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:

ASI 17th Avenue Corp. (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 two property assessments prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

ROLL NUMBERS:	**079108908 and 079131504**
LOCATION ADDRESSES:	**221 – 17 AV SE** **229 – 17 AV SE**
FILE NUMBERS:	**75824 and 75826**
ASSESSMENTS:	**$1,420,000 and $975,000**

These two complaints were heard together on the 11th and 12th days 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:

- *C. Chichak – 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] At the point in the hearing where the Complainant would ordinarily present his rebuttal document C-2, the Respondent objected to pages 12 to 26 inclusive of the document. He argued that it represented new evidence that was not presented in either documents C-1 or R-1. The Complainant suggested to the Board that the information was relevant to discussions and City evidence regarding "historic buildings" in Calgary.

[3] The Board recessed to consider this objection. Upon resuming the hearing, the Board concurred in part with the Respondent and directed the Complainant to delete pages 14 to 26 of his Rebuttal document C-2 because the Board considered it to be new evidence not previously disclosed in the hearing.

[4] The Complainant decided therefore to withdraw his Rebuttal document C-2 and it was not considered further in the hearing.

Property Descriptions:

[5] The subject at 221 – 17 AV SE is a 1980 2-storey house conversion used for commercial purposes in the Beltline 8 (BI 8) district of downtown Calgary. The site contains an "average" (B) class building with a total 2,509 SF of office space (756 SF is below grade), and is situated on an 8,649 square foot (SF) lot. The subject was assessed using the market approach to value – "land value only" at a typical $165 per SF, for a total assessment of $1,420,000.

[6] The subject at 229 – 17 AV SE is a 1910 2-storey house conversion used for commercial purposes in the Beltline 8 (BI 8) district of downtown Calgary. The site contains an "average" (B) class building with a total 2,100 SF of office space (780 SF is below grade), and is situated on a 5,913 square foot (SF) lot. The subject was assessed using the market approach to value – "land value only" at a typical $165 per SF, for a total assessment of $975,500.

Issues:

[7] The Complainant raised the following two 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 8 area?

Complainant's Requested Values:

[8] a) For 221 – 17 AV SE - $990,000 instead of the assessed $1,420,000.

b) For 229 – 17 AV SE - $820,000 instead of the assessed $975,500.

Board's Decisions:

[9] The Board confirmed the assessments as follows:

a) For 221 – 17 AV SE - $1,420,000.

b) For 229 – 17 AV SE - $975,500.

Legislative Authority, Requirements and Considerations:

[10] 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."

[11] 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:

For Issue [7] (a);

[12] 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, which the subject is not. He clarified in questioning from the Respondent that while he was challenging the City's $165 per SF land value used in assessing the subject, the land value technique should not have been used at all, the Income Approach to Value methodology should have been used instead.

[13] The Complainant affirmed that the owner has no plans to re-develop the site. 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 CBRE Richard Ellis for 18 existing and proposed "AA" and "A" and Mixed-Use buildings in downtown and beltline Calgary to suggest that a considerable amount of new 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. He referenced CARB 73296P-2013; CARB 0677P-2012; and CARB 1864P-2012 in support of his position.

[14] 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 largely ignored this factor. Therefore he considered the Respondent to be in violation of the identified parts of the MGA and MRAT.

[15] The Complainant provided the Board with his own calculation of land value (page 40 C-1), which was based on a review of three of the City's four 2011 land sales. Three sales were from BL2 and the other from BL8. He clarified that he had used the City's Land Rate Study, but deleted one City BL8 land sale example at 103 – 17 AV SE containing 25,240 SF, because he considered the site was going to be re-developed. Nevertheless, he argued that the land value from the remaining three BL2 sales examples were still applicable to BL8 where the subjects are located.

[16] The Complainant noted that two of the three sales he reviewed were adjusted for certain "influences" and were 46,370 SF and 52,411 SF in land area respectively. The remaining sale was 8,046 SF in land area. Based on his analysis of these three sales, he concluded that $127 per SF was an appropriate land rate to be applied to the two subjects. He calculated therefore that the assessments should be reduced to the values as shown in [8] above.

[17] The Complainant provided a matrix of seven house conversion property sales on page 30 of C-1. He calculated the apparent per square foot values of each by dividing the area of the Improvement firstly - into the sale prices, and secondly - into the assessed values. He acknowledged the City had divided the sale values of its market sales by the area of the land – a completely different technique, to identify its values. Nevertheless, he argued that his methodology was relevant, and demonstrated that the indicated value of $395 per SF gleaned from this analysis, demonstrates that the subjects are over-assessed. He suggested that the $395 per SF value should be applied to 221 – 17 AV SE and the $465 per SF should be applied to 229 – 17 AV SE.

[18] While the Complainant argued that the subjects should have been assessed using the Income Approach to Value methodology, and was allegedly in violation of legislative requirements to do so, he did not prepare or present to the Board his own valuations using that methodology. He did argue however that the Assessment to Sale Ratios (ASR) of the seven

house conversion properties noted in [17] above, were, in some cases, outside (high or low) the acceptable range of assessment values from the desired 1.0, all of which indicated to him that the City's assessment procedures with respect to the subjects may be flawed.

Respondent's Position:

For Issue [7] (a);

[19] The Respondent confirmed that he visited the two sites in April 2013 and had personally taken the photos of them that he presented in his Brief R-1. He clarified that contrary to the assertions of the Complainant, he had not used the "Highest and Best Use" technique at all when assessing the subjects. He noted that by departmental Policy, he was required to, and had in fact conducted two evaluations on each of the subjects, 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.

[20] The Respondent 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. He referenced several CARB decisions, and in particular CARB 0176/2010-P, and CARB 72582P-2013, to emphasize this principle.

[21] The Respondent clarified that initially he prepared an assessment for each of the subjects using the "Income Approach to Value" methodology. He used "typical" value inputs from recent City studies for the BL8 market zone. He argued that the subjects are under-improved as per allowed zoning, and their current income streams are insufficient to value the subjects (for assessment purposes) at market value. Therefore a "land only" evaluation was completed for each of the subjects. This resulted in their respective current assessments which are now before the Board.

[22] The Respondent challenged the Complainant to identify exactly where in the MGA or MRAT it states that the City cannot choose its methodology. In support of his position he referenced ARB 0522/2010-P. He also questioned the Complainant as to how an intent to develop (or not) affects land value under this, or a "Highest and Best Use" methodology? In support of his position, the Respondent referenced CARB 73278P-2013.

[23] The Respondent further clarified that according to Policy, he prepared a second assessment evaluation for each of the subjects on the basis of their marketable land values. These evaluations relied on four 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 $165 per SF is an appropriate typical land rate for properties similar to, and located similarly to the subjects in Beltline 8. He argued that the Complainant's methodologies would produce values that were less than land value in the market, and this was improper and inequitable.

[24] The Respondent noted that the "land only" valuation led him to conclude that the value of the two sites as "land" was greater than their respective values as determined by the income approach values that he had previously calculated. Therefore, and also pursuant to previous CARB decisions and departmental Policy, the respective land values were assigned to the subjects as their assessed values.

[25] The Respondent 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 21 – 28 inclusive of R-1, the Respondent provided relevant sections of the legislative authority in the MGA and MRAT as support for the City's use of this methodology.

[26] The Respondent also clarified that by legislation under the MGA and MRAT, the City is required to use Mass Appraisal to assess properties pursuant to certain mandated principles – all of which were applied in assessing the subjects. 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.

[27] The Respondent also clarified that the Complainant's use of the assessment for the Nellie McClung Home at 803 – 15 AV SW as a demonstration that the City assesses properties for less than market, is seriously flawed. He noted that the McClung site is a formally designated civic "Historic Site" whose "air rights" were sold to an adjacent property, and, its development rights are curtailed by its formal designation. Therefore, its value in the marketplace is diminished, and it cannot reasonably be compared to the subjects, or properties similar to the subjects. He noted that the Complainant had used the McClung House example in his alternate calculations of value in [17] and [18] above, and this would skew the results of his study such that they are unreliable.

Board's Reasons for Decision:

[28] With respect to Issue [7] (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 two subjects 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 two subjects, 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) In concert with the foregoing in (a) and (b) above, the methodology employed by the Respondent to value the two subjects 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.

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

e) The Board, having carefully examined the Respondent's valid market sales, concurs that the $165 per SF land value is an accurate reflection of land value for BL8 and the two subjects. The preponderance of evidence provided by the Respondent supports this position.

f) The Board was not persuaded by the Complainant's evidence and arguments as to the relevance of the $395 and $465 per SF alternate land values he calculated from his data, because it was calculated using the area of the improvement rather than the land. The Board found it difficult, if not impossible, to relate and meaningfully compare these values to the Respondent's values, which were derived from dividing the sale value by the land area. Therefore the Board placed little weight on the Complainant's evidence regarding this point.

g) The Complainant provided insufficient information to demonstrate to the Board that the assessments of the two subjects are incorrect.

Complainant's Position:

Issue [7] (b);

[29] The Complainant argued that the City has in fact assessed similar beltline properties for less than apparent market value and this is inequitable. He provided City Assessment Explanation Supplements for several beltline properties he considered were good examples,

one being 803 – 15 AV SW (Nellie McClung House) to support his position on this point. He also offered details on two other market sales he argued were sold for less than market value. Therefore, he argued, the Respondent's argument that he must not assess the value of properties less than market value is erroneous.

[30] The Complainant also argued that the assessment of the two subjects are not equitable when compared to other similar house conversion properties in BL8 and elsewhere in the beltline district as a whole. On page 28 of C-1 he provided a matrix containing the assessments of seven "B" Class house conversion properties. 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 $235.92 per SF and a Median value of $247.25 per SF indicated that the two subjects - #221 being $566 per SF, and #229 being $465 per SF, were inequitably assessed compared to the others.

Respondent's Position:

Issue 7 (b);

[31] The Respondent argued that the Complainant's equity analysis is flawed and the results could not be compared to the assessed value of the two subjects because the latter had been valued on the basis of the market value area of the land – not the improvement. He also clarified that the Complainant has erroneously compared the two subjects to the "developmentally restricted" McClung House at 803 – 15 AV SW. This factor alone, skews the Complainant's results and renders them not only unreliable, but difficult if not impossible to compare to the two subjects. 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."

[32] The Respondent argued that the equity properties used by the Complainant are in fact valued at more than their land value, not less, and therefore there is no inequity. He provided evidence to this effect in a matrix of equity property comparables on page 30 of his Brief R-1. He also provided the Assessment Explanation Supplements for each of his examples and detailed the particulars of each property for the Board and Complainant.

[33] The Respondent argued that the two subjects are therefore equitably assessed.

Board's Reasons for Decision:

[34] With respect to Issue [7] (b) the Board finds that;

a) It concurs with the Respondent that the Complainant's equity 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 equity analysis are difficult, if not impossible, for the Board to compare it in a meaningful way, to the Respondent's equity comparables analysis.

b) The Respondent provided information and argument in his Brief R-1 to demonstrate to the satisfaction of the Board that the Respondent does not, as a matter of Policy, assess properties at less than market value. The Respondent relied on several CARB decisions, which he presented to the Board to support this position. Therefore on the basis of the totality of evidence presented to it on this issue by the Respondent, the Board considers the two subject's assessments to be fair and equitable.

c) The Board concurs with the Respondent that the two subjects are assessed equitably with other similar properties which have been assessed in the same manner as the subjects in BL8. The Complainant's information demonstrates that a value less than market value would be produced using his data, and this would produce resulting values for the two subjects that would be inequitable with other similar properties.

d) The Complainant provided insufficient information to demonstrate to the Board that the assessments of the two subjects are not fair and equitable.

DATED AT THE CITY OF CALGARY THIS 11th **DAY OF** July **2014.**

K. D. Kelly

Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure – Rebuttal
3. 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.

For Administrative Use Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	commercial	House conversions	market value	Assessment parameters