

**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:

Yiu Cheung Lee and Yiu Leung Lee (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. B. Hudson, PRESIDING OFFICER

Y. Nesry, MEMBER

J. Lam, 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: 045098894

LOCATION ADDRESS: 1116 16 AV NW

FILE NUMBER: 68493

ASSESSMENT: \$1,020,000

This complaint was heard on the 26th day of July, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *B. Neeson*
- *K. Fong*

Appeared on behalf of the Respondent:

- *H. Yau*
- *R. Ford*

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

[1] There were no procedural or jurisdictional matters raised by the parties. However, the parties agreed and the Board concurred that the evidence and argument heard in respect of complaint file # 68092 would be included in considering the decision on this complaint.

Property Description:

[2] The subject property is a 10,297 square foot (sf.) parcel of C-COR1 zoned land, and is improved with 1,890 square feet of free standing full service restaurant and dining lounge space. The property is located on 16 AV and 11 ST in the Capitol Hill community of NW Calgary. The current assessment is \$1,020,000 based on vacant land value of \$100 per square foot (psf.).

Issues:

Does the Capitalized Income Approach Provide a Better Estimate of Market Value and Assessment Equity for the Subject Property?

Complainant's Requested Value: \$580,000

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

The Board finds no compelling evidence to conclude that the capitalized income approach provides a better estimate of market value and assessment equity for the subject property.

[3] The Complainant requested that the subject property be assessed based on the capitalized income approach to value using all typical income parameters for a freestanding retail restaurant on 16 AV, (page 20 of Exhibit C1). This process yields an assessment amount of \$580,000.

[4] The Respondent countered that the land value only of the property outstrips the income value. The land value as vacant is based on land sales of C-COR1 zoned land on 16 AV NE (page 9 of Exhibit R1). The Respondent has applied \$100 psf. based on the sales to the 14,019 sf. parcel; yielding the current assessment of \$1,020,000.

[5] The Complainant did not challenge the land rate, but argued that until a comprehensive "highest and best use" analysis concludes that a use other than the existing use for the property is physically possible, legally permissible, financially feasible and maximally productive; the assessment must be prepared under the requirements of Section 289(2) of the Act.

[6] Section 289(2) of the Act directs as follows:

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, and
- (b) the valuation and other standards set out in the regulations for that property.

[7] The Respondent advised that the City of Calgary's Assessment Business Unit (ABU) has valued any non-residential property where the vacant land value exceeds the value as improved, on land value. This mass appraisal methodology is designed to ensure that equitable assessment between similar properties is maintained. The ABU argues that to assess an improved property below the threshold of the underlying vacant land value is to inequitably assess such properties.

[8] The Respondent acknowledged that the improvement on the subject property generates income, however the value of the income based on typical parameters is less than the value of the land as vacant. Although Section 289(2) of the Act does require that the characteristics and physical condition of the property must be reflected in the assessment; that does not mean that the characteristics and physical condition necessarily contribute value.

Board's Decision: The assessment is confirmed at \$1,020,000

DATED AT THE CITY OF CALGARY THIS 31 DAY OF Aug. 2012.



T. B. Hudson
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	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.*

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<i>Decision No. 1090/2012-P</i>			<i>Roll No 045098894</i>	
<u>Subject</u>	<u>Type</u>	<u>Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Retail	Restaurant	Land Value as Vacant .v. Income	Equity