

**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:

Deer Valley Village Shopping Centre Ltd.
(as represented by Linnell Taylor Assessment Strategies), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

M. Vercillo, PRESIDING OFFICER
S Rourke, MEMBER
A. Zindler, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER: 149149809

LOCATION ADDRESS: 1176 137 AV SE

FILE NUMBER: 66228

ASSESSMENT: \$6,120,000

This complaint was heard on 8th day of August, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *J. Mayer*

Appeared on behalf of the Respondent:

- *C. Yee*

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

[1] The Calgary Composite Assessment Review Board (CARB) derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below.

Property Description:

[2] The subject property is a retail shopping centre located in the "Deer Ridge" community of SE Calgary. According to the information provided the property contains three buildings of various sizes and include assessable subcomponents such as a PAD site, a recreational area, a gas bar and commercial retail units (CRU's). The buildings were constructed in 1900, 1984 and 1990 respectively and have a total assessed rentable area of 26,406 square feet (SF) exclusive of the gas bar. The buildings are situated on a 2.96 acre (129,064 SF) site that has a land use designation of Commercial – Community 2.

[3] The subject is assessed using the Income Approach to value. The potential gross income (PGI) calculation uses six subcomponents, applying various assessment rental rates to CRU, gas bar, PAD and recreational areas. The gas bar includes a convenience store and car wash and is assessed a PGI of \$105,000. All spaces include allowances for a 7.25% vacancy rate, operating costs of \$8.00 and a 1.00% non-recoverable rate to calculate net operating income. The net operating income is capitalized for assessment purposes using a 7.50% capitalization rate (cap rate).

Issues:

[4] The Complainant addressed the following issue at this hearing:

- 1) The PGI applied to the gas bar's assessment is not reflective of the actual income derived by the owner and should be adjusted accordingly.

Complainant's Requested Value:

[5] \$300,000 on the complaint form. \$5,646,380 at this hearing.

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

ISSUE 1: The PGI applied to the gas bar's assessment is not reflective of the actual income derived by the owner and should be adjusted accordingly.

The Complainant provided a 44 page document entitled "Disclosure of Information" that was entered as "Exhibit C1". The Complainant, along with Exhibit C1, provided the following evidence or argument with respect to this issue:

[6] A map of the subject that suggested the subject's gas bar is significantly set back from the subject's property line, resulting in limited exposure to the Bow Bottom Trail roadway.

[7] The subject's gas bar is on a land lease. The gas bar's PGI assessment of \$105,000 was based entirely on the improvements in place as follows:

- 1) A base rate assessment of \$45,000 for a gas bar of less than 1,000 SF,
- 2) An additional assessment of \$25,000 for the convenience store, and
- 3) An additional assessment of \$35,000 for the car wash.

[8] The assessed party (the landlord) in this complaint owns the land only and not the improvements. The land lease upon which the gas bar has been erected requires the owner of the improvements (the tenant) to both construct and then subsequently remove the improvements at the termination of the lease and at the tenant's sole expense. The Complainant argued that the landlord is assessed the value of both the land and improvements, which is unfair and incorrect because the landlord does not own or collect rent on the improvements.

[9] The land lease renewal that was signed in 2010, for the gas bar site was leased at a rate of \$66,000 per annum until 2015 for a 30,000 SF site. This inferred a current value of \$2.20 per SF ($\$66,000 / 30,000 \text{ SF}$) and should be the PGI value for the gas bar in the Income Approach calculation.

[10] A table of four land lease comparables of gas bars with similar traffic counts and leased areas varying from 32,000 SF and 48,177 SF, lease start dates varying from February, 2010 to November, 2011 and land lease rates varying from \$2.23 per SF to \$3.67 per SF. The Complainant suggested that based on these comparables the gas bar's current PGI assessment of \$3.50 per SF ($\$105,000 / 30,000 \text{ SF}$) is excessive.

The Respondent provided a 141 page document entitled "Assessment Brief" that was entered as "Exhibit R1". The Respondent, along with Exhibit R1, provided the following evidence or argument with respect to this issue:

[11] Assessments of fifteen retail shopping centres that included gas bars in their assessments. The Respondent confirmed that in all cases, gas bars that are attached to retail shopping centres are assessed as outlined by the Complainant in his evidence. The amount of the assessed PGI depends on whether the gas bar improvement contains just a gas bar or a gas bar with a convenience store and/or a car wash.

The CARB finds the following with respect to this issue:

[12] That in accordance with legislation, the Respondent is required to assess the market value of a property using mass appraisal techniques, estimating the fee simple estate of the property, reflecting the market conditions of similar properties.

[13] That the Complainant, in his request, appears to be asking that the assessment of the gas bar be reflective of only the "Leased Fee" estate of the property, which is not consistent with assessment legislation.

[14] That the Complainant failed to provide compelling market evidence that the gas bar's PGI value is incorrect.

[15] That the PGI assessment of the gas bar at \$3.50 per SF is within the range of the four land lease comparables provided by the Complainant.

Board's Decision:

[16] The complaint is denied and the assessment is confirmed at \$6,120,000.

The CARB provides the following reason for the decision:

[17] As stated in the CARB findings, the assessor is required by legislation to assess the market value of a property using mass appraisal techniques, estimating the fee simple estate of the property, reflecting typical market conditions of similar property. According to The Appraisal of Real Estate: Second Canadian Edition, Chapter 5, Fee Simple estate is defined as "absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, expropriation, police power, and escheat." The CARB is of the opinion that the assessment of this gas bar is consistent with the legislation and in accordance with the definition of Fee Simple Estate. In the absence of any compelling market evidence to the contrary, the CARB is satisfied that the assessment of the gas bar's PGI, is fairly and equitably applied.

DATED AT THE CITY OF CALGARY THIS 28 DAY OF August 2012.



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.*

(For MGB Office Only)

Column 1	Column 2	Column 3	Column 4	Column 5
CARB	Retail	Neighborhood Mall	Income Approach	Lease rates