

**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:

Scott's Trustee Corp. (as represented by Canadian Valuation Group LTD. and Linnell Taylor and Associates), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***P Petry, PRESIDING OFFICER
D Julien, 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:	064070105
LOCATION ADDRESS:	905 37 Street. S.W.
HEARING NUMBER:	64107
ASSESSMENT:	\$1,060,000

This complaint was heard on the 25th day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- Mr. J Mayer

Appeared on behalf of the Respondent:

- Mr. H Yau

Property Description:

The subject property is a freestanding fast food restaurant occupied by Kentucky Fried Chicken (KFC). This property is located at the corner of 9th Avenue and 37 Street S.W. The building is 2,115 sq. ft. and is situated on a parcel of land totalling 15,652 sq. ft. The subject property has been assessed based on a sales value in land only.

Issue:

1. Does the assessed value in land only represent a correct and equitable estimate of the subject's market value?
2. Does the proposed income approach provide a better reflection of a correct and equitable assessment?

Other matters and issues were raised in the complaint filed with the Assessment Review Board (ARB) on March 4, 2011. The only issues however, that the parties sought to have the Composite Assessment Review Board (CARB) address in the hearing on August 25, 2011 are those that referred to above, therefore the CARB has not addressed any of the other matters or issues initially raised by the Complainant.

Complainant's Requested Value:

Based on the Complainant's recommended income approach the requested assessment for the subject property is \$820,000.

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 does not capture the subject property's full market value.

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 Complainant argued that the first highest and best use criterion is that the proposed change in use must be legally permissible. The subject property has an ongoing lease in place and therefore fails to qualify on this first consideration. 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.

On this basis the Complainant argues that the income approach should be applied in reaching the assessment of the subject. The Complainant provided assessment information on two other KFC outlets shown assessed rental rates of \$30 and \$32 per sq. ft. The Complainant also introduced a table of five rental rate comparisons ranging from \$16.50 to \$30.00 per sq. ft. Based on this information the Complainant proposed that a rental rate of no more than \$30 per sq. ft. should be applied to the subject.

The Complainant then went on to provide supporting information and recommendations for the value of factors typically used in the application of the income approach. A vacancy allowance of 1%, a non-recoverable allowance of 1%, operating costs of \$7 per sq. ft. for vacancy and a capitalization rate (cap) of 7.5% were recommended. Applying these values within its pro-forma, the Complainant produced a value of \$820,000 for the subject property.

The Respondent indicated through its evidence that the subject property has been valued based on an aggregate rate of \$68.25 per sq. ft. of land which includes an additional corner lot influence of 5%. The Respondent argued that with a site coverage of only 13.5% the subject property is underdeveloped and the typical income approach will not produce its market value. The Respondent introduced three sales of C-COR lands with time adjusted values ranging from \$70.38 to \$112.16 per sq. ft. in support of the rate applied in reaching the assessment of the subject. The Respondent argued that the two rental rates brought forward by the Complainant respecting other KFC outlets are not similar to the subject as they are Pad sites with in shopping centres, not freestanding retail such as the subject.

The Respondent referred the CARB to a 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**

The Complainant has challenged the Respondent's approach to value as being anticipatory and without proper analysis of all the components of highest and best use. Section 289 (2) of the Act requires that assessments reflect the characteristics and physical condition of the property on December 31 of the assessment year. One of the significant characteristics is the low site coverage respecting the subject. The CARB agrees with the Respondent that the capitalized net income approach, in this case, will not capture the market value of the property because of the large parcel of land and the low site coverage.

The Complainant had set out need to follow the highest and best use criteria when moving from an income approach to land value. The CARB agrees that a highest and best use analysis should be done before proceeding with a value based on land only, however in this case it is clear that the improvement underutilizes the available land and that some adjustment would be necessary if one were to apply the income approach to value.

In this case the Respondent used a very simplistic analysis which does not stand up under scrutiny and cannot be considered an appropriate highest and best use analysis. However, the Complainant has not considered the value in the apparent excess land of the subject and has not provided any analysis to assist the CARB in reaching a fair conclusion with respect to valuing this aspect of the property. Despite the weaknesses of the Respondent's analysis the CARB finds no other evidence upon which to determine a fair and equitable assessment for the subject.

The Income Approach to Value

The Complainant has developed an income based approach which may have merit in a more typical situation. However as reviewed above the CARB has concluded that there is additional value in the land beyond that which is captured through the application of the income approach. The income approach as proposed therefore will not produce a reliable indication of the subject's market value.

Summary

The CARB has found the income approach proposed by the Complainant to be unreliable in this case and therefore, despite the weakness of the Respondent's land value only approach, has determined that the land value only approach used to develop the assessment for the subject property should not be overturned. The 2011 assessment for the subject property is confirmed at \$1,060,000.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 29th DAY OF SEPTEMBER 2011.



Presiding Officer
Paul G. Petry

APPENDIX "A"

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

NO.	ITEM
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- | | |
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| 1. C1 | Complainant Disclosure |
| 2. 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*