



Complaint ID 4640 1714
Roll No. 087203

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: November 28, 2022

PRESIDING OFFICER: Dierdre Mullen
BOARD MEMBER: Roy Brown
BOARD MEMBER: Allan Tarnoczi

BETWEEN:

South Country Co-op Ltd.

Complainant

-and-

Special Areas Board

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 Special Areas Board as follows:

ROLL NUMBER: 087203

MUNICIPAL ADDRESS: 4212 Hwy 9, Special Areas, AB

ASSESSMENT AMOUNT: \$1,647,950

The complaint was heard by the Central Alberta Regional Assessment Review Board on the 28 day of November 2022, via videoconference.

Appeared on behalf of the Complainant: Andrew Iazard, Agent, Altus Group
Stefan Roth, Agent, Altus Group

Appeared on behalf of the Respondent: Christopher Snelgrove, Assessor, Benchmark Assessment Services
Trent Caskey, Director of Property Administration with Special Areas Board - Observing

DECISION: The assessed value of the subject property is changed to \$989,744

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 is an improved 7.15-ac site located north of Oyen at the junction of highways 9 and 41. The improvements consist of a Co-op gas station and convenience store and fast-food restaurant with additional drive through access. The original building was constructed (YOC) in 1979 and has had at least three additions/modifications. In 1998, an addition was added to the north side of the building and now represents the current size of 9,765 square feet (sf). In 2008, modifications to the existing building interior were completed. In 2012, a drive through access was added to the site. The site is assessed using the Cost method.

PRELIMINARY MATTERS

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

ISSUES

- [6] The assessment is too high. Specifically, should the subject be assessed using the Marshall and Swift (M&S) Convenience Store “419” code instead of Mini-Mart Convenience Store “531” code, or should the property be assessed as a Truck Stop “580” code?
- [7] Is the correct depreciation table used in the calculation?
- [8] Is the correct Market Adjustment applied to the subject?
- [9] Is the correct land rate applied to the subject?

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

- [10] The Complainant and Respondent agree on the Class D (wood or steel frame exterior walls), the effective age of the property at 21 years for both the store and the restaurant areas, and the “average” quality. Based on the agreed to “average” rating, the M&S description and data table included by the Complainant indicates a 35-year life for the store section and 30-year life for the restaurant section.

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- [11] The Complainant stated that the subject should be assessed as a Convenience Store 419 rather than the Mini-Mart Convenience Store 531 based on the descriptions in the M&S data estimator. Mini-Mart Food Stores 531 are very small convenience outlets, typically 1,000 to 2,000 square feet, that cater primarily to a transient trade for self-service snack foods and beverages. The better stores will have public restrooms and limited hot or deli food preparation and service areas. Lower qualities are minimum code throughout.
- [12] A Convenience Market 419 are small food stores, typically 2,000 to 8,000 square feet, with limited interior facilities. They are designed for the quick purchase of standard staple items in small quantities. They have extensive shelving but few facilities. The storage area is relatively small. The better qualities include small specialty or gourmet food shops. These occupancies include suitable plumbing and electrical facilities for refrigeration equipment.
- [13] The Complainant asserted that if the assessment remains as a Mini-Mart Convenience Store 531, the data inputs are incorrect, and the assessment should be changed. That requested amount is \$1,038,462 based on current M&S depreciation codes.
- [14] The Complainant argued that it could not reproduce the current assessment based on M&S tables. The Assessment notice and summary and details indicate that the assessment was produced using Marshal & Swift data.
- [15] At issue was the depreciation percentage of the store and the restaurant. The store's depreciation was listed at 21% and the restaurant was listed at 9%. The Complainant stated that these percentages are not based on M&S tables. The M&S table included by the Complainant shows a depreciation of 42% based on the 21-year effective age for a convenience store with a 35 typical life expectancy, and 57% depreciation based on the 21-year effective age and 30-year life expectancy for the restaurant.
- [16] In order to test the Respondent's calculations, the Complainant had to adjust the typical life expectancy of the area to 48 years for the store and 62 years for the restaurant to achieve the same calculations as in the assessment. The M&S tables do not exceed 80 years effective age, and the life expectancy for 35- and 30-years age life was difficult to calculate but had to be approximated by the Complainant.
- [17] The Complainant stated that the site should really be a Convenience Market 531 based on the description. A typical life of a convenience market is 35 years for the "average" rating. Using the M&S data, the depreciation for the subject should be 42% based on the 21-year effective age for a convenience store with a 35-year typical life expectancy, and 57% depreciation based on the 21-year effective age and 30-year life expectancy for the restaurant. The requested assessment based on the M&S data for the subject should be \$927,445.
- [18] The Complainant stated that either change is acceptable.

Position of the Respondent

- [19] Respondent stated that it uses the Alberta Assessment manual depreciation tables to calculate the age-life of improvements and continued that it is an acceptable and industry standard that is used in all of the Special Areas. Using a different table would create an inequity within the municipality.

- [20] The Respondent stated that the Complainant's request to change from Mini-Mart to Convenience Store matches the described square footage, and the subject is typical of almost any gas station in Alberta as for the interior finish. There is also a large washroom with private shower stalls for patrons to use as needed. The best description for this property is Truck Stop "580". It is described as follows: These buildings are of multipurpose design to include convenience store, food service, shower and toilet, game and restroom facilities for highway travelers and truckers. Good facilities include the typical coffee shop operation, while the average quality includes the limited lower priced fast food franchise operation. Lighting and plumbing, although adequate to service the operation, are not excessive or ornate. Since truck stops have higher requirements for heating, cooling and ventilation, use component 617 (Complete HVAC) for HVAC costs.
- [21] Updated area calculations did not change the total area and the Respondent stated the 21-year effective age remains in place. The Truck Stop description includes the fast-food restaurant so no longer requires a different depreciation.
- [22] The Respondent also argued that the Land Value of the site was incorrect and should be changed to \$94,480 from \$69,480 to include servicing which was missed in the original assessment.
- [23] Lastly, the Truck Stop should reflect a comparable near Hanna called the Cactus Corner. This change effects the market depreciation from 85% to 95%. The summary of this change to Truck Stop is as follows:
- Land \$94,480
 - Improvements \$1,503,170
 - Total Assessment \$1,597,650
- [24] In summary, from a fairness & equity standpoint, the depreciation tables are deemed to be correct and acceptable as they are the same as all other properties within Special Areas. To change them to the M&S tables as requested would create inequities thus making the remaining other assessments unfair.
- [25] The Respondent recommends changing the 2021 assessment from the current \$1,647,950 to \$1,597,650 as outlined above to bring this property valuation more in harmony with the only other comparable property in Special Areas.

Position of the Complainant - Rebuttal

- [26] In rebuttal, the Complainant did not have any issue with the new identification as Truck Stop 580 but argued there are four problems with the Respondent's proposed assessment: 1. using the 1984 Alberta Commercial Assessment Manual; 2. the market adjustment depreciation; 3. the age life depreciation percentage; 4. the land rate change to \$94,480.

Using the 1984 Alberta Commercial Assessment Manual (1)

- [27] The Complainant argued that the 1984 Alberta Commercial Assessment Manual was retired and discontinued in 2007, further, Alberta Municipal Affaires provided a bulletin in 2008 that referred to the phasing out support for the manual for 2007 but were extending an extra year to give more time for assessors to make adjustments.

“The commercial portion of the 1984 Assessment Manual has not been updated to reflect changes in building construction costs or components since its development in the early 1980s. Until now, it was annually updated by indices and cost modifiers that were disseminated by the Ministry to assessors. However, by continuing to annually update the commercial portion of the 1984 Assessment Manual, the Ministry was effectively supporting the use of an out-of-date manual when a number of commercial cost manuals are readily available in the marketplace.

Assessors can obtain a commercially available manual and applicable updates to reflect current construction costs. All available commercial cost manuals are commonly accepted valuation tools that provide accurate cost estimates.”

- [28] Additionally, the use of commercial costs estimators is endorsed by Municipal Affairs who cites Marshall and Swift cost estimators in their Principles of Assessment 1 training manual. Additionally, the municipality of Medicine Hat, the City of Calgary, and the City of Edmonton, all endorse the use a single cost manual be use for valuing similar properties. All three municipalities list Marshall and Swift as a possible cost estimator in their literature.
- [29] The Complainant argues that accessing the 1984 Alberta Commercial Assessment Manual is difficult to do since it is no loner available for purchase. Additionally, using two different cost manuals may unfairly manipulate an assessment.

Market Adjustment Deprecation (2)

- [30] The market adjustment deprecation changed from 85% to 95% in the new proposed assessment based on the comparable property – Cactus Corner - 100km away from the subject and is in a different market area. The Complainant argued that the Respondent did not include any evidence to support the change except to say that it would be inequitable since both properties are similar Truck Stop improvements.
- [31] To support the 85% market adjustment, the Complainant included four comparables in the area with similar market adjustments. The adjacent bulk fuel station/card lock has an 85% market adjustment, and the UFA in Cereal shows an 80% market adjustment for its shop, equipment building and relocatable office and a 35% adjustment for the storage garage.

Age Life Depreciation Percentage (3)

- [32] The age life depreciation percentage in the new proposed assessment to Truck Stop remains the same as in the prior assessment and is incorrect. The M&S tables for Truck Stop should reflect the D class, “average” rating since this has not changed. The typical age life rating for this type of property is 30 years. The 30-year age life deprecation is 57% based on the M&S tables. And, under Truck Stop, the restaurant is included so one deprecation value covers the entire building.

Land Rate Change To \$94,480 (4)

- [33] The proposed land value increase to \$94,480 is unsupported by the Respondent and should be considered new argument and inadmissible. The Respondent did not include or identify any evidence to support the change except to state that it was missed in the original assessment.

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- [34] In its summary, the Complainant included many Court of King's Bench, Supreme Court of Canada decisions in support and some of which is noted below.

BOARD FINDINGS and DECISION

- [35] The Board finds the subject property should be assessed as a Truck Stop 580, both the Complainant and Respondent agree that this is a good descriptor for the subject.
- [36] The subject is similar to the Cactus Corner in many ways. It is the destination of truck drivers and passenger cars along the highway. It has the required facilities to support travellers including restaurants, food, drink, lounge, showers, and fuel. Truckers may not be able to access fuel at the subject, but the adjacent bulk fuel station/card lock is accessible and does not have the amenities of the subject.
- [37] The Board finds the use of the 1984 Alberta Commercial Assessment Manual unfair. This document is no longer in print and can not be obtained easily. A layperson would have difficulty obtaining this manual to test the validity of its assessment but would also have to know that it was used as an estimator within the assessment. In the Respondent's assessment document, no where on it does it explain to the tax payor that the assessment was derived using two different estimators, it only identifies Marshall & Swift as the cost calculator.
- [38] The combining of two cost estimators in this case, has unfairly increased the assessment. The 1984 Alberta Commercial Assessment Manual is no longer updated, nor is it supported by Municipal Affaires, and it has been recommended that Assessors use commercially available manuals and applicable updates since 2008. The Board finds the mixing of two cost estimators unfair to the Complainant.
- [39] The Board finds that the best and most accurate assessment would be to use one cost estimator for all the required calculations. In this case, Marshall and Swift is already being used, it would seem convenient to also use the M&S depreciation tables. The depreciation is one number since the designation of Truck Stop is considered all under same roof and would have a 57% depreciation based on a 21-year effective age and 30-year age life as noted in the M&S category.
- [40] In *Costco Wholesale Canada Ltd. v City of Medicine Hat*, 2022 ABQB 129, Justice Ashcroft cites *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at par [51]...

As stated in **Vavilov** at para 83, the starting point in a judicial review is to examine the reasons with "respectful attention" and attempt to understand the reasoning process followed by the decision maker. The Court must focus on the decision that the administrative body actually made, not what the Court would have done in its place: *Vavilov* at para 15. However, to be upheld as reasonable on judicial review, the reasons of administrative decision makers must be transparent, intelligible, and justified: *Vavilov* at para 15. The requirement of intelligible and justified reasons applies to both process and outcome: *Vavilov* at para 86.

This Board agrees that the decision must be transparent, intelligible and justified, but the original assessment does not support this notion.

- [41] The Board finds the change of market adjustment to 95% from 85% unsupported. The original market adjustment should remain the same since the subject is no closer to the comparable Cactus

Corner than before the change. The Respondent did not provide evidence of why it should be changed except to state that it should be the same coding as the comparable. The Complainant included four comparables supporting the 85%. The Board agrees with reasons by Justice Ashcroft, that decisions must be based on facts. *Costco Wholesale Canada Ltd. v City of Medicine Hat*, 2022 ABQB 129 at para[46]...

The Applicants advance several grounds, related to the substantive nature of the Decision:

1. That the Board unreasonably accepted that the 4% the City applied to nonrecoverable costs included vacant space short fall. The Applicants submit that this conclusion was not justified on the facts before the CARB, and the law it was required to apply. The unreasonableness of the Decisions is also supported in that the Board fettered its discretion by accepting the City's method of calculation as a binding policy;
2. That the Board unreasonably placed the onus on the Applicants to prove the proper assessment, before the Board would consider altering the assessment and;
3. The Board unreasonably refused to alter the assessment because it would be unfair and inequitable to other parties..

[42] The Board finds the change in the land rate unsupported. The Respondent did not include any information of why that change occurred other than it was forgotten in previous assessments. The Board refers to the above citation from *Costco Wholesale Canada Ltd. v City of Medicine Hat*, 2022 ABQB 129 at para [46] point 1.: The Board must make a decision based on facts, and the only facts presented were those confirming the 85% market adjustment.

[43] The Respondent claimed that to change this assessment would make it inequitable with other properties in the Special Areas region. The Court in *Ross v Edmonton (City)*, 2015 ABQB 495 at paragraph 21 sets out the appropriate framework from which the CARB must approach their task.

"The Applicants must show "some evidence that the assessment is incorrect after which, the evidentiary onus then switches to the City to provide some evidence that the assessment is correct." The Board then weighs all of the evidence and decides whether the Applicants have met their ultimate burden, on the balance of probabilities, to demonstrate that the assessments were not fair and equitable."

Unsubstantiated unfairness to other property owners is not a reasonable basis to deny relief to the Complainant.

[44] For these reasons the Board changes the assessment to Truck Stop 580 as follows:

Using the Respondent's proposed assessment total cost for the structure and HVAC system \$1,798,749 less total depreciation (based on M&S tables at 57%) equals \$773,460. Less the market adjustment of 85% equals \$657,411, plus coded additions \$311,258 equals \$968,699, less GST 5%, for a total assessment of \$989,744.

DECISION SUMMARY

[45] The Board finds that the assessed value is changed to \$989,744.

[46] Dated at the Central Alberta Regional Assessment Review Board, in the Province of Alberta this 13th day of December, 2022 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.



Dierdre Mullen
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. C.1	Complainant submission	187 pages
2. C.2	Complainant rebuttal	224 pages
3. C.3	Hearing Complaint and authorization	4 pages
4. R.1	Respondent submission	57 pages