

**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:

***Canada Safeway Limited (as represented by AltusGroup), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***Board Chair, J. Zezulka  
Board Member, D. Pollard  
Board Member, J. Kerrison***

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: 080200603**

**LOCATION ADDRESS: 524 - Elbow Drive SW**

**HEARING NUMBER: 66368**

**ASSESSMENT: 11,310,000.00**

This complaint was heard on the 19 day of June, 2012, at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Six.

Appeared on behalf of the Complainant:

- K. Fong
- D. Main

Appeared on behalf of the Respondent:

- L. Wong

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

(1) At the outset of the hearing, the Respondent objected to the inclusion of the Complainants evidence submission, on the grounds that the information had not been disclosed in accordance with sections 8, Disclosure of Evidence, of the Matters Relating to Assessment Complaints Regulation. Section 8 (1) (a) states as follows;

*"the complainant must, at least 42 days before the hearing date,*

*(1) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing..."*

(2) In order to comply with the 42 day deadline imposed by the Regulation, the Complainant's disclosure package should have been received by the Respondent and the Composite Assessment Review Board by midnight, on August 7, 2012. The documents were received by the Assessment Review Board at 12:06 and 12:13 A.M. on August 8. The Respondent confirmed that those times were the same as the time the documents were received by the Respondent.

(3) Technically, the disclosure was late. However, the time the documents were received was "the middle of the night". Logically, none of the documents would have been read, or even looked at, prior to the start of business the following day. This Board will not venture into the realm of improbable assumptions and conclusions.

(4) In the opinion of the Board, the Respondent was not adversely affected or prejudiced in any way by the late disclosure. Furthermore, the Respondent received the information in ample time to formulate any counter argument that he considered necessary.

(5) In the interests of natural justice, the information was allowed and the Board proceeded to the merit hearing.

**Property Description:**

(6) The subject is a free standing retail store, occupied by a Canada Safeway store, located on the corner of Elbow Drive and 5 Street SW, in the Cliff Bungalow community of SW Calgary. The area is near the City's Beltline district. The Elbow River is across the street from the subject. The building is 24,569 square feet ( s.f.). The year of construction is 1971. The land size is 1.60 acres.

**Issues / Appeal Objectives**

(7) The property is currently being assessed as land only, at a rate of \$155 per s.f. of land area, to which a 5 per cent corner adjustment has been applied. The Complainant takes the position that the subject is still an operating supermarket, and should therefore be assessed on the income approach. Alternatively, the Complainant challenges the City's land rate and the manner in which it is applied.

**Complainant's Requested Value:** \$4,170,000, or \$3,504,000 based on land only.

**Evidence / Argument**

(8) The Complainant maintains that the Assessor has disrupted equity, because the subject has not been valued in the same manner as other supermarket properties in the City, but rather has been valued as an undeveloped site, which the Assessor maintains is the Highest and Best Use of the site. The Complainant maintains that the City's conclusion of Highest and Best Use does not result in a fair and equitable assessment in relation to similar properties.

(9) The subject site is a rectangular site with the Elbow River across the street. Because of the River proximity, the site is classified as being in the flood zone, which leads to restrictive development conditions. According to the City's Land Use Bylaw, the site is designated C-COR1, and C-COR2. The C-COR1 portion, which is 12,916 s.f., has a Floor Area Ratio (FAR) of 3.0, and a height restriction of 16 metres (52 feet). The C-COR2 portion is 56,618 s.f. and has an allowable FAR of 1.0, and a height restriction of 10 metres (30 feet).

(10) Notwithstanding that the complaint centres mostly on the issue of highest and best use, and equity, the majority of the hearing was spent on the valuation of the land, as though undeveloped. The Complainant requests that, if the property is to be valued as land value only, a rate of \$36.75 per buildable s.f., as determined by the FAR within the Land Use Bylaw, should be applied.

(11) Floor Area Ratio is a measure of building size, that is a measure of the density in most commercial and high density districts. The Land Use Bylaw defines it as "*The quotient of the total gross floor area of all buildings on the parcel divided by the area of the parcel.*" Simply stated, the higher the allowable FAR, the larger the building that can be built on that site. Typically, a site that can accommodate a larger building is worth more than an equal sized site that can accommodate a smaller building. It logically follows then, that a site with a high FAR should sell for more per s.f. than a site with a lower FAR.

(12) In addressing the City's land value, Complainant argued that most sites in Calgary's inner City, excluding the downtown core, have an FAR ranging from 3.0 to 8.0, and that it was inequitable to compare these sites directly to the subject on a per s.f. of site area basis. Rather, equity based on land only could only be achieved if the comparison was based on buildable s.f. or buildable area. Based on the Land Use Bylaw, the subject's total buildable area is 95,376 s.f.

(13) The Board recognizes that the FAR of any given site is the product of other factors. Location, and all that goes with it in terms of surrounding development, traffic patterns, and environmental considerations, rates as one of the most important. The Board also recognizes

that there is a relationship between FAR and selling price. The relationship might not be a direct one-to-one ratio, but it is one that can be identified. Finally, the fact that FARs are the result of planning, and are changeable depending on site specific considerations and planning applications, is also recognized.

(14) The Complainant submitted eight Beltline sites, and two C-COR2 land sales in support of the land rate being sought. The Beltline sales reflected a mean and median selling price of \$131.06 and \$120.36 per s.f. of site area respectively. Seven of the sales had an FAR of 3.0. One had a 5.0 FAR. Two of the properties had environmental contamination. The five sites with a 3.0 FAR appear to be a single assembly, and reflect an average selling price per buildable s.f. of \$34.27. The site with 5.0 FAR reflects a selling price per buildable s.f. of \$34.00. The two C-COR2 sales reflect prices of \$49.42 and \$59.10 per buildable s.f. One of these is an environmentally contaminated corner lot on 17 Avenue SE. The second site is in NW Calgary.

(13) In support of the assessed land value, the Respondent submitted five sales that reflected residual land values ranging from \$127 to \$258 per s.f. of site area. The mean and median appear at \$172 and \$153 per s.f.. Three of the comparable parcels are smaller than 7,500 s.f.. Four of the parcels are improved with buildings. The building component was removed via the Marshal and Swift cost calculator, but the cost calculations were not submitted for consideration. In answer to questions, the Respondent stated that the majority, or all, of these buildings are still in use. One of the sites has environmental concerns, for which the City applied a 25 per cent adjustment. However, the source of the 25 adjustment was not explained, but rather appeared as an arbitrary amount. Finally, the Respondent could not identify the allowable FAR attached to each site.

(14) As far as the income approach is concerned, the Complainant submitted income approach calculations that produced an indicated value of \$4,170,000. The inputs adopted by the Complainant included a rental of \$13 per s.f. for the supermarket space, and \$2.00 per s.f. for the mezzanine. The vacancy for the supermarket was 1.0 per cent, and the capitalization rate applied was 7.25 per cent. All of these factors are in keeping with the City's inputs in the mass appraisal model, and were not disputed by the Respondent.

### **Board's Findings**

(15) The Board finds that the City's land value conclusion for the subject is based primarily on land residuals of improved property. This approach is considered by the Board to be unreliable at best. Consequently, the Board can place little weight on the result.

(16) Having said that, the Board questions the validity of valuing the subject property as an undeveloped site. The subject is currently operating as a supermarket. The evidence of the Respondent failed to persuade the Board that alternative uses for the subject property would be manifest in the near future, or even in the foreseeable future. In any Highest and Best Use analysis, an alternative use cannot be based on conjecture and unsupported opinion. The approximate timing of an alternative use is critical, but none was provided in the evidence submitted. And, because assessment of property is an annual, or at least a periodic function, the Highest and Best Use conclusion should be one that can be manifest in the relevant time frame; i.e. the immediate future. Such is not the case in this instance.

- (15) Section 289(2) of the Municipal Government Act states (among other things);  
"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 ....."

There were no development applications, or development permit in place to indicate that a change in use was forthcoming, or even being contemplated.

- (16) This Board is also persuaded by the notion of fairness and equity. In this regard, the following from *Stade v. Assessor #23 – Kamloops* provided some guidance;  
*"Questioning the relationship between assessment and the properties estimated market value is a market value argument, with accuracy the measure of success. Equity instead relates to consistency and fairness of assessment. Consistency requires that similar properties be assessed similarly and that differences be accounted for consistently. Fairness means similar treatment under the law, which typically means that if one group of taxpayers is afforded a privilege, such as underpaying taxes, then everyone should be afforded a similar privilege."*

- (19) The Board is persuaded that equity can only be maintained if the subject is assessed on the basis of a class "B" supermarket. For that reason, the Complainant's income approach to value is considered preferable to the existing method of assessment, or the Complainant's land analysis.

- (20) Using the income approach as calculated by the Complainant, the assessment appears at \$4,176.913, truncated to \$4,170,000.

#### **Board's Decision**

- (21) The assessment is reduced to \$4,170,000.00.

DATED AT THE CITY OF CALGARY THIS 23<sup>rd</sup> DAY OF October, 2012.



Jerry Zezulka  
Presiding Officer

#### **APPENDIX "A"**

#### **DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:**

| NO. | ITEM |
|-----|------|
|-----|------|

- |    |  |
|----|--|
| 1. | C1 Evidence Submission of the Complainant            |
| 2. | Beltline Land Analysis, submitted by the Complainant |
| 2. | R1 Evidence Submission of the Respondent             |

*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 MGB Administrative Use Only**

|                            |             |                     |                    |              |
|----------------------------|-------------|---------------------|--------------------|--------------|
| Decision No. 1827/2012 - P |             |                     | Roll No. 080200603 |              |
| <u>Subject</u>             | <u>Type</u> | <u>Issue</u>        | <u>Detail</u>      | <u>Issue</u> |
| CARB                       | Retail      | Income v land value | FAR                |              |