

**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:

***Louson Investments Ltd. (as represented by Linnell Taylor and Associates),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***P Petry, PRESIDING OFFICER
S Rourke, MEMBER
J Pratt, 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:	068206804
LOCATION ADDRESS:	308 – 17th Avenue S.W.
HEARING NUMBER:	60807
ASSESSMENT:	\$5,880,000

This complaint was heard on the 11th day 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. J Mayer

Appeared on behalf of the Respondent:

- Mr. J Toogood

Property Description:

The subject property is a 21,425 sq. ft. two storey commercial building known as the Model Milk Building. The improvement was built in 1933 and is situated on 28,742 sq. ft. of land. The subject property has been assessed based on sales, using a land value only approach.

Issues:

- 1) Does the current assessment based on a land value only approach, produce an assessment which is at market value and which is equitable?
- 2) If the subject assessment is found not to be at market value or equitable, does an assessment based on the income approach provide a better estimate of the subject's market value and an assessment which is equitable with similar properties within the municipality?

Complainant's Requested Value:

Based on the Complainant's request that the income approach be applied as recommended, the assessment for the subject property is \$5,510,000.

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

- 1) The CARB decides that in this case the land only value for the subject property has produced a reasonable estimate of its market value as of July 1, 2010.

- 2) The CARB decision is that the value based on the income approach as applied by the Complainant supports the current assessment.

Summary of the Party's Positions

The Complainant suggested that the Respondent's assessment based on land value is anticipatory and treats the subject as a vacant land site. This approach fails to recognize that the subject is a fully functioning income producing property. Section 289 (2) of the Municipal Government Act (Act) requires that each assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which the tax is to be imposed. The characteristics of the subject include leases in place and the fact that the subject is an ongoing commercial property and should be valued using the capitalized income approach. The Complainant also argued that the British Columbia Court of Appeal decision known as "Bramalea" deals with the question of inequity created when different assessment approaches lead to higher assessments for some properties in the same class and where they compete for the same customers. The Complainant's arguments in this case were similar to those advanced in CARB decision 1853/2011-P and therefore will not be fully canvassed here as this case ultimately turns on an error made by the Complainant's application of the capitalized income approach to value.

The Complainant provided support for the value of factors typically used in the application of the income approach. While it is not necessary to review all of this evidence, one component of the net income for the subject is derived from 5,200 sq. ft of space leased to Goliath's Sauna Tel for a 24 year period at a rate of \$22.24 per sq. ft. Based on the Complainant's review of rental rates for basement space the Complainant recommended that the CARB accept a rental rate of \$9 per sq. ft. for this space. When the Complainant applied the capitalized income approach using all of its recommended values, the \$9 rate for the basement space was reduced to \$6 per sq. ft. This pro-forma using the \$6 rate produced the requested value of \$5,510,000. The Complainant provided a corrected recommendation using the \$9 rate which resulted in a value of \$5,699,000.

The Respondent indicated through its evidence that the subject property has been valued based on a base rate of \$195 per sq. ft. of land with an additional corner lot influence of 5% for a total rate of \$204.75 per sq. ft. The Respondent explained that in all cases, it applies both an income approach to value and a land only approach to value. The higher of these two valuations is then selected as the assessment for the year in question. The Respondent acknowledged that there are not a lot of Beltline sales, however, provided a list of five sales used to derive the base rate of \$195 per sq. ft. for land as of the valuation date, July 1, 2010. Four of these sales included improvements; however the Respondent indicated that it had determined a value of the improvements using the Marshall and Swift depreciated cost approach and these values were then removed from the sales prices. The five sales showed a range in value from a low of \$151 per sq. ft. to a high of \$324 per sq. ft. and median value of \$196 per sq. ft. The Respondent had applied a value of \$195 per sq. ft. as its base land rate for the majority of the Beltline, excluding only BL 1 on the eastern side of the Beltline and BL 5 on the far western edge of the Beltline. The Respondent had also completed a test income pro-forma for each sale to show the level of income necessary to produce the sales price and stated that these properties could not be expected to achieve these rents.

The Respondent also provided four sales that had been sold through the courts to show that

even under those circumstances the values are over \$200 per sq. ft. One of these sales was post-facto by a month or so and sold at a rate of \$164 per sq. ft. Three property listings were also cited in support of the land value applied by the Respondent. The Respondent referred the CARB to a large number of previous ARB and CARB decisions which it believed support the application of land value where that value exceeds the value produced by a typical income approach. Based on the sales which support the land value, the equitable application of this approach and the previous board decisions also supporting the land value approach, the Respondent requested that the assessment be confirmed.

Findings and Reasons for the Board's Decision:

Land Value Only Approach

In this case the Respondent used a very simplistic analysis which does not stand up under scrutiny and can not be considered an appropriate highest and best use analysis. However, the Complainant's income analysis produces a value only 3% below the value arrived at by the Assessor. The CARB is not prepared to alter an assessment by such a minor percentage.

The Income Approach to Value

The Board notes that the comparables used by the Complainant to justify a recommendation of \$9 per sq. ft. for the basement space occupied by Goliath's Sauna Tel, are all for much smaller space and may not be similar to the basement space in the subject. The space in the subject is leased for a 24 year period and at a value of \$22.24 per sq. ft. The large variance between the \$9 recommended rate and the lease rate of \$22.24 brings in to question the validity of the \$9 rate as being typical.


The more significant issue, however in this case is the very minor adjustment of only 3% being sought by the Complainant after applying the \$9 per sq. ft. rate rather than the \$6 rate that had been used in error. The Complainant had made reference to the British Columbia Court of Appeal case "Bramalea" in support of its equity argument. This case also supports the notion that both equity and "actual value" or market value are not absolute values but rather are a range in value. The CARB is very reluctant to make any change to the assessed value unless the evidence is compelling beyond at least a 5% threshold. In our opinion the breadth of range for market value exceeds 3% and therefore the CARB would not be prepared to adopt the Complainant's recommended value even if we had found the Complainant case to be generally compelling. The matter of the very small adjustment being sought by the Complainant has caused the Board not to deal with all of the other issues in any depth as the requested adjustment in this case is simply not persuasive.

Summary

The CARB has found that the income approach proposed by the Complainant is generally supportive of the current assessment and in light of the fact that market value is a range of value, the CARB has decided that an adjustment to the 2011 assessment is not justified. The Assessment is therefore confirmed at a value of \$5,880,000.

It is so ordered.

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



Presiding Officer
Paul G. Petry

APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C 2	Complainant Appendices
3. R2	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) 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.

470(2) *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).*

470(3) *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*