

**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:

***Calgary Co-operative Association Ltd, COMPLAINANT,
as represented by Altus Group***

and

The City Of Calgary, RESPONDENT

before:

***T. Helgeson, PRESIDING OFFICER
P. Charuk, MEMBER
S. Rourke, 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: 042120105

LOCATION ADDRESS: 4608 16th Avenue N.W.

HEARING NUMBER: 64210

ASSESSMENT: \$2,700,000

This complaint was heard on Tuesday, the 30th 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:

- *B. Neeson*

Appeared on behalf of the Respondent:

- *B. Thompson*

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

No procedural or jurisdictional matters were raised.

Property Description:

The subject property is a “stand-alone” Calgary Co-op gas bar, convenience store and car wash of 2,551 sq. ft., situated on a parcel of 24,004 sq. ft. The land use designation is Commercial-Corridor 2. The subject property was constructed in 2007, and has been assessed using the cost approach, i.e., land value, plus Marshall and Swift value of the building.

Regarding Brevity

In the interests of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect the evidence presented and examined by the parties before the Board at the time of the hearing.

Issues:

1. Has the cost approach used to assess the subject property resulted in an inequitable assessment?
2. Would the income approach result in a better estimate of market value for assessment purposes?
3. If the income approach is a better method of valuing the subject property, what should be the capitalization rate?

Complainant's Requested Value: \$1,260,000

Summary of the Complainant's Position

The subject property is a stand-alone, single-tenancy retail use. The assessment of the subject property is in excess of its market value for assessment purposes. The assessment has increased by 66.7 percent since 2009. Furthermore, the assessment is not fair and equitable considering the assessed values and assessment classifications of comparable properties. The valuation method used for the subject property, i.e., the direct sales comparison approach, is fundamentally flawed in both derivation and application. Due to the characteristics and physical condition of the subject property, the income approach would result in a more reliable estimate of market value for assessment purposes. The Respondent has ignored the downturn in real estate prices that occurred in 2009, and has failed to assess the subject property in a consistent manner with other income producing properties, contrary to the requirements of s. 293(1) of the *Act*.

The Respondent's *2010 My Property Report* confirms that there have been no development permits or building permits for the subject property in the last three years, indicating that there is no plan for redevelopment of the subject site. That means the assessed value cannot be determined on an expectation of future use because there is no evidence of any use other than the current use. To be considered as the highest and best use for a property, a potential use must pass a series of tests: it must be (i) legally allowable, (ii) physically possible, (iii) financially feasible, and finally, (iv) maximally productive. With respect to what is legally allowed on the subject site, the current zoning permits core commercial uses, including the current use. As for what is physically possible, the subject property consists of 14,553 (*sic*) sq. ft. of land area. Given the permitted uses of the current zoning, we agree that the subject site could support redevelopment.

The highest and best use of a property must be financially feasible. If the value of the land as vacant would exceed the value of the property as improved, then redevelopment would likely be the maximally productive use of the property. Nevertheless, as noted above, there have been no building or development applications for the subject property in the past three years. Now to the fourth test, maximally productive use. Considering the current market in Calgary, we suggest that the current use of the subject property is the most productive use as of the condition date stipulated by Section 289(2)(a) of the *Act*.

(2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31st of the year prior to the year in which a tax is imposed under Part 10 in respect of the property . . .*

Given Section 289(2)(a), would an assessor value vacant land based on a potential use as of December 31st of the assessment year? In all of the circumstances, it is submitted that the existing use and most likely continuing use for the subject property is a single-tenant retail use. Using the comparison approach to value, as the Respondent did, is in contravention of Section 293(1) of the *Act* and Sections 2 and 3 of the *Regulation*. On the basis of the mandatory requirement of Section 293 that assessment procedures and valuation standards be applied in a fair and equitable manner, it is suggested that the income approach should be used to determine the value of the subject property for assessment purposes, and that the cap rate should be 7.50 percent.

Summary of the Respondent's Position

Market value, not the method of valuation, is the issue. The subject property is a freestanding improvement consisting of a Calgary Co-op gas bar, convenience store, and carwash. The subject property has its own title, it is not part of a neighbourhood or community shopping centre. For 2011, the subject property has been assessed at \$2,700,000 based on the cost approach. The Complainant provided equity comparables of other gas bars that are part of neighbourhood or community centres, and have been assessed on the income approach. The Complainant's comparables are unlike the subject property in that they are not freestanding. They are part and parcel of neighbourhood or community shopping centres and cannot be sold separately. Even if a gas bar was on its own separate title, if it operated in conjunction with a shopping centre it would be assessed using the income approach. We have provided evidence of eighteen properties that, like the subject, are freestanding gas bars, and all of which have been assessed using the cost approach.

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

For the purpose of this decision, the term "gas bar" means a facility with gas pumps and any related improvements such as a convenience store and a carwash, and "freestanding gas bar" means a gas bar as defined situated on a parcel of land that has its own title, and that contains only the gas bar.

The Complainant argues for valuation of the subject property by the income approach, on grounds that the income approach would result in a more reliable estimate of market value for assessment purposes. In support of that argument, the Complainant says that the present use of the subject property is the most likely future use. The Complainant agrees that given the land use designation, or "zoning," of the subject property, redevelopment could occur, but is not likely. The Respondent's position is that redevelopment is more likely to take place where a gas bar is freestanding, rather than located on the property of a shopping centre.

In ARB 0547/2010, the decision that confirmed the 2010 assessment of the subject property done on the cost approach, the Board found as follows:

"The CARB finds that the Complainant has presented an appealing argument, but finds the alleged inequity rests more with a seemingly unfair advantage by way of lesser assessments accorded to shopping centre gas bars, than the subject and its peers being over-assessed. The compelling distinction between these two identical business operations is separate title."

This Board agrees that the compelling distinction between a freestanding gas bar and a gas bar that is part and parcel of a shopping complex is separate title. Separate title allows the freestanding gas bar to be sold on the open market, no subdivision required. Unlike gas bars that are anchored to a shopping centre, the subject property could drift off into the real estate market at any time, hence is more marketable. Furthermore, the subject property enjoys a good location on 16th Avenue NW, i.e., Highway #1, and the fact that it is not affiliated with the operation of a shopping centre may well mean that there are fewer constraints on redevelopment. In the view of the Board, the subject property is more likely to be sold or redeveloped than a gas bar that is part and parcel of a shopping centre. In the view of the Board this potential for sale or redevelopment is a characteristic of the subject property that falls within the meaning of section 289(2)(a) of the *Act*.

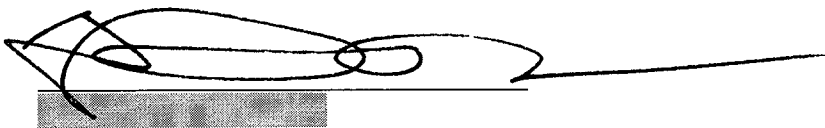
The Board agrees with the Respondent that there is no magic in any particular approach used in assessing property unless such approach is capable of producing a reasonably accurate estimate of market value. The subject property was assessed using the cost approach, an approach based on the market value of the land and the replacement cost of the improvements, less depreciation. The Complainant submitted that the assessment of the subject property is in excess of market value, but the evidence relied on by the Complainant were assessments of gas bars that were integral to shopping centres, or, in one or two instances, near shopping centres. All the aforementioned gas bars were assessed using the income approach. The Complainant adduced no other evidence to demonstrate that the assessed land value of the subject property fails to reflect market value, or that the assessed improvement value was not correct.

For the reasons given above, the Board is of the view that gas bars that are part and parcel of a shopping centre are not comparable to freestanding gas bars. The fact that freestanding gas bars near shopping centres have been assessed based on income does not alter that view. The Complainant relied on such freestanding gas bars as equity comparables, but failed to challenge the Respondent's rationale for using the income approach in assessing them, i.e., that they were operated in conjunction with shopping centres. In the result, the Board finds that the Respondent's comparables are in fact not comparable to the subject property, hence there is no evidence that the assessment of the subject property is inequitable, or fails to reflect market value. This finding obviates the second and third issues.

Board's Decision:

The assessment of the subject property is confirmed at \$2,700,000.

DATED AT THE CITY OF CALGARY THIS 16 DAY OF November 2011.



Presiding Officer

Exhibits

C-1, Respondent's Evidence Submission.

C-2, Composite Assessment Review Board Decision ARB 1569/2010-P

C-3, Composite Assessment Review Board Decision ARB 1569/2010-P

R-1, Respondent's Assessment Brief

<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Retail	Stand Alone	Income Approach	Capitalization Rate

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.*