

**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:

**Rowanwood Properties Limited c/o Opus Development Ltd.
(as represented by Linnell Taylor Assessment Strategies), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**J. Krysa, PRESIDING OFFICER
J. Massey, MEMBER
P. Pask, MEMBER**

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	101046308
LOCATION ADDRESS:	6666 Macleod Trail SW
HEARING NUMBER:	65882
ASSESSMENT:	\$2,500,000

The complaint was heard on August 14, 2012, in Boardroom 11 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

D. Sheridan

Appeared on behalf of the Respondent:

R. Ford

Board's Decision in Respect of Procedural or Jurisdictional Matters

At the outset of the hearing, the Complainant raised a preliminary matter in respect of the composition of the Board, and specifically in respect of the presiding officer. The Complainant submitted that in 2011, the presiding officer heard and decided an issue similar to the issue that will be put before the Board in this matter, and the concern is that the presiding officer may therefore have a bias in favour of a particular conclusion. The Respondent had no issue with the composition of the Board.

In the ensuing discussion with the parties, the presiding officer advised the parties that although the presiding officer may have drafted and signed the decision of the Board, the 2011 matter was heard by a three member panel, and the decision rendered was the decision of the entire panel based on the evidence presented in that matter. The presiding officer assured the parties that notwithstanding the 2011 decision, he maintains no bias in favour of a particular conclusion, and the decision of the Board in this matter would be the decision of the entire panel, based on the evidence presented in this matter.

The Complainant accepted the assurance of the presiding officer, and did not take further issue with the composition of the Board.

Property Description

The subject property is an individually titled, 26,372 sq.ft. (square foot) parcel of land that is part of a community shopping centre development. The parcel is improved with a 2,400 sq.ft. "A+" quality, freestanding "pad" restaurant with a partial basement (storage) area of 900 sq.ft. The improvement was constructed in 1995 and exhibits a building footprint to land ratio of 9.1%.

Issues

The Complainant identified the following matter in section 4 of the complaint form:

3. an assessment amount

The Complainant set out the grounds for the complaint in section 5 of the complaint form with a requested assessment value of \$1,570,000; however, at the hearing the Complainant's issue was limited to the following:

Issue: Is the market value of the subject property best reflected by the subject's capitalized income (income approach to value), or the market value of the underlying land?

Complainant's Requested Assessment

At the hearing, the Complainant requested an assessment of \$1,510,000.

Board's Decision in Respect of the Issue

[1] The Complainant argued that the assessment has increased by 68.92% from \$1,480,000 in 2011, notwithstanding that there have been no physical changes to the subject property. The Complainant submitted that there is no evidence of a corresponding increase in the marketplace over the past 12 months, as no sales of "chain" fast food restaurants take place.

[2] The Complainant further argued that the subject property is an income producing retail property, and therefore the assessment value should be established by means of the income approach. In support of the argument, the Complainant provided an excerpt from the Detailed Assessment Audit Manual of the Alberta Municipal Affairs Assessment Business Unit, Assessment Services, dated February 2004 to demonstrate that the income approach is the recommended primary valuation approach for retail and strip commercial properties within Alberta.

[3] The Complainant submitted that the Assessor has ignored the recommended approach, and has valued the subject property at the value of the underlying land by means of the cost approach, attributing no value to the improvements. The Complainant contends that, in doing so, the Assessor has failed to comply with section 289(2)(a) of the Act, by failing to reflect the physical characteristics of the subject property as of December 31, 2011, and failing to reflect the valuation standard set out in the regulations for that property. The Complainant further argued that if the recommended approach is not relied upon, the departure and selection of an alternate approach should be fully supported by a highest and best use study, which clearly supports the proposed highest and best use, being a use other than the subject's current use.

[4] In respect of the subject property, the Complainant argued that the Assessor's methodology is anticipatory, as there have been no applications for a demolition or re-development permit, or for re-zoning, and there is no apparent intent on the part of the Complainant or the current tenant to terminate the continuing use of the property as an income producing retail property. Moreover, the Complainant contends that although the assessment may accurately reflect the "embedded" market value of the land, the Complainant cannot access this value as the improvement on the site is encumbered by lease until July 31, 2015; and thereafter for two additional 5-year terms as a result of the current tenant's options to renew.

[5] The Complainant argued that as a result of the lease encumbrances in place, the subject fails to meet the criteria for the first test of highest and best use, being "Legal Permissibility", and set out by the Complainant as - "public restrictions including zoning guidelines, utility right-of-way, etc., and private restrictions such as leases and easements."

[6] The Complainant provided an income approach valuation for the subject property employing a \$44.00 per sq.ft. market rent rate derived from an analysis of nine "fast food" restaurant leases, six property assessments, and five business assessments. A nominal market rent rate of \$2.00 per sq.ft. was applied to the basement "storage" area. The Complainant's vacancy allowance of 1% was supported by a third party publication, and the Complainant's vacancy shortfall allowance of \$9.00 per sq.ft. was unsupported. The capitalization rate of 7% was supported by two, third party publications and comparisons to the assessed capitalization rates applied to 5 other fast food restaurants. The Complainant's resultant estimate of market value established by means of the income approach is \$1,515,857.

[7] The Respondent submitted that assessments of income producing properties are prepared on the basis of the income approach to value; however, where the income generated by an improvement, capitalized, does not establish a market value greater than the market value of the underlying land as though vacant, the vacant land value is selected to be the assessed value. The Respondent argued that this is a highest and best use test that has been the subject of several Board decisions, and provided CARB 2548/2011-P, CARB 2521/2011-P, CARB 1191/2011-P, CARB 0867/2010-P and CARB 2594/2011-P (the subject of the preliminary matter above), in support. In respect of the subject property, the Respondent argued that the Complainant's income approach valuation establishes a value less than that of the underlying land, which supports the methodology employed by the Assessor.

[8] The Respondent further argued that the base land assessments are consistently prepared by means of the following land valuation formula:

Area – Sq.Ft.	Rate / Sq.Ft.
• First 20,000	\$100.00
• 20,001 to 135,000	\$ 60.00
• Area over 135,000	\$ 28.00

[9] The Respondent submitted that the assessment has been prepared by means of the following calculation to reflect market value of the underlying land, as though vacant:

Formula	Size (Sq.Ft.)	Unit Rate	Value	Effective Unit Rate
First 20,000 Sq.Ft.	20,000	\$ 100.00	\$ 2,000,000	
Area > 20,000 Sq.Ft.	<u>6,372</u>	\$ 60.00	<u>\$ 382,320</u>	
	26,372		\$ 2,382,320	\$ 90.34
Adjustments:	Corner Lot	5%	<u>\$ 119,116</u>	
			\$ 2,501,436	\$ 94.85
	Truncated		\$ 2,500,000	

[10] In support of the land rates applied, the Respondent provided four time adjusted sales of parcels that occurred between February 2010 and May 2011. In support of the \$100.00 per sq.ft. land rate applied to the first 20,000 sq.ft. of land area, the Respondent called the Board's attention to the two parcels located on 16th Ave NE exhibiting a land use designation of C-COR 1, that transferred at time adjusted rates in excess of \$100.00 per sq.ft.

[11] In further support of the land rates applied and the subject's assessment, the Respondent provided a third party transaction summary in respect of a March 1, 2012 sale of a 36,380 sq.ft. vacant parcel located at 6550 Macleod Trail SW, that transferred at a unit rate of \$117.00 per sq.ft. The Respondent argued that if a nearby parcel of vacant land is worth \$117.00 per sq.ft., a similar improved property cannot be worth less.

[12] The Respondent argued that there is equity in the resulting assessments as the methodology is applied consistently. To demonstrate that the subject's assessment is equitable in relation to the assessments of similar properties, the Respondent provided a summary of the assessment particulars of three improved parcels located along Macleod Trail that were also assessed by means of the Assessor's land valuation formula.

Decision

[13] The Board finds that the market value of the subject property is best reflected by the market value of the underlying land.

[14] The Board finds that the characteristics of the subject property demonstrate that the subject property is significantly underdeveloped based on the subject's current land use designation, as the improvement represents only 28.4% of the subject's potential site development. For this reason, the Board finds that it is not practical to employ the income approach to value, as the estimated net operating income generated by the current improvement does not reflect the potential net operating income of the property.

[15] The Board rejects the Complainant's arguments that the assessment does not comply with s.289(2)(a) of the Act, nor the valuation standard set out in the regulations.

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, and
- (b) the valuation and other standards set out in the regulations for that property.

[16] The Board reiterates the reasoning in CARB 1191/2010-P, that although an assessment must reflect a property's characteristics pursuant to s.289(2)(a) of the Act, those characteristics may not necessarily have value, nor contribute to the market value of the property. In this instance, the Board finds that the subject property is underimproved, and the current improvement does not contribute to the market value of the property.

Matters Relating to Assessment and Taxation Regulation, AR 220/2004

6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

[17] In respect of the legislative requirements set out in s.6(1) of the regulation, the valuation standard for a parcel of land and the improvements to it is market value; however, the Board notes that there is no legislative requirement to employ any particular valuation approach to establish market value.

[18] The Board further notes that the Complainant provided no market evidence to refute the Assessor's land rates, or challenge the Assessor's land valuation formula.

The assessment is **CONFIRMED** at: \$ 2,500,000.

DATED AT THE CITY OF CALGARY THIS

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DAY OF OCTOBER, 2012.



J. Krysa, Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission (120 pages)
2. R1	Respondent's Submission (57 pages)

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	Retail	Stand Alone	Income Approach	Land Value; s.289;