

**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:

***LOUISE BLOCK CAPITAL CORP., COMPLAINANT
(Represented by Altus Group Ltd.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member D. JULIEN
Board Member T. USSELMAN***

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: 068127109

LOCATION ADDRESS: 1110 MACLEOD TRAIL SE

FILE NUMBER: 68558

ASSESSMENT: \$2,030,000.00

This complaint was heard on 9 day of August, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- Michael Cameron Altus Group Ltd. – Representing Louise Block Capital Corp.

Appeared on behalf of the Respondent:

- Erin Currie – 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] There being no preliminary matters the Board preceded to the merits of the complaint.

Property Description:

[3] The subject property is a vacant parcel in the Beltline community at 1110 Macleod Trail SE. The parcel, encompassing an area of 0.4 acres, is zoned with a land use designation of CC-X. The property, assessed at a vacant commercial land rate of \$155.00 per square foot, with a total of -25% adjustments for light rail transit (-15%), corner lot influence (+5%) and a adjustment for abutting train track (-15%), is assessed at \$2,030,000.00. Special note is made that the property is located on top of the tunnel for the Light Rail tracks.

Complainant's Requested Value: \$270,000.00

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 photographs, site maps and City of Calgary Assessment Summary Reports and Valuation Reports.

[6] Both parties also placed Assessment Review Board decisions before this Board in support of their positions. 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.

Issues:

Would an Income Approach to valuation present a better indicator of market value if the capitalization rate correctly reflected a property with a short life challenge?

Complainant's Evidence:

[7] At the outset of the hearing the Complainant advised the Board the property under complaint is owned by the City of Calgary, but under lease to Louise Block Capital Corp. for use as a parking lot. As it is under lease, the tenant is responsible for the assessment and taxes resulting from the assessment. (C1, Pg. 28-32)

[8] The Complainant submitted a letter to the Property Manager at Strategic Group from the City of Calgary which served notice of the termination of the lease effective June 30, 2013. (C1, Pg. 34)

[9] The Complainant submitted prints from the City of Calgary website which showed the future development of the site for a new East Victoria park. (C1, Pg. 36-39)

[10] A "2012 Requested Assessment Valuation" analysis created by the Altus group was presented to show how the requested valuation of \$270,000.00 was determined. (C1, Pg 41) The analysis was predicated on a rate of \$2,400.00 per stall, with a 1% non-recoverable allowance and a capitalization rate of 51.08%. The rate per stall and the non-recoverable allowance were based upon parking stalls in office building in the downtown, as shown on submitted Non-Residential Properties – Income Approach Valuation reports. (C1, Pg. 42-47).

[11] The explanation for the short life capitalization rate follows:

Calculation of Overall Discount Rate –

Original Lease Year	1998
Current Year of Valuation	2011
Building Age at Valuation (years)	13
Investment Recovery (%)	100%
Perpetual Life Term (years)	15
Overall Investment Re-Capture (%)	6.67%
Capitalization Rate	7.75
Overall Investment Re-Capture (%)	6.67%
Assessed Discount Rate (%)	1.08%

Summary of Assessed Return and Return of Overall Investment

Lease Expiration Date	2013
Lease Term (years)	15
Investment Recovery Period (years)	2
Investment Recovery (%)	100%
Investment Recovery Period (years)	2
Investment Recapture Rate (%)	50.0%

Correction of the Investment Recapture Rate

Assessed Discount (%)	1.08%
Investment Re-Capture Rate (%)	50.00%
Short Term Capitalization Rate (%)	51.08%

[12] The Complainant submitted two Municipal Government Board Orders – MGB 105/06 and MGB 154/07 – which dealt with the same issue on the property at 8330 Macleod Trail SE, the Heritage Plaza. (C1, Pg. 66-106) The Complainant noted the Boards in the cited decisions accepted the Direct Capitalization Straight Line Overall Investment Recovery Analysis as the 'most accurate method of determining the appropriate capitalization rate adjustment'. (C1, Pg. 92)

[13] An addition decision, CARB 2726/2011-P, was cited by the complainant which also dealt with the issue of properties with a short life applicable to the property at 1851 Sirocco Drive SW. The property in the decision was leased from the City of Calgary for a term of 35 years, with options to renew. The Complainant noted the Board in the decision accepted the methodology to determine a new capitalization rate and reference the decisions of MGB 105/06 and MGB 154/07 in its decision. (C1, Pg. 110-118)

Respondent's Evidence"

[14] In testimonial evidence the Respondent stated the property under complaint was a vacant parcel being utilized as a parking lot on July 1, 2011 and December 31, 2011. The City of Calgary had assessed the parcel at a vacant land rate of \$155.00 per square foot with a total of -25% influence adjustments. It was the position of the Respondent that the subject property has been assessed using typical rates as applied to similar properties.

[15] The Respondent presented to the Board two Land Only parcels in the vicinity of the subject property also assessed on a base land rate of \$155.00 per square foot – 1203 and d1327 Macleod Trail SE. (R1, Pg. 16)

[16] CARB 1166/2011-P was submitted by the Respondent showing the assessment was under complaint in 2011 and was confirmed by the Board in its decision. (R1, Pg.17-20)

Findings of the Board:

[17] The Board accepted the methodology of the Direct Capitalization Straight Line Overall Investment Recovery Analysis as applied to the subject property. The methodology is an accepted statistical approach and has been accepted by prior Boards in the cited decisions as applicable to properties with short life issues.

[18] The Board found the Complainant presented a compelling argument with respect to the property not being reflective of typical vacant properties in the Beltline. With the pending removal from the market place, it places a sever handicap on the marketability of the property in the open market. Any person leasing the site would have only a very short time in which to recover the investment of acquiring the site.

[19] The Board found the Respondent present no evidence to dispute the Income Approach as applied by the Complainant to the subject property. The Respondent did question the Complainant's use of a rate of \$2,400.00 per stall in the calculation, but present the Board with no alternative rate.

[20] The Board found the Respondent had submitted no evidence to show the source of the land rate of \$155.00 per square foot.

[21] The Board, in its deliberation, looked to the Matters Relating to Assessment and Taxation Regulation, Part 1, Section 2 which states, "An assessment of property based upon market value (c) must reflect typical market conditions for properties similar to that property.

The Board found the Respondent had presented no comparable properties which were leased from the City of Calgary and subject to a termination of its lease in the foreseeable future. The Board finds the subject property is not typical of vacant properties in the Beltline area for it has a remaining life of only two years, after which it reverts to the City of Calgary and is removed from the market place.

[22] While a Board is not bound by the decision of prior Boards, this Board accepts the rationale for the decisions found in MGB 105/06, MGB 154/07 and CARB 2726/2011-P. This Board accepts the request as put forward by the Complainant.

Board's Decision:

[23] The Board reduced the assessment from \$2,030,000.00 to \$270,000.00.

DATED AT THE CITY OF CALGARY THIS 25 DAY OF September 2012.

A handwritten signature in black ink, appearing to read 'Philip Colgate', is 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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Types	Vacant Land	Cost/Sales Approach	- Land Value - Income Approach

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,

Division 2**Decisions of Assessment Review Boards****Decisions of Assessment review board**

467(1) An assessment review Board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulation,
- (b) the procedures set out in the regulation, and
- (c) the assessment of similar property or businesses in the same municipality.

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.