

**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:

Colliers International Realty Advisors, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

L. Patrick, PRESIDING OFFICER

K. Farn, MEMBER

A. Zindler, MEMBER

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

ROLL NUMBER:	071126452
LOCATION ADDRESS:	2840 Memorial DR SE
HEARING NUMBER:	57931
ASSESSMENT:	\$4,330,000

This complaint was heard on 12th 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:

- Michael Uhryn

Appeared on behalf of the Respondent:

- Edwin Lee

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

There were no procedural or jurisdictional matters.

Property Description:

The property is located on the south east corner of Memorial Drive SE and 28 Street SE consisting of a 118,407 square feet parcel of land upon which are located a 5,251 square foot Boston Pizza restaurant and an 8,567 square foot Swiss Chalet restaurant both of which are free standing buildings.

Issues:

1. The assessment is not reflective of the market value because the market net rental rate used to determine the Potential Net Income is incorrect.

Complainant's Requested Value: \$3,649,000

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

Complainant's position:

The Complainant filed this complaint on the basis that the market net rental rates used by the respondent in the Income Approach Valuation were incorrect and not supported by the lease rate comparables. The rental rates used by the Respondent in the assessment were \$28.00 per square foot for the smaller building (Boston Pizza) and \$26.00 per square foot for the larger building (Swiss Chalet). The submission by the Complainant in respect to the Swiss Chalet is that the rental rate ought be reduced to \$22.00 per square foot which is what the Respondent used in respect to the 2009 assessment and that the Respondent has not exhibited any basis upon which to increase the rate to \$26.00. The submission in respect to the Boston Pizza is that the rental rate be reduced to \$23.50 per square foot and that this rate is supported by lease comparables. It is acknowledged by the Complainant that both of these restaurants fall into the sit down restaurant category used by the Respondent in its assessment process. The Complainant further acknowledged that the rate normally associated with the sit down restaurant category is \$28.00 however in the case of the subject there are influences in respect

to the site such as location and access that require a reduction in the rental rate noting that the Boston Pizza rental rate was reduced to \$28.00 from the 2009 rental rate of \$30.00. The Complainant did not contest the other income approach inputs or the capitalization rate used by the respondent in developing the Net Operating Income for the property. The Complainant offered 13 lease comparables, 4 of which are likened to the sit down restaurant category. The Complainant acknowledged that of the 4 comparables 2 were yet to be constructed, one is a land lease and the 4th is not a free standing building and is located in a community shopping center. The Complainant also submitted an extract from the 2009 complaint that indicated the actual rental rates to be \$16.50 for the Swiss Chalet and \$32.62 for Boston Pizza.


Respondent's position:

The Respondent submitted that the use by the Complainant of comparables that failed to display close similarity to the subject because of the absence of improvements or were part of a multi tenanted structure failed to satisfy the burden of proof that the assessment is incorrect or inequitable. The Respondent submitted that although the rental rate for sit down free standing restaurants in the NE quadrant is \$28.00 per square foot the subject is close enough to the NE/SE quadrant boundary to benefit from that rate application. The \$26.00 rate for the Swiss Chalet recognizes the substantially larger floor area, condition and the lack of accessibility from Memorial Drive. The equity comparables submitted by the respondent were for NE quadrant and disclosed assessments in a range of \$28.00 to \$30.00 per square foot to support the assessment rates. The lease rate comparables submitted by the Respondent ranged from \$25.00 to \$32.00 and covered locations in 3 quadrants.

Board's Decision:

The assessment is confirmed. The comparables relied upon by the Complainant were irrelevant because of the incorrect category to which they were related or they were flawed because they lacked any similarity to the subject. The Complainant's request to return the assessment to the 2009 amount was not supported in any evidence presented and the evidence was lacking in any information that would indicate an inequity. The burden of proof is not met in respect to showing an assessment that is either incorrect or unfair. The Board found the assessment comparables of the Respondent to be consistent and supportive of the assessment of the subject and the lease comparables indicate that the rental rates are not inconsistent with the rates used in the assessment in that for the most part the actual rates exceed the typical rates used by the Respondent. The Board found that in fact the Respondent's evidence support both buildings being at the \$28.00 rate however the Respondent has chosen to make the assessment based on the 26.00 rate for the Swiss Chalet and the Board confirms the assessment on that basis. Accordingly, the Board determined that there was insufficient evidence to support a change in the assessment and that the Respondent had demonstrated that the assessment was both fair and correct.

DATED AT THE CITY OF CALGARY THIS 30th DAY OF July 2010.


J. Patrick
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.*