

**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 (as represented by David Sheridan), 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: 101046308

LOCATION ADDRESS: 6666 MacLeod Trail SW

HEARING NUMBER: 60932

ASSESSMENT: \$1,480,000

This complaint was heard on 30th 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:

- *David Sheridan*

Appeared on behalf of the Respondent:

- *Rob Ford*

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

There were no procedural or jurisdictional matters prior to the commencement of the hearing.

Property Description:

The subject property is a freestanding fast food restaurant constructed in 1995 containing 2,400 ft.² of building area . The land parcel contains 0.61 acres and the improvements front on the busy Macleod Trail.

Issues:

Issue #1 The complainant presented at page 3 of his exhibit C1, information that the assessment represents an 87% annual increase.

Issue #2 Has the assessor erred in considering a land only, market value for the subject property; and not considering the value of the property as it is improved with its' existing fast food restaurant.

Complainant's Requested Value: \$1,240,000

Complainant's position:

Issue#1 The Complainant provided narrative that 'an increase of 87.34% is not mirrored by equivalent shifts in market value over the same corresponding 12 month period. He also provided at pages 9 through 13, evidence of the 2010 and 2011 assessments .

Issue #2 The Complainant argued that the assessment methodology selected was inappropriate; and the assessor had the responsibility of considering the improvements based upon the requirements of Municipal Government Act section 289(2)(a). He pointed out that the Detailed Assessment Audit Manual recommends that the Income Approach be used in the assessment of income producing property. He further pointed out that the neighboring property at 6606 Macleod Trail, which is a Canadian Western bank, has been assessed using the Income Approach to Value. At page 5 the Complainant references the Bramalea decision, which in his opinion entitles him to 'relief based upon properties in the same class'. He argues that input criteria for the income approach used in his neighbor's assessment would be the correct set of criteria to use in the Income Approach when assessing his property.

Respondent's position:

Issue #1 The Respondent did not reply to this issue.

Issue #2 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 say that it is his responsibility to assess based upon Market Value which is 'the most probable amount that would exchange between a willing buyer and willing seller' and that this would be based upon the Highest and Best Use of the property which is 'that amount that will produce the greatest amount of return'. He said that the neighboring property at 6606 Macleod Trail was sufficiently different from the subject property that the basis for assessment would be different. He also pointed to pages 19 through 21, inclusive, which he said were properties similar to that of the subject and which he said were assessed using assessment methodology the same as that used for the subject assessment. Finally, the Respondent provided a series of 17 Assessment Review Board decisions affirming that when land only represented the Highest and Best Use of the subject property, then land value only was the proper methodology.

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

Issue #1

The Board reviewed the Municipal Government Act (MGA) section 285 which says in paraphrase that *each municipality must prepare annually an assessment for each property in the municipality*. It was therefore decided that, absent information with respect to the complaint status in 2010, or any other mitigating circumstances, an under assessed in 2010 or a recently improved property in 2011 could have an assessment increase that appears unusually high.

Issue #2

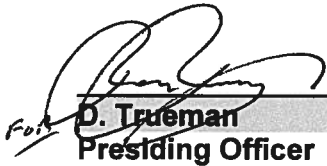
The Board understands and accepts the principles outlined in the *Bramalea* decision however, learns in *Bentall Retail Services Inc v. Vancouver (Assessor) Area #09* [2006] B.C.J. 560 which clarifies the *Bramalea* decision by stating, "Bramalea stands for the proposition that when equity is an issue, it is only if the range of values determined to be actual value lies entirely outside the range of values that is inequitable, that an adjustment is required." Therefore, underpinning both of these decisions is the need to have established market value (range) or actual value (range) for each of the subject and the other "similar" properties to which it is to be compared. (For the purpose of this decision the panel accepts that market value and actual value have the same meaning.) It follows then that the Assessor must in accordance with the Municipal Government Act (MGA) S285 'prepare annually assessments' and S289(2)(b) 'each assessment must reflect' and the regulations, Matters Relating to Assessment and Taxation Regulation (MRAC) 4(1)(a) base his assessments on Market Value and 2(a) use mass appraisal. The Board agrees with the proposition that a Highest and Best Use study is the first step in determining a market value and accepts the testimony of the Respondent that the onus or burden of proof first falls upon the Complainant; thus requiring a Highest and Best use Study for the subject property, from the Complainant, in the first instance.

The board notes that the improvements at 6606 MacLeod Trail, presented by the Complainant as the land and buildings on which he based his equity argument, occupies roughly 22% of the site; whereas the subject improvements cover approximately 9% of its site. Circumstances such as these greatly reduce comparability. Given the absence of a Complainant Highest and Best Use study and also given the direction of the MGA at S 467 (3) 'an assessment review board must not alter any assessment that is fair and equitable' the board prefers the evidence of the Respondent in this case.

Board's Decision:

The assessment is confirmed at \$1,480,000.

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
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. 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.*