

**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:

Linnell Taylor and Associates, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

D. Trueman, PRESIDING OFFICER

R. Roy, MEMBER

B. Jerchel, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 179211602

LOCATION ADDRESS: 66 Sandarac Dr NW

HEARING NUMBER: 62587

ASSESSMENT: \$4,390,000

This complaint was heard on 29th day of June, 2011 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:

- *Joel Mayer*

Appeared on behalf of the Respondent:

- *Garry Good*

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

There were no procedural or jurisdictional matters prior to the commencement of the hearing however, once the Complainant had presented his case the Respondent petitioned the panel to decide whether or not the Complainant had met his onus of presenting any reasonable evidence that the assessment was incorrect. The Respondent pointed out that the assessment had been prepared using the Income Approach to Value and that the only evidence that the Complainant had presented was a capitalization rate study consisting of 2 sales, neither of which were very comparable to the subject. The Complainant responded by saying that this was the best information available and that it was supported by the results of a published capitalization rate study furnished by an independent source. The panel recessed and after deliberation agreed that the two capitalization rate indicators presented by the Complainant were weak, mainly on account of the fact that the capitalization rate for one had been estimated and that the other had been adjusted by the Complainant to account for stabilization; without the benefit of a rental/vacancy rate study. However, there was further evidence that on a value per square foot basis the subject property was assessed well in excess of the average unit price of these two comparable sales. Given that the Board's responsibility is to decide questions of market value from all of the evidence provided it was determined that the hearing should proceed.

Property Description:

The subject property is a strip retail single-story building constructed in 1994 containing 14,655 ft.² of rentable area, on a 1.47 acre site. It is known as Sandstone Village and located in Sandstone Valley in the northwest part of Calgary. There is a separate freestanding 2,850 ft.² fast food restaurant as part of the 14,655 rental area and the assessor has listed the center as B+ quality for assessment purposes.

Issues:

Has the assessor used a capitalization rate which is too low and does not adequately represent the risks of ownership that the subject exhibits.

Complainant's Requested Value: \$3,980,000

Complainant's position:

At page 6 of exhibit C1 the Complainant presented rent details contained in the most recent Assessment Request For Information (ARFI) which suggested that the subject property was

achieving net rent from tenants at the rate of \$22.37 per Sq. foot on average. With this as a starting point the Complainant then presented the August 2009 sale of 20 Douglas Woods Dr. SE. for the sale price of \$3,900,000. This property was of similar age, size and although located in the Southeast section of Calgary reported a 9% capitalization rate. To support similarity the Complainant pointed out that this property was achieving a unit net rental of \$21.60 per Sq. foot. As a second point of reference the Complainant presented the September 2009 sale of 1055 Canyon Meadows Dr. SW. for \$2,850,000. This property was also of similar age size and design and was achieving an annual average net rent of \$18.36 per Sq. foot with a 10% vacancy. The complainant thought that this vacancy exceeded the market vacancy allowance and thus adjusted the income by some \$15,138 to provide an indicated "stabilized" capitalization rate of 8.27% which he rounded to 8.25%. In support of the foregoing two capitalization rate indicators the Complainant presented a summary of the Colliers International Canada, Cap Rate report for the second quarter of 2010, from which he extracted the Strip Mall Calgary Retail Rates. He said these ranged from a low of 7.25% to a high of 8%. He went on to point out that because the subject is 17 years old it should not be compared with new and high-traffic competitors and thus the higher end of the Colliers range would apply. Finally he pointed out that his sales suggested that, on an unadjusted basis, value indications of \$240 and \$237 Dollars per Sq. foot respectively was indicated while at the same time the subject had been assessed at \$300 per Sq. foot.

In rebuttal the Complainant, in his document exhibit C3, suggests the City's 14 comparable sales support his argument that an increased capitalization rate and lowered value on a price per unit basis is warranted. The Complainant elaborated by saying that at least four of the Respondent sales were not comparable because they were too large and at least two of the Respondent comparables were not appropriate because they were too small. He suggested that in document R1 at page 24 the three most comparable properties were the property at 20 Douglas Woods Dr. SE., the property at 20 Inverness Square SE and the property at 5303 68th Ave. SE.. He said that from these a median capitalization rate of 8.33% is indicated and a median sale price of \$258 per Sq. foot is indicated.

Respondent's position:

The Respondent presented the Board with six decisions referencing the burden of proof or onus of the parties, where it was confirmed that it is the responsibility of the Complainant/Appellant to provide prima facie proof that any particular assessment is incorrect or inequitable. The Respondent went on to point out that the subject property was of better than average quality and in this regard he referenced its' tenant list and its' superior location in the northwest part of Calgary which he said were prime reasons for its' receiving a B+ quality rating. He said that many of the comparables presented were located in the northeast and southeast and were thus generally regarded as inferior. The Respondent pointed to his 2011 Strip Center Capitalization Rate Summary and referenced its median 7.48% indicator and average 7.46% indicator saying that these were not unlike the Colliers results of between 7.25% and 8%. He said that the higher value on a unit price per square foot for the subject property was directly related to its' higher-quality.

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

The Board firstly considered the Complainants evidence which consisted of two sales, the first of which had an estimated capitalization rate of 9%. The Board took this to mean that the reporting agency had adjusted certain of the inputs necessary to report this rate. Given that there was no evidence on which these adjustments were based the Board found little comfort in

the applicability of this rate. Similarly the panel noted the Complainant's adjustment of the capitalization rate in his second comparable, without evidentiary support for the adjustment used, however, it particularly noticed the absence of this comparable in the Complainant list of best comparables available in his rebuttal. Because the panel did not have the benefit of assessment quality ratings for any of the comparable sales presented by either of the parties and because comparables must be selected on the basis of similarity the panel chose to select from the comparables available on the basis of age, size and potential gross income on a per square foot basis. In this regard sales comparables at 20 Douglas Woods Dr., SE, 1055 Canyon Meadows Dr., SW, 20 Inverness Sq. SE. and 5303 - 68th Ave. SE. were determined to be most comparable to the subject property. These comparables suggest that a slight upward adjustment to the capitalization rate would be in order however, when applied to the City's projection of an NOI for the subject property, which is based on the legislated typical inputs and not in dispute, a reduced assessment of 1.2% is indicated. The Board is mindful of the Bentall decision which confirms that value lies within a range and is therefore not inclined to decide that the current assessed amount is wrong based upon this minor variance. More specifically, the Board were persuaded that the Respondent had presented the most compelling evidence based upon his treatment of both the subject and the comparables using typical input criteria and that the subject offered nothing that could be described as undue investment risk as alleged by the Complainant.

Board's Decision:

The assessments confirmed \$4,390,000.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF July, 2011.


D. Trueman
Presiding Officer

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

NO.	ITEM
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1. C1
2. R1

Complainant Disclosure
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.*