

**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-26.1, Section 460(4).

**between:**

***Linnell Taylor Assessment Strategies, COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***W. Kipp, Presiding Officer  
C. McEwen, Board Member  
J. O'Hearn, Board 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: 067205880**

**LOCATION ADDRESS: 1212 – 17 Avenue SW, Calgary AB**

**HEARING NUMBER: 55981**

**ASSESSMENT: \$2,230,000**

This complaint was heard on the 5<sup>th</sup> day of July, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- J. David Sheridan

Appeared on behalf of the Respondent:

- Emilia Borisenko

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

As a preliminary issue, the Respondent objected to the admission of rebuttal evidence from the Complainant because that evidence had apparently been submitted three days past the due date (June 28, 2010 rather than June 25, 2010). The Complainant conceded that, according to the time lines set by the City of Calgary, the submission was late. With no objection from the Complainant, the CARB ruled that the rebuttal evidence was not admissible.

Subsequent to the hearing, the Complainant contacted the City Clerk's Office of The City of Calgary regarding the interpretation of rebuttal due dates. Mr. Gregory Dawson of the City Clerk's Office subsequently responded by e-mail on July 6, 2010, clarifying the Clerk's Office position on due dates. With apologies, Mr. Dawson confirmed that the Complainant's rebuttal evidence due date was actually June 28, 2010. The rebuttal had therefore been filed within the proper timelines.

The CARB had received the same rebuttal evidence in the course of other hearings during the same week and had considered it in the context of those hearings.

The CARB confirms that the rebuttal had not, in fact, been filed too late for consideration at the hearing on July 5, 2010. That rebuttal has been considered in conjunction with this hearing.

**Property Description:**

The property that is the subject of this complaint is a commercial retail property located on the north side of 17<sup>th</sup> Avenue SW, in the area of south downtown Calgary known as The Beltline. The property comprises a purpose-built retail store building containing 3,848 square feet, built on a 10,384 square foot commercial lot in 1998. Since its construction, it has been occupied by a Blockbuster Video store pursuant to a lease starting May 24, 1998, expiring on May 31, 2013.

For 2010, the property is assessed as "land only" at a unit rate of \$215 per square foot of land area.

**Issues:**

The Complainant raised the following matters in section 4 of the complaint form: *Assessment amount*

The Complainant also raised the following specific issues in section 5 of the Complaint form:

- Highest and Best Use as interpreted by the ABU is flawed
- Assessment calculated on Land-as-if-Vacant is incorrect and inequitable

- Assessment is excessive
- Assessment is excessive on an actual land value basis

As of the date of this hearing all issues remained in dispute.

During the hearing, the Respondent pointed out that there was an error in the materials in the Respondent evidence brief. Corrected pages were entered and marked as Exhibit 1.

**Complainant's Requested Value:**

\$1,900,000

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

Issue 1: Highest and Best Use

The Complainant referred to the Respondent's assessment method as "anticipatory" in that it anticipates a use for the subject property that was not probable as at the condition date of December 31, 2009 or at the valuation date of July 1, 2009.

The concept of highest and best use requires consideration of a number of factors which includes legal and physical factors. By assessing the property as vacant land, the Respondent has determined that there is a higher and better and more profitable use that can be made of the land.

In coming to this conclusion, the Respondent has failed to recognize all legal factors, including the fact that the property continues to be encumbered by a lease that does not expire until May 31, 2013, some four years and 11 months beyond the valuation date. Furthermore, there has been no consideration given to the physical characteristics and their impact on any alternative development of the 10,384 square foot interior lot. With consideration given to setbacks, parking requirements and the like, the existing building may be the optimum development for the lot.

Not only is the building a modern one, just 11 years old, but it continues to function and operate as an income producing property.

The Respondent acknowledged that no highest and best use study had been undertaken for this property prior to the finalization of the 2010 assessment. The Respondent's valuation approach for properties such as the subject is to value that property, first by use of the income approach and second, as vacant land and then select the higher of the two values as the assessment. The rationale is that *"some improved properties would not reach their market value if valued based on the income approach"*.

**Findings**

In view of the above considerations, the CARB finds as follows with respect to Issue 1:

The CARB does not concur with the Respondent's concept of highest and best use. The quote shown above suggests that the Respondent will value a property such as the subject by more than one valuation approach, without regard to highest and best use and then adopt the highest valuation as the assessment of that property. There are situations, and the subject is one of those, where the

value of the vacant land might be greater than the value as improved but it is not possible to achieve vacant land status within a reasonable period of time. In the subject instance, there is a lease for the property with a remaining term of almost five years. The costs to the property owner for an early lease termination could more than offset the difference in the two values. In making this assessment, that potential cost was not investigated.

The CARB finds that highest and best use must be the foundation for a market valuation of the property and that it cannot simply be valued as land without full consideration of all components of highest and best use.

#### Issue 2: Assessment calculated on Land-as-if-Vacant is incorrect and inequitable

This issue is very much the same as Issue 1. The Complainant maintains that the assessment is incorrect because it did not consider all characteristics of the subject property, including its highest and best use.

The inequitable assessment argument stems from a comparison of the subject property to other properties improved with functioning and in good condition improvements where those other properties have been valued as improved properties and not as vacant land. No comparison properties were provided by the Complainant but the argument was intended to stand on logic.

In reply, the Respondent stated that inequities would exist where a property was assessed with consideration to its improved state when other, similarly improved properties are assessed at a higher amount as vacant land.

#### Findings:

The CARB finding is the same as for Issue 1. Participants in the marketplace would recognize the status of the subject property and assign a value to it on the basis of that status. It may very well be that the value of the improved property is less than what its value would be as a vacant site but if it is not legally or economically possible to achieve vacant site status, then the improved property market value would prevail.

Equity does not mean that similar properties should be assessed at the same rate or value. It means that similar properties should be assessed in a like manner.

#### Issue 3: Assessment is Excessive

From the point of view of the Complainant, the subject property must be valued in accordance with its highest and best use and that optimum use is as an income producing retail investment property. In the marketplace, such properties are valued by the income approach. The valuation as vacant land results in an assessment that is excessive.

Revenue producing properties are most often valued by the income approach and that is the valuation technique chosen by the Complainant. A net income capitalization technique was used wherein a market or typical rent rate is determined from an analysis of lease data from other similar premises, appropriate market supported vacancy and vacancy shortfall allowances are made and the resulting net income amount is capitalized at a market derived capitalization rate.

In this instance, the Complainant reported that the subject premises were currently leased at a rental

rate of \$45 per square foot. A table of lease data for other properties was presented wherein rental rates ranged from \$23.00 to \$95.00 per square foot. From all of that data, the Complainant selected a rate of \$40.00 per square foot as the typical rent for the subject.

A vacancy allowance of 1.0% was chosen after consulting market survey reports dealing with retail vacancies in various sectors of Calgary and with particular regard to the national tenant and long term lease in the subject building. An \$8.50 per square foot vacancy shortfall allowance and an 8.0% capitalization rate were taken from assessments of other income producing properties in the city.

Using these input amounts and rates, the Complainant arrived at a market value amount of \$1,900,675.

The Respondent had not valued this property by the income approach. There was no evidence put forward to challenge the vacancy, shortfall or capitalization rate input factors used by the Complainant but questions were asked about the \$40 rent rate. A table in the Respondent's evidence included comments about the retail leasing comparables used by the Complainant. Several of the comments did not relate to the subject property (this same table had been included in Respondent's evidence briefs for other Beltline property complaints) but some referenced "post-facto" lease dates and some pointed out inconsistencies between the Complainant's details and those found on ARFI's.

#### **Findings:**

The CARB finds that having established that the highest and best use of the subject property is as a revenue producing investment property, the most reliable estimate of market value will come from the income approach. Other than questioning the rent rate used by the Complainant, the Respondent found no fault with any of the other inputs so the CARB accepts the vacancy allowance, the shortfall allowance and the capitalization rate. However, the CARB does not accept the \$40 rent rate as typical.

Firstly, it was noted from the rent roll provided in the Complainant's evidence that the rent rate for the appropriate time period surrounding the valuation date was \$48.00 per square foot, not \$45.00 as shown in the evidence. Secondly, the Board was not convinced by the Complainant's reasoning that lead to a \$40.00 typical rent rate given the diversity of rates and sizes and types of premises in the retail leasing table provided.

The Board determined that if the subject rent rate for the valuation date (\$48.00 per square foot) was inserted into the income approach formula, the indicated property value would be \$2.28 million which coincidentally supports the assessment of \$2,230,000. Even at a \$45 per square foot rental rate, the outcome would support the assessment amount.

While the CARB finds that the income approach is the appropriate valuation approach for determination of the assessment of the subject property, it finds that the Complainant's application of this approach results in a lower value that has not been adequately supported. With consideration given to a more appropriate rent rate, the final outcome is similar to the 2010 assessment.

#### **Issue 4: Assessment is excessive on an actual land value basis**

In the event that the CARB determined that the subject property is appropriately valued as vacant

land, the Complainant presented evidence to show that the \$215 per square foot rate used in the assessment is excessive. A number of comparables were presented and most of these were challenged by the Respondent.

**Findings:**

The CARB did not dwell on the land value evidence. The Board has determined that the subject property should be assessed using the income approach to value. In the application of that approach, the Board finds that the resulting value indicator is much the same as the assessment.


**Board's Decision:**

In summary, the CARB finds that properties such as the subject must be assessed with regard to their highest and best use. In the subject instance, highest and best use analysis would indicate that the property is a revenue producing investment property and it should be valued as such, by use of the income approach.

Application of the income approach, using appropriate input rates, results in a value that is very close to the assessment currently on the property.

The 2010 assessment is confirmed at \$2,230,000.

DATED AT THE CITY OF CALGARY THIS 19<sup>th</sup> DAY OF July 2010.

  
W. Kipp  
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.*