

**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.

between:

***LA DOLCE VITA RESTAURANTS (1982) LTD., COMPLAINANT
(Represented by Assessment Advisory Group Inc.)***

and

The CITY OF CALGARY, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member P. GRACE
Board Member R. DESCHAIINE***

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 2011 Assessment Roll as follows:

ROLL NUMBER: 056101009
LOCATION ADDRESS: 202 8A STREET NE
HEARING NUMBER: 67292
ASSESSMENT: \$551,500.00

This complaint was heard on 26 day of June, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- Stephen Cobb, Assessment Advisory Group Inc. – Representing La Dolce Vita Restaurants (1982) Ltd.
- Terry Youn, Assessment Advisory Group Inc. – Representing La Dolce Vita Restaurants (1982) Ltd.

Appeared on behalf of the Respondent:

- Lawrence Wong – Representing the City of Calgary

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

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties had no objections to the panel representing the Board as constituted to hear the matter.

Preliminary Matter:

No preliminary matters were raised, so the Board proceeded to hear the merits of the complaint.

Property Description:

The subject property is a commercial property use, with sub property use of house conversion (CS0501) located at the intersection of 1st Avenue NE and 2th Streets NE in the Bridgeland/Riverside Community. The structure is currently used as an office for a chiropractor and physical therapist. The structure, situated on a 0.11 acre parcel, has a total area is 1,182 square feet on one level. The subject property has been assessed, based upon the Sales Comparison Approach, at \$551,500 or \$138.26 per square foot.

Complainant's Requested Value: \$350,000.00

The Board noted the requested value was changed at the hearing from the original request of \$276,000.00.

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

In the interest of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

Both the Complainant and the Respondent submitted background material in the form of photographs, site maps and City of Calgary Assessment Summary Reports and 2012 Property

Assessment Notice.

ISSUE 1: Should an income approach be applied to the valuation of the subject property?

Complainant's Evidence:

The Complainant submitted its own income approach analysis for the subject property, using rates from the City of Calgary, October 03, 2011 preliminary rates table. (C1, Pg.18-19) The Complainant through his methodology was able to approximate the rates applied in the assessment of the subject property, to a value of \$552,560.00

For the calculation of the current and the requested assessment the Complainant used the following variables:

	City Assessment	Typical City Rate
Net Market Rate – Medical	\$40.00	\$21.00
Vacancy Allowance	5.0%	5.0%
Vacancy Shortfall	1.0%	1.0%
Capitalization Rate	7.5%	7.5%
Value	\$552,560	\$268,093

At the hearing the Complainant withdrew the use of an 8.0% capitalization rate as it stated it had no evidence to support the original request for 8.0%.

The Complainant advised the Board, at the hearing, the income approach value calculated was too low and revised the request to \$350,000.00 based upon the equity comparable.

Respondent's Evidence:

The Respondent stated "there are no City of Calgary typical rates for the subject as it is valued under the sales comparison method" and the 'typical' City rates used by the Complainant did not represent any City of Calgary rates applied. (R1, Pg. 3)

Findings of the Board

The Board found the income approach applied by the Complainant was flawed by inconsistencies and unsupported rates. The Board was unable to determine the source of the net rental rate of \$40.00 per square foot or vacancy allowance of 5% used in the calculation of the assessment, as they appear in no documents submitted into evidence.

Further, the Complainant provided no market evidence to support the rate of \$21.00 for the initially requested value and submitted no evidence to show how the revised request was calculated.

The Board found the income approach prepared by the Complainant lacked validity and supporting market evidence. The Board further found it was unable to reproduce the results obtained by the Complainant's methodology.

As the sales approach to valuation is applied by the City of Calgary, the requested application of an income approach by the Complainant, based on unsupported rates, was not accepted by this Board.

ISSUE 2: Is the subject property equitably assessed in relation to other properties?

Complainant's Evidence:

The Complainant submitted into evidence two equity comparables to support a change to the subject assessment.

Address	Assessment Class	Use	Property Use	Valuation Approach	Assessment	Land (Sq.Ft.)	Building (Sq. Ft.)	Other Facts	Assessment/Sq. Ft. Building
Subject									
202 8A Street NE	Non-Residential	Chiropractic Office	Commercial	Sales Comparison	\$551,500	4,904	1,182		\$462.58
Comparable									
909 1 Avenue NE	Non-Residential	Restaurant	Commercial	Sales Comparison	568,500	4,905	2,078	Ample Parking	\$273.58
206 8A Street NE	Residential	Family Home	Single Residential	Sales Comparison	423,500	4,904	1,253	Garage	\$337.99

It was the submission of the Complainant that the comparables showed the subject property was over assessed "given the adjacent properties are larger and better buildings, especially the restaurant." (C1, Pg. 2)

Respondent's Evidence:

The Respondent submitted evidence to show the area for 990 1 Avenue NE (056098809), used by the Complainant in the equity comparison, was incorrect and the correction would result in a higher assessment per square foot. The Respondent submitted documents to show the area used by the Complainant was the total area, including areas below grade. The Respondent testified the below grade area would not be assessed at a high rate, but did not provide a value.

The revised table, reflecting the area change, is presented below -

Address	Assessment Class	Use	Property Use	Valuation Approach	Assessment	Land (Sq.Ft.)	Building (Sq. Ft.)	Other Facts	Assessment/Sq. Ft. Building
Subject									
202 8A Street NE	Non-Residential	Chiropractic Office	Commercial	Sales Comparison	\$551,500	4,904	1,182		\$466.58
Comparable									
909 1 Avenue NE	Non-Residential	Restaurant	Commercial	Sales Comparison	568,500	4,905	1,074	Ample Parking	\$529.33
206 8A Street NE	Residential	Family Home	Single Residential	Sales Comparison	423,500	4,904	1,253	Garage	\$337.99

The Board notes the calculated rate per square foot reflects only the above grade area and would accordingly be lower if the value of any below grade area was included, however the rate to apply was not provided for the below grade living area.

Findings of the Board

The Board did not take into consideration the comparable at 206 8A Street NE as the property is a residential use and has been assessed under a different model of residential properties. The

Board found no basis for comparing the assessments.

The Board found, when the area of the property at 909 1 Avenue NE was amended to reflect the above grade area, the assessment per square foot supported the assessment for the subject property. The Board recognized the revised rate, calculated by the Board, does not reflect the area below grade which has been assessed in the comparable, but was sufficiently satisfied the revised rate indicated that a comparable rate had been applied to the subject property.

The Board found the equity comparables were insufficient in comparability to support a change to the assessment.

Board's Decision:

The Board found the Complainant failed to provide supporting evidence for the requested changes to the assessment and a change to the assessment was not justified.

The Board found guidance in prior decisions with respect to the decision on the subject property.

Imperial Parking Ltd. v. Calgary (City) [2002] Board Order: MGB 140/02 at paragraphs 37:

"in the absence of any substantive evidence that would lead a reasonable person to conclude that there might be a problem of equity with the subject assessments, the MGB must agree with the Respondent that the Appellant has failed the onus test. In failing the onus test, the MGB must conclude the City correctly assessed the subject property."

The Decision of the Board confirmed the assessment at \$551,500.00.

DATED AT THE CITY OF CALGARY THIS 24 DAY OF July 2012.


PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent's 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 ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Type	Speciality Property House Conversion	Sales Approach versus Income Approach	- Land and Improvement Comparables -Equity Comparables

LEGISLATIVE REQUIREMENTS**MUNICIPAL GOVERNMENT ACT****Chapter M-26**

1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Division 1**Preparation of Assessments****Preparing annual assessments**

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

289(2) Each assessment must reflect (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

ALBERTA REGULATION 220/2004**Municipal Government Act****MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION**

1(f) "assessment year" means the year prior to the taxation year;

Part 1**Standards of Assessment****Mass appraisal**

2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

Division 2 Decisions of Assessment Review Boards**Decisions of assessment review board**

467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.