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:

Haiku Management GP INC. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
R. Deschaine, BOARD MEMBER
K. Farn, 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 2014 Assessment Roll as follows:

ROLL NUMBER:	**067092106**
LOCATION ADDRESS:	**739 – 10 AV SW**
FILE NUMBER:	**74810**
ASSESSMENT:	**$1,940,000**

This complaint was heard on 11th day of June, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *W. Van Bruggen – MNP LLP*

Appeared on behalf of the Respondent:

- *R. Ford – 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] The Complainant introduced but did not present his Rebuttal document C-2.

Property Description:

[3] The subject is a 6,509 square foot (SF) land parcel, improved circa 1928 with a 5,825 SF single-storey commercial building in the Beltline 3 (BL3) district of downtown Calgary. The site contains a "B" class building, and is located at 739 – 10 AV SW. The subject was assessed using the market approach to value – "land value only" at a typical $285 per SF, for a total assessment of $1,940,000.

Issues:

[4] The Complainant raised the following issues:

a) Was the subject incorrectly assessed as "Land Value" instead of using the "Income Approach to Value", contrary to Section 289(1)(2) of the Municipal Government Act (MGA), and, Part 1 Section (2) of "Matters Relating to Assessment and Taxation Regulation" (MRAT)?

b) Was the subject assessed inequitably compared to other similar properties in the Beltline 3 area?

Complainant's (Final) Requested Value: $1,750,000.

[5] (note; The Complainant originally requested a value of $1,620,000 in his evidence package, but during his presentation to the Board, he offered several corrections to his Income approach to Value calculations and subsequently increased his request to $1,740,000, then finally to $1,750,000.)

Board's Decision:

[6] The Board confirmed the assessment at $1,940,000.

Legislative Authority, Requirements and Considerations:

[7] The Complainant referenced Section 289(1)(2) of the MGA in his presentation. This Section states:

> "289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.
>
> (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."

[8] The Complainant referenced Part 1 of "MRAT" in his presentation. This Part states:

> **"Mass appraisal**
>
> **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."

Positions of the Parties

Complainant's Position:

Issue [4] (a);

[9] The Complainant argued that the Respondent had violated Section 289(1)(2) of the MGA and Part 1, Section (2) of MRAT when it assessed the subject because it allegedly ignored the onsite improvement and improperly used a "Highest and Best Use" analysis to assess it. He posed that the use of this technique implies that a property is likely to be imminently developed.

[10] The Complainant affirmed that the owner has no plans to re-develop the site, and in fact, the tenant has recently signed a long-term (5 year) lease. He also argued that there are no current Development Permits, either applied for or issued for the site, all of which demonstrates that the Respondent has erred in the methodology presumably used to assess it. He presented marketing data from Colliers International which suggested that a considerable amount of new beltline office/retail space would be coming onstream in 2014, and therefore the subject's owner may or may not consider re-developing his site. Therefore, he argued, the subject should have been assessed using the Income approach and not the Land Value approach.

[11] The Complainant argued that Section 289(1)(2) of the MGA and Part 1 (2) of MRAT requires the respondent to consider the onsite improvements as of December 31, 2013 when preparing an assessment, and the Respondent has ignored this factor. Therefore he considered the Respondent to be in violation of the identified parts of the MGA and MRAT.

[12] The Complainant provided the Board with his own calculation of value using the "Income approach to Value" methodology. He noted that many of his inputs to the calculation (e.g rent; cap rate; op costs; non-recoverables; vacancy rate; etc) were "typical" values taken from the City's market studies (for each variable), which he then applied to his calculation. He confirmed that he had applied different city values to his calculation, than the City had used for properties similar to the subject.

[13] The Complainant identified his calculations on page 73 of his Brief C-1, also noting that he had initially and erroneously added certain City-generated values (eg Op Costs) but had since exchanged them for others from the City's studies. He clarified that he used City values because he did not have the time to conduct his own retail studies to determine an appropriate alternate Vacancy Rate for example. After making several corrections to his inputs, and re-calculating the results and conveying them to the Board and Respondent, the Complainant ultimately concluded that the assessed value of the subject should be reduced to $1,750,000.

Respondent's Position:

Issue [4] (a);

[14] The Respondent clarified that he had not used the "Highest and Best Use" technique at all when assessing the subject. He clarified that by departmental Policy, he was required to, and had in fact conducted two evaluations on the subject, and indeed all similar properties in all of the Beltline. One evaluation is conducted using the Income Approach to Value, and the second using the Land Value approach. He clarified and confirmed that whichever valuation method produces the highest value is therefore the one used for assessing a beltline property. He clarified that the department has consistently used this approach since 2010, particularly since several Composite Assessment Review Board (CARB) Decisions had criticized it for not doing so.

[15] The Respondent clarified that initially he prepared an assessment for the site using the "Income Approach to Value" methodology – but using different, and more applicable "typical" value inputs from recent City studies than those "typical" City inputs used by the Complainant. He argued that the Complainant had misinterpreted certain of City data, some intended for beltline zones other than BL 3. Therefore, because the Complainant had "mixed and matched" these values, he had arrived at erroneous conclusions of value (on page 73 of C-1) as a result.

[16] The Respondent further clarified that according to Policy, he prepared a second assessment evaluation of the subject on the basis of its marketable land value. This evaluation relied on selected recent valid beltline market land sales which he provided in considerable detail to the Board. He clarified that detailed studies by the department of these valid market sales, led him to conclude that $285 per SF is an appropriate land rate for properties similar to, and located similarly to the subject in Beltline 3. He argued that the Complainant's methodologies would produce a value that was less than land value in the market.

[17] The Respondent noted, and the Complainant confirmed, that the latter did not necessarily object to this value, which resulted from an analysis of market sales in both BL3 and BL4. He noted that while the Complainant had previously suggested considering only BL3 sales, (separating out BL4 sales) the BL3 sales would have produced a typical land value of $320 per SF – much higher than the $285 per SF applied by the City in calculating the assessment before the Board.

[18] The Respondent noted that this second "land only" valuation led him to conclude that the value of the site as "land" was greater than its value as determined by the income approach that he had previously calculated. Therefore, and also pursuant to departmental Policy, this value ($1,940,000) was assigned to the subject as its assessed value. He clarified that previous CARB decisions had posed that a "willing seller would not likely sell his property for less than the land's market value", and therefore this methodology was endorsed by the Boards. On pages 34 – 36 inclusive of R-1, the Respondent provided relevant sections of the legislative authority in the MGA and MRAT for the City's use of this methodology.

[19] The Respondent also clarified that by legislation under the MGA and MRAT, it is required to use Mass Appraisal to assess properties pursuant to certain mandated principles – all of which were applied in assessing the subject. Moreover he noted, the methodologies used by the City are subject to annual review by Alberta Municipal Affairs. Therefore, the Respondent argued, the City did not violate Sections 289(1)(2) of the MGA or Part 1 (2) of MRAT as alleged by the Complainant, since it was clear that the Income Approach valuation he calculated ($1,820,000) did not reflect market value. Hence the Land value of $1,940,000 was applied as the subject's assessment.

Board's Reasons for Decision:

[20] With respect to Issue [4] (a) the Board finds that;

a) The Complainant has misinterpreted Sections 289(1)(2) of the MGA and Part 1 Section 2 of MRAT, and accordingly the Respondent has not violated these legislative Sections as alleged by the Complainant. On the contrary, the Board finds that the Respondent has employed methodologies to assess the subject which are not only permitted under legislation, but also endorsed and encouraged by many Municipal Government Board and CARB decisions. ARB Decision 0522/2010-P states in part:

> "The legislation and attendant regulations do not identify the valuation approach chosen by an assessment authority to prepare assessments for non-residential property.....Assessors routinely use any and/or all of the three generally accepted valuation approaches to property assessment (i.e. the direct sales comparison approach, the capitalized income approach or the cost approach.) to establish values."

b) The Respondent did not use a "Highest and Best Use" methodology to assess the subject, as was erroneously assumed by the Complainant, and argued extensively before the Board. Therefore, the Board finds that the Complainant's fundamental argument regarding this point alone, is unsupported and invalid. The Board considers the following from CARB 73278P-2013 to be relevant:

> "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 this 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."

c) While the Complainant prepared an Income Approach to Value valuation for the subject to support his position on this point, he confirmed that he relied on "typical" values gleaned from City studies because he was unable to conduct his own studies. The Board accepts the position of the Respondent that the Complainant has

misinterpreted several of the City's valuation studies, and used incorrect City values in his Income Approach to Value calculation of alternate value for the subject. This erroneous calculation appears on Page 73 of C-1. Therefore the Board finds this evidence from the Complainant to be unreliable.

d) The Board is satisfied from the detailed evidence presented during the hearing that the data produced from the Respondent's studies is relevant and valid. The Board is also satisfied that this data was correctly and appropriately applied to methodologies used to assess the subject, thereby leading to a correct, fair, and equitable assessment.

e) The Complainant voluntarily corrected his inputs and resulting calculations at various points in his presentation, and thereafter presented the Board with three different valuations during the course of his presentation. The Board was left with little confidence in the Complainant's conclusions of alternate value from the results.

f) The Board, having carefully examined the Respondent's valid market sales, concurs that the $285 per SF land value is an accurate reflection of land value for BL3 and BL4 and the subject. The Complainant, in large part, did not entirely dispute this $285 per SF value. Moreover, the Board was not persuaded by the Complainant's arguments as to the relevance of the $320 per SF BL3 land value he calculated from his data because it was calculated using the area of the improvement rather than the land.

g) The methodology employed by the Respondent to value the subject has been repeatedly endorsed by various decisions of the Municipal Government Board (MGB). The Respondent referenced CARB 0522/2010-P; CARB 73278P-2013; CARB 2536/2011-P; CARB 1612-2011-P; CARB 2434/2011-P; and CARB 1838/2011P which support this principle.

h) The Complainant provided insufficient information to demonstrate to the Board that the assessment is incorrect.

Complainant's Position:

Issue [4] (b);

[21] The Complainant argued that the assessment of the subject is not equitable when compared to other similar properties in BL3. On page 20 of C-1 he provided a matrix of five "B" Class properties from BL3, BL4, and BL5. He divided the building (improvement) area only (not the land) into the assessment for each property, and concluded from examination of the results that an average value of $233.81 per SF and a Median value of $245.50 per SF indicated the subject was inequitably assessed.

Respondent's Position:

Issue [4] (b);

[22] The Respondent argued that the Complainant's equity analysis is flawed and the results could not be compared to the assessed value of the subject because the latter had been valued on the basis of the market value area of the land – not the improvement. He clarified in R-1 that:

> "Neighbouring properties have been valued in the same manner as the subject property, provided the respective income values of each are superseded by the established land value. This creates and maintains equity."
>
> "The use of vacant land to assess an improved property is within the jurisdiction of the City of Calgary. This has been confirmed by numerous compositions of the Assessment Review Board and the Municipal Government Board. Its application for the 2014 roll year creates and maintains equity, while reflecting the Assessment business unit's best estimate of market value, as outlined in our legislative framework."
>
> "To lower the assessment of the subject property to the complainant's requested value would create an inequity with other commercial parcels (both improved and unimproved) in the Downtown and Beltline and would set the assessment at an amount will below market value as of July 1, 2013."

[23] The Respondent argued that the subject is equitably assessed.

Board's Reasons for Decision:

[24] With respect to Issue [4] (b) the Board finds that;

a) It concurs with the Respondent that the Complainant's analysis is flawed because the analysis depends on the square foot area of the improvement rather than the square foot area of the land. The land and its market value is a constant whereas the improvement is not. Therefore the results of the Complainant's analysis cannot be readily compared in any meaningful way to the Respondent's assessment of the subject, and other similar properties which have been assessed on land value.

b) The Respondent provided information and argument in his Brief R-1 to demonstrate to the satisfaction of the Board that the assessment is fair and equitable.

c) It concurs with the Respondent that the subject is assessed equitably with other similar properties which have been assessed in the same manner as the subject in BL3. The Complainant's information demonstrates that a value less than market value would be produced using his data, and this would produce a resulting value that would be inequitable with other similar properties.

d) The Complainant provided insufficient information to demonstrate to the Board that the assessment is not fair and equitable.

DATED AT THE CITY OF CALGARY THIS 15th DAY OF July 2014.

K. D. Kelly
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	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.*

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Beltline offices	Offices	market value	Equity and Assessment parameters