

**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:

Hortco Developments Inc. (as represented by G. Horton), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Mowbrey, PRESIDING OFFICER

A. Blake, MEMBER

R. Roy, 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: 016213704

LOCATION ADDRESS: 87 Crowfoot Wy NW

FILE NUMBER: 65557

ASSESSMENT: \$4,530,000

This complaint was heard on 5th day of September, 2012 at the office of the Assessment Review Board located at Floor Number four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom five.

Appeared on behalf of the Complainant:

- G. Horton

Appeared on behalf of the Respondent:

- R. Farkas

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

[1] Upon questioning by the Presiding Officer, the party present indicated no objection to the composition of the Board. In addition, the Board members indicated no bias on this file. Under a preliminary issue, the question was raised by the Respondent in allowing late evidence to be disclosed by the Complainant. The Board recessed, deliberated and rendered the decision that late evidence would not be accepted and therefore would not be heard by the Board.

Property Description:

[2] The subject property is part of the Crowfoot Power Centre and is assessed at \$4,530,000.

Issues:

[3] What is the market value of the subject property?

Complainant's Requested Value: \$3,851,000

Complainant's Position:

[4] The Complainant filed this complaint on the basis that the subject property assessment of \$4,530,000 was inequitable and in excess of market value. In support of this position, the Complainant presented a 10 page evidence package to the Board (Exhibit C-1) and an additional evidence package entered as Exhibit C-2 5 pages.

[5] The Complainant stated the assessor said that the City used market rents for a power centre. The Complainant stated that they were a strip centre, located in the town centre and was on the periphery of the centre.

[6] The Complainant stated his rents were closer to market than the City's typical market rents. The Complainant stated that he had been in business for 40 years and does not rent space less than market.

[7] The Complainant stated that the small centre was compromised due to the traffic problems created by Tim Horton's and in fact, one of his tenants vacated the premises due to the parking problems.

[8] During summary and argument, the Complainant stated that the City's mass appraisal system does not work for his strip centre and the Board should consider using actual rents

obtained rather than the typical rental rates utilized by the City. The Complainant stated the restaurant assessment was not being contested.

[9] During argument and summary, the Complainant reiterated that his centre is not similar to those in the Respondent's calculation and thinks the City may have erred on the rental rates used.

[10] The Complainant requests the Board to reduce the 2012 assessment to \$3,851,000 that better reflects the actual rents achieved.

Respondent's Position:

[11] The Respondent presented a 43 page assessment brief (R-1) to the Board.

[12] The Respondent stated the issues were actual rents versus typical rents and the power centre location of the subject property.

[13] The Respondent explained to the Board that the subject property assessment and other similar assessments were prepared using the income approach. The Respondent said that most income producing properties are valued based on their income potential using a regressed typical lease rate by observing market triple net leases from 2009 to 2011. Direct capitalization is the method employed to value all of the properties in the commercial retail inventory valued using the income approach. This involves capitalizing the typical net operating income by a typical overall capitalization rate determined from comparable sales of similar properties (Exhibit R-1 page 4).

[14] The Respondent noted that parking is ample and not inadequate as the Complainant stated. In addition, the pictures and maps submitted by the Respondent show the subject property is situated within the power centre (Exhibit R-1 pages 6-12).

[15] The Respondent noted that while the parking caused by Tim Horton's compromised the parking situation, Tim Horton's could actually be a draw to the Complainant's centre.

[16] The Respondent presented the Board with a detailed listing of rental rates for those premises under 1000 square feet. The median is \$40.00 per square foot (Exhibit R-1 page 19).

[17] The Respondent further presented the Board with a detailed listing of rental rates for those premises over 1000 square feet. The median worked out to \$37.00 per square foot (Exhibit R-1 page 20).

[18] The Respondent gave the Board the property details outlining the typical net operating income of \$328,995, a 6.00% vacancy allowance and a cap rate of 7.5% to arrive at an assessed value of \$4,530,000 for the subject property (Exhibit R-1 pages 13-14).

[19] The Respondent advised the Board about "fairness and equity in mass appraisal." The assessment business unit (ABU) is bound by the *Municipal Government Act (MGA)* and the associated regulations to prepare assessments as set out in the legislation.

MRAT 2(a) states;

"An assessment of property based on market value

- a) must be prepared using mass appraisal,
- b) must be an estimate of the fee simple estate in the property,

- c) must reflect typical market conditions for properties similar to that property."

[20] During argument and summation, the Respondent stated that traffic is not an issue and Tim Horton's could draw people to the Complainant's centre. The Complainant's centre is definitely part of the power centre and typical rental rates were derived from the power centre including the Complainant's rental rates. The Respondent added that market evidence supports the assessment.

[21] The Respondent requested the Board to confirm the 2012 assessment of \$4,530,000 as being fair and equitable.

Board's Decision:

[22] The decision of the Board is to confirm the 2012 assessment of \$4,530,000.

Reasons for the Board's Decision

[23] The Board reviewed both the Respondent's and the Complainant's evidence and found the Respondent's evidence to be more compelling. The Board did in fact believe that the Complainant's shopping centre was part of the power centre as outlined by maps and brochures.

[24] The Board notes that the restaurant is under appeal.

[25] The Board does not agree with the Complainant's assessment methodology, using actual rents and then using the City's typical cap rates, vacancy rates etc. Therefore, the use of actual rents to determine the appropriate rate is not sufficient to support incorrect assessment of typical values.

[26] The Respondent notes the City is legislated to use mass appraisal. The Board does not consider the Complainant's shopping centre to be unique and is therefore subject to the mass appraisal process.

[27] The Complainant did not give the Board sufficient comparables to show the Respondent's assessment rates were incorrect.

[28] The onus is on the Complainant to show an assessment is incorrect. The Board is satisfied that the Complainant did not provide sufficient and compelling evidence to enable the Board to form an opinion as to the incorrectness of the assessment.

DATED AT THE CITY OF CALGARY THIS 20th DAY OF September 2012.



Presiding Officer

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

NO.	ITEM
1. C-1 10 pages	Complainant's Disclosure
2. C-2 5 pages	Complainant's Disclosure
3. R-1 43 pages	Respondent's Disclosure

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.*