

**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:

Estancia Investments Inc. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***P. Petry, PRESIDING OFFICER
H. Ang, BOARD MEMBER
D. Steele, BOARD MEMBER***

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: 067086090

LOCATION ADDRESS: 1313 – 10th Avenue S.W.

FILE NUMBER: 65775

ASSESSMENT: \$8,980,000

This complaint was heard on the 7th day of August, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue N.E. Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *M. Uhryn*

Appeared on behalf of the Respondent:

- A. Czechowskyj

Property Description and Background

The subject property is known as the Royal Bank Data Centre and is located in the west Beltline at 1313 – 10 Avenue S.W. The structure has three stories with 52,338 sq. ft. of rentable office space and 58 parking stalls. The structure was built in 1978 and is situated on a corner lot consisting of 1.27 acres of land (55,193 sq. ft.).

The subject property has been valued by the Assessor using land value only at \$155.00 per sq. ft. plus 5% for the corner lot influence on value. This approach is predicated on the assumption that the subject property is not developed to its highest and best use. The Complainant argues that the current use is the highest and best use, therefore the subject should be valued using the income approach as is the case with other office buildings in the area.

Issues:

- [1] Does the subject property meet the standard tests for redevelopment and the application of value in land only in light of its current development and income potential?
- [2] Should the subject property assessment be based on the capitalized income approach to value and if so what is the correct, fair and equitable market value.
- [3] Other matters and issues were raised in the complaint filed with the Assessment Review Board (ARB) on March 2, 2012. The only issues however, that the parties sought to have the Composite Assessment Review Board (CARB) address in the hearing on August 7, 2012 are those referred to above, therefore the CARB has not addressed any of the other matters or issues initially raised in the Complaint.

Complainant's Requested Value:

- [4] Based on the capitalized income proforma proposed, the Complainant requests that the assessment be reduced to \$8,310,000.00.

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

[5] The CARB has decided that the current assessment will not be altered.

Summary of the Party's Positions

Complainant

[6] The Complainant asserts that the Respondent has not provided a complete "highest and best use" analysis respecting the subject property and other properties of this nature are assessed using the income approach. The Complainant discussed four criteria that must be weighed when considering the question of highest and best use or re-development.

[7] Firstly, re-development must be possible and while this could be the case for the subject property, it is a 1978 class B office building in good condition, close to the LRT line and fully leased. The owners have spent in excess of \$3,000,000 to upgrade the building in the last few years.

[8] Secondly, re-development must be legally permissible and in this case enforceable and valuable leases run through 2017 and 2019. The current development is in full compliance with the existing land use bylaw for the subject lands.

[9] Thirdly, the re-development must be financially feasible and at this point in time the building has 8 and 10 year leases which cannot legally be set aside. No other analysis has been done to consider the viability of re-development. It was argued that the value of the sale in 2009 was based on the current longer term leases in place and not on the potential for re-development.

[10] Fourthly, highest and best use would consider maximum productivity but again the property has long term leases, is in good repair and is in compliance.

[11] The Complainant argued that because the subject property is not a candidate for re-development that the assessment should then be determined using the Respondent's typical capitalized income parameters. The Complainant presented evidence of the Respondent's capitalized income parameters through reference to a retail/office property located at 815 – 10th Avenue S.W. In this case the Respondent had applied a vacancy allowance of 10%, office rent at \$13 per sq. ft., \$12 per sq. ft. for operating costs, 1% for non-recoverables and a capitalization rate of 7.75%. The Complainant also applied a rental rate of \$150 per month for the 58 parking stalls.

[12] Based on the above parameters the value determined by the Complainant for the subject property is \$8,310,000.00. This is the value sought by the Complainant.

[13] In response to the Respondent's assertion that the subject achieves rents much higher than other similar office properties, the Complainant argued that the subject rents were negotiated in a period when typical rents were higher but in any case that should not be a factor. Equity requires that typical factor values be applied regardless of the experience of the subject.

[14] With respect to the sale of the subject at a price of \$15,000,000 in May of 2009, the Complainant argued that this sale occurred in a period of higher market values and the purchasers were looking at the income stream in place rather than any future potential for re-development.

[15] The Complainant referred the CARB to a number of Assessment Review Board decisions in support of its conclusions and in particular to a recent order number 1000/2012-P.

Respondent

[16] The Respondent argued that an assessment based on the property's highest and best use is appropriate in this case. Firstly because it is not developed to its full potential of 275,960 sq. ft. but consists of only 52,338 sq. ft. of rentable area. In rebuttal the Complainant argued that when maximum ground floor area and landscaping requirements are considered any potential building could only have a maximum area of 64,583 sq. ft.

[17] Secondly the Respondent argued that buyers look at the potential going forward and this occurs whether or not there may be an existing improvement. The Respondent provided an example of this type of occurrence and also an example of a case where the income approach undervalued a property that was sold for the approximate value set by the Respondent for its land only.

[18] The Respondent provided five sales to support its land value of \$155 per sq. ft. which had been used in arriving at the current assessment. In rebuttal the Complainant argued that for reasons of size, differing land use and location, two of the five sales used by the Respondent are not comparable to the subject.

[19] The Respondent relied on a number of Assessment Review Board orders where the boards did not accept a full highest and best use analysis but rather accepted the basic test of values produced by the income approach versus the land value only approach to be appropriate within the mass appraisal environment.

[20] The Respondent challenged the Complainant's reliance on one comparable at 815 – 10th Avenue for the income approach parameters for the subject. This is only one example of assessment criterion and the property used is primarily retail in nature, located within a retail strip. It would be a mistake therefore to determine that the parameters applied in this case would also be applicable to the subject.

[21] The Respondent indicated that the parking rate of \$150 per stall per month applied by the Complainant has not been used in this area of the Beltline and referred to a property at 999 - 8 Street S.W. where the assessed rate for surface parking is at \$200 per stall per month. If this change only were applied to the Complainant's proforma, the resulting value would be \$8,759,083.00, a value very close to the assessed value of the subject.

[22] The Respondent pointed out that the Complainant has not applied the actual income or experience of the subject where the current rents are \$36 per sq. ft. and the weighted average rent is \$28 per sq. ft. Also the Complainant seeks a vacancy allowance of 10% when there is no vacancy in the subject property. If the actual values for the subject are applied the resulting value would in fact support the subject's sale price of \$15,000,000.00 in 2009.

[23] The Respondent indicated that the current assessment under values the subject based on its sale in 2009 and requested that the assessment be confirmed.

Findings and Reasons for the Board's Decision:

Issue 1) Value in Land Only – Highest and Best Use

[24] The CARB first considered the question of highest and best use and the evidence to support the assessment arrived at through basing that value on land only. The fact that there are so few sales to consider suggests to the Board that there may not be a high demand for re-developable property in BL-4. Where this is the case a more thorough highest and best use analysis which focuses on one or two alternative re-development options may be appropriate. More analysis may also be required when the capitalized income approach and the land value only approach result in values that are fairly close together.

[25] The CARB also has a concern respecting the validity of a land rate arising from so few sales and where some of the sales are outside the relevant district and are not as comparable as is desirable.

[26] The Complainant has attempted to apply the standard highest and best use tests to the subject rather than to a plausible re-development alternative. The result of the Complainant's analysis was to confirm the current use is compliant with the current land use bylaws and to show that the subject is legally bound by current leases. The Complainant could have applied the typical highest and best use tests to a perspective alternative development and then compared that information to the performance of the subject improvements; however this was not done.

[27] While the CARB has some concern respecting the Respondent's highest and best use analysis as indicated above, the Complainant's arguments and evidence in this regard do not address the highest best use tests on a comparative basis but rather serve to show that the subject is in compliance with the bylaws and to show the basic viability of the subject as an on-going concern.

[28] The significant sum of approximately \$3,000,000 recently spent on upgrading this property led the CARB to question whether there should be an effective age placed on the building and whether or not the subject is properly classed as a "B" building. The rental rates achieved by the subject also appear to be almost triple the rate suggested by the Complainant as being typical of "B" class buildings. This is another indication that the suggested "B" classification may be wrong for the subject.

[29] The CARB has concluded that if some weight is given to the significant upgrades to the subject and to the subject's financial performance, comparable properties with similar attributes may yield capitalized income factor values that would produce a value for the subject property above the current land only value. The CARB therefore agrees with the Respondent that the current assessment which is based on the subject land only value may understate the property's real market value.

Issue 2) Capitalized Income Approach

[30] The Complainant argues that the subject property should have been assessed based on the capitalized income approach as is the case for similar properties. The Complainant therefore introduced a capitalized income proforma using what it considered to be typical factor values for the BL-4 district of the Beltline.

[31] The CARB carefully considered the Complainant's income proforma and the factor values applied. The CARB was not persuaded that factor values used by the Complainant are appropriate for the following reasons:

- For the reasons already provided in paragraph 28.

- There was only one source of the information representing what the Complainant considered to be were typical factors and values used by the Assessor when applying the income approach to office properties in BL-4. This is simply inadequate evidence to show what is typical.
- Further, the only comparable chosen, 815 – 10th Avenue S.W, contains more retail space than office and is part of a strip retail centre.
- The Complainant applied a parking rate of \$150 per stall per month. Based on the Respondent's evidence the typical surface parking rate for BL-4 is \$200 per stall per month. Where the Complainant argued that the rate of \$200 is applicable to underground parking, however the Respondent showed that the \$200 rate had been applied to 187 stalls of surface parking in the case of 999 – 8 Street S.W. This change alone increases the income value substantially to \$8,759,083.00. This value actually supports the current assessment.
- The CARB had no evidence that capitalization rates are the same for retail/office in a strip centre and BL-4 office/warehouse as is the property type of the subject.

[32] The Complainant argues an equitable assessment is achieved through the application of the Respondent's typical income approach parameters for "B" class office and that the performance of the subject should not be a consideration. In this case the CARB disagrees with the Complainant's argument as has been explained above.

[33] The 2009 sale of the subject cannot be overlooked even though it is somewhat dated. The Complainant argued that the purchasers looked to the income the property is capable of producing and not to the potential for re-development. That being the case, it seems incongruous to then argue that the financial performance of the subject should have no bearing on its July 1, 2011 market value. If as the Board suspects the subject is wrongly classified the question of equity must be viewed through comparison with a different set of properties that have greater similarity to the subject than those that are before the CARB in this case.

[34] For all of the forgoing reasons the CARB found the Complainant's evidence and argument respecting its proposed income approach to be flawed and not capable of producing the market value of the subject property.


Summary

[35] The subject property is performing well above the value of its current assessment and the alternate value derived by the Complainant's capitalized income proforma. Based on the subject's sale in 2009 and its current financial performance the CARB decides that a reduction to the current assessment is not justified.

[36] The assessment of \$8,980,000 is therefore confirmed.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 14 DAY OF September 2012.


[Redacted]
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
2. R1	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) *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.*

470(2) *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).*

470(3) *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
Commercial	Office	Outside Core	HBU vs Income	Equity/Class