

**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:

***Community Natural Foods Ltd. (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: 067233908**

**LOCATION ADDRESS: 1003 – 11<sup>th</sup> Street S.W.**

**FILE NUMBER: 66557**

**ASSESSMENT: \$4,860,000**

This complaint was heard on the 8 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 a two story office/warehouse building consisting of 22,460 sq. ft. of rentable area and is located in the BL-4 district of the Beltline at 1003 -11 Street S.W. The building was constructed in 1978 and is situated on 29,871 sq. ft. of land which has a designated land use as “commercial” or CC-X. There are 52 surface parking stalls on site.

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 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 5, 2012. The only issues however, that the parties sought to have the Composite Assessment Review Board (CARB) address in the hearing on August 8, 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 by the Complainant, the request is that the assessment be reduced to \$3,800,000.00.

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

- [5] The CARB has decided that the current assessment is correct, fair and equitable.

**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 that 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.

[7] Firstly, re-development must be physically possible and while this could be the case for the subject property, it is a 1978 class B office building in good condition and fully leased through September 2013.

[8] Secondly, re-development must be legally permissible and in this case the current lease cannot be set aside. Re-development opportunity must be imminent and not prospective. The current development is in full compliance with the existing land use bylaws for the subject.

[9] Thirdly, highest and best use would consider maximum productivity; however the subject is in good repair and achieving close to market rents. Again it is in compliance with all bylaws.

[10] The Complainant provided the subject property's business assessment for 2012 to show that the City of Calgary has concluded that 16,495 sq. ft. is designated as office space and 5,965 sq. ft of space is designated as storage space for a total of 22,460 sq. ft.

[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 – 10<sup>th</sup> 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 52 parking stalls. The Complainant suggested that a rate of \$7.50 per sq. ft. would be the typical rate for the non-office space in the subject building.

[12] The Complainant indicated that while the comparable at 815 10<sup>th</sup> Avenue is assessed at \$200 per stall per month for parking, these stalls are under ground parking stalls which would be at a higher value than the subject's surface stalls. Evidence shows that the subject is renting its parking stalls for \$130 per stall per month. The Complainant argued that based on the Business Assessment data for the subject it would appear that the City of Calgary place a value of only \$125 per stall per month on the subject parking stalls. The Complainant submitted that the \$150 per stall rate used in its proforma is even above the rate the evidence shows to be typical.

[13] Based on the above parameters the value determined by the Complainant for the subject property is \$3,800,000.00. This is the value sought by the Complainant.

[14] The Complainant provided one other property comparable at 601 - 10<sup>th</sup> Avenue S.W. where the income approach had been applied to conclude the assessment. The Complainant

argued that the application of different assessment approaches for similar properties results in inequity.

[15] The Complainant referred the CARB to CARB decisions 0726/2010-P and 1000/2012-P in support of its conclusions.

### **Respondent**

[16] The Respondent argued that an assessment based on the property's highest and best use is appropriate in this case because the subject is not developed to its full potential.

[17] The Respondent provided a table of data showing that based on the existing bylaws the subject property could be re-developed to a maximum of 149,355 sq. ft. while the existing improvement is only 22,460 sq. ft. In rebuttal the Complainant argued that when maximum ground floor and landscaping requirements are considered any potential building could only have a maximum area of 64,583 sq. ft.

[18] The City of Calgary considers the value generated through application of the capitalized income approach and the sales comparison approach respecting land only. Where the land only value exceeds the capitalized income value, then the assessment is based on the land only value, which is the case for the subject.

[19] The Respondent provided an example to show an instance where the income approach undervalued a property that was sold. The land only value, when applied, came much closer to the actual sale value.

[20] The Respondent provided five sales to support the land value of \$155 per sq. ft. which is the value used in arriving at the current assessment. In its 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.

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

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

[23] 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. The ARFI for this building shows that actual rates are \$310 per stall per month. The Respondent stated that a rate of \$200 per stall per month is the typical rate for BL-4. If this change only were applied to the Complainant's proforma the resulting value would be \$4,200,000.00, a value reasonably close to the assessed value of the subject.

[24] The Respondent pointed out that the Complainant did not supply the ARFI for the subject property to either this Board or to the City of Calgary, leaving it difficult to know how the subject is actually performing.

[25] The Respondent indicated that the current assessment is fair and equitable for the

subject and requested that the assessment be confirmed.

### **Findings and Reasons for the Board's Decision:**

#### **Issue 1) Highest and Best Use**

[26] The CARB first considered the question of highest and best use and the evidence to support the assessment arrived at through placing that value on land only. The fact the Board did not have the actual data on how the subject is performing raises questions that cannot be answered. 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.

[27] 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 not as comparable as would be desirable.

[28] 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 potentially has a current lease. The lease evidence is weak at best as there is no direct evidence but only an inference of a lease in a marketing document. 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.

[29] The CARB notes that in 2010 a complaint respecting the subject and the use of the land value only approach was made to the CARB. The evidence in the current complaint is different. However, the CARB notes that the 2010 value of \$215 per sq. ft. was confirmed and the current assessment is now based on \$155 per sq. ft. Neither party referred the Board to market evidence which has led to this reduction.

[30] While the CARB has some concern respecting the Respondent's highest and best use analysis as indicated above, the Complainant's failure to bring forward evidence concerning the subject property's performance parameters hindered the CARB in its consideration of all the relevant facts.

[31] In addition the CARB was not persuaded by the Complainant's capitalized income approach for the reasons provided below.

#### **Issue 2) Capitalized Income Approach**

[32] The Complainant argues that the subject property should have been assessed based on the capitalized income approach as is the case for similar properties. In support of this position the Complainant provided a table consisting of five comparables where the income approach had been applied. The assessed values, however of all of these comparables, produced per sq. ft. values for land only at or higher than the threshold land value of \$155 per sq. ft. which has

been applied to the subject. This fact seems to confirm the methodology used by the Assessor to determine which valuation approach will be used to drive the assessments of office properties in BL-4. The Complainant's evidence shows the subject to have the lowest site coverage of the comparables and the highest per sq. ft. assessment based on the sq. ft. of improvement. The CARB does not agree with the Complainant that this fact shows inequity. This information only shows the relationship between the size of the improvement and their respective assessments. There are many other factors that must be considered in an equity analysis.

[33] 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:

- There was only one source of the information representing what the Complainant believed 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 – 10<sup>th</sup> 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 approximately \$4.2M.
- 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 case for the subject.


[34] While the CARB found some weakness in the land only approach applied by the Respondent, it did not have confidence in the income proforma recommended by the Complainant. Nor could the CARB conclude with any degree of certainty that the income approach would produce a value that would be more equitable with the assessments of similar properties. In light of the foregoing reasons the CARB does not accept the reduction in value proposed by the Complainant in this case.

### **Summary**

[35] The Complainant proposed that the income capitalized approach should be applied to the subject property and in doing so the resulting value would be correct and more equitable with the assessments of other similar properties. While the CARB found weaknesses in the Respondent's highest and best use analysis and the basis for its land value, the analysis of the Complainant was also incomplete. Furthermore the Complainant's alternative approach to market value using the income approach was not well supported or persuasive. The assessment is therefore confirmed at \$4,860,000.

It is so ordered.

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:**

<b>NO.</b>	<b>ITEM</b>
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
Office/warehouse	Office – BL-4	Land only value	Highest and Best Use	Equity / income approach