

**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:

***THP HOLDINGS LTD., COMPLAINANT
(Represented by Assessment Advisory Group Inc.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member B. JERCHEL
Board Member K. FARN***

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 2012 Assessment Roll as follows:

ROLL NUMBER: 112060405

LOCATION ADDRESS: 7730 MACLEOD TRAIL SE

FILE NUMBER: 66971

ASSESSMENT: \$3,440,000.00

This complaint was heard on 14 day of August, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- Stephen Cobb, Assessment Advisory Group Inc. – Representing THP Holdings Ltd.
- Terry Youn, Assessment Advisory Group Inc. – Representing THP Holdings Ltd.

Appeared on behalf of the Respondent:

- Randy Farkas – Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] No jurisdictional or procedural matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

Property Description:

[3] The subject property contains two structures located at 7730 Macleod Trail SE in the Fisher Park district. The structures, situated on a 1.011 acre parcel, have a combined total assessable building area of 19,321 square feet. Structure one identified as constructed in 1940 is a 1,728 square foot outbuilding used for storage. Structure two, identified as a retail strip centre of 17,593 square feet, was built in 1963. Although the parcel is improved, the property is assessed at the estimated market value of the underlying land, as though vacant, by means of the following formula:

Formula	Area (Sq. Ft.)	Rate/Sq. Ft.	Value
1st 20,000 Sq.Ft.	20,000	\$100.00	\$2,000,000
Area > 20,000 Sq.Ft.	<u>24,059</u>	<u>\$60.00</u>	<u>\$1,443,540</u>
Total	44,059		\$3,443,540
Truncated:			\$3,440,000
Effective Land Rate		\$78.16	

Complainant's Requested Value: \$2,560,000.00

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

[4] In the interest of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[5] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

[6] A prior Board decision was placed support of the requested adjustment. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Issue:

Does the current assessment based upon a 'land value only' approach produce a fair and equitable assessment based on market value?

Complainant's Evidence:

[7] The Complainant challenged the land rate applied for the determination of the assessment before the Board. While the Complainant presented no market evidence to support its position with respect to the land rate, it did reference decisions made in 2012 with respect to the land rate applied to properties along the Macleod Trail corridor. Specifically mentioned were CARB decisions 0874/2012-P, 0852/2012-P and 0853/2012-P, which presented decisions, based upon the land rate.

Respondent's Evidence:

[8] The Respondent presented a table of the eleven sales utilized by the City of Calgary to determine the land rates used to value the subject property. (R1, Pg. 10) The Respondent stated to the Board there were in fact no sales of vacant land in the Macleod Trail corridor. The rates applied had been determined through a comparison with two sales located on 16th Avenue NE – 505 16 Avenue NE and 510 16 Avenue NE. It was the position of the Assessment Business Unit there was sufficient similarity in commercial development and traffic flows to support the application of a rate derived from 16 Avenue NE to the Macleod Trail corridor.

[9] Further support for the 'equating' of 16th Avenue NE and the Macleod Trail corridor was presented through the introduction of traffic studies for various areas of the City of Calgary. (R1, Pg.11-20) The studies show the area on 16 Avenue NE, where the sales occurred, experienced a traffic count of approximately 47,000 vehicles per day compared with Macleod Trail traffic count at 59,000 vehicles per day.

[10] The Respondent testified the assessments of all similar properties are prepared by means of the income approach to value; however, where the indicated market value is less than the value of the underlying land, as though vacant, the vacant land value is determined to be the market value of the property. The Respondent argued the approach is not a valuation of the highest and best use of the property as argued by the Complainant, but the value which would be realized in the market place.

[11] The Respondent submitted a vacant land sale on March 1, 2012 at 6550 Macleod Trail SW. The parcel sold for \$4,250,000.00 for 0.835 acres or approximately \$116.85 per square foot. The Respondent testified the sale, while not a part of the analysis to establish the land rate was an indicator of the correctness of the land rates applied to the Macleod Trail corridor. (R1, Pg. 21-22)

[12] The Respondent submitted a "2012 City of Calgary Commercial Land Equity Comparables" chart which provided three categorized as 'Land and Improvement' which had

been assessed in a like manner as the subject property. (R1, Pg. 24)

Issue:

Is an income approach a better indicator of market value for the subject property?

Complainant's Evidence:

[13] The Complainant submitted an income valuation approach calculation to determine the requested value of \$2,560,087.00. (C1, Pg. 11) The Complainant employed the following rates and allowances to calculate the requested value:

CRU 1001-2500 sq. ft. rate -	\$16.00 per square foot
CRU 2501-6000 sq. ft. rate -	\$14.00 per square foot
Office rate-	\$11.00 per square foot
Poor Location rate -	\$8.00 per square foot
Storage rate -	\$3.00 per square foot
Vacancy allowance	5.0%
Operating Costs/Shortfall	\$8.00
Non-recoverable allowance	1%
Capitalization rate	7.5%
Requested Assessment	\$2,560,087.00

[14] The Complainant provided a copy of the subject's "2011 Non-Residential Properties – Income Approach Valuation" to show the breakdown into its assessable components. (C1, Pg. 12-13)

[15] Submitted into evidence was a copy of the August 25, 2011 "Assessment Request for Information" (ARFI) which provided a breakdown of the leases within the subject property, showing such factors as the tenant name, leased area, annual rental rate and operating costs.

[16] A number of 2012 Business Assessment Summary Reports on Macleod Trail were presented showing business rates applied for office and retail spaces. (C1, Pg. 20-26)

[17] The Complainant presented a comparable located at 4310 Macleod Trail SW which it contend was similar to the subject property but was valued on an Income approach as shown by a "2012 Preliminary Assessment Explanation Supplement – Non-Residential Properties – Income Approach Valuation". (C1, Pg. 27-32) The Complainant stated the calculation for the requested subject income approach was based upon the information from the comparable document.

[18] A reference document "2012 Business Assessment – typical net annual rental value" (C1, Pg. 33-34) was submitted into evidence by the Complainant.

Respondent's Evidence:

[19] The Respondent presented no evidence to rebut the complainant's calculation of the requested market value using the income approach. When questioned by the Board with respect to the presented income calculation the Respondent state the values were reasonable but it had no information as to the whether the values presented were the typical rates applied on the Macleod Trail corridor.

[20] With respect to the Complainant's comparable at 4310B Macleod Trail SW, the

Respondent submitted an analysis to show why the property had been assessed on an income approach. (R1, Pg. 25) Based upon an income approach the market value for the comparables was \$1,890,000.00 (amended to \$1,600,000.00), whereas the land value approach generated a value of \$703,850.00 using the same rates as applied to the subject property, with an adjustment of -15% for topography.

Findings of the Board:

[21] The Board was presented with two differing approaches to valuation. The Complainant stated the income approach is a better indicator of market value while the Respondent stated a vacant land value gives a more accurate indicator of the market value when offered on the market.

[22] The Board in reaching its decision first examined the question of land value as set by the City of Calgary. The presentation by the Respondent raised concern for the Board when a policy for valuation based upon possible market land value is predicated upon a population of only eleven sales.

[23] The land rate was established based primarily of two sales in a different market area on properties very dissimilar to the subject for they were lots of 16,988 square feet and 6,241 square feet as opposed to the subject at 44,059 square feet. The lack of market evidence of typical C-COR3 land values along Macleod Trail fails to substantiate the value of the underlying land.

[24] The Board in its deliberation takes guidance from the noted CARB decisions which dealt specifically with the land value in the Macleod Trail corridors. Upon review of the cited decisions the Board found the evidence presented in those cases supported the Complainant's position the land rate presented by the Respondent was not supported by the evidence. The decisions found the approach taken by the Respondent was flawed as the one sale did not appear to be an arm's length transaction. Further the analysis, provided in the decisions, of sales along Macleod Trail indicated a lower land value and subsequent rate. The Board found the analysis of the Macleod Trail sales more compelling than the Respondent's attempt to extend the sales of 16th Avenue NE to the subject parcel. Accordingly the Board finds the lack of substantial evidence for the current land rate and reduces the rate to \$60.00 per square foot.

[25] Upon review the income approach as presented by the Complainant raised more questions in the analysis than it provided a possible valuation. The board found the intermixing of typical rates, such as capitalization rate, vacancy and shortfall allowances, and non-recoverable allowance, with more site specific rental rates was contrary to good appraisal practice. The Board upon review was unable to find market evidence to support the rental rates employed by the Complainant through either comparable properties or the leases as set out in the Assessment Request for Information (ARFI) document. It is not the role of the Board to reanalyze the income document and recalculate the value using typical rate, rather the burden of proof rested on the Complainant to present valid evidence. According, the Board does not place substantial weight upon the income approach as presented. The Board did note the rental rates for the subject property were lower than the typical applied on the Macleod Trail corridor.

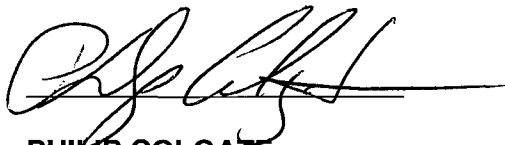
Decision of the Board

[26] Based upon the decision with respect to the land rate the Board calculates the assessment as followed:

44,059 square feet @ \$60.00 per square foot = \$2,643,540.00

[27] The assessment is reduced from \$3,440,000.00 to \$2,640,000.00

DATED AT THE CITY OF CALGARY THIS 17 DAY OF September 2012.

A handwritten signature in black ink, appearing to read 'Philip Colgate', written over a horizontal line.

PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R2	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.*

LEGISLATIVE REQUIREMENTS**MUNICIPAL GOVERNMENT ACT****Chapter M-26**

1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Division 1**Preparation of Assessments****Preparing annual assessments**

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

289(2) Each assessment must reflect (a)the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

ALBERTA REGULATION 220/2004**Municipal Government Act****MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION**

1(f) “assessment year” means the year prior to the taxation year;

Part 1**Standards of Assessment****Mass appraisal**

2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Types v. Retail	Vacant Land v. Strip Plaza	Cost/Sales Approach v. Income Approach	Land Value v. Net Market Rent/Lease Rates