co-operative. This fact may have had some impact on the sale price arrived at between the parties.
- [17] The Respondent provided the CARB with a listing of the combined subject lands by Avison Young showing a asking price of \$1,999,000. The subsequent sale of the subject for the sum of \$727,700. This represents a very large reduction in value from the listing price. The Respondent also provided information regarding a second property held by Shell Canada at 3840 MacLeod Trail South. The property had been listed for the sum of \$2,080,500 but sold on November 29, 2011 along with a Tim Horton's improvement for \$675,000.
- [18] The Respondent presented a list of nine commercial land sales ranging in selling price from a low of \$29.32 per sq. ft. to a high of \$120.87 per sq. ft. Two of these sales were located along 16th Avenue N.E., one selling for \$107.15 per sq. ft. and the other for \$85.21 per sq. ft. The Respondent argued that these values are more indicative of market values along 16th Avenue N.E.

- [19] Two equity comparables were also introduced by the Respondent. These assessments were of properties with corner influences and contamination concerns. One property was located on Bowness Road N.W. and the other at 1620 4th Street N.W. The assessed values were \$57 and \$53 per sq. ft. respectively.
- [20] The Respondent suggested that the sale of the subject may not be the best indicator of value because of the relationship between the parties and the contamination question. The Respondent asked the CARB to confirm the assessment.

Findings and Reasons for the Board's Decision:


- [21] The CARB considered the Respondent's sales evidence and found that the two sales along 16th Avenue N.W. had no contamination or other influence that would have affected their selling price and therefore they are not comparable to the subject property.
- [22] The Respondent's equity comparables were in very different locations as compared to the subject and were smaller in size. Without more evidence respecting the degree of similarity between these properties and the subject, little weight could be placed on this evidence.
- [23] The CARB found the sale of the subject to be very convincing for the following reasons:
- The subject property had been listed on the open market for a considerable length of time.
 - The parties are large sophisticated corporations capable of undertaking the due diligence required of this transaction.
 - Both parties operate gas stations and presumably know the law respecting responsibility for contamination remediation. The CARB notes that The Environmental Protection and Enhancement Act casts a wide net respecting responsibility for contamination remediation and includes the current owner.
 - The fact that Calgary Co-operative leased the subject lands for parking prior to the sale has not been shown to be a factor in the sale or the price paid and the CARB accepts that the open market sale is not tainted by this fact.
 - While the sale occurred sometime after the July 1 valuation date, it was nevertheless within the assessment year.
 - The sale referred to in Madam Justice Acton's decision was also post-facto to the July 1 valuation date. The Acton decision carried considerable weight respecting the CARB's decision to place considerable reliance on the sale of the subject property in this case.
- [24] The CARB also placed weight on the sale of the property located at 3840 MacLeod Trail South. This property was listed at \$2,080,500 as a surplus Shell

Canada site, It is slightly larger than the subject and both parties agreed that its location is comparable to that of the subject. This property sold November 29, 2011 for \$675,000 and included a Tim Horton's improvement. Both the decrease in value from the list price and the sale price itself support the CARB's decision to place weight on the sale of the subject property.

- [25] Based on the foregoing, the CARB has accepted the Complainant's position and its proposed value for each parcel.
- [26] The assessment is therefore set as follows: For roll number 046254900 the assessment is reduced to \$486,700; and for roll number 046254801 the assessment is reduced to \$241,000.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 5 DAY OF September 2013.



Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	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 ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
Commercial	Service Station Site	Land Only	Contamination	Sale of Subject