

**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:

1604455 Alberta Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, Mr. J. Fleming
Board Member Ms. S. Rourke
Board Member Mr. J. Rankin***

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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: 082042607

LOCATION ADDRESS: 3415 26th Ave. SW

HEARING NUMBER: 65862

ASSESSMENT: \$916,000

This complaint was heard on 25th day of July, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *Ms. R. Crowley, Mr. D. Kampel, for Complainant*

Appeared on behalf of the Respondent:

- *Ms. V. Lavalley, Ms. S. Turner for Respondent*

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

There were no procedural or jurisdictional matters raised.

There was no concern with the composition of the panel.

Property Description:

The property is a separately titled retail building which is physically attached to other units so that it appears as a component of a strip centre. The building was built in 1953 and contains 3,266 square feet (sq. ft.) of ground floor space, and 1,358 sq. ft. of basement space, for a total size of 4,624 sq. ft. The property has 3 tenants including the business of the Complainants representatives. The property has no parking, but the city owns land in front of the development which serves as parking for the subject and attached neighbouring businesses. The subproperty use is CM0210 Retail – Shopping Centres – Strip, and is valued on the Income Approach to value (IAV). The building quality was changed by the City in 2011 from “C” to “B+”.

Issues:

The Complaint form identified a number of issues which were replicated in the Complainant's evidence:

1. Should the assessment per sq. ft. be 45% higher than the block average?
2. Should the sales price of the subject establish the assessment when comparable properties are valued comparatively much lower?
3. Should the property quality be changed to “B+” when other comparable properties retain their “C” rating?
4. Should the property be classed as Freestanding Retail rather than a strip center? (This issue was identified, but not really argued in the hearing.)

Complainant's Requested Value:

\$687,000

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

Issues # 1 & 2: The Complaint is allowed in part and the assessment is reduced to \$711,000.

Issue # 3: The property should be afforded a “C” quality.

Issue # 4: The property is properly classified as a Strip Centre.

Board's Decision:

The Complainants advised that they had purchased the property in May 2011 for \$940,000. The Complainant indicated they may have overpaid for the property, because they had been looking for a location for a long time, and this property was particularly well suited because it was close to their home. They indicated the property was not listed on MLS, they had not obtained an Appraisal and they had bought it very quickly on listing for a price \$10,000 less than asking.

With respect to the current complaint, the Complainant indicated they had attempted to contact the City and their calls were not returned. As a result they made an assumption that their assessment was prepared on the sales comparison basis and prepared their evidence on that basis. It was only when they received the City disclosure that they realized the assessment was prepared based on the IAV.

They provided assessments of the neighbouring properties in the "strip centre" which averaged \$136.90 per sq. ft., while their assessment was \$198.10 (including the basement) (Ex. C1, pg. 4). This, they said, indicated the inequity of the assessment. They suggested that an appropriate value could be obtained by multiplying the comparable rate per sq. ft. by the area of their property to arrive at a value of \$633,042 ($\$136.90 \times 4,624 \text{ sq. ft.}$).

In a subsequent section, they also noted that all of the properties of the other strip centre owners were assessed as a "C" quality condition. Once again, they noted the inequity of this treatment as they indicated that they had not done any improvements which would warrant a change in condition, nor in their opinion, was their property any different than their neighbours who still had a "C" quality rating.

Further they provided additional examples of sales in the area where the assessments had not increased as a result of the sale (Ex. C1, pg. 8) as much as the subject property. They calculated that other properties were assessed at 79.8% of their sale price, and they calculated that on this basis, their assessment should be \$750,120 ($\$940,000 \times 79.8\%$).

Their final request was for an assessment of \$687,000 which they indicated represented an average of the two values above, and which they felt offered a reasonable balancing of both arguments.

As well as the neighbouring attached properties, the Complainants provided a number of other retail properties in the neighbourhood which they argued were better quality than the subject, but which had lower/similar quality ratings than the subject. The Complainants felt this was unfair and inexplicable. The Respondent subsequently noted that several of the Comparables were in fact neighbourhood/community malls, and that a quality comparison between different types of malls was inappropriate.

The Complainant provided a Rebuttal (Ex. C4) which was, for the most part, a restatement of their main disclosure.

The Respondent advised that the change in quality came about as part of the City's review of the sale. The Respondent reminded that the property had sold 4 months before the valuation date for an amount \$24,000 higher than the assessed value. This should provide ample support for the value.

They also indicated that they would be reviewing the quality of the other properties in the strip centre for next year's assessment, but they also provided a copy of a CARB decision (1168-2011-P) which noted that an error was an insufficient basis to overturn an assessment.

In follow up questioning, the Respondent indicated that they did not provide any information on the rental rate stratification based on quality, however the Complainant produced this information from the City website (marked Ex. C3). In response to further questions, the City advised that the rents varied with quality, and that the difference between "B" and "C" quality could be as much as \$5.00 per sq. ft. They also advised they did not provide information on other income attributes and their changes with the quality rating, but they did confirm that these attributes (vacancy, capitalization rate, etc) did not vary with quality.

With respect to the Strip Centre versus Freestanding Retail issue, they advised that the key for classing this as a strip center was that the building appears as a strip center, and it is reasonable to assume that the contiguous merchants benefit from one another.

The CARB considered all of the evidence and argument. The CARB notes that it is unfortunate that the City did not respond to the Complainant, because it would/might have allowed the Complainant to prepare a more focused disclosure, and saved them some time. Unfortunately, comparative assessments based on sales comparison require significant adjustments, in this case, for basement versus no basement, attributing the values of second floor, main floor and basement appropriately and accounting for quality. So, the CARB was unable to put a lot of weight on the Comparable analysis. Likewise with the sales versus assessment analysis, once again, there are many variables to consider and to weigh in a comparison like this, and unless this is done, it is difficult for the CARB to place sufficient weight on the results.

With respect to the quality issue, the Respondent advised that the change in quality came as a result of the analysis of sale by the City, yet the City was unable to explain what the underlying reasons were for the change. The Complainant provided ample examples of similar properties (including all of those that were in the "strip centre" which contained the subject), all of which had a "C" condition. Accordingly, the CARB concludes that the Complainant has the best evidence of quality, and confirms that the quality should be "C".

The Respondent maintained that the best evidence of value was the sale of the subject during the valuation year. The Complainants argue that the purchase price was not necessarily market value. The CARB accepts the Complainants arguments because it is reasonable that there were additional motivational issues which might skew the price: the location of the property (within walking distance of their home) and the fact that the Complainants had been looking for a long time. They purchased almost upon listing of the property (which was not listed on MLS) for a price that represented almost full asking price. Finally, the highest rent being achieved in the property at the time of sale was \$14.00 which was a rate that would make it difficult to support the assessment in an IAV. All of these reasons can support an argument that the sale was not at market value.

In terms of establishing a market value the Respondent advised that the current rental rate parameters for the subject reflected a "B+" rating, and confirmed that a "B-" rating would be at the lower end of the "B" rental rate scale. Thus a "C" rating would result in rents not more than \$18.00 per sq. ft. for the smaller tenants and \$17.00 per sq. ft. for the larger tenants (Ex. C3, Strip Centres – C and lower). When these rents are inserted into the City's IAV (Ex. R1 pg.9)

calculation (with all other attributes remaining the same), the value is \$711,000.

In so far as the City's argument that errors need not lead to an assessment change, the CARB notes that the basis for its decision is that the Complainant had better evidence of quality than the Respondent. That is the reason for the change in the quality which leads to the revised rental rates reflecting the quality of the property, and ultimately a reduced assessment based on the IAV.

Finally with respect to the matter of Strip Centre versus Freestanding Retail, the CARB accepts that the City's classification as a strip centre fits better for the property, because the property "looks" like a strip centre and the CARB also concludes that the City's position that the contiguous merchants benefit from each other similar to the merchants in a strip centre is a reasonable conclusion.

Accordingly, the assessment is reduced to \$711,000 as outlined above.

DATED AT THE CITY OF CALGARY THIS 24th DAY OF August, 2012.

for 
James Fleming
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Enlarged Comparables
4. C3	City Website Rental Rates
5. C4	Complainant Rebuttal

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 Official Use Only:

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Strip Plaza (Unit Ownership)	Income Approach	• Net Market • Lease Rates • Quality of Improvement