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Market Value using the Income Approach in Mid-Sized Municipalities: A discussion of Issues

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Agenda

- Review of the basics
 - Assessor's obligations (Market Value & Equity)
 - Jurisdiction of ARBs: s. 467
- Review of *Costco v. Medicine Hat (City)*, 2022 ABQB 129
- Discussion - possible solutions



Review of the Basics

➤ Market Value (MGA)

- 1 (1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;



Review of the Basics

- Equity is not defined but the term “equitable” is used in the MGA

293(1) In preparing an assessment, an 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.



Jurisdiction of the ARB

Municipal Government Act, R.S.A. 2000, c M-26, s. 467(1),(3)

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.

467(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.





**COSTCO WHOLESALE
CANADA LTD. V CITY OF
MEDICINE HAT, 2022 ABQB
129**



Issue: Treatment of Vacant Space Shortfall

- Complainant argued that there was no line item for vacant space shortfall in the assessment. Other municipalities include a vacant space shortfall.
- City advised that overall expense ratio of 4 percent for non recoverable expenses and 2 percent for replacement includes typical operating expenses and included vacant space shortfall. Assessor advised that the City had not reanalyzed its overall expense ratio for 2019 but believed it had been done in the prior year.
- City advised that other municipalities which include a separate vacant space shortfall have a lower deduction for non-recoverable expenses (generally 2% instead of the 4% in the City)



CARB Decision

- Majority accepted the City's approach noting that the same issue had been the subject of a prior complaint on a different property and that that the CARB's decision in that matter had not been appealed
 - Majority held it was clear that the vacant space shortfall was included in the 4% non-recoverable allowance but did not provide substantive reasons on why
 - Majority held that allowing the Complainant an additional deduction would be a "double dip"



CARB Decision

➤ Dissenting Reasons

“The Respondent admitted that no calculation of either the non-recoverable expenses nor the vacant space shortfall/vacant space shortfall was performed for this year; nor was there any evidence as to when it had last been undertaken although there was an acknowledgement by the Respondent’s representative assessor that it should be done next year. To extrapolate that 4 % for non-recoverables plus 2% for replacement costs was a fair estimate of all the costs to be deducted from the net operating income is simply a guesstimate as no actual numbers were presented in evidence to determine how the assessor came up with the 4 % allowance for non recoverables.” (para 63)



Judicial Review

- Complainants applied for judicial review on the following grounds:
 - That the Board unreasonably accepted that the 4% the City applied to non-recoverable costs included vacant space short fall;
 - That the Board unreasonably placed the onus on the Applicants to prove the proper assessment, before the Board would consider altering the assessment and;
 - The Board unreasonably refused to alter the assessment because it would be unfair and inequitable to other parties.



Decision

- Rejected claim of bias and fettering
- However, the Court held that the Majority Decision was unreasonable as:

“The Decisions do not give reasons as to why the Majority chose to give significant weight to any or all of the evidence of the City assessor in the absence of any data (other than a reference to a historical assessment not in evidence) as to how the 4 percent calculation was developed and what typical operating expenses were included under that non recoverable allowance. The Majority did not grapple with the statutory requirement that the valuation date for the properties was July 1, 2019 yet the City’s evidence was that the data relied upon for operating costs was historical. The Majority did not mention the historical data at all; rather, the Majority accepted the City’s methodology and said it should be the City that decides whether a change in the method of calculating tax assessments is warranted.”
(para 60)



Issue: What Evidence Must a Municipality Provide to Support an Assessment?

- The Court acknowledged that the City was not required to provide specific kinds of evidence but does not provide any guidance as to what evidence would have been sufficient:

“The ***Principles of Assessment***, require that, “In situations where there are few sales the ARB should expect to hear sound reasoning behind the selection of typical rent rate, typical vacancy, typical operating expenses and overall capitalization rate”: page 40. **I acknowledge that the City was not required to produce specific kinds of evidence to support its 4% non-recoverable allowance.** However, there was no evidence, other than the quite general evidence given by the assessor above, which explained how the City considered, assessed and applied the 4% non-recoverable allowance.”
[emphasis added] (para 62)



Discussion

- What *Costco* reveals:
- How does a mid-sized municipality establish income approach market value where there are few comparators?



Discussion

- Disclosure of the “entire analysis data set”



Discussion

- Comparisons and trends with **other municipalities** to determine if the values used for these inputs, as well as other costs
- But, s. 467(3) requires intra-municipality comparison
- Would legislative change assist?



Discussion

Use of the Cost Approach

- Calculations
- Limitations
- Divergent results?
- Justification?
- Considerations at ARB?



Discussion

- Use of ARFI (s. 295)
- Consider asking for:
 - Taxpayer internal valuations?
 - Balance sheet values for asset?
 - Public information regarding value?
 - Financial statements?
 - Applications to lenders including valuations?
 - Capital budgets for buildings and fixtures?
 - Corporate income tax returns?

Discussion

- Consider use of s. 465 to compel information?





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