

**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:

Glenmore Leasehold Holdings 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: 120022702

LOCATION ADDRESS: 3411 GLENMORE TR SE

FILE NUMBER: 66215

ASSESSMENT: \$2,640,000

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. D. Sheridan

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 "South Foothills" community of SE Calgary. According to the information provided the property contains four buildings of various sizes and include services such as a fast food restaurant, a retail shopping centre, a gas station/convenience store and car wash. Three of the buildings were constructed in 1999, while gas station/convenience store was constructed in 2001. The buildings have a total area of 32,665 square feet (SF) and are situated on a 5.29 acre (230,347 SF) site and have a land use designation of Direct Control District (DC).

[3] The subject is assessed using the Cost Approach to value. The land is owned by the City of Calgary and is assessed a value of \$2,220,981, factoring in a 5% corner lot positive influence and a 25% DC restrictions negative influence. The commercial improvements are owned by Glenmore Leasehold Holdings Ltd (the assessed person) and are located in the centre median of Glenmore Trail, between Ogden Road and Barlow Trail. The improvements are assessed using the Marshall & Swift Valuation Service. The total assessed depreciated cost of the improvements is \$422,718.

Issues:

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

- 1) The subject is a Leasehold Estate and the assessment fails to account for the terminated land lease.

Complainant's Requested Value:

[5] \$1,020,000 on the complaint form. \$860,000 at this hearing.

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

ISSUE 1: The subject is a Leasehold Estate and the assessment fails to account for the terminated land lease.

The Complainant provided a 165 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] The subject is a Leasehold Estate, which is commonly defined as:

- 1) "The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions."

The Complainant argued that the "Fee Simple" tenure has been retained by the City of Calgary. Use of the site has been conveyed to the Glenmore Leasehold Holdings Ltd. by way of a land lease.

[7] A copy of the Ground Lease and the Ground Lease Amending Agreement between the City of Calgary (the "Landlord") and Glenmore Leasehold Holdings Ltd. (the "Tenant"). The amending land lease has various 5 year renewal terms extending to a termination date of January 31st, 2024. The lease requires the Tenant to completely demolish all improvements and "ensure the site is in an equivalent condition confirmed by the 1998 Phase II environmental study.

[8] A copy of a letter from the City of Calgary Corporate Properties and Buildings Department dated March 5, 2009. The letter notified Glenmore Leasehold Holdings Ltd. that the Ground Lease will be terminated on April 30, 2014 because the land will be needed for "municipal purposes".

[9] Argument that with the land lease being terminated as at April 30, 2014, the assessed person has only 2.83 years from the valuation date of July 1, 2011 to recapture his investment. Accordingly and anticipating an Income Approach to value the subject, the Complainant offered a calculation for an appropriate capitalization rate (cap rate) referred to as "Direct Capitalization – Straight Line Overall Investment Recovery Analysis". In this cap rate analysis, the Complainant broke down two components of a cap rate; a Recapture Rate and a Discount Rate. Within a 7.50% cap rate typically used to value shopping centres, the Complainant argued the Recapture Rate would be 1.67% (100% of the investment over 60 years of recapture), leaving a residual 5.83% as the Discount Rate. In the case of the subject, however, the Complainant argued that the investor has only 2.83 years to recapture the investment. Therefore the Recapture Rate would be 35.34% (100% of the investment over 2.83 years of recapture). Adding the Discount Rate of 5.83% as calculated above to the 35.34% Recapture Rate, would result in a revised cap rate for the subject of 41.17%.

[10] An Income Approach to value the subject using various rental rates on the subject's subcomponent spaces. The rental rates used were supported by other property assessments of similar space using Income Approach to value. The Complainant calculated an Effective Gross Income (EGI) of \$469,088. According to the Complainant, the rent roll of the subject confirms a contract rent of \$414,783. After applying vacancy, non-recoverable, shortfall and land lease costs a Net Operating Income (NOI) of \$357,151 is derived. The Complainant then capitalized the NOI using the cap rate of 41.17% as calculated above.

The Respondent provided a 107 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] A chart of 2012 Industrial Land values. The Respondent highlighted that industrial land in the SE quadrant of the city is assessed at a rate of \$525,000 per acre.

[12] A chart of assessment influence adjustments. The Respondent highlighted the subject's land value is adjusted downwards 20% (+5% for corner lot and -25% for land use restriction).

[13] An alternative Income Approach valuation for the subject property. The Complainant highlighted that if the Income Approach was used to value the subject, an NOI of \$455,532 would be calculated and a capitalized value of \$6,070,000 would result from a cap rate of 7.5%.

The CARB finds the following with respect to this issue:

[14] 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 property.

[15] That the subject's fair market value is severely compromised by the termination of the land lease.

[16] That the Respondent's influence adjustments of negative 20% adjustment to land value assessment may have not adequately captured the effect on the fair market value of the land as a result of the termination of the land lease.

[17] That the Direct Capitalization – Straight Line Overall Investment Recovery Analysis provided by the Complainant as a calculation of a revised cap rate is reasonable under the circumstances.

[18] That the NOI of the subject property as calculated by the Complainant included a land lease expense.

[19] That the Respondent provided no market evidence to support his valuation given the circumstances.

Board's Decision:

[20] The complaint is accepted in part and the assessment is revised to \$1,100,000.

The CARB provides the following reasons for the decision:

[21] 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 the 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." In this case, the governmental power of taxation and police power (implying zoning) is arguably the owner of the land, the City of Calgary. In this case, the City of Calgary as Landlord of the land lease is imposing a great limitation on the use of the property given the termination of the land lease in

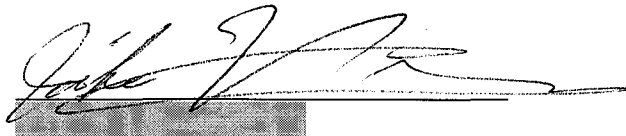
2.83 years from the valuation date. In doing so, the City of Calgary compromises the fair market value of the property to a great degree.

[22] Given the 2.83 years of useful life of the current use, the CARB believes that the cap rate used by the Complainant in his valuation of the subject reasonably captures the limitation on fair market value as of the July 1, 2011 valuation date,

[23] Because of the increased risk of ownership, the CARB considers it unlikely that the subject would trade on the open market. However, if it theoretically did trade in the open market, a potential investor would likely investigate the income generating potential of the subject over its very short 2.83 years of useful life remaining. Given the circumstances, it is inconceivable that an investor would be willing to pay even the assessed land value of \$2,220,981, given that the subject can only generate a contract rent of \$414,783 per year over the next 2.83 years. This of course does not even consider any demolition costs or any environmental reparation costs that both must be borne by the potential investor when the land lease terminates.

[24] The CARB is of the opinion that the Respondent's calculation of NOI using typical assessed rental rates, vacancy rates, operating costs and non-recoverable rates and is likely the most equitable calculation when compared to other similar retail shopping centres. The Complainant's use of a land lease expense in his calculation of NOI introduces the concept of a Leasehold Estate interest, which the CARB rejects as part of what is required in the assessment according to the legislation. Therefore, the CARB calculates the revised assessment using the NOI of the Respondent (\$455,531), but capitalizes the NOI at the Complainant's cap rate (41.17%).

DATED AT THE CITY OF CALGARY THIS 29 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	Cap Rate