TOWN OF COCHRANE
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 ("*MGA*").

between:

HLG Investments Ltd., COMPLAINANT

and

The Town of Cochrane, RESPONDENT

before:

H. Kim, PRESIDING OFFICER
S. Ray, MEMBER

This is a hearing of the complaint to the Town of Cochrane Assessment Review Board in respect of a property assessment prepared by the Assessor of the Town of Cochrane and entered in the 2013 Assessment Roll as follows:

ROLL NUMBER	LOCATION ADDRESS	2013 ASSESSMENT
620000	639 First Street West	$432,000

This complaint was heard on the 26th day of July, 2013 in the Council Chambers of the Town of Cochrane (Town) located at 101 RancheHouse Road, Cochrane, Alberta.

Appeared on behalf of the Complainant: B. Kendall, Property owner

Appeared on behalf of the Respondent: V. Cottreau, Assessor, Town of Cochrane
A. Aldred, Assessor, Town of Cochrane

Attending for the ARB: J. Knight, ARB Clerk

Procedural or Jurisdictional Matters:

Quorum

[1] This matter was set to be heard by a panel of three members, but one of the members was not able to attend. The MGA provides for a quorum of two members:

> **458(2)** The provincial member and one other member of a composite assessment review board referred to in section 453(1)(c)(i) constitutes a quorum of the composite assessment review board.

There was no objection to the panel as constituted. Accordingly, the remaining two members proceeded to hear the matter as a quorum.

Disclosure

[2] The Complainant had been notified of the hearing date by registered mail and the dates for disclosure of evidence were stated in the letter. He did not provide the initial disclosure documents or rebuttal. The Reasons for Complaint on the Complaint form stated "property is incorrectly assessed for a linear property of this type" with no further details, and the requested assessed value was not specified. The Respondent submitted the disclosure package to defend the assessment at the required time prior to the hearing.

Alberta Regulation Regulation 310/2009 Matters Relating to Assessment Complaints (MRAC) specifies mandatory timelines for disclosure of evidence prior to a hearing:

> **8(2)** If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:
>
> (a) the complainant must, at least 42 days before the hearing date,
>
> (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
>
> (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;
>
> (b) the respondent must, at least 14 days before the hearing date,
>
> (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and
>
> (ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;
>
> (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

MRAC further states that the Board must not hear evidence that has not been disclosed:

> **9(2)** A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

[3] At the beginning of the hearing, the Complainant was advised of the legislation, and that since no evidence had been submitted within the required timelines, the Board could not hear his evidence. He stated that he was not aware of this requirement, that it was different from previous years, and that if that was the case he would have to ask for a postponement. The Respondent was prepared to proceed, because the Complainant's position was already known from their telephone conversations. The Respondent stated that as long as any evidence or testimony was limited to the two issues discussed - adequacy of the adjustment applied and the development permit, the Respondent's position was that the Complainant could be heard and that it was not necessary to consider an application for postponement.

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

[4] The Board determined that the hearing would proceed and the Complainant would be provided the opportunity to present his case.

Reasons:

[5] The Respondent was aware of the case that was to be presented and agreed to have the hearing proceed, therefore the intent of the disclosure provisions had been met. MRAC allows for the abridgement of time:

> **10(3)** A time specified in section 8(2)(a), (b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.

The consent was verbal at the hearing and not in writing.

[6] In considering whether this satisfied the requirements of the legislation, the Board notes that MRAC is a regulation that sets procedural rules to facilitate a fair hearing process. It would be contrary to the intent of the MGA to deny the taxpayer the right to contest his assessment due to failure to strictly adhere to the provisions of MRAC in a situation where the Respondent had indicated a willingness to proceed. Had the Respondent indicated prejudice due to the failure of the Complainant to adhere to the requirements of the legislation, the hearing would not have proceeded and the assessment would have been confirmed, as there would have been no evidence to vary the assessment.

[7] While the hearing proceeded and the Complainant's arguments were considered, the Board advises the Complainant that had the Respondent not agreed to abridge the time and an application for postponement been made by the Complainant to allow him to submit evidence, it would not likely have been granted. MRAC states:

> **15(1)** Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

Failure to disclose would not generally be determined to be an exceptional circumstance that would warrant the granting of a postponement.

Property Description:

[8] The subject property is a vacant 0.48 acre parcel adjacent to the north side of the railroad tracks at the west end of downtown Cochrane, where First Street West joins the 1A highway. The parcel was created in 2002 and has 424 feet of frontage with 50 feet lot depth. It is zoned CB - Central Business District and is assessed based on the rate applied to vacant commercial land in the downtown core ($1.2 million per acre) with a -25% Location Adjustment applied, resulting in the assessment under complaint calculated at 0.48 ac @ $900,000/ac.

Issues:

[9] The complaint form identified the following matters that apply to the complaint: an assessment amount, an assessment class, and the type of property. The Reasons for Complaint stated "property is incorrectly assessed for a linear property of this type". At the hearing, the specific issues were identified as:

1. Is the -25% adjustment adequate to recognize the characteristics of the parcel?
2. Should the value of the parcel be adjusted due to lack of a Development Permit?

Party Positions:

Complainant's position:

[10] The Complainant stated that the subject property is unique and that the assessor overlooked critical characteristics of the parcel in determining the assessment. The parcel is only 50' deep and there is no other parcel in the downtown core that shallow, most are 150' deep. The land use bylaw requires a 5m rear yard setback, which takes away 1/3 of the subject parcel compared to 11% of typical parcels. This is the only parcel south of the 1A highway that is accessed by gravel road, all the other properties front onto Town infrastructure. Town services are much further away from the subject property (about 40 m) than typical parcels in the downtown area (about 10 m) and therefore service connections would cost substantially more than for a typical parcel.

[11] The Complainant had developed other parcels in the immediate area, and stated that the Town would not advise what would be required for a Development Permit (DP) for the subject property. The Complainant made a DP application on June 21 for a permitted use, but the application fee had not yet been cashed and the 40 days decision period pursuant to Sec 684 of the MGA will expire next week. The Complainant stated that if the DP is not approved, this property should be assessed at the lowest value.

[12] There was no requested assessment noted on the complaint form. Upon questioning the Complainant advised that a $150,000 reduction in the assessment would recognize the unique characteristics of the parcel and requested the assessment be lowered by that amount.

Respondent's position:

[13] The Respondent agreed that the parcel is unique, but it has value and is required to be assessed. Market value can only be determined using comparable properties that sold. Six

commercial vacant parcels that sold between May 2009 and May 2012 were submitted. The parcels ranged from .0.14 and 4.16 acres with selling prices of $700,000/ac to $3,314,286/ac. There was also one 0.17 ac industrial parcel that sold in December 2010 for $1,382,353/ac. On that basis, the vacant land rate for the downtown core was set at $1,200,000. The subject parcel was given an allowance of -25% to recognize its shape and proximity to the railroad tracks. The Respondent stated that this is the only parcel that is receiving an adjustment. Two of the sales were very close to the subject, effectively directly across the street. They were smaller parcels of 0.14 and 0.29 ac that sold for $3,314,286 and $2,241,379/ac respectively in May 2010 and November 2011. The subject is assessed substantially less, at $900,000/ac.

[14] The subject parcel had been offered for sale several times in the recent past, and the listing sheets were presented. All of the listings had either been terminated or expired and the true market value of the parcel would not be known until it actually sold; however the asking prices were $2,299,000, $1,799,000 and $1,300,000 in 2007, 2009 and 2010 respectively, substantially more than the current assessment.

[15] The Respondent had email correspondence with the senior planner at the Town with respect to the DP application. It had been submitted on May 22, 2013 but was determined to be incomplete as it was missing dimensions from the building to the property line. There is no evidence that a DP could not be obtained, and in any event, whether or not a vacant parcel has a DP does not factor into the value. Likewise, the distance to services are not considered, only whether a parcel is serviced or not. The subject parcel has access to services and is considered to be serviced. In summary, the assessment adequately reflects any negative characteristics of the parcel and should be confirmed.

Board's Decision:

[16] The decision of the Board is to confirm the 2013 assessment for the subject property as follows:

ROLL NUMBER	LOCATION ADDRESS	2013 ASSESSMENT
620000	639 First Street West	$432,000

Reasons:

[17] In the absence of an equity argument, the adequacy of a negative allowance can only be evaluated in relation to whether the resulting value reflects the market value of the parcel. While the Board agrees that the subject parcel suffers from an unusual shape and possibly higher development costs, it did not appear to be undevelopable. The Board considered the argument of the Complainant with respect to the rear yard setback, but noted that the parcel to the east had been developed with no rear yard setback and was of the opinion that it would be reasonable to apply for a variance for the subject parcel.

[18] The only evidence of market value was the list of sales presented by the Respondent. The Board considered the selling price of the neighbouring parcels, in particular the one directly across the street that sold seven months prior to the valuation date of July 1, 2012. While the Board recognizes that it may be a superior parcel, it is in very close proximity and its 0.29 ac parcel size is within reasonable range of the subject. The assessment per acre of the subject is

40% of the sale price of the comparable; i.e. an allowance of -60% of the market value of a comparable parcel that does not have the negative influences of the subject. There was no evidence presented to support a greater allowance.

[19] With respect to the lack of a DP, it might be relevant if a DP could not be obtained due to constraints on the parcel; however in the subject case a DP had only been applied for a short time prior to the hearing, and there was no evidence that it would not be processed. Therefore, the Board is of the opinion that the lack of a DP does not negatively impact the value of the subject parcel.

DATED AT THE TOWN OF COCHRANE THIS 1 DAY OF AUGUST 2013.

per

H. Kim, Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

1 Information package prepared by ARB Clerk consisting of complaint form and Respondent's submission

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.