



**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 *MGA*).

between:

***Kapasi Business Services Ltd.***  
***(represented by Colliers International Realty Advisors Inc.), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***Ms. V. Higham, PRESIDING OFFICER***  
***Ms. A. Huskinson, BOARD MEMBER***  
***Mr. E. Reuther, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary (the City) and entered in the 2014 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>201259439</b>
<b>LOCATION ADDRESS:</b>	<b>940, 396 11<sup>th</sup> Avenue SW Calgary, Alberta</b>
<b>FILE NUMBER:</b>	<b>76722</b>
<b>ASSESSMENT:</b>	<b>\$864,000</b>

This complaint was heard on 16<sup>th</sup> day of June, 2014 at the office of the Calgary Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- **Mr. J. Phelan**                      **Agent, Colliers International Realty Advisors Inc.**
- **Mr. S. Kassam**                    **Agent, Colliers International Realty Advisors Inc.**

Appeared on behalf of the Respondent:

- **Mr. R. Natyshen**                **Assessor, City of Calgary**

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

- [1] Neither party objected to the composition of the Board as introduced at the hearing.
- [2] All disclosure materials were received in a timely fashion, as legislated under the Act.
- [3] The Board notes an executed Agent Authorization Form present in the file.
- [4] No preliminary matters were raised by either party.
- [5] This is the "lead file" from which disclosure packages, and the Direct Sales Comparison evidence and arguments presented by both parties were carried forward to complaint file #76724, heard together by this panel on the same day.
- [6] Upon request, the Board also agreed to carry forward the "flood effects" arguments and evidence presented by both parties from "lead file" on that issue #76617, heard by the Board on the same day.

#### **Procedural Matters – Motions to Exclude and Dismiss:**

- [7] After the Complainant presented his submissions to the Board, but prior to the Respondent presenting his case, the Respondent asked the Board to rule on two motions, based on issues arising out of the Complainant's presentations.
- [8] The Respondent then introduced the following motions:
  - 1) Motion to exclude the Complainant's submissions respecting the "economies of scale" argument for lack of disclosure; and
  - 2) Motion to dismiss the complaint for lack of "onus" on the part of the Complainant.
- [9] The Board heard comments from both parties relative to these two motions, recessed the proceedings for a brief period, dismissed the parties from the boardroom, and considered the requests. After reconvening the hearing, the Board denied both motions for the following reasons:
  - 1) The Complainant's "economies of scale" oral submissions constituted *argument* and not *evidence*, and were therefore not required by the Act to be disclosed prior to the hearing. While the Complainant as a courtesy might have noted in his disclosure package that this argument would be raised as a "will speak to" matter, it did not need to be disclosed prior to the hearing.

- 2) The Complainant submitted a list of 14 comparable sales in his disclosure package, but at the hearing advised that he was relying solely on *one* of those fourteen to make his case. The Respondent then argued that the Complainant, having relied on only one sale, compromised his case by failing to meet the required onus to present sufficient, relevant evidence to support an appeal.
  - 3) The Board disagreed and found that the Complainant had submitted sufficient relevant evidence in his disclosure package to have met "onus," and that the Board was free to decide how much weight to place on all evidence submitted, irrespective of the Complainant's position on the one sale.
- [10] The Board then proceeded to hear the Respondent's case, continuing the hearing.

**Property Description:**

[11] The subject is assessed as an "A2" quality condo space located in a building constructed in 2008 at 940, 396 11 Avenue SW, in zone BL3 of the city's Beltline commercial district. Designated as Centre City Mixed Use District, the condo comprises 2,029 square feet (sf) of space on 0.35 acres of assessable land area. The subject is currently assessed at \$864,000 using the Direct Sales Comparison approach to value.

**Issues:**

[12] The Complainant identified one matter on the Complaint Form as under complaint, being the assessment amount. During the hearing, the Complainant indicated he was requesting a different assessment amount (\$806,000) than originally noted on the Complaint Form (\$751,680). The Complainant then raised the following issues for the Board's consideration:

- 1) What is the correct typical per square foot (psf) value to apply to the subject property: the assessed \$425.83 psf or the requested \$400 psf?
- 2) Did the City err in failing to apply a quantified "flood effects" adjustment to the subject property?

**Complainant's Requested Value: \$806,000**

**Board's Decision:** For reasons outlined herein, the Board confirms the subject assessment.

**Authority, Requirements and Considerations:**

[13] A Composite Assessment Review Board (CARB) derives its authority from the *MGA*, Revised Statutes of Alberta 2000, 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 *MGA* 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.

Section 2 of the *Matters Relating to Assessment and Taxation Regulations* (the MRAT) states:

- (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**

**Issue 1: What is the correct typical per square foot (psf) value to apply to the subject property: the assessed \$425.83 psf or the requested \$400 psf?**

#### **Complainant's Position on Issue #1:**

[14] The Complainant submitted two tables of 14 comparable sales each (13 of which are common to the City's analysis), showing both a time adjustment to the July 1, 2013 valuation date (Exhibit C1, p.26) and no time adjustment (Exhibit C1, p.22). The unadjusted table reveals a mean price of \$397.43 psf, but the adjusted table notes no mean or median value for the data.

[15] The Complainant directed the Board to focus on one sale in the subject building, another condo unit (920, 396 11 Avenue SW) located on the same floor as the subject, which sold on October 8, 2010 for a time adjusted sale price of \$420.62 psf. The Complainant argued that a sale in the subject building, just across the hall from the subject, is the best comparable to apply when calculating the subject's valuation.

[16] The Complainant further argued that since this unit is nearly half the size of the subject, the well-established principle of "economies of scale" should dictate that it would be valued at a higher price psf, and that reducing the subject's psf value to \$400 would appropriately account for this economic factor.

#### **Respondent's Position on Issue #1:**

[17] The City submitted its Beltline "A" Class Commercial Condo Sales analysis (Exhibit R1, p.26), comprising 13 properties, all of which are common to the Complainant's study. The City's analysis is time adjusted, and includes psf figures for each comparable *minus* the respective titled parking stall value. The Respondent argued that since these stalls can be separately sold, their value must be removed from the original price. Reviewing the time adjusted data minus the parking, the City's mean/median values are \$418.26 psf and \$439.14 psf respectively.

[18] The Respondent objected to the Complainant's use of only one sale to derive the requested value, given the sufficient sample size available. Noting the City's mandate to calculate mass appraisal assessment valuation, the Respondent argued that it's more equitable and fair to use all "A" quality Beltline sales, rather than just the one relied upon by the Complainant.

[19] The Respondent also noted that the Complainant's comparable data does not include an analysis for the exclusion of titled parking in the building, which renders the Complainant's figures and conclusions erroneous.

#### **Board's Findings and Reasons for Decision on Issue #1:**

[20] The Board confirms the assessed typical value of \$425.83 psf applied to the subject.

[21] The Board was not persuaded by the Complainant's argument relative to the one sale in the subject building being the best evidence of typical market value for the subject, given the City's legislated mandate to conduct assessments on a mass appraisal basis using *typical* values derived from similar properties.

[22] The Complainant offered no evidence to dispute the validity of the City's comparables (all of which were included in the Complainant's own sample), and offered no rationale for excluding all but the one of these sales – except to say that it was the best sale.

[23] The Board accepts the Respondent's evidence as reasonably representative, and finds this to be the best indicator of value for the subject property.

#### **Issue #2: Did the City err in failing to apply a quantified "flood effects" adjustment to the subject property?**

##### **Complainant's Position on Issue #2:**

[24] The Complainant argued that the "crippling repercussions" (Exhibit C1, p.1) of the 2013 flood in Calgary "rendered properties within the flood zone at essentially a \$0 value" (Exhibit C1, p.1), due to the devastating economic effects of the flood.

[25] The Complainant submitted that this "market freeze as at July 1, 2013" (Exhibit C1, p.1) justifies the requested 50% reduction, since the negative economic impact of the flood affected more than just flooded properties in Calgary. The Complainant argued that the City failed to "quantify" this impact in the subject assessment, since it was one of those properties not flooded, but surely *affected by* the event.

[26] The Complainant presented several third party reports and articles (Exhibit C1, pp.28-48) in support of this argument, noting that the subject was included in a series of Calgary postal code prefixes which the Scotiabank flagged as requiring "additional inspections or appraisals before any financing gets approved" (Exhibit C1, p.38), making it more onerous and costly to property owners within those prefixes.

##### **Respondent's Position on Issue #2:**

[27] The Respondent argued that the Complainant's requested flood effects reduction is unwarranted, since the subject was not actually flooded last summer, nor does it lie within in any flood zone identified by the City.

[28] The Respondent challenged the relevance and reliability of third party reports and articles submitted by the Complainant, noting that they all referred to *residential*, not commercial properties.

[29] The Respondent noted that sale prices for non-residential properties in the subject area have actually increased generally since the flood last summer, and that properties either flooded or in a City-identified flood zone, were appropriately adjusted in their respective assessments.

[30] The Respondent also questioned the 50% reduction, noting that the Complainant submitted no data to support an adjustment of this or any value, arguing that it was arbitrarily conceived in an evidentiary vacuum.

**Board's Findings and Reasons for Decision on Issue #2:**

[31] The Board finds that the City did not err in omitting to apply a quantified "flood effects" reduction to the subject property.

[32] The subject was neither flooded, nor in a flood zone, and the Complainant failed to proffer any evidence whatsoever of specific – even marginal – market value *impact* to the subject justifying a downward adjustment of any amount for flood effects.

[33] The Board finds that the third party reports and articles submitted by the Complainant are not relevant to the commercial subject property in any persuasive manner, since they all speak to residential properties.

[34] The Board concurs with the Respondent's submission that the requested 50% adjustment is arbitrary and unsupported by the evidence submitted at the hearing, and further notes that the Complainant's requested assessment value (\$806,000) does *not* reflect a 50% reduction, for reasons not articulated during the hearing.

**Board's Decision:**

[35] For the reasons outlined herein, the Board confirms the subject assessment.

DATED AT THE CITY OF CALGARY THIS 11<sup>th</sup> DAY OF JULY 2014.

  
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V. Higham, Presiding Officer

## APPENDIX "A"

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Disclosure
2. R1	Respondent's 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 – Roll Number 201259439**

<b>Municipal Government Board Use Only: Decision Identifier Codes</b>				
<b>Municipality/Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
Calgary CARB	Office	Low Rise (Unit Ownership)	Sales Approach	Land & Improvement Comparables