

**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, Revised Statutes of Alberta 2000 (the Act).

between:

Lloyd & Flo Holdings Ltd. (represented by AEC International Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***W. Kipp, PRESIDING OFFICER
P. Charuk, MEMBER
P. Pask, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	112108808
LOCATION ADDRESS:	7516 Macleod Trail SE, Calgary, AB
HEARING NUMBER:	65357
ASSESSMENT:	\$4,500,000

This complaint was heard on the 11th day of June, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *Brock Ryan and Jamie Wingrowich, AEC International Inc.*

Appeared on behalf of the Respondent:

- *Cliff Yee and Shelly Turner, City of Calgary Assessment*

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

Neither party expressed any objections to the composition of the CARB panel.

The Respondent claimed that the Complainant essentially agreed with the base land rate used in making the assessment. The only disagreement was over adjustments to be made to the value. Since there would be no necessity to defend the base land rate, the Respondent chose to remove Page 57 (the page setting out land sales data) from Exhibit R-1. Neither the Complainant nor the Board had concerns about the exhibit change so Page 57 was struck from the evidence package. Once the sales evidence was removed from the Respondent's evidence, there was no need to introduce the Complainant's rebuttal so that disclosure document was not entered as an exhibit.

Property Description:

The property that is the subject of this complaint is a commercial property on the east side of Macleod Trail SE. It comprises a 61,785 square foot lot with 135 feet of frontage onto a service road paralleling Macleod Trail with one commercial building near the front. The rear of the lot backs onto the rail right of way containing rail lines operated by CP Rail and the City of Calgary Light Rail Transit (LRT) system. A 7,277 square foot store building, built in 1964 occupies the lot. The City of Calgary rates the building as "B" quality. The building is leased to Canadian Tire Real Estate Limited and occupied as a "PartSource" store. There are a number of rights of way, easements etc. that impact the property.

Issues:

In Section 4 (Complaint Information) of the Assessment Review Board Complaint form filed February 21, 2012, box #3 (assessment amount) was checked. An attachment set out six reasons for the complaint.

The Complainant's disclosure document received by the assessment review board on April 30, 2012, noted that the assessment had increased by 82.2% over the previous year's assessment due to a change in the valuation method used by the Respondent. Encumbrances on title referencing rights of way were stated to negatively impact the value of the property, as did the single access point from the front roadway. Since the property is leased, it would also be acceptable to prepare an assessed value using the income approach. Lastly, the assessment is

inequitable when compared to assessments on other Macleod Trail properties.

At the hearing, the Complainant stated that the primary issues were the land value after consideration of the negative influences and that the property should be valued by the income approach. Some equity comparable data in the disclosure document was discussed. The Board considered only the issues that were raised at the hearing.

The Board concluded that the issues were:

- 1) *Should the land value be reduced to reflect negative influences?*
- 2) *Is this property assessed inequitably when compared to other Macleod Trail property?*
- 3) *Would the income approach provide a better indication of market value?*

Complainant's Requested Value: \$2,700,000

Position of the Complainant:

Negative Influences to Land

The only vehicular access to the property is a single access point from a service road that parallels Macleod Trail. There are six encumbrances registered on the title for such things as utility rights of way and an easement regarding a mutual access agreement. Some of these "run with the land" which means that they cannot be removed unless removed by the rights holder – the property owner cannot order their removal. Building restrictions are in place on the right of way/easement land thereby reducing the potential of the site. This type of restriction impacts negatively on the land value.

Equity

A table setting out assessment data on 13 Macleod Trail properties (11 of which were improved with buildings) showed that assessments ranged from a low of \$45 to a high of \$73 per square foot of land area. The subject assessment reflects a rate of \$73 per square foot of land. From 2011 to 2012, there was wide fluctuation in assessment changes. Two of the assessments decreased while the others increased from 0.6% to 118.0%. The subject increased by 82.2%. This magnitude of increase was not supported by market activity according to the Complainant.

Another table displayed assessment data for four other Macleod Trail undeveloped sites. Assessments per square foot of land area ranged from \$42 to \$70. The average was \$61. The Respondent provides a list of "Land Rate Adjustments" for influences that can add to (corner lot) or detract from value. The copy of the table in Complainant's evidence indicated that a negative adjustment of 25% could be made for "limited access". A further 15% reduction could be made for "public utility" which the Complainant maintains would be applicable to the flankage onto the railway lines and the numerous utility rights of way and mutual access easement. Application of these adjustments, totalling -40% to the assessed land rate of \$73 per square foot yields a reduced rate of \$44 per square foot. At this rate, the subject assessment should be \$2,700,000 which is the requested assessment.

Income Approach

The building on the subject property is leased to Canadian Tire at a rental rate of \$22.50 per square foot of building area. When this rate is input into the income approach formula containing typical rates for other factors such as vacancy, operating costs, non-recoverable expenses and capitalization rate, the indicated property value is \$2,037,000, an amount significantly lower than the assessment.

Position of the Respondent:*Negative Influences to Land*

Current land influence adjustment tables do include a category for limited access, however that deduction is only made in situations where a property has no public roadway access. The subject may have just one access point but that is from a service road running beside Macleod Trail. The property has direct exposure to Macleod Trail. No adjustment for access is warranted for the subject property.

Having regard to the Complainant's adjustment for "Public utility", that was an adjustment that might have been considered in past years however the current adjustment factor table does not include any factors for that influence. There has been no market evidence available to support such an adjustment so it is no longer considered in land valuations.

Equity

The 2012 assessment on the subject property follows the Respondent's current policy regarding valuations of all Macleod Trail property. Properties are first valued by the income approach (where there is a building). Then, only the land is valued by direct comparison and the higher amount is taken as the assessment. In the subject instance, the land value far exceeded a valuation by the income approach. This recent policy change could explain why there has been such a wide span in percentage changes from year to year. This is irrelevant in any event because percentage change in assessments on a year over year basis is not a valid ground for changing an assessment. Any number of factors could have changed from one year to the next, thus causing an assessment to change.

Having regard to the Complainant's equity comparables, the Respondent stated that several of these were not comparable to the subject because of influences that caused values to be adjusted downwards. For example, many of the properties on the west side of the northerly stretch of Macleod Trail have significant reductions due to their location either on the side of or at the base of a steep escarpment that prohibits use or development of the entire site. A couple of the properties in the Complainant's equity chart had been incorrectly assessed and once those assessments were reviewed following receipt of the Complainant's evidence, new assessments were calculated and amended notices were issued. Other circumstances such as parking restrictions and parcel size/shape also made the Complainant's equity comparables less reliable.

Income Approach

For comparison purposes, the Respondent calculated a property value via the income

approach. Inputs were all "typical" as applied to other similar properties on Macleod Trail, including a \$19.00 per square foot rental rate. The valuation by this approach was \$1,560,000.

The Respondent concluded that the market value of this property was in its land, stating that an informed seller would not sell for less than land value.

Board's Findings and Decision With Reasons:

The Complainant has approached this complaint from several perspectives. The Board dealt with each issue that was addressed by the parties.

Negative Influences to Land

The Board does not find that the single ingress/egress point in the frontage of the property warrants a negative adjustment to base land value. Macleod Trail is a unique artery and there are portions with service roads and portions where properties are directly accessed from the driving lanes of Macleod Trail. Almost all of the properties on this artery are developed for commercial uses and businesses have not demonstrated by their actions that the presence or absence of service road access is a factor that impacts on value.

The Board finds it curious that the Respondent no longer considers utility right of way or some types of easements as negative influences however it does concur that finding appropriate market evidence to support such adjustments is difficult if not impossible. The Complainant argued that it should be obvious that some of these encumbrances warrant negative land value adjustments. Perhaps but with no market based support, making arbitrary adjustments could create inequitable assessments.

Without market support, the Board finds that making realistic access or public utility adjustments is not possible.

Equity

The Board is not swayed by the Complainant's equity evidence and argument. As pointed out by the Respondent, many of the Complainant's equity comparables are not comparable to the subject. The Board agrees that year over year assessment change ratios is not a valid basis to determine whether an assessment is fair and equitable.

Income Approach

Both parties applied an income approach as an alternative valuation method. The Complainant even based that valuation on the actual rental rate that was being achieved in the building. The Respondent used a lower "typical" rental rate. The value conclusions of \$2,037,000 and \$1,560,000 do not provide any reliable property value in the opinion of the Board. The building to land ratio, at under 12% is much lower than typical site coverage ratios for this type of property. The subject site is encumbered to some extent by rights of way/easements, however the parcel is of sufficient size to accommodate significantly more building than currently exists. This low site coverage ratio is typically recognized in the market but neither party made any adjustment in their income approach calculations for this factor. The Board gives no weight to the income approach alternatives provided by the parties.

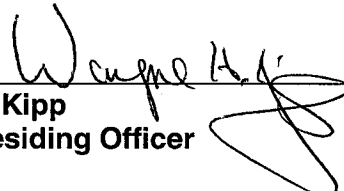
In conclusion, the Board recognizes that there might be some consideration given to the land encumbrances as described by the Complainant, however in valuing the property, there must be some market evidence to support such adjustments. In this case, no evidence was presented.

The Board finds that the Complainant's equity argument is not sufficiently supported by reliable evidence. Too many questions remain as to the comparability of the properties listed.

The income approach valuations by both parties are not accepted by the Board as being indicative of market value of the property.

The 2012 assessment of \$4,500,000 is confirmed.

DATED AT THE CITY OF CALGARY THIS 29th DAY OF June. 2012.



W. Kipp
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1 (minus Page 57)	Respondent Disclosure

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.*

For Internal Use

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Equity	Comparables
			Sales Approach	Land value
			Income Approach	