

**CALGARY
COMPOSITE 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:

Zomac Holdings Ltd.
(as represented by Colliers International Realty Advisors, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Fleming, PRESIDING OFFICER
R. Roy, MEMBER
B. Jerchel, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 069108801

LOCATION ADDRESS: 915 9th Ave SE

HEARING NUMBER: 61205

ASSESSMENT: \$3,000,000

This complaint was heard on 27th day of July, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *D. Porteous*

Appeared on behalf of the Respondent:

- *C. Yee*

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

There were no procedural or administrative matters raised at the hearing.

Property Description:

The property is 24,752 square feet (sq. ft.) in 2 buildings, (one of 18,848 sq. ft. on two floors, and one of 5,904 sq. ft. also on 2 floors) and situated on 27,825 sq. ft. of land in southeast Calgary. The building containing 18,848 sq. ft. has what the city describes as Retail Below Grade where the windows are located above grade. One building was constructed in 1948 and one in 1956. The properties are rated a "C" quality by the City and have a land use designation of Industrial Commercial, Commercial - Corridor 2. The property has influences for Traffic Main, Transportation Utility Corridor, Corner Lot and Abutting a Train Track, and none of these influences have any specific effect on value because the property is valued on the Income Approach to Value (IAV). The properties are used as multi tenant office /retail.

Issues:

There were a number of issues listed on the complaint form, but at the hearing the Complainant indicated there were two issues in dispute.

1. Should the property be valued on its underlying land value, and if so, should it receive adjustments for abutting a train track, and lack of access and/or grade separation?
2. If the property is more appropriately valued on the income approach, what is the best rental rate to be used for assessment purposes; the actual rental rate used by the Complainant or the typical rental rate used by the Respondent?

Complainant's Requested Value:

\$1,750,000

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

The Highest and Best Use for the property is an Income producing property.

The "best" evidence of typical rental rates are the rates used by the respondent.

Board's Decision & Reasons:

The Complainant described the subject property, pointing out that the property was poorly designed to function as a retail space with no storefront on 9th Ave. As well, he focussed on the fact that there was no legal access to the rear of the property from the rear as it could only be accessed by crossing a CPR Right of Way, and there were no agreements in place to guarantee access. The reason the rear access was critical was because there was a grade separation (including a retaining wall) in the parking lot of the subject which stopped any vehicular access to the rear of the property from 9th Ave (see Ex. C1 pg. 34) and there was

significant parking at the rear of the property.

The problems with access, the general location and the basis for assessment for other neighbourhood properties (Ex. C1 pg 50), prompted the Complainant to argue that the subject should be valued based on its land value. The Complainant provided suggested calculations with the land valued at \$90.00 per sq. ft (for which he provided evidence supporting this value in Ex. C1 pg 47). To this calculation he argued should be added; a positive 5% adjustment for a corner lot (which was a typical rate for this adjustment) and a negative 30% adjustment, 15% (which was the typical rate for abutting a railway track in the beltline), and 15% (to account for the lack of access to the rear of the site). Using this formula, the Complainant reached an indicated value of \$63.00 per sq. ft. (a value calculation the CARB could not replicate) and a total value (rounded) of \$1,750,000. The Complainant asked that this value be set as the assessment.

Failing that, the Complainant reviewed the location of the subject, stating that the "best" retail rates along 9th Ave. SE began some 3 blocks east of the subject at 11th St. SE., and as such the typical rates for the subject were the actual rents that the subject was able to achieve in the market. The Complainant did not know whether the rents were fully gross, partially gross or net. The comparison between the Complainant's suggested typical rents per sq. ft. and the Respondent's typical rents per sq. ft. are set out in the following table (Ex C1 pg 37 & pg 54).

	Complainant	Respondent	Difference
Office	\$9.15	\$10.00	\$.85
Retail 1,001 – 2,500 sf	\$9.15	\$15.00	\$5.85
Retail 6,001 – 14,000 sf	\$8.60	\$11.00	\$2.40
Retail Below Grade	\$7.41	\$10.00	\$2.59
Retail Upper	\$9.15	\$10.00	\$0.85

The Complainant accepted all of the Respondents other inputs, and so the value produced by the Complainant using the IAV was \$2,190,103. The Complainant asked that the CARB consider the truncated \$2,190,000 as an alternately acceptable assessment.

In their rebuttal, the Complainant provided photos of some of the Respondents Lease comparables, suggesting that they were not comparable.

The Respondent indicated that in the City's opinion, there was no basis for valuing this property on a land only basis because the value in use was far in excess of the land value. In commenting on the Complainant's request he disputed the adjustments for abutting a railway track and for lack of access. He indicated that abutting a railway track was an influence on this property, but that there was NO adjustment for this influence on land values in this neighbourhood, stating that the market did not justify an adjustment. In the case of the suggested adjustment for lack of use, he indicated that there was no support provided for this type of adjustment or the suggested value for this adjustment. The Respondent advised that if the land were to be valued as vacant, the first 20,000 sq. ft. would be valued at \$90.00 per sq. ft. and the balance would be valued at \$45.00 per sq. ft. Adding the corner lot adjustment would produce a value of \$2,259,731. He concluded this argument though by explaining that the value of the land with any adjustments was immaterial because the property should be valued on the IAV and adjustments such as this would not apply under the IAV.

In his response to the argument on the rental rates, the Respondent provided a lease comparison chart (Ex. R1 pg 22 -23) which provided comparables for each of the typical rent levels used by the City in developing the assessment. The Respondent also advised that they presumed all of the rents were triple net in their analysis. These comparables, they asserted supported their typical rents used in the assessment and they requested confirmation of the assessment.

The CARB considered all of the evidence. With respect to the land value argument, the CARB agreed with the Respondent. The value in use was much greater than the land value as evidenced by the assessment. The neighbourhood property cited by the Complainant as valued on the Land Value basis appeared to be a single storey structure and as such may not have produced sufficient income for the IAV to exceed the vacant Land Value, but no detailed evidence was provided to allow for analysis. The CARB agreed that there was no right of access to the rear of the property but they concluded that there were ways that the property could be re-graded and/or ramps provided to allow parking access to the entire property from 9th Ave. SE.

When it came to the rental rate analysis, the CARB questioned the comparability of a number of the Respondents comparables. The CARB concluded there might be some validity to the Complainants comments that the retail rental rates were higher east of 11th St. SE, and they also had some reservations about the comparability of the Below Grade Retail comparables all of which were located some distance from the subject. The CARB also had some concerns about the comparability of the Crossroads Farmers Market to the subject to establish the Upper Retail rents as they felt that the Farmers' market was a stronger destination location.


The CARB noted however, that most of the suggested comparables had higher rents than the "typical" rates used by the Respondent for the subject. Perhaps more importantly, the Complainant had not provided any evidentiary support for the argument that rents were higher east of 11th St. SE nor was there evidence to support that the actual rents in the subject were typical for that area. Accordingly, the CARB concluded that the Complainant had not provided sufficient evidence to demonstrate that the assessment was in error.

Finally, the CARB noted that the assessment for the previous year was \$1,660,000 (Ex C1, pg 13) and inquired of the parties if either of them knew how that value had been established. Neither party knew the basis for the assessment.

Board Decision:

The complaint is denied and the assessment is confirmed at **\$3,000,000**.

DATED AT THE CITY OF CALGARY THIS 8 DAY OF August 2011.


James Fleming
Presiding Officer

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

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

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.*