

Central Alberta

Regional Assessment Review Board

Decision No.: CARB 0262 607/2014

Complaint ID: 607

Roll No.: 2131705

REGIONAL ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: August 15, 2014

PRESIDING OFFICER: Cathryn Duxbury

BOARD MEMBER: Velma Keeler

BOARD MEMBER: Al Gamble

BETWEEN:

SHAW Cablesystems Limited

Complainant

-and-

The City of Red Deer

Respondent

This is a complaint to the Central Alberta Regional Assessment Review Board in respect of the following assessment:

ROLL NUMBER:	2131705
MUNICIPAL ADDRESS:	4761 62 Street
ASSESSMENT	\$1,006,600

The complaint was heard by the Composite Assessment Review Board on the 15th day of August, 2014, in the City of Red Deer.

Appeared on behalf of the Complainant: Stephen Cook, Managing Director, VP
James Phelan, Analyst
Colliers International Valuation & Advisory Services

Appeared on behalf of the Respondent: Rob Kotchon, Assessment Coordinator / Analyst
Anna Meckling, Assessor
City of Red Deer, Revenue & Assessment Services

JURISDICTION

[1] The Central Alberta Regional Assessment Review Board (hereinafter “the Board”) has been established in accordance with section 456 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (hereinafter “the MGA”).

[2] Neither party raised an objection to any Board member hearing the complaint.

[3] No procedural or jurisdictional matters were raised by either party.

PRELIMINARY MATTERS

[4] There were no preliminary matters raised by the parties.

BACKGROUND

[5] The subject property is a single tenant office warehouse that is owner occupied. It has 6,067 square feet (sf) on the main floor and 2,474 sf of mezzanine space. The property sits on 0.35 acres and has 39% site coverage. The property is zoned I1 Industrial (Business Service) District and the building was constructed in 1980.

ISSUE AND FINDINGS

[6] At issue is whether the assessed value of the property determined by the City using the income approach to value is incorrect.

Complainant’s position:

[7] After reviewing the details of the subject property, the Complainant took the Board through an explanation of the three traditional approaches to valuing real property. The Complainant takes the position that the Respondent erred in using the income approach to valuing the subject property because being owner occupied, the property does not generate income. The Complainant believes that the cost approach should have been used. That said, the Complainant proceeded to suggest a value for the subject property based on each of the three approaches explained on page 7 of Exhibit C1.

[8] Referring to quotes from the International Association of Assessing Officers and the Appraisal Institute of Canada found on page 8 of Exhibit C1, the Complainant argued that the primary approach to valuing owner occupied commercial and industrial properties such as the subject property, is the direct comparison approach provided there are adequate sales to do so. The Complainant admitted that there were too few sales to properly rely on this approach, but for the purposes of illustrating how excessive the Respondent’s assessed value is, the Complainant took the Board through the process of valuing the subject property using the direct comparison approach.

[9] The Complainant referred the Board to a table of what they argued are three comparable properties that sold between September 2011 and February 2013, the details of which are shown on page 9 of Exhibit C1 and in pages 18 - 20. These properties range in size from 11,250 sf to 20,400 sf, and years of construction of 2006 to 2008, with sale prices that range from \$127.45 per square foot to \$155.56 per square foot. The Complainant noted that despite

all of these properties being superior to the subject, the average unit price is \$142.84 per square foot, which is considerably lower than the assessed value of the subject property at more than \$165.00 per square foot. Taking into consideration the significant differences between the three superior comparables and the subject property, the Complainant suggested that a more fair and equitable estimate of market value is \$120.00 per square foot. Using \$120.00 per square foot, a truncated assessed value of \$758,000 for the subject property is obtained.

[10] The Complainant went on to value the subject property using the cost approach to value using the Marshall & Swift Valuation Guide for the improvements, and the land assessments for what the Complainant argued are three comparable properties located in the City of Red Deer. Based on the calculations found on page 10 of Exhibit C1, the Complainant determined that the depreciated replacement cost of the building on the subject property is \$228,232.30. Based on the median assessment per acre of the three properties detailed on pages 11 and 21 to 23 of Exhibit C1, and rounding upward, the Complainant determined the land value for the subject property to be \$122,500. Taking the depreciated replacement cost of the building and the land value together, the Complainant maintained that the cost approach to valuing the subject property produces an assessed value of \$350,500.

[11] Although the Complainant argued that it is fundamentally incorrect to assess the non-income generating, owner occupied subject property using the income approach to value, the Complainant reviewed the Respondent's calculations for the purposes of pointing out for the Board a significant error the Respondent made therein. The error the Respondent made, the Complainant argued, was in assigning a lease rate to the 2,474 sf of mezzanine space. Although the Complainant acknowledged during questioning that the mezzanine space had value, the Complainant argued that the value of that space should be blended into the lease rate applied to the main floor space because the mezzanine would never be leased separately from the main floor by the owner. Keeping all of the other values used by the Respondent in their calculations the same, removing the mezzanine space from the income calculations produces a truncated assessed value for the subject property of \$807,000. During questioning, the Complainant advised that the \$11.50 per square foot lease rate used by the Complainant for the 6,067 sf of main floor space, the same rate used by the Respondent for the same space, is a blended rate that already considers the fact that the subject property has mezzanine space.

[12] By way of summary, the Complainant noted that all three approaches to value, done correctly, produce an assessed value considerably less than the assessed value produced by the Respondent. Because it is fundamentally incorrect to assess the owner occupied subject property using the income approach to value, and because there are too few sales for the direct comparison approach to be properly used, the Complainant believes that the most persuasive evidence supports using the cost approach to valuing the subject property. Accordingly, the Complainant requests that the assessed value of the subject property be reduced to \$350,500. The Complainant concluded by stating at page 14 of Exhibit C1:

Furthermore, by the precedent set out in *Bramalea v. British Columbia*, in the event of a discrepancy between a fair market value assessment, and an equitable assessment, the tax payer is entitled to the lesser of the two burdens.

Respondent's position:

[13] The Respondent advised the Board that the 6,067 sf concrete block subject property underwent significant renovations in 2004. Renovations included the addition of a front

vestibule, a refinished exterior, new windows and exterior doors, 2,474 sf of new office build-out in the original warehouse plus an office mezzanine. A further addition to the mezzanine of 594 sf occurred in 2008. Total office finish on the main floor includes the front office of 2,474 sf, and a 1,136 sf finished air conditioned equipment room in the rear area of the warehouse, representing 60% of the main floor area. The building has a 22' wall height, is fully sprinklered, and the yard is fully paved parking.

[14] The Respondent assessed the subject property using the income approach to value, which involves the analysis of a property in terms of its income producing capability. Actual rents are gathered by the City and analyzed on an annual basis to determine typical or market rent rates that are applied to all industrial properties like the subject property, whether owner occupied or not. The market rent applied to a particular property is dependent upon the degree of finish the property exhibits. A market rent rate of \$11.50 per square foot was applied to the main floor of the subject property in recognition of the above average finishes. A lower market rent rate would have been applied if the building had less finishes.

[15] The Respondent noted that the Complainant did not dispute any of the values the Respondent used in the income approach to value other than the assigning of a lease rate to the mezzanine space. The Respondent explained that the City of Red Deer recognizes that a mezzanine is leasable area and is therefore assessable as part of the improvements to the property. A market lease rate depending on the level of finish is attributed to all mezzanine space, with even unfinished storage mezzanine space being assessed at a nominal rate. In the case of the subject property, 60% of the main floor lease rate was utilized (\$7.00 per square foot), which recognizes that the extent of the office finishing is more than what is typically found in the mezzanine of an industrial building. For example, the subject property's mezzanine features full HVAC, sprinklers, and good partitioning.

[16] The Respondent explained that if a blended lease rate were to be used, as suggested by the Complainant, the blended lease rate would be the weighted average of the lease rate applied to the main floor and the lease rate applied to the mezzanine space, and then multiplied by the entire finished square footage of the property. Accordingly, the Respondent argued, the Complainant erred in its income approach calculations by only applying their "blended" lease rate to the main floor square footage of the property.

[17] Regarding the use of the direct comparison approach to value the subject property, the Respondent agreed with the Complainant that there were too few sales to properly employ this approach, which is one of the reasons the Respondent said they did not use it. That said, the Respondent reviewed for the Board five sales which occurred in the City of Red Deer within eight months of the valuation date of July 1, 2013, including one post facto sale. These properties range in renovation dates from 1974 to 2012, main floor areas of 7,518 sf to 11,250 sf, and sale prices per square foot of \$100 to \$181. The subject property was assessed at \$165.95 per square foot, which the Respondent noted is well within the range. The details of the sales are found on pages 16 and 38 to 59 of Exhibit R1. The Respondent noted that the Complainant's sales comparables included only one recent City of Red Deer sale, and two dated industrial sales from different municipalities. The one City of Red Deer sale used by the Complainant was one of the five City of Red Deer sales used by the Respondent.

[18] Regarding the use of the cost approach to value the subject property, the Respondent noted that the Guide to Property Assessment and Taxation in Alberta, published by Municipal

Affairs of the Government of Alberta, supports using the cost approach where the property being valued is new or nearly new, in situations where few comparables are available, or when the improvements are unique or specialized. The Respondent is of the view that these circumstances do support the use of the cost approach in valuing the subject property.

[19] The Respondent also pointed out several issues they found with the Complainant's calculations. Regarding the use of the Marshal & Swift Valuation Guide for the valuation of the improvements, the Respondent noted that the base cost used by the Complainant was for the storage warehouse class, which applies to industrial properties with significantly less finishes and office space than the subject property. The Respondent also noted that none of the four multipliers were applied against the base cost, which is a requirement in the Guide because the base rate is a bench mark cost only. The Respondent also took significant issue with the fact that the Complainant used a depreciation factor of 52.5%, which would apply to a 33 year old building that had not undergone the significant renovations the subject property had. During questioning of the Complainant the Respondent got the Complainant to concede that if a property undergoes significant renovations, the effective age of the property would be used to determine the depreciation factor applied, and the depreciation factor would be smaller than the one applied if no renovations had been completed since the date the building was constructed. In short, the Respondent argued that too large a depreciation factor was applied to the subject property. Several pages of the Marshal & Swift Valuation Guide were produced at pages 60 to 66 of Exhibit R1 to illustrate many of the Respondent's points.

[20] Regarding the Complainant's determination of the land value for the subject property, the Respondent noted that the Complainant used the assessed values of the three vacant land parcels, rather than sales comparables. In addition, the Respondent noted that two of the parcels used by the Complainant are public utility lots owned by the City which would never sell on the open market because no improvements can be placed on them.

[21] In conclusion, the Respondent argued that the Complainant failed to provide relevant or reliable evidence from the City of Red Deer that the current assessed value exceeds the market value of the property, and failed to meet the evidentiary burden upon them to show that the assessment is wrong, unfair or inequitable.

Board Findings:

[22] Section 467 of the MGA guides decisions of assessment review boards, and provides in part:

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

...

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

The onus is on the Complainant to provide sufficient evidence to justify a change to the assessment. For the reasons that follow, the Board finds that the Complainant has failed to satisfy the onus upon them.

[23] Section 293(1)(2) of the MGA sets out some of the assessor's obligations:

293(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.

(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

[24] The valuation standard the assessor must apply is set out in s. 6(1) of the *Matters Relating to Assessment and Taxation Regulation*, Alta. Reg. 220/2004:

6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value...

[25] While the Respondent is bound by legislation to derive fair and equitable assessments which reflect market value, the legislation does not dictate which approach the Respondent must use to derive that value. The Respondent used the income approach to value all industrial warehouse properties in the City of Red Deer and the Board was not persuaded that this approach was improper based solely on the fact that the subject property is owner occupied.

[26] Regarding the values the Respondent used in its income approach to valuing the subject property, the Complainant's written submissions only take issue with the Respondent having assigned a separate lease rate to the mezzanine space. All other values in the Complainant's calculations of the assessed value of the subject property based on the income approach are identical to the Respondent's. At the hearing, the Complainant argued that the \$11.50 per square foot lease rate used by the Complainant for the 6,067 sf of main floor space, the same rate used by the Respondent for the same space, is actually a blended rate that already considers the fact that the subject property has mezzanine space.

[27] The Board notes that the Complainant provided no evidence to support their contention that \$11.50 per square foot is the blended market rent rate for the subject property other than the statement they made in the hearing during questioning and repeated in summary. The Complainant argued at the hearing that the Respondent failed to provide evidence that the \$11.50 per square foot is the non-blended market rent rate for the subject property. However, the Respondent provided their response to the Complainant's written materials and came into the hearing with the understanding, entirely reasonable in the Board's opinion, that the \$11.50 per square foot value was not in dispute. The Complainant cannot reasonably argue that no evidence was brought to support a point the Respondent was not advised in advance of the hearing was in contention. The Complainant acknowledged that the mezzanine space has value. With no evidence brought forward to suggest that the value the Respondent attributed to the mezzanine space in the subject property is incorrect, the Board is not prepared to alter the assessed value of this space. Accordingly, the Board accepts the assessed value of the subject property determined by the Respondent using the income approach over the value determined by the Complainant using the same approach.

[28] Regarding the use of the direct comparison approach to value the subject property, both parties agreed that there were too few sales to properly employ this approach. In any event, the Board would place little weight on two of the Complainant's three sales comparables because they are outside of the municipality.

[29] Regarding the Complainant's use of the cost approach to value the subject property, the Board was persuaded that the Complainant made fundamental errors in their calculations. The base cost used by the Complainant was for a class with significantly less finishes and office space than the subject property has, none of the required four multipliers were applied against the base cost, too large a depreciation factor was applied, and assessed values were used for the land comparables, two of which are public utility lots, rather than sales comparables.

[30] Based on the evidence provided, the Board is not persuaded that the assessed value is unfair and inequitable and should be changed.

[31] Although the Board has rejected all of the assessed values produced by the Complainant using the three traditional approaches to valuing real property, the Board felt it necessary to comment on the Complainant's citation of *British Columbia (Assessor for Area 9 – Vancouver) v. Bramalea Ltd.* (1990), CanLII 284 (B.C.C.A.) ("*Bramalea*") in their materials and during the hearing. In citing *Bramalea* as described above immediately following the Complainant's argument that the taxpayer should get the lesser of the assessed values produced using the three approaches, it appeared to the Board that the Complainant was suggesting *Bramalea* stands for the proposition that the taxpayer is entitled to the lesser of the assessed values produced using the three approaches to value. The Board notes that *Bramalea* does not stand for that proposition.

SUMMARY

[32] For the reasons noted above the assessed value of the subject property is CONFIRMED at \$1,006,600.

Dated at the City of Red Deer, in the Province of Alberta this 15th day of September, 2014 and signed on behalf of the Presiding Officer for all three panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



Sonya Parsons, Board Officer, on behalf of
Cathryn Duxbury, Presiding Officer

This decision can be appealed to the Court of Queen's Bench on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 470 of the *Municipal Government Act* which requires an application for leave to appeal to be filed and served within 30 days of being notified of the decision. Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX "A"

Documents Presented at the Hearing
 and considered by the Board

<u>NO.</u>	<u>ITEM</u>
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure

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Decision No. CARB 0262 607/2014		Roll No. 2131705		
<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Warehouse	Single Tenant	Income Approach (Types 1 to 6)	Leasable Area