



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:

***2540 Kensington LTD. (as represented by Avison Young Property Tax Services),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
R. Deschaine, BOARD MEMBER
T. Usselman, 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 NUMBERS: 060078805 and 060078904

LOCATION ADDRESSES: 2530 Kensington RD NW
2540 Kensington RD NW

FILE NUMBERS: 76918 and 76919

ASSESSMENTS: \$2,020,000 and \$5,250,000

These two complaints were heard together on 23rd day of June, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *J. Mayer – Avison Young Property Tax Services*

Appeared on behalf of the Respondent:

- *C. Neal – Assessor, City of Calgary*
- *S. Bezin – 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 and Respondent requested that the complaints for these two files be heard together since the two buildings, for all intents and purposes, operate together, share parking, and immediately abut one another on the same street. Both properties are owned by the same company.

Property Descriptions:

[3] For file # 76918 - The subject at 2530 Kensington RD NW is assessed as a "C" quality one-storey suburban office building located in the community of West Hillhurst. It has 7,500 square feet (SF) of above grade space, and 7,500 SF of below grade space. It has recently (2014) been converted to retail use. It is assessed using the income approach at \$11 per SF for both the upper and lower floor areas for a value of \$2,020,000.

[4] For file # 76919 - The subject at 2540 Kensington RD NW is assessed as a "B" quality three-storey suburban office building located in the community of West Hillhurst. It has 21,375 SF of above grade space, and 7,125 SF of below grade space. It is assessed using the income approach at \$16 per SF for the upper floor area, and \$11 per SF for the lower floor areas for a total assessed value of \$5,250,000.

Issue:

[5] What is the assessed value of each of the subjects, given that they transacted together in one arms-length market sale which was "assembled" in 2012 and "finalized" in January 2013?

Complainant's Requested Value:

[6] The Complainant requested the following revised assessments:

- (a) For 2530 Kensington RD NW – File #76918 - \$1,877,155.
- (b) For 2540 Kensington RD NW – File #76919 - \$4,826,968.

Board's Decision:

[7] The Board confirmed the assessments as follows:

- (a) For 2530 Kensington RD NW – File #76918 - \$2,020,000.
- (b) For 2540 Kensington RD NW – File #76919 - \$5,250,000.

Legislative Authority, Requirements and Considerations:

[8] The Complainant briefly referenced certain principles in Court Of Queens Bench of Alberta ABQB 512 (Acton Decision) at [24] which states:

"In my view, the MGB's failure to rely on the evidence of value provided by the recent sale of the Property fails to meet the test of reasonableness. I agree with the following comments from **Re Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd. et al.** (1984), 47 O.R. (2d) 766 (Ont. H.C.J. Div. Ct.) at p. 767:

"It seems to me to be worth remembering that where the Assessment Act, R.S.O. 1980, c. 31 requires the determination of what a property might be expected to realize if sold on the open market by a willing seller to a willing buyer (s. 18(2)), the price paid in a recent free sale of the subject property itself, where, as in this case, there are neither changes in the market nor to the property in the interval, must be very powerful evidence indeed as to what the market value of the property is. It is for that reason that the recent free sale of a subject property is generally accepted as the best means of establishing the market value of that property.....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 realistic and most reliable method of establishing market value."

Positions of the Parties

Complainant's Position:

[9] The Complainant clarified that the two subjects transacted together in an "arms length" sale which was finalized in January 2013, approximately 5 months prior to the valuation date for assessment purposes. He suggested that the sale price of \$5,800,000 for the two buildings together, was a "discounted" price because of certain "functional obsolescence" said to be associated with each of the two buildings. He advised that when the two buildings were purchased, they needed extensive renovations to both the interior and exterior of the buildings. For example, the Complainant noted that an elevator had to be installed in the 3 – storey structure, as well as the addition of "wheelchair access" capabilities as part of an exterior renovation. Various other interior improvements were also implemented at a cost of \$904,123. He provided copies of the contract hiring the renovation company.

[10] The Complainant argued that the \$904,123 cost of the improvements to the two buildings should be added to the \$5,800,000 combined sales value for the two buildings, and the resultant value of \$6,704,123 then apportioned between the buildings to determine their individual market values as a result of the sale. He argued that this would provide a more accurate indication of market value for each building than the individual values produced by the Assessor.

[11] The Complainant argued that the extensive nature of the renovations to the two buildings had nothing to do with their current uses, but merely demonstrated that the two buildings were older, dysfunctional, and largely unfit for office use in their prior form. This led him to conclude that the buildings sold for less than market value as a result. He argued that at time of sale, the two buildings were merely obsolete "C" Class and not "B" Class vacant office spaces, and this was their condition as of December 31, 2013.

[12] The Complainant examined the current City assessments for the each of the two buildings - i.e \$5,250,000 and \$2,020,000 and noted their total value of \$7,270,000. He concluded that the larger building accounted for 72% of the total assessment value, and the smaller building for 28% of the value. He then concluded that the percentage of the total sale price of \$5,800,000 to be apportioned to each building was \$4,176,000 (72%) for the larger building, and, \$1,624,000 (28%) for the smaller building.

[13] The Complainant then calculated that the total renovation value (\$904,123) to be apportioned to each of the buildings was \$650,968 (72%) for the larger structure, and \$253,155 (28%) for the smaller one. He calculated that the proper market value therefore for each of the two properties, was \$4,826,968 (\$4,176,000 + \$650,968) for the larger building; and, \$1,877,155 (\$1,624,000 + \$253,155). He reiterated that the recent (joint) market sale of the two subjects, when adjusted for improvements, is the best evidence of market value for each of the two properties. He referenced the so-called "Judge Acton" Court decision (see [8] above) in support of his position.

Respondent's Position:

[14] The Respondent presented her disclosure Brief R-1 and argued that the Complainant's arguments and valuation logic for apportioning value to each of the subjects is seriously flawed. She reviewed the Complainant's calculations, noting that the purchasers planned, prior to acquiring the sites, to turn the smaller building (2530 Kensington RD NW) into a Co-op Liquor store. She provided copies of various City of Calgary Permits authorizing the improvements to that building for that purpose, some prior to the date of acquisition. She also provided current photos of the finished work. Nevertheless, she clarified that the City had assessed the building as a "C" Class office building, and not as a liquor store.

[15] The Respondent noted that while the sale of the two subjects finalized in January 2013, building permit applications for the new Co-op Liquor store in the smaller building were approved by the City in 2011, and it opened in May 2013. She noted that renovation work is still proceeding in the larger three-storey building at 2540 Kensington RD NW. She noted that it had been assessed as a "B" Class office building.

[16] The Respondent argued that in order to properly apportion the renovation costs to each of the two buildings, one needed to carefully examine the contract documents between the owner and the renovator. She suggested that the Complainant did not do this. She noted that he merely assumed that the work to be undertaken in each building was identical, which it was not, and therefore simply divided the cost on a percentage basis between the two structures. This is flawed analogy she argued.

[17] The Respondent also provided documentation demonstrating that the building permit renovation costs for the smaller building at 2530 Kensington RD NW were stated to be \$750,000 and not the Complainant's percentage value of \$253,155. She also provide similar documentation to show the building permit renovation costs for the larger building at 2540 Kensington RD NW were stated to be \$636,528 and not the \$650,968 posed by the Complainant. The Respondent provided pictures taken in December 2013 which showed that the "wheelchair access" and other exterior renovations had been completed on the larger building at that time. Therefore, she noted, the Complainant is mistaken when he argues that the subject was an obsolete, unimproved building on December 31, 2013.

[18] The Respondent provided copies of mortgage documents for the two subjects, noting that in December 2012 a mortgage of \$7,000,000 was acquired for the two sites, which was then superseded by a new 2014 mortgage for \$8,400,000. She argued that this information supports the assessments of the two properties which together total \$7,270,000.

[19] The Respondent clarified that the City is required under provincial legislation to use mass appraisal techniques which employ "typical" values to arrive at estimates of market value for individual properties like the two subjects. She reiterated that the subject property at 2540 Kensington RD NW was assessed as a "B" Class office building by using values typical of that

Class. She also confirmed that the subject at 2530 Kensington RD NW was similarly assessed as a "C" Class building. She compared the City's legislated methodology to the Complainant's arbitrary apportionment of construction and assessment value, and concluded that the latter's methodology is not a recognized valuation technique, and is therefore inconsistent and unreliable.

Board's Reasons for Decision:

[20] The Board finds that it concurs with the Respondent that the respective valuations proposed by the Complainant for each of the two subjects wherein he arbitrarily identifies and apportions percentage renovation costs, and combines them with similar arbitrarily defined percentage elements of their combined sale price, is flawed and unreliable.

[21] The Board finds that based on the evidence and argument in this hearing regarding the particulars associated with the combined sale of the two subjects for one composite price, and contrary to the assertions of the Complainant, the so-called "Acton" Court Decision (see [8] above) does not apply in this appeal.

[22] The Board finds that there is ample evidence as provided by the Respondent to demonstrate that, contrary to the assertions of the Complainant, renovation work on the two subjects, to one degree or another, occurred prior to their market sale. The Respondent's photographs taken in December 2013 for example, confirm this point.

[23] The Board finds that notwithstanding [22] above, the subjects were each assessed by the Respondent as suburban office buildings using legislated Mass Appraisal techniques. The subject at 2530 Kensington RD NW was assessed using typical parameters for "C" Class suburban offices, whereas the subject at 2540 Kensington RD NW was assessed using typical parameters for "B" Class suburban offices.

[24] The Board finds that the Complainant did not challenge any of the "C" Class or "B" Class suburban office valuation parameters used by the Respondent to assess each of the subjects.

[25] The Board finds that the Complainant provided insufficient information to demonstrate that the two subjects were assessed by the Respondent inequitably or unfairly, or that the assessments for each are incorrect. The assessments of both properties under appeal in this hearing are therefore confirmed.

DATED AT THE CITY OF CALGARY THIS 17th 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. 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	commercial	Suburban office	market value	Market sale