

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460(4).

between:

WILSON LAYCRAFT BARRISTERS & SOLICITORS, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Ted Sadlowski, PRESIDING OFFICER

Robert Kodak, MEMBER

John Mathias, 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: 068080803

LOCATION ADDRESS: 200 8 Avenue SW

HEARING NUMBER: 57871

ASSESSMENT: \$34,600,000

This complaint was heard on the 7th day of July, 2010 in Boardroom 2 at the office of the Assessment Review Board located on Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta. It was continued on the 1st day of October, 2010 in Boardroom 12 at the same location.

Appeared on behalf of the Complainant:

- *G. Ludwig of Wilson Laycraft*
- *G. Kerslake of Altus Group*
- *F. Zinner of Hudson's Bay – in attendance for the July 7th, 2010 hearing only.*

Appeared on behalf of the Respondent:

- *E. Borisenko, Assessor*
- *A. Cunningham, Law Branch, City of Calgary.*

Property Description:

The subject property is a retail use property that is located in the central core of downtown Calgary. It was constructed in 1911 with additions in 1929 and 1957, has six floors, a basement and it is a standalone building. A portion of the top floor is occupied by a fitness facility. The remaining space is used by the Bay as full-line department store and occupies 373,159 square feet. The fitness facility occupies 18,966 square feet. The subject is described as notable, rare and unique and has a Category A Potential Historical site designation, but to date has not been designated as such.

Issues:

- 1) Does the retail rental rate applied by the City Of Calgary reflect typical market conditions and is it equitable with other similar locations?
- 2) Does the overall capitalization rate reflect the risk associated with a Category A Potential Historical Site?
- 3) Is the net rental area of the subject property over-stated?
- 4) Does the assessment reflect market conditions as at July 1, 2009?

Preliminary Matters:

There were no objections about any of the panel members raised by either the Complainant or the Respondent. Also none of the panel members had any bias toward this complaint.

The Complainant raised a preliminary matter under sections 299 and 300 of the Municipal Government Act. A request for information from the Respondent was made in a letter dated March 4, 2010. According to the Complainant the requested information was not received and hence the Complainant requested that certain pages from the Respondent's brief be stricken and subsequently requested a postponement of the hearing.

The decision of the Board was that matters that relate to the interpretation of the legislation are not in the purview of the Board. The role of the Board is to hear the merits of the case regarding the valuation of the property. Therefore both requests were denied and the hearing proceeded to the merits of the case at hand.

Position of the Complainant:

The Complainant submitted evidence showing that the market net rental rate applied to the fitness facility is \$9.50 per square foot and that applied to the retail space was \$8.00 per square foot. Further, the Complainant submitted evidence showing the 2008 rental rates for retail space and listed the rental rates for other department stores in the City of Calgary. In 2009 the rates ranged from \$5.00 to \$5.50 per square foot. Rental rates for department stores, like Sears, Zellers, Walmart in other cities in Western Canada were provided. Those rates ranged from \$1.74 to \$5.18 per square foot.

Other department store leases in the City of Calgary are in malls and in buildings with at most 3 stories. The subject is a standalone facility with 6 stories and a basement. Such a multiple floor facility would be considered obsolete by today's standards.

The Complainant also indicated that the overall capitalization rate of 7% used to assess the subject is too low given the risk that is associated with a Category A Potential Historical Site. Potential restrictions that could result from an historical designation would warrant a higher capitalization rate. Other facilities in the City of Calgary have demonstrated an average actual capitalization rate of 7.37%. Given that the subject is a Category A Potential Historical Site an 8% capitalization would be more reasonable.

The Net Rentable Area (NRA) of the subject should be reduced from 392,125 square feet to 381,230 square feet. The difference, 10895 square feet, is the upper mechanical room and is not a rentable space. The Complainant indicated that the mechanical areas of other downtown buildings are not assessed. The requested 2010 value is \$16,140,000.

Position of the Respondent:

The Respondent put forth a recommendation that the assessment on the subject property be reduced to \$32,400,000. The recommendation was based on the Income Approach Manual Calculation. In this calculation the large retail space was assessed at \$8.00 per square foot, the fitness space at \$9.50 per square foot, the basement retail at \$6.00 per square foot and the storage/mechanical at \$1.00 per square foot. The mechanical area was assessed because part of the area was used for storage in addition to housing the mechanical components.

The Respondent submitted lease comparables to support the \$8.00 per square foot retail rate. The rates ranged from \$8.80 per square foot to \$36.00 per square foot. In addition, twenty-four equity comparables with an area of over 70,000 square feet were submitted. The lease rate was \$10.00 per square foot. These comparables were provided to support the \$8.00 per square foot on the large retail space.

The Respondent also submitted eight lease comparables to support the \$9.50 per square foot rent on the recreational (fitness) space. The rental rates per square foot ranged from \$9.25 to \$20.50.

Regarding the capitalization rate, the Respondent applied the 7% rate to the subject as well as to all Group B Regional Shopping Centres. The 7 ¼ % rate applied to the Scotia Centre and TD Square was not applied to the subject because it has no office portion. The 7% rate was applied to twenty-two retail properties in close proximity to the subject and of the same vintage as the subject.

The Respondent submitted an inventory of Evaluated Historic Resources in the City of Calgary. It was pointed out that the Historical Resources Act requires the City to pay compensation for any loss of economic value to private property arising from the designation.

The Respondent submitted an Assessment request for Information (ARFI). The ARFI showed that the rental rate on the fitness facility was \$8.75 per square foot.

Board's Decision:

The decision of the Board is to reduce the assessment to \$28,920,000 from the current assessment of \$34,600,000. This is predicated upon: 1) a reduction in the rent rate for the sixth floor space from \$8.00 to \$6.00 per square foot, 2) the elimination of the mechanical space from assessment, and 3) an increase in the capitalization rate from 7.0% to 7.5%.

Reasons:

The Board considered the evidence and argument presented by both parties. The Board found that the net rental rates applied to the basement, recreational space and the large retail space (floors 1-5) to be fair and equitable. Regarding the assessment, the Board took the following factors into consideration: age of the subject; the risk associated with Category A Potential Historical Sites; and the closure of the restaurant and retail space on the sixth floor of the subject. The Board applied an \$8.00 per square foot rental rate to floors one through five. The Board further applied a \$6.00 per square foot rate to the sixth floor. That rate is equal to the rate applied to the basement by the Respondent. The Board was persuaded that the \$6.00 rate was appropriate for the sixth floor for two reasons: the restaurant on that floor is now closed and retail traffic has diminished on the higher floors to the point that the space is functionally obsolete for retail purposes.

The Fitness area remains at \$9.50 per square foot. The ARFI indicated that the rate was \$8.75 per square foot and comparables in the area support a \$9.50 rate.

The \$1.00 per square foot rate for the mechanical/storage space is removed. The Board heard evidence that mechanical space is not typically assessed in the calculation of NRA.

The Board was persuaded that the inclusion of the subject on the "inventory" as a "Category A Historical" site does pose some restrictions and uncertainty for the subject. The statement: "means that the historic resource cannot be altered or demolished without consent" can create some limitations for the subject.

While the subject is not designated, at the very least, this places uncertainty which would be a limiting factor if the property was to be sold or redeveloped. A one half point increase in the capitalization rate to 7.5% acknowledges the increased risk, but at the same time does not ignore the "core" location of the subject.

DATED AT THE CITY OF CALGARY THIS 2nd DAY OF November 2010.



T. Sadlowski
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.*