

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 (as represented by Altus Group),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***S. Barry, PRESIDING OFFICER
A. Huskinson, BOARD MEMBER
J. Rankin, BOARD MEMBER***

This is a complaint to the Calgary Composite Assessment Review Board (the 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: | 201414281 |
| LOCATION ADDRESS: | 1111 PANATELLA BV NW |
| FILE NUMBER: | 75041 |
| ASSESSMENT: | \$2,750,000 |

This complaint was heard on the 30th day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *D. Main, Agent, Altus Group*

Appeared on behalf of the Respondent:

- *J. Yeung, Assessor, City of Calgary*
- *T. Johnson, Assessor, City of Calgary*

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

[1] The Parties requested that the evidence submissions C2, C3, C4(1) and C4(2) and, likewise, all relevant argument, questions and responses be carried forward from files 75400, 74179, 75043 and 75044 heard on July 29 and 30, 2014, to file 75041. The Board agreed.

Property Description:

[2] The subject property contains a gas bar, convenience store and car wash and is located on the corner of 14 St. NW and Panatella Bv. NW in the community of Panorama Hills on a 1.71 acre parcel. The land use designation is Commercial-Neighbourhood 2. Its sub-property classification for assessment purposes is CM0705 Retail Vehicle/Accessories–Combo Gas/Kiosk/Serv Stn/Store/Car Wash. It was assessed using the Cost approach to value which produced a value of \$2,199,477 for the land and \$550,832 for the building.

Issues:

[3] Does the application of the Income approach to value create a more equitable assessment than the cost approach?

Complainant's Requested Value:

[4] On the Complaint form, the requested value was \$1,360,000. At the time of the hearing, this was amended to \$1,450,000.

Board's Decision:

[5] The Board reduced the assessment to \$1,450,000 based on the application of the Income approach to value as calculated by the Complainant in its C1 disclosure document.

Legislative Authority, Requirements and Considerations:

[6] A Composite Assessment Review Board (CARB) derives its authority from the *Act*, section 460.1, which reads as follows:

- (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).

Section 293 of the *Act* requires that:

- (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.

Sections 2 and 4 of the Matters Relating to Assessment and Taxation Regulations (*MRAT*) state:

- (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.
- 4(1) The valuation standard for a parcel of land is
 - (a) market value, or
 - (b) if the parcel is used for farming operations, agricultural use value.

Position of the Parties

Complainant's Position:

[7] The Complainant's primary argument was that gas bars should be assessed in the same manner whether they are located on a separate title, with or without accessory uses (own parcel), or as part of a parcel containing other large retail properties such as shopping centres or strip malls (shared parcel). His position was that the Cost approach creates a much higher value, therefore assessment and tax, than the Income approach. This, in turn, creates an inequity among similar, competing operations.

[8] It was his opinion that the Cost approach should be reserved for special purpose buildings for which neither market data nor alternative uses would usually be available and that, in any event, the results of the Cost approach should be tested to ensure it approximates market value. He argued that this gas bar was not a special purpose property any different from other gas bars throughout the City; that they all operated the same way.

[9] The Complainant's Income approach calculation applied the appropriate gas bar land rental rate of \$105,000 and the parameters typically used for other properties in the north-west quadrant of the City for which the Income approach was used by the City: specifically, typical vacancy of 9.0 per cent (%) and, a capitalization rate of 6.5%. The rental data used by the Complainant, he said, was also the rental data used by the Respondent in calculating the annual Business assessment.

[10] The Complainant tested the current assessment by working it backwards through the Income approach which generated a rental rate of \$200,218; an amount, he stated, that was completely unrealistic as market value when compared to the rental rate that would have been applied by the Respondent if the Income approach had been used.

[11] The majority of the evidence presented by the Complainant was carried forward from previous hearings and included a significant body of evidence in support of his position. This included the CARB decisions which accepted the Complainant's Income approach, as well as documents that showed that the Assessor was able to derive and apply market data, specifically lease rates for both own parcel and shared use gas bars. The Complainant provided a chart of 43 service stations across the City, with various associated components, some on their own parcel and some as part of a more extensive development, some of which came from the Assessor's records and some of which were from the Complainant's records. All of these, the Complainant stated, identified rental rates and lease start and finish dates. The Complainant supported these with rent roll extracts. The Complainant also documented a large number of similar use properties, some of which were assessed on Cost and some on Income, including some gas bars that were assessed on Income although they were located on their own parcel.

[12] The Complainant provided decisions of various Courts that spoke to the relationship of fair market value to the cost approach method of valuation particularly with relevance to special purpose property and what that entails. The Complainant documented nine decisions and referred specifically to *Labatt Brewing Company Limited v. St. John's (City) and Molson Breweries Limited and Molson Canada Limited v. St. John's (City)*, 2011 NLCA 75 (Labatt's). He noted the prohibition of classifying properties in a "discriminatory fashion".

[13] The Complainant also provided a number of LARB, CARB and Municipal Government Board (MGB) decisions that spoke to Cost versus the Income approach and some that dealt with the issue of service stations as special purpose properties. The Complainant argued that these decisions supported his position.

[14] The Complainant raised the issue of contamination and its impact on sales prices and land values. The Board's Findings and Reasons for Decision have dealt with that argument without the need to expand on the Complainant's position here.

Respondent's Position:

[15] The Respondent relied on Ministerial guidelines and legislation related to the Province's audit function as well as the Alberta Assessors' Valuation Guide for Gas Bars, as reproduced in his R1 Disclosure, to support the methodology chosen for this assessment. He argued that the Minister's guideline "requires recognition of gas stations as a separate stratification, gas stations must be compared to gas stations for fairness and equity, and the Minister's appointed auditor will test for the use of the cost approach, and if not used the municipality must show the cost approach is not feasible."

[16] The Respondent produced the 2014 Assessment Explanation Supplement and the Marshall & Swift Summary Report. The Respondent noted that the Complainant did not specifically question or contest the Marshall & Swift calculation or valuation parameters.

[17] The Respondent stated that most own parcel gas bars are owner occupied and therefore lease information or an approximation of same is not readily available and, although they are easier to sell than those attached to a shopping centre or strip mall, there have been very few sales. Without that information, and not because these are special purpose premises, he said, the Cost approach was the sole method remaining to assess such properties.

[18] With respect to equity, the Respondent pointed to a listing of 15 properties that all were coded as gas bars located on their own parcel, with or without an accessory use, which, he noted, were all assessed using the Cost approach.

[19] The Respondent noted a number of 2013 CARB decisions in which the Board accepted the Respondent's methodology and confirmed the assessment, including the 2013 CARB decision (72296P-2013) on the subject site.

Board's Findings and Reasons for Decision:

[20] The Parties presented voluminous documentation and argument that was carefully considered by the Board. Not all of it was relevant to the final decision, particularly the question of site contamination raised by the Complainant. No site specific information pertinent to contamination was tabled and because the properties are actively engaged in gas bar operations and because the request is for the adoption of the Income, not the Sales Comparison approach, the Board saw no reason to make a determination on the effect on value of such contamination, if it existed.

[21] Similarly, the Respondent stated that the methodology used by him reflected a paucity of market data, not a determination that the properties were special purpose. The Board sees no point, then, in continuing that argument in its decision.

[22] The Board accepted the position that the Assessor can choose the valuation method that he believes produces a correct and equitable assessment. However, he must do that in the context of the legislation, particularly MRAT s.2, as stated above. The key components there, in the Board's opinion, are the requirement to base the assessment on market value using mass appraisal, reflecting market conditions for properties similar to that property. The Board also, having regard to s.467(3)(c) of the Act, accepted the Complainant's argument that gas bars should be compared to gas bars, which is consistent with the Respondent's argument in paragraph [15], above.

[23] The Board also accepted the Complainant's argument that further stratification of this use of land in distinguishing between operations situated on their own parcel versus operations on land shared with larger retail uses, created an inequity in assessment that is inconsistent with the legislation.

[24] Ministerial guidelines and handbooks do not over-ride the legislation and, as reproduced in this evidence package, are not consistent with the legislation before us. In any event, the valuation standard is market value; there is no separate valuation standard as there is for railways, linear or machinery and equipment.

[25] Although the Complainant did not challenge specific components of the Marshall & Swift report, he did raise the issue of land values in the assessments and the Board noted that only limited detail for the assessment was produced; there was not, for example any evidence to support the land rate that was applied. A chart listing CN-2 commercial land sales in 2014 was in evidence but it did not draw any conclusions or obviously support the land value in the assessment.

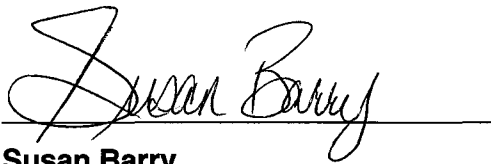
[26] Equity extends beyond establishing different codes and applying the same methods or parameters to each coded type. Equity must extend to similar uses. The Board was guided by Labatt's cited above.

[27] The Respondent chose to stratify gas bars so that those that operate on separately titled properties, even though they may have connected ancillary uses, have a different assessment method applied from those that are part of a larger parcel that contains a variety of different retail or commercial premises. To the Board's mind, it is a distinction without a difference. The similarity in these Complaints is the gas bar. The gas bars compete against each other, not

against a shopping centre. If the assessment on one gas bar is considerably more than another for no other reason than extraneous commercial operations, then an inequity in assessment and, therefore, taxation is created.

[28] The Board was satisfied that there was sufficient market data available to support the Income approach; in fact, it was clear that the Respondent had access to such data and used it when he thought it was appropriate. The Board was also satisfied that the income approach market data was correctly applied and produced an assessment that was reflective of market value using mass appraisal techniques and having regard to similar properties.

DATED AT THE CITY OF CALGARY THIS 14th DAY OF August 2014.

A handwritten signature in black ink, appearing to read "Susan Barry", is written over a horizontal line.

Susan Barry
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

| NO. | ITEM |
|------------|--|
| 1. C1 | Complainant Disclosure |
| 2. C2 | Complainant Disclosure – Service Stations - 2014 Valuation Evidence Appendix |
| 3. C3 | Complainant Disclosure – Service Station - 2014 Land Rate Analysis |
| 4. C4(1) | Complainant Disclosure - Service Stations – The Cost Approach as a Proxy for Market Value; pp 1 to 201 |
| 5. C4(2) | Complainant Disclosure - Service Stations – The Cost Approach as a Proxy for Market Value; pp 202 to 317 |
| 6. 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 Purposes Only

| Municipality | Roll Number | Property Type | Property Sub-Type | Issue | Sub-Issue |
|---------------------|--------------------|----------------------|--------------------------|--------------|------------------|
| Calgary | 201414281 | Retail | Stand Alone | Income | Cost |