

**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:

***Ted Helgeson, PRESIDING OFFICER
Don Steele, MEMBER
Ed 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: 126046200

LOCATION ADDRESS: 2515 90th Avenue S.W.

HEARING NUMBER: 61352

ASSESSMENT: \$8,440,000

This complaint was heard on Friday, the 5th 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:

- *Mr. Porteous and Mr. Uhryn*

Appeared on behalf of the Respondent:

- *Mr. Farkas*

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

No procedural or jurisdictional matters were raised

Property Description:

The subject property is a strip shopping centre at 2515 90th Avenue S.W. in the community of Oakridge. The subject property's site area is 4.16 acres, and total rentable floor area is 38,671 sq. ft. There is a drycleaning establishment on the subject property, and a PetroCanada service station adjacent to the subject property.

Issues:

1. Has the subject property been contaminated with gasoline and tetrachloroethylene?
2. Has the Respondent's use of typical rents in the assessment of the subject property resulted in a cap rate that produced an assessment in excess of market value?

Complainant's Requested Value: \$5,540,000

The Complainant's Position

A Phase 1 Environmental Site Assessment has verified contamination of the subject property by hydrocarbons leaking from underground gasoline storage tanks at the PetroCanada station adjacent to the subject property, and by tetrachloroethylene contamination from *April Fresh Cleaners*, a dry-cleaning establishment on the subject property. Other contaminated properties have had their assessments reduced by 30% in recognition of the negative influence of contamination. Furthermore, the rents of a number of the properties in the Respondent's Strip Centre Capitalization Rate Analysis are significantly lower than stated in the analysis. When these lower rents are used, the cap rate becomes 8.0%. Applying a cap rate of 8.0% to the subject property's net income of \$633,375, and reducing the result by 30%, produces an assessment of \$5,540,000.

The Respondent's Position

The Complainant's Phase 1 Environmental Site Assessment from 2003 indicates a medium to high *risk* of potential contamination on the subject property. There is no proof that the property is contaminated. With respect to the cap rate argument, in analyzing our cap rate study, the Complainant removed two sales of property under 10,000 sq. ft. on grounds that they are too small and not physically or economically comparable. Of the sales in the study, the Complainant adjusted the rental rate of only four of them, which raised the cap rate to 8.41%. The adjusted rental rates appear to be actual rents, or rents currently in place. Decisions of the Board provide guidance with respect to the methodology of assessment, and a comparison of assessment-to-sales ratios will demonstrate the effect the Complainant's requested cap rate would have on the sale prices used to determine the assessed cap rate.

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

With respect to the alleged contamination on the subject property, the Board noted the following statements in the Complainant's Phase 1 Environmental Site Assessment prepared in October of 2003 by Cirrus Environmental Services:

Cirrus personnel did not observe any unusual odours or evidence of air emissions during their brief site reconnaissance. [p.27]

*As of the date of this report, data collected during the course of this assessment suggests that the **potential** (Board's emphasis) for significant negative environmental conditions existing at the Subject Property is: Medium to High = Significant negative conditions were reported and/or observed in connection with the Subject Property. [p.28]*

*This Phase 1 ESA does not involve physical testing or sampling. It is intended to reduce but not necessarily eliminate uncertainty regarding the **potential** (Board's emphasis) for significant negative environmental conditions to exist on the subject property. [p.28]*

This report should be used for informational purposes only and should not be construed as a comprehensive or chemical characterization of the site. [p.49]

The Phase 1 Environmental Site Assessment did not find any contamination on the subject property. It found a *potential* for contamination. In the absence of evidence of actual contamination, the Board had nothing on which to ground a finding that the subject property was contaminated. Regarding the Complainant's derivation of a higher cap rate, it appears that actual rents were parachuted in among the Respondent's typical rents for that purpose.* In a decision referenced as CARB 1301/2011, the Board made the following finding:

The Board understands that calculating the value of a property using the income approach must be based on a consistent methodology. In other words, if "actual" rates are to be used to calculate a value, then all factors in that calculation must reflect actual values. On the other hand, if typical rates are used to calculate value using an income approach, then all factors in that calculation must be typical rates. It is not appropriate to calculate the value of a property using some factors derived from actual data and some factors derived from typical data. That said, typical rates are required.

*p.90 of the Complainant's submission.

In other words, when it comes to assessment, you can't mix and match. It's either all one, or all the other. In any event, whatever the cap rate used, the assessment-to-sales ratio is the litmus test. The Respondent's "Strip Centre Capitalization Rate Assessment to Sale Ratio (ASR) Comparison: 7.50% v. 8.00%" at page 41 of the Assessment Brief demonstrated that a cap rate of 7.5% resulted in a median ASR of 0.98, and an average ASR of 0.96%. On the other hand, the use of a 8.0% cap rate produced a median ASR of 0.92, and an average 0.90%. In the result, the Board finds no reason to reduce the assessment.

Board's Decision: The assessment is confirmed at \$8,440,000.

DATED AT THE CITY OF CALGARY THIS 12th DAY OF September 2011.



T. Helgeson
Presiding Officer

Exhibits:

C-1, The Complainant's Submission

R-2, The Respondents Assessment Brief

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.*