

**CALGARY
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(4).

between:

Assessment Advisory Group, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Steven C. Kashuba, PRESIDING OFFICER
Ed Reuther, MEMBER
Ron Roy, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: 079520300

LOCATION ADDRESS: 2500 – 4 Street SW

HEARING NUMBER: 58347

ASSESSMENT: \$8,300,000

This complaint was heard on 9th day of July, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom #9.

Appeared on behalf of the Complainant:

- Troy Howell

Appeared on behalf of the Respondent:

- Dan Satoor

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

1. Procedural Matter

At a point when the Complainant completed the presentation of their evidence, the Respondent requested that the board adjourn the hearing and decide in favour of the City. It was their contention that the Complainant had listed three issues in their Complaint Form but completely disregarded any evidence for the one issue having to do with operating costs, and provided irrelevant evidence for the remaining two issues. As a result, it was the position of the Respondent that the Complainant failed to meet their onus of proving the assessment to be incorrect and asked the board to confirm the assessment without the necessity of proceeding to cross examination, summary, and argument.

In response, the Complainant submitted that the weight given to *any* evidence submitted by either party is solely the responsibility of the board and not that of the Respondent.

After a brief recess the board elected to proceed with the merits of the complaint and allow each party to cross examine the evidence provided by the other party. It was the conclusion of the board that to do otherwise would bring into question the element of natural justice which must rightfully be accorded the Complainant *even at the risk of receiving evidence that may possess, in the judgement of the Respondent, some weaknesses in substance and/or credibility.*

Property Description:

The subject property, located at 2500 – 4th Street SW, is known as the *Roxboro Mall*, an urban commercial-retail mall on the main floor of a high-rise residential condominium building. Constructed in 1997, the building sits on 1.385 acres of land, and the area of the retail space is 19,032 square feet. Its current assessment is set at \$8,300,000.

Issues:

1. The City's lease rate as applied to the subject property is too high.

Although the issues brought forward by the Complainant may have been checked off on the original Complaint Form, they were not readily available or discernible in the evidentiary document as made available to the board (refer to the preliminary matter, above). However, in reviewing 1-C, page 12 of the Complainant's Evidence, the board concludes that at issue is City's application of a lease rate of \$36 per square foot as opposed to the Complainant's request of \$20 per square foot.

Complainant's Requested Value: \$7,220,000.

Board's Decision in Respect of Each Matter or Issue:

1. Is the lease rate applied by the City too high?

In defence of their request to reduce the assessment of the subject property by using a lease rate of \$20 per square foot as opposed to the City's use of \$36 per square foot, the Complainant relied upon the *Assessment Request for Information* (1-C, page 17) wherein the lease rates as submitted to the City ranged from \$33 per square foot to \$41 per square foot. In addition, the Complainant presented five lease comparables (1-C, pages 22 – 31).

In reviewing this evidence, the board notes that the lease rates submitted by the Complainant for the subject property actually support the assessment while the lease rate comparables are taken from properties that exhibit dissimilar characteristics and cannot be used as a true test of the lease rates applied to the subject property.

To support the assessment the Respondent submitted a *Valuation Summary* (1-R, page 13 and page 21) showing that the Complainant failed to include the 37 underground parking stalls shown on title. According to the Respondent, these parking stalls generate considerable revenue and must be added to the Net Operating Income. Additionally, the Complainant erred in their representation of the City's use of a capitalization rate which is 7.50% and not 8.00% (see 1-C, page 12 of the Complainant's submission and 1-R, page 12 of the Respondent's submission). To further support the assessment, the Respondent submitted one comparable sale (1-R, page 43).


In reaching its decision, the board finds that the Complainant's submission lacked credibility in the use of capitalization rates, square footage of the subject property, and the absence of the revenue from parking stalls in the calculation of its Net Operating Income which, in turn, impacts directly the calculation of the assessment value.

In addition to the foregoing, the board notes that the vacancy rate of 4% and the capitalization rate of 8.00% were not at issue. Notwithstanding this observation, the board notes that the Complainant, in their analyses of the Respondent's submission, incorrectly stated the City's position to be one of applying a capitalization of 8.00% while in actual fact the pro forma put into evidence by the City reflects a capitalization rate of 7.50%.

Board's Decision:

It is the decision of the board to confirm the assessment of the subject property for 2010 at \$8,300,000.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF July 2010.


Stephen C. Kashuba

Presiding Officer

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.*