
Complaint ID 0262 1412
Roll No. 30000931306

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: July 12, 2021

PRESIDING OFFICER: M. Oberg
BOARD MEMBER: D. Dey
BOARD MEMBER: V. Keeler

BETWEEN:

ALTUS GROUP LIMITED

Complainant

-and-

REVENUE & ASSESSMENT SERVICES
For The City of Red Deer

Respondent

This decision pertains to a complaint submitted to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by an Assessor of The City of Red Deer as follows:

ROLL NUMBER: 30000931306
MUNICIPAL ADDRESS: 3310 50 AV, Red Deer, AB
ASSESSMENT AMOUNT: \$26,840,200

The complaint was part of a mutually agreed batch of complaints heard starting on the 12th of July 2021. Arguments specific to the subject were heard by the Composite Assessment Review Board on the 13th & 14th days of July 2021, at via Video Conference, in the province of Alberta.

Appeared on behalf of the Complainant:
Andrew Izard, Altus Group Limited
Brent Foden, Altus Group Limited

Appeared on behalf of the Respondent:
Gregory Plester, Brownlee LLP, Legal Counsel for the City of Red Deer
Cale Green, Property Assessor, City of Red Deer
Maureen Cleary, City Assessor, City of Red Deer

DECISION: The assessed value of the subject property is varied to \$16,490,024, rounded to \$16,490,000.

JURISDICTION

- [1] The Central Alberta Regional Assessment Review Board [“the Board”] has been established in accordance with section 455 of the Municipal Government Act, RSA 2000, c M-26 [“MGA”].

PROPERTY DESCRIPTION AND BACKGROUND

- [2] The subject property (subject) is a full service, good quality 12 storey hotel having 241 suites, located on 10.33 acres of land in the City of Red Deer (City). The subject has a wide variety of amenities which include: a fitness area and swimming pool, a liquor store, a restaurant, a hair salon, two nightclubs, and a number of retail units. In addition, the subject has boardrooms and banquet halls suitable for conventions, and office space available for rent, as well as a large space for accommodating trade shows. The subject was built in 1977, and has been consistently maintained and renovated since that time. The subject is considered to be unique in the area due to its size and its variety of amenities.
- [3] The subject is assessed at \$26,840,200 using the income approach to value. The hotel portion and the commercial/retail portion are assessed separately.
- [4] The hotel portion is assessed at \$13,293,700, based on a potential gross income (PGI) of \$5,937,637, an expense ratio of 75.5%, a “reserves for replacement” deduction of 2.5%, a “furniture, fixtures and equipment” (FF&E) deduction of 15%, a net operating income (NOI) of \$1,129,965, and a capitalization rate of 8.5%. No vacancy allowance is provided. The value per unit/suite is \$55,161.
- [5] The commercial/retail portion is assessed at \$13,546,500, based on a PGI of \$1,232,498, a vacancy allowance of 3%, an operational costs adjustment of \$14,059, a “non recoverables” adjustment of 2.5%, an NOI of \$1,151,451, and a capitalization rate of 8.5%. The value per unit is \$56,210.
- [6] All of the commercial/retail amenities are operated by the subject’s owner, with the exception of two small commercial retail units (CRU) that are operated by commercial entities separate from the subject’s owner, having a total square footage of 3,026.

PRELIMINARY MATTERS

- [7] The Presiding Officer confirmed that no Board Member raised any conflicts of interest with regard to matters before them.
- [8] Neither party raised any objection to the panel hearing the complaint.
- [9] No additional preliminary or procedural matters were raised by any party. Both parties indicated that they were prepared to proceed with the complaint.

POSITION OF THE PARTIES**Position of the Complainant**

- [10] The Complainant requested the Board to reduce the assessment of the subject to \$16,150,000 based on the sale of the subject, or alternately to \$16,490,024 based on the three year stabilization of the subject's actual revenue and expenses.
- [11] In support of their request to reduce the assessment of the subject, the Complainant presented evidence and argument to show: that a calculation error was made in the 2020 Assessment Details that caused the PGI to be too high; that the hotel's revenues have been overstated, while the expenses have been understated, which has caused the assessment to be too high; that the best indicator of market value is the recent sale of the subject; that the assessment is not equitable when compared with the assessment of similar properties; and that the current assessment has not adequately been adjusted for recent declines and restrictions in the local economy, largely due to the COVID-19 pandemic. The Complainant confirmed that the capitalization rate used by the City is not in dispute.

Calculation Error

- [12] The Complainant provided a copy of the 2020 Assessment Details, which shows the 241 units (suites) for the hotel, the multiplier rate of \$63, and the resulting market income of \$5,541,795, Exhibit C.1 p. 17. They pointed out that instead of using this value for the PGI, the assessment was based on a higher value of \$5,937,637, and that there has been no explanation provided by the assessor.
- [13] The Complainant believes this is an obvious multiplication error that causes the assessment to be higher than it should be. The Complainant provided a table showing that if the \$5,541,795 value were used, that the resulting assessment for the hotel portion would be reduced from \$13,293,700 to \$12,191,949, Exhibit C.1 p. 18.

Overstating of Revenues and Understating of Expenses

- [14] The Complainant presented a table showing the revenue and expenses of the subject for three years from July 1, 2017 to June 30, 2020, Exhibit C.1 p. 23. They used 100% of the values from July 1, 2018 to June 30, 2019 to stabilize the three years of revenue and expenses. They explained that the normal way to use three years of financial data is to use 20% of the first year's NOI, 30% of the second year, and 50% of the third year, but that if that process were used when the third year is affected by a pandemic, that the results would be skewed unfairly.
- [15] The table shows that the NOI for July 1, 2019 to June 30, 2020 was -\$62,857. The NOI of \$1,590,273, from the second year, minus 15% for FFE and \$49,920 for other income (from the two CRUs) results in a total NOI of \$1,401,652, which calculates to a market value of \$16,490,024. The revenues and expenses from this table were obtained from the Income Statements, which were provided. The Complainant stated that this stabilization method is the way a buyer would likely accept as being a reasonable estimate of value.

- [16] The Complainant presented a second table showing the same revenue and expenses of the subject, but using 20% for the first year, 30% for the second year, and 50% for the third year. The resulting total NOI calculates to a market value of \$14,326,766, Exhibit C.1 p. 60.
- [17] The Complainant argued that the difference between the calculated market value of \$16,490,024 and the current assessment of \$26,840,200 shows that: either extra income has been assessed in addition to the income that was actually generated, or that the typical values used to calculate the revenue and expenses produce an assessment that is far too high.

Sale of the Subject

- [18] The Complainant argued that the recent sale of the subject should be considered the best indicator of market value, and that this argument is supported by case law.
- [19] The Complainant presented a copy of the Non-Residential Sales Verification Questionnaire, which was provided to the City's Assessment Services, Exhibit C.1 p. 76 - 78. It states that the sale price of the subject was agreed upon in August 2020, and that the closing date of the sale was November 1, 2020. It further states that the property was not marketed by a Realtor. The Complainant explained that the vendor could have used other means to advertise the property.
- [20] The Complainant also provided a copy of the land title, which shows that the transfer of land was registered on November 19, 2020, Exhibit C.1 p. 27 - 33. It also shows that a \$14,500,000 mortgage was provided to the purchaser by Temple Hotels Inc. The vendor was Treit Holdings 10 Corporation and the purchaser was O'Chiese Hospitality (GP) Inc.
- [21] The Complainant provided a copy of the Affidavit of Transferee – Form 39, which shows that the sum paid for the sale was \$19,000,000. It also states that "the present value of the land, in my opinion is \$19,000,000".
- [22] During questioning, the Complainant explained that there are three separate companies involved in the ownership of the subject. Morguard Corporation owns 100% of Treit Holdings 10 Corp., and Treit Holdings 10 Corp. owns 100% of Temple Hotels Inc.
- [23] The Complainant argued that because the sale price was negotiated in August 2020, which is close to the Valuation Date of July 1, that the sale price of \$19,000,000 should be considered the best indicator of market value. When the 15% FF&E is removed, the resulting estimate of value is \$16,150,000, which is the requested assessment for the subject.
- [24] During questioning, the Complainant stated that though they asked the owner for a copy of the sale agreement, a copy was not provided to them.

Assessments of Similar Properties

- [25] The Complainant presented assessment information from three hotels in Red Deer: The Black Knight Inn, which also has a convention center; The Travelodge by Wyndham; and The Motel 6. The subject's assessed value per suite of \$55,161 is much higher than the comparables, which are \$23,333 (Black Knight Inn), \$21,097 (Travelodge), and \$21,645 (Motel 6). As well, the value per unit

of the Black Knight Inn's commercial/retail portion of their assessment, being \$28,357 per unit is much less than the subject's value per unit of \$56,210, Exhibit C.1 p. 85 - 94.

- [26] During questioning, the Complainant stated that all three comparables are hotel/motels.
- [27] During questioning, the Complainant stated that adjustments, such as effective year built or amenities, were not made to the comparables to make them more similar to the subject.
- [28] The Complainant argued that the per suite values of the comparables show that the subject is assessed much higher than similar properties in the same market area.

Declines and Restrictions in the Local Economy

- [29] The Complainant argued that the declines in the oil and gas industry, combined with the affects of COVID-19, have had a very significant impact on the hospitality and retail industries in Alberta, and that the assessment of the subject has not been adjusted adequately.
- [30] Three issues of the publication "Alberta Economy: Indicators at a Glance" for the weeks of: July 5, 2019; January 10, 2020; and July 3, 2020 were reviewed by the Complainant, Exhibit C.1.B p. 11 - 24. The first two publications indicate that, considering indicators such as retail sales, housing starts, and non-residential permits, that the economy in Alberta was slowing down before the pandemic began. During this time, there was a large drop in the number of drilling rigs operating. The Complainant argued that this economic condition had an impact on the hospitality and retail industries, which had a direct impact on the subject.
- [31] In the July 3, 2020 edition of "Alberta Economy: Indicators at a Glance", indicators such as employment, retail sales, housing starts, and non-residential permits show extreme declines. As well, the price of oil and drilling rigs operating were declining. It was noted that COVID-19 restrictions had been in effect since March 15, 2020.
- [32] The Complainant provided timelines of the various restrictions that were put in place in response to the pandemic, Exhibit C.1.B p. 26. The Complainant also provided copies of the public health orders which impacted occupancy, issued by Alberta Health on March 17, May 14 (2), May 15, and June 26, 2020. These included forced closures of: gatherings of more than fifty people, gyms and swimming pools, bars and nightclubs. Restrictions of 50% capacity were applied to: restaurants and cafes. Some of these restrictions were issued, and then removed or modified at a later time. These health orders were in place before the Valuation Date, Exhibit C.1.B p. 37 - 62.
- [33] The Complainant also provided copies of public health orders issued on November 12, December 8, and December 11, 2020, Exhibit C.1.B p. 199 - 226. The restrictions included: an early "last call" for liquor sales in restaurants, bars and other facilities, and a complete closure to nightclubs, hotel meeting rooms, restaurants, cafes and bars (takeout allowed) on December 11, 2020.
- [34] Media articles on the closure of various retail and eating establishments were also provided, Exhibit C.1.B p. 228 - 248.
- [35] The Complainant provided information on the Canada Emergency Commercial Rent Assistance (CECRA) Program, which was implemented to help alleviate the hardships being experienced by

small business due to COVID-19, Exhibit C.1.B p. 63 - 95. The subject had investigated this program, but found that it did not qualify.

- [36] The Complainant stated that the City has only used a 1% adjustment to the Non-Recoverables Rate, which is now 2.5%, to capture the affect of COVID-19, and that this adjustment is not adequate.

Position of the Respondent

- [37] The Respondent requested the Board support the current assessment of \$26,840,200, stating that it is both fair and equitable. The Respondent provided evidence and argument in support of their request.
- [38] The Respondent presented the City of Red Deer 2020 Hotel Assessment Methodology guide, Exhibit R.1 p. 34. They emphasized the following portions of the guide: that the method used for hotels is the income approach to value, employing an overall capitalization rate; the stabilization/weighting of three years of income and expenses are used to reduce abnormal supply and demand factors, or temporary conditions that may translate into unusual revenues or expenses; and that the hotel portion of a property is assessed separately from the retail portion.

Calculation Error

- [39] The Respondent stated that there was not a calculation error made in the use of the PGI value of \$5,937,638 instead of \$5,541,795. The former figure was obtained by using the stabilization calculation of 20% for the first year, 30% for the second year, and 50% for the third year of typical PGI values.

Overstating of Revenues and Understating of Expenses

- [40] The Respondent presented the assessment details for the subject. The hotel portion is assessed separately from the commercial/retail portion, with typical values and rates being used for both portions.
- [41] The Respondent did not provide a list of comparable commercial/retail properties to support the assessment of the commercial/retail portion of the subject. During questioning, they stated that a restaurant in downtown Red Deer would be used as part of the group of restaurants that would form the market typical values and rates that were used to assess the restaurant in the subject.
- [42] The Respondent argued that because the Complainant focused their review on site specific data and that the use of market typical rates through mass appraisal was ignored by the Complainant, their approach can create an inequitable valuation when comparing similar properties that compete in the same market.
- [43] The Respondent stated that lodging properties received an average assessment decrease of 20% from the previous assessment year, Exhibit R.1 p. 37, but that the subject received only an 11% decrease. They also stated that the prior year's assessment (2019) was decreased by 13%. In response to questions from the Board no information was provided as to what the average

assessment decrease was for the prior year's assessment, and no information was provided as to why the subject received only an 11% decrease.

- [44] The Respondent provided a table which explains the 2020 market expense ratio analysis, Exhibit R.1 p. 51. They stated that, according to the hotels which responded to the Annual Request for Information (ARFI), the minimum expense ratio was 53.68%, maximum 108.65%, median 83.22%, and average 83.57%. 2019's expense ratio used for assessments was 75%, and the 2020 expense ratio is 80%. Due to stabilization, the expense ratio becomes 75.5% for the 2020 assessment. During questioning the Respondent was questioned as to why 80% was used instead of a number closer to the median or average. The reasoning provided by the Respondent was not sufficient to adequately answer the question.

Sale of the Subject

- [45] The Respondent stated that the City was not informed that a sale of the subject was pending, November 19 2020. They also stated that the property was not listed on the open market through a realtor, and that the sale was registered at land titles after the valuation process was complete.
- [46] During questioning, the Board asked for clarification on this point. The Complainant had pointed out that in the Respondent's document, the Financial Information Request (FIR), it asks "Is your property currently listed for sale, or been listed since July 1, 2019?" The answer provided was "yes". The Respondent acknowledged that they knew that the subject was listed for sale, but not that an agreement was being worked on.
- [47] The Respondent stated that the sales transaction includes a vendor take back mortgage provided by Temple Hotels Inc., as is shown in the mortgage document provided by Land Titles. They argued that the acquisition of Treit Holdings 10 Corp. by Morguard Corporation, with the selling off of other lodging properties would indicate potential financial duress. This argument is supported by the drop in Temple Hotels share prices from \$35 in 2014 to \$1.52 in November 2019, as is shown in an article provided by the Respondent, Exhibit R.1 p. 170 - 173.
- [48] They further argued that these factors show that the sale transaction appears to be more of a "fire-sale" than an arm's length market transaction, and that it should not be considered in the assessment valuation.
- [49] The Respondent also argued that having a copy of the sales agreement could have made some of the sale information more clear. During questioning, the Complainant responded by pointing out that the City could have obtained a copy of the sales agreement themselves using an MGA s.295 request.
- [50] The Respondent provided Annual Reports for Temple Hotels Inc. for the years 2013 to 2015, Exhibit R.1 p. 238 - 246. This document shows that the company purchased the subject in 2008 for \$51,749,000, and that its appraised value in 2015 was \$65,800,000.
- [51] Regarding the Affidavit of Transferee, with its statement regarding the value of the land, the Respondent stated that the credentials of the person making the statement are in question, and that this could have been rectified if that person were available for cross examination.

[52] The Respondent stated that the Fall of 2020 was a poor time to sell the subject due to the effect of COVID-19. They also stated that "situations involving partial interest, special financing, and assumed leases are an indicator of a non-arm's length sale."

[53] In support of this argument, they referred to CARB decisions which rejected the use of sales which included atypical financing, including a vendor take-back mortgage, Exhibit R.1 p. 94 - 128.

Assessments of Similar Properties

[54] The Respondent provided a table showing an income analysis for six comparable hotel properties, described as examples of the highest quality and best performing hotels in the City, Exhibit R. 1. p. 50. The Respondent stated that the document shows that:

- I. the subject (241 suites) is much larger than the comparables (from 79 to 92 suites);
- II. the subject's assessment per door (\$111,370 including hotel + commercial/retail) is much higher than the comparables (from \$59,914 to \$64,561, median \$59,915);
- III. the subject age (1977) is significantly older than all but one of the comparables (from 1978 to 2018, median 2008).

[55] Adjustments, such as effective year built, amenities, or size, were not made to the comparables to make them more similar to the subject.

[56] The Revenue Per Available Room (RevPAR) was provided for the subject at \$38.71, which was derived from the subject's 2020 Annual Request for Information (ARFI). The stabilized RevPAR for the subject is \$59.80. The derived and stabilized RevPAR information for the comparables used to calculate the RevPAR was redacted for confidentiality reasons. The market RevPAR for 2020 is \$63.

[57] The Respondent argued that the subject is the only good quality full-service property out of this grouping. They also stated that the subject's extensive retail component influences the subject hotel's assessment per door, because it is better able to generate revenue than the comparables.

[58] In support of the subject's assessment, the Respondent provided a table showing three sales comparables in the City occurring between July 1, 2017 and July 1, 2020, Exhibit R.1 p. 53. They are described as follows, All three hotels are "limited service";

- I. Comparable #1 was built in 2003, having four storeys and 92 suites, having a quality rating of 4, its sale price was \$8,700,000 (\$94,564 per door) in May 2019, and having an assessment to sales ratio (ASR) of 0.79. Comparable #1's 2020 assessment is \$5,512,200 (\$59,915 per door).
- II. Comparable #2 was built in 2006, having three storeys and 79 suites, having a quality rating of 1, its sale price was \$3,197,000 (\$40,468 per door) in September 2018, and having an ASR of 0.62. Comparable #2's 2020 assessment is \$1,666,700 (\$21,097 per door).

- III. Comparable #3 was built in 2006, having four storeys and 88 suites, having a quality rating of 4, its sale price was \$5,675,000 (\$64,488 per door) in August 2017, and having an ASR of 0.90. Comparable #3's 2020 assessment is \$2,607,300 (\$29,628 per door). Comparable #3's sale transaction was listed as "duress" due to vendor motivation due to contamination issues. The Respondent stated that Comparable #1 was given the most weight. The subject's assessment per door is shown as \$111,370, which includes the assessment of the hotel at \$55,161 per unit/suite and the commercial/retail portion at \$56,210.
- IV. Adjustments, such as effective year built or amenities, were not made to the comparables to make them more similar to the subject.

[59] During questioning, the Complainant asked why the City would have used a sale that was under "duress" to support the capitalization rate, when they also argue that the sale of the subject was under "duress" and therefore should not be used to value the subject's assessment. The Respondent stated that not as much weight was put on this sale.

Declines and Restrictions in the Local Economy

[60] The Respondent stated that the assessment was calculated using financial information from July 1, 2019 to June 30, 2020, which became part of a three-year weighted average. This time period includes a four month period from March (first COVID-19 case in Alberta) till June 2020.

[61] The Respondent stated that a review of other comparable markets in Alberta was conducted to ensure that any assessment shifts due to the pandemic were equitable with other municipalities.

[62] They further stated that the lodging properties in the City received an average decrease of 20% from the previous assessment year.

[63] The Respondent stated that the COVID-19 evidence provided by the Complainant was generic, and not specific to the subject. Therefore, this information should not be used to determine the subject's assessment. The Respondent believes the negative financial outcome for 2020 is a "misnomer".

[64] The Respondent concluded by requesting the Board confirm the 2020 assessment of the subject at \$26,840,200.

Rebuttal

[65] The Complainant argued that in regards to the 2020 market expense ratio analysis, that an explanation should have been given as to why an 80% expense ratio is being used instead of a percentage closer to the median or average. As it is now, there is no way to test the information.

[66] The Complainant stated that the market RevPAR of \$63 is overestimated, but that because the key information has been redacted, there is no way to test it. The Complainant argued that for the RevPAR calculations, and for other information that was redacted by the Respondent, that the solution would have been to request the written information to be treated as a confidential

document and for portions of the hearing to have been held in a “closed session”. The Complainant referred to MRAC s.30 to support their argument.

- [67] Financial information for four hotels, including the subject, were provided. The Complainant argued that this information shows that the expense ratio should be more like 93%. The Complainant also provided the 2020 Assessment Details for these hotels, which show that the expense ratios used by the City for these properties were as follows: Cambridge 75.50%, Days Inn 77%, Best Western 74%, and Comfort Inn 74%, Exhibit C.2. p. 22. The Complainant argued that using different expense ratios for different hotels, when they are supposed to be typical, makes it difficult for a landowner to understand how their assessment is calculated.
- [68] The Complainant argued that the Respondent’s description of the sale of the subject as being “under duress” is unsubstantiated, and that: having multiple separate companies involved in the ownership of the vendor; including a take-back mortgage in the financing of the sale; or, having one of the multiple companies experiencing a low share price, does not mean that the sale was “under duress”.
- [69] The Complainant further stated that they have checked official channels to determine that there is no evidence of Duress, Foreclosure, or CCAA bankruptcy which would indicate that the sale was not valid. In support, the Complainant provided documents related to the above checks of official channels that were performed, Exhibit C.2. p. 112 - 124. As well, they argued that Morguard Corporation is a multi-billion dollar company which could easily absorb the minor losses experienced in 2020, Exhibit C.3.
- [70] The Complainant argued against the Respondent using CARB 008107-2020 decision to show that other boards have not used COVID-19 information because it “was generic in terms”. The Complainant referred the Board to a line in the decision from that hearing which states that “the Board place no weight on the statement(s) presented by the Complainant regarding economic downturn (due to COVID-19), or regarding the statement regarding taxes (mill rate) versus assessment, as the information was generic in terms, the valuation date of the subject was pre-COVID-19, and property assessment does not align with setting the municipal mill rate,” Exhibit R.1 p. 78.
- [71] The Complainant concluded by requesting the Board to reduce the 2020 assessment of the subject from \$26,840,200 to \$16,150,000 based on the sale of the subject, or alternately to \$16,490,024 based on the three year stabilization of the subject’s actual revenue and expenses.

BOARD FINDINGS and DECISION

- [72] The Board carefully considered the evidence by both parties in determining the issues before the Board.

Calculation Error

- [73] The Board placed the most weight on the Respondent’s explanation that the PGI value of \$5,937,638 was used instead of \$5,541,795 because the higher figure was determined through the stabilization calculations. The three year stabilization calculations, which use 20% of the first year’s typical

revenue and expenses, 30% of the second year, and 50% of the third year, are part of the process used by the City to even out the effects of unusual circumstances in a given year.

Overstating of Revenues and Understating of Expenses

- [74] The Board placed little weight on the Respondent's Assessment Details for the subject. The assessed value is comprised of 50% hotel and 50% commercial/retail. However, the defence of the current assessment was entirely for the hotel portion of the subject. There were no comparables provided for the commercial/retail portion of the subject, nor were there explanations provided as to how the different rates were calculated. No opportunity was given to evaluate the reasonableness of the information provided. This lack of information is important since the concerns of the Complainant included both the hotel and the commercial/retail portions of the subject.
- [75] The Board placed no weight on the Respondent's explanation regarding average assessment decreases of 20% compared with the subject's assessment of 11%, and of the expense ratio of 80% as opposed to approximately 83.5%. Too little information was provided to be useful to the Board.
- [76] The Board placed little weight on the calculation of the RevPAR because of the limited opportunity to evaluate the evidence provided. The Board agrees that the Respondent could have provided the information they considered confidential if they would have followed the appropriate processes, as are laid out in MRAC s.30 and MGA s.525.1 (3).
- [77] The Board acknowledges that in accordance with mass appraisal, typicals must be used to calculate an assessment. The City has done this. However, as *Mountain View (County) v. Alberta (Municipal Government Board)* [2000] ABQB 594 states:
- I. [21] "The principles which underlie the assessment process dictated by the Act are threefold. They require that assessments of property be based on market value, that they not be in excess of that which is fair and equitable having regard to assessments of similar property in the same municipality and that they be prepared using mass appraisal. The requirements of these three principles may be in conflict. If they are, the conflict should be resolved. ... The answer should not be to maintain (in conflict with the Regulation) the assessment at a level higher than market value."
 - II. [25] "... the result achieved by the use of mass appraisal must achieve a result which accords to a reasonable extent with statutory requirements, in particular that of establishing a land assessment based on market value. Here the procedure used, for reasons which have been explained, did not achieve that result. I am of the view that the procedure used must therefore be considered to have been unacceptable from a legal point of view. I am also of the opinion that the action of the Board in setting aside and reducing the original assessment should stand, even though the revised assessment was not obtained by use of mass appraisal methods. I base this view on the fact that the mass appraisal as used did not produce a result that complied with the market value requirement."

The Board is not persuaded that the mass appraisal approach, using market typical values, provides the means for determining the market value of the subject property in these current circumstances.

Sale of the Subject

- [78] The Board placed little weight on the Respondent's argument that the sale of the subject should not be used because the property was not listed through a realtor. The Complainant's explanation that the subject could have been marketed using other methods was reasonable. No evidence was provided for either argument.
- [79] Further, the Board placed little weight on the Respondent's argument that the sale should not be used because it was post facto. The Board placed more weight on the fact that the sale occurred within the assessment year, and that this basis of using the sale is supported by Calgary CARB 2560/2011-P, Calgary CARB 74912P-2014, and of *R.W. Lamond v. City of Calgary* [2010] AMGBO No. 034/10. Because the sale is not being used to determine value, but rather that it is being used to support the assessment based on the actual revenue and expenses, and that the sale occurred near the Valuation Date, the Board finds that time adjustment in this case is not necessary.
- [80] The Board placed little weight on the Respondent's argument that the sale should not be used due to circumstances surrounding the sale including: three companies being involved with the vendor; the inclusion of a vendor take back mortgage; low share prices for one of the three companies, and that these factors show that the sale was more of a "fire-sale" than an arm's length transaction. While these factors may raise questions, there was no evidence provided to support the Respondent's argument. Further, the arm's length relationship between the vendor and the purchaser was never questioned, and the Board finds that this relationship is the key indicator of being an arm's length sale.
- [81] The Board placed no weight on the Respondent's argument that the Complainant should have provided a copy of the sales agreement, since the Respondent was also able to obtain a copy using an MGA s.295 request.
- [82] The Board considered but placed little weight on the Respondent's argument that the use of sales with similar factors was rejected by previous CARB decisions. While it is generally helpful to maintain a consistent pattern of decision making, each hearing has its own set of facts and individual Board is not legally bound by previous CARB decisions. Also, as it was pointed out during the hearing, the use of post facto sales has been used by some panels and not by others. It has not been a consistent practice, as demonstrated by the fact that both parties provided CARB decisions to support their arguments. Some of these decisions use the post facto sale as a direct indicator of value, and others as comparables to support the party's position. The Board's use of the post facto sale of the subject is as a support to other evidence provided by the Complainant and not as a direct indicator of value. The following case law referred to in MGB Board Order 209/98 provides direction in this regard:
- I. *Roberts and Bagwell v. The Queen* stated that post facto evidence can be looked at where the market conditions have remained the same and the evidence is relevant in place and time and is logically probative of the fact to be found.

- II. The Court also states that post facto evidence can be used to look at a trend in value where the conditions at the time of assessment indicate that there is a real prospect of change. However, the post facto evidence must not be used to establish value as at the time of assessment.

MGB Board Order 073/04 states that:

- III. The Applicant is correct that the MGB may not use post facto evidence in a direct manner to set value. Likewise, the Applicant also correctly conceded that the MGB may use such evidence to confirm market trends.

[83] The Board placed much weight on the land title documents, which include the Affidavit of Transferee – Form 39. This document shows the sale price as \$19,000,000 to acquire the lands, which included buildings and all other improvements affixed to the land.

[84] The Board accepts the Respondents explanation that FF&E is an annual amount set aside to provide for ongoing replacement of items which wear out rapidly as an expressed percentage of total revenue for hotel assessments in Alberta. Therefore, the Board finds that it is appropriate to remove the 15% FF&E in order to determine the fee simple estate, being \$16,150,000.

Assessment of Similar Properties

[85] The Board placed little weight on the Respondent's equity analysis for six comparable high quality hotel properties. This analysis reflects the comments made by both parties during the hearing, that the subject is unique in the municipality, being much bigger, and having more amenities than any other hotel. The subject's assessment of \$111,370 per suite, which includes both the hotel and commercial/retail portions, is nearly double the median of \$59,915. The number of suites in the subject is more than 2 ½ times the comparables'. However, the Respondent provided no adjustments in order to make the comparables more similar to the subject.

[86] Rather, the Board is persuaded by the Respondent's statement that the subject's commercial/retail component influences the subject's hotel assessment because it is better able to generate revenue.

[87] The Board placed no weight on the Respondent's three sales comparables, which are "limited service" hotels, having little or no commercial/retail assessment. The Respondent provided no adjustments to the comparables to make them more similar to the subject.

[88] The Board placed little weight on the Complainant's three equity comparables. Comparable #1 is a hotel having convention facilities. The subject's assessed value per suite of \$55,161, while Comparable #1's value per suite is \$23,333. The subject's commercial/retail value per unit is \$56,210, while Comparable #1's value per unit is \$28,357. That being said, it is still difficult to determine comparability because no adjustments were made in order to make the comparables more similar to the subject.

[89] The Respondent presented active real estate listings for three hotel/motel properties in the City. During questioning, it was pointed out that these documents do not represent actual sales, and are

themselves post facto. The Board finds this makes the listings unusable for comparing with the subject.

Declines and Restrictions in the Local Economy

- [90] The Board placed little weight on the Complainant's review of the publication "Alberta Economy: Indicators at a Glance". Though it would be reasonable to assume that a property such as the subject would be affected by the state of the economy, there was no evidence provided to make a direct connection to the subject.
- [91] The Board placed much weight on the restrictions issued by Alberta Health in response to COVID-19. Though these restrictions are general in that they were issued to all Albertans and all property owners in Alberta, they also specifically affected each property in that it was the responsibility of every individual Albertan and every individual property owner to obey the restrictions. Therefore, the Board finds that these restrictions are strong evidence of a negative effect on the subject.
- [92] The Complainant provided two sets of restrictions: from March 17 to June 26 (before the Valuation Date) and from November 12 to December 11 (before the Condition Date). The former restrictions would have had a serious affect on the NOI of the subject's commercial/retail portions, with the closing of bars and nightclubs, and the 50% restriction to restaurants and cafes. The latter restrictions show that the affect continued through the year, culminating with a complete closure to nightclubs, hotel meeting rooms, restaurants, cafes and bars (takeout allowed) on December 11, 2020.
- [93] Through the hearing the Board was told that there were two adjustments made to the 2020 assessment: a 1% adjustment to the Non-Recoverables Rate (now 2.5%), and a 20% average decrease from the previous assessment year (subject 11%). The Respondent did not provide evidence that the restrictions had an effect on the 2020 assessment beyond these figures.
- [94] The Board finds that the adjustments made to the 2020 assessment were not sufficient to account for the reduction in NOI that was presented in the Complainant's financial information for the subject. As was previously shown, the Respondent stated that the subject's commercial/retail component influences the subject's hotel assessment because it is better able to generate revenue. The Board finds that it is reasonable to conclude that this relationship between the subject's commercial/retail component and its hotel assessment could also go the other way, that a severe restriction to the commercial/retail would also negatively affect the NOI of the hotel, and that this would result in a reduced assessment.
- [95] For these reasons, the Board reduces the assessment from \$26,840,200 to \$16,490,024 using the income approach to value, based on the three year stabilization of the subject's actual revenue and expenses, and being supported by the sale of the subject at \$16,150,000 (\$19,000,000 less FF&E.)

DECISION SUMMARY

[96] The Board finds that the Respondent values are varied to \$16,490,024, rounded to \$16,490,000.

[97] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 13th day of August, 2021 and signed by the Presiding Officer on behalf of all the panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



Mark Oberg
Presiding Officer

If you wish to appeal this decision you must follow the procedure found in section 470 of the MGA which requires an application for judicial review to be filed and served not more than 60 days after the date of the decision. Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX

Documents presented at the Hearing and considered by the Board.

<u>NO.</u>	<u>ITEM</u>
1. A.1	Hearing Materials provided by the Clerk (45 pages)
2. C.1	Complainant Submission (295 pages)
3. C.1.B	Complainant Submission COVID 19 Market Value Impact Appendix 1 (299 pages)
4. C.2	Complainant Rebuttal (311 pages)
5. C.3	Complainant Rebuttal – Appendix 2 (24 pages)
6. R.1	Respondent Submission (246 pages)