

**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(4), Revised Statutes of Alberta 2000 (the Act).

between:

***Samuel Bell., COMPLAINANT,
as represented by Colliers International Valuation & Advisory Services***

and

The City Of Calgary, RESPONDENT

before:

***T. Helgeson, PRESIDING OFFICER
D. Steele, MEMBER
E. Reuther, 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: 083202804

LOCATION ADDRESS: 3939 17th Avenue S.W.

HEARING NUMBER: 61353

ASSESSMENT: \$15,190,000

This complaint was heard on Thursday, the 4th of August, 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:

- M. Uhryn

Appeared on behalf of the Respondent:

- H. Yau

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

At the outset of the hearing, the Respondent objected to information arranged in tabular form at p. 28 of the Complainant's rebuttal evidence on grounds that it was new evidence that the Complainant should have included in his original submission. In dealing with this issue, the Board noted that there is nothing in s.8 of the *Matters Relating to Assessment Complaints Regulation*, AR310/2009, that precludes new evidence from being admitted on rebuttal. Section 8(c) provides as follows:

*(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing **in rebuttal** to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.*

If new evidence were precluded, the Complainant would have to perform the extremely difficult if not impossible task of using the evidence in his original submission to rebut the evidence of the Respondent. Furthermore, there would have been no need for the legislative draftsmen to mention disclosure of evidence in s.8(c). That said, the words *in rebuttal*, as adumbrated above, support the interpretation that the evidence in the Complainant's rebuttal should be evidence that *rebutts* the evidence in the Respondent's submission. It can be new evidence, but it must be evidence that is addressed directly to the Respondent's evidence. To determine whether the impugned evidence was in fact rebuttal evidence, the Board reserved its decision on whether the impugned evidence was admissible until evidence-in-chief from both parties had been heard. In the result, the Board found that the evidence, being information in tabular form prepared by the Respondent and entitled "2011 Neighbourhood, Community Centre Capitalization Rate Summary" was admissible as rebuttal evidence.

Property Description:

The subject property is a neighbourhood shopping centre at 3939 17th Avenue SW, with a rentable area of 59,481 sq. ft., and a land area of 185,880 sq. ft.

Issues:

Have the net operating income ("NOI") and the capitalization rate ("cap rate") used in the assessment of the subject property resulted in an incorrect assessment?

Complainant's Requested Value: \$12,770,000

Summary of the Complainant's Submission

The assessment of the subject property was \$9,230,000 last year, and jumped to \$15,190,000 this year. The new LRT line is directly north of the subject property across 17th Avenue. Properties along 17th Avenue SW have been negatively affected by construction of the new LRT line. There is evidence that the ongoing construction has resulted in a loss of sales. Furthermore, sales of properties comparable to the subject property that support a more appropriate cap rate have been analyzed and normalized to demonstrate that the Respondent has used an incorrect income parameter in calculating the assessment. These sales were relied upon in deriving a typical cap rate summary for retail properties. The sale prices and net operating incomes ("NOI's") of four comparable properties, i.e., 1725 32nd Avenue NE, 5220, 5010 4th Street NE, 11440 Braeside Drive SW, and 920 36th Street NE, indicate higher NOI's than those of the Respondent, and justify a higher cap rate, in this case 8.0%. Applying this cap rate to corrected income parameters results in an assessment of \$12,770,000.

Summary of the Respondent's Submission

There is nothing blocking vehicular access to the subject property. Recent leases in the area show increased rental rates. Lessees know that when the LRT line is up and operating, there will be no problem at all. The assessment of the subject property increased because it became a neighbourhood shopping centre when *Liquidation World* was replaced by *Shoppers Drug Mart*. In the ICSC (International Council of Shopping Centres) Dictionary, neighbourhood shopping centres are defined as follows:

neighbourhood centre This centre is designed to provide convenience shopping for the day-to-day needs of consumers in the immediate neighbourhood. These centres are often anchored by a supermarket and/or a drug store anchor. These anchors are supported by stores offering drugs, sundries, snacks and personal services. A neighbourhood shopping centre is usually configured as a straight-line strip with no enclosed walkway or mall area, although a canopy above the storefronts may provide shade and protection from inclement weather. These centres range between 30,000 and 150,000 square feet of gross leasable area encompassing between 3 and 15 acres and the primary trade area is about 3 miles.

The subject property clearly meets the definition of neighbourhood centre. The Complainant's comparables are strip centres and strip centres do not have anchor tenants. Strip malls are not comparable to neighbourhood centres. The Complainant has relied on strip shopping centre sales used in deriving this year's strip centre capitalization rate to arrive at a cap rate for a neighbourhood shopping centre. In the Complainant's requested assessment, there is agreement with all income parameters except the cap rate (set at 8% instead of 7.25%) and the CRU rates for 0-1000 sq. ft., 1,001 sq. ft., "Pad Restaurant Dining."

You cannot change one component of an assessment analysis without making corresponding changes in other components. Rent for retail space in Calgary is increasing; hence if you use higher cap rates, property values decrease. Conversely, where rents are increasing, lower cap rates reflect the increase in the resulting value. Furthermore, the Complainant's own "CANADA: CAP RATE REPORT" indicates 2010 retail cap rates for neighbourhood shopping malls in Calgary of 6.75% to 7.25%. The cap rate used in assessing both neighbourhood shopping

centres and community centres is 7.25%.

Summary of the Respondent's Rebuttal

In developing its cap rate, the Respondent has lumped neighbourhood and community shopping centres together, even though they are markedly different, as recognized in the Respondent's own material. In addition, the Respondent has used a portfolio sale in its analysis. The McKnight shopping centre is most comparable and it shows a cap rate of 8.5%. The median of the cap rates derived from valid sales, that is without the portfolio sale, i.e., Quarry Park Boulevard SE, and without 1221 Canyon Meadows Drive SE, which has a significant amount of undeveloped land, is 7.92%, which amply supports our request for an 8% cap rate

Board's Decision in Respect of Each Matter or Issue

The Board finds that the subject property is a neighbourhood shopping centre. The Respondent's evidence was persuasive. The Complainant had much to say about the Respondent's grouping neighbourhood community centres with community shopping centres, but failed to explain why that was an error. The construction of the LRT line might have caused some inconvenience to nearby properties, but only in the short term. Why the Complainant relied on strip shopping centres to support its requested 8.0% cap rate remains a mystery.

Furthermore, it was not explained why "a significant amount of undeveloped land" or a portfolio sale should automatically disqualify a community shopping centre from the Complainant's analysis of the Respondent's neighbourhood and community centre capitalization rate study. Nevertheless, taking the middle of the road and leaving 1221 Canyon Meadows Drive SE out of the analysis, the average cap rate would be 7.19% and the median 7.40%, figures closer to the Respondent's 7.25% than the Complainant's 8.0%. Finally, the Complainant's own 2010 CANADA CAP RATE REPORT, which appears to make no distinction between neighbourhood and community shopping centres, indicates cap rates for community shopping centres of 6.75% to 7.25%. In the result, there was insufficient evidence to support a reduction in the assessment.

Board's Decision: The assessment is confirmed at \$15,190,000

DATED AT THE CITY OF CALGARY THIS 12 DAY OF SEPTEMBER 2011.



T. Helgeson
Presiding Officer

Exhibits

C-1, Complainant's Submission

C-2, Complainant's Rebuttal

R-1, Respondent's Assessment Brief

R-2, Colour photographs

R-5, More Colour photographs

R-3, CARB 1000/2011-P

R-4. CARB 1503/2011-p

R-5, CARB 0746/2011-P

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.*