

**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: 068206804

LOCATION ADDRESS: 308 – 17 Avenue SW, Calgary AB

HEARING NUMBER: 55999

ASSESSMENT: \$6,480,000

This complaint was heard on the 6th 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

Property Description:

The property that is the subject of this complaint is a commercial retail property known as the Model Milk Building located on the north side of 17th Avenue SW, in the area of south downtown Calgary known as The Beltline. The property comprises a multi-tenant retail building containing 20,875 square feet, built on a 28,742 square foot commercial lot circa 1933. There is a two storey section of the building and there is a basement. The property is included in the City of Calgary's *Inventory of Potential Heritage Sites*, however it does not have any heritage designation.

For 2010, the property is assessed as "land only" at a unit rate of \$225.45 per square foot of land area (base rate of \$215 plus 5% for corner location).

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.

Complainant's Requested Value:

\$5,500,000

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 leases that do not expire within the short-term. Furthermore, there has been no consideration given by the assessor to the fact that the property could, at some time, be classified as a heritage property in which case the building could not be removed from the site.

The building 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"*. The Respondent did not provide the Board with any other valuation that could be compared to the land as if vacant value.

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 are leases for the property with remaining terms of two years or more. The costs to the property owner for early lease terminations could more than offset the difference in the two values. In making this assessment that potential cost was not investigated.

No consideration had been given by the Respondent to the potential for heritage site recognition. The CARB had no evidence before it to show what the impact of such a designation would be on use and value. The only evidence was the opinion of the Complainant that there could potentially be an impact.

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. A list of 66 properties was in the Respondent's evidence. All had been assessed as vacant land at a base rate of \$215 per square foot. Nine of the 66 properties were actually vacant sites.

Findings:

The CARB finding is the same as for Issue 1. Participants in the marketplace would recognize the status of the subject property as an older building encumbered by leases 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 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 rental rates from \$13.77 to \$21.59 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 rates of \$30.00 per square foot for restaurant space, \$23.00 per square foot for main floor retail space and \$6.00 per square foot for basement space as the typical rents for the subject. Part of the rationale for selecting these particular rent rates was the location of the property in a non-prime Beltline location and the large size of the restaurant premises, in particular.

A vacancy allowance of 8.25% was chosen after consulting market survey reports dealing with retail vacancies in various sectors of Calgary and finding that the City applied an 8.25% vacancy rate to other Beltline income producing properties. A \$12.00 per square foot vacancy shortfall allowance, 1.0% non-recoverable expense allowance and a 7.5% 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 \$5,502,907.

The Respondent had not valued this property by the income approach. There was no evidence put forward to challenge the vacancy, shortfall, non-recoverables or capitalization rate input factors used by the Complainant although questions were asked about how the Complainant arrived at the rent rates. 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 rates 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, the non-recoverable expense allowance and the capitalization rate. The Complainant's reasoning that lead to the \$30 restaurant rental rate as typical was questionable. In the retail leasing table, three restaurant leases had rents of \$40, \$35 and \$38 per square foot. Even with adjustments for location, date of lease and size of premises, the Board was not convinced that \$30 was typical. Further, the Respondent had presented comparable basement lease rates from \$1.66 to \$5.50 per square foot, averaging \$3.24, but \$6.00 was chosen for the subject even though its location had been described as inferior to some of the comparables. Some of the comparables seem to have had finish in the basement areas but the information was sketchy as to the amount and quality of that finish. The basement in the subject was described as a club/spa but there was no detail of the type or quality of that finish.

The CARB has found 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 is not reasonable given the evidence regarding the characteristics of the subject and its comparability to the retail lease comparables.

When the income approach is applied using rental rates of \$35.00 or \$38.00 per square foot to the restaurant space, the indicated values tend to support the \$6,480,000 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 \$225.45 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.

The Complainant also provided rebuttal evidence that provided additional data on sales used by the Respondent to determine land value.

Findings:

The CARB did not dwell on the land value evidence or rebuttal. The Board has determined that the subject property should be assessed using the income approach to value.

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.

The Complainant's application of the income approach is not accepted because of unconvincing rental rate analyses.

The 2010 assessment is confirmed at \$6,480,000.

DATED AT THE CITY OF CALGARY THIS 19th 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.*