

**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:

Louise Block Capital CORP. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***P. Petry, PRESIDING OFFICER
Y. Nesry, BOARD MEMBER
D. Steele, BOARD 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: 068125301

LOCATION ADDRESS: 1102 MacLeod Trail S.E.

FILE NUMBER: 68557

ASSESSMENT: \$1,220,000

This complaint was heard on 15th day of October, 2012 in boardroom 3, at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue N.E. Calgary, Alberta.

Appeared on behalf of the Complainant:

- M. Cameron and D. Genereux

Appeared on behalf of the Respondent:

- J. Lepine

Property Description and Background

The subject property is a vacant land parcel consisting of 10,495 square feet (sq. ft.) with frontage along MacLeod Trail. The City of Calgary Light Rail Transit passes directly under the subject lands. The subject property is owned by the City of Calgary (City) and leased to the Complainant for parking use. The 15 year lease commenced on July 1st, 1998 and will expire on June 30th, 2013.

The subject property has been valued by the Assessor using the sales comparison method which, in this case results in the application of a base rate of \$155 per sq. ft. adjusted by -15% for light rail transit, -15% for abutting train track and +5% for corner influence. The Complainant challenges the basis for the assessment, claiming that the subject is atypical and that the declared public use of the property along with the short time remaining on the lease requires that a different set of valuation parameters be applied.

Issues:

- [1] Is the subject property atypical because of its encumbrances and short life?
- [2] Is the Complainant's approach to value appropriate given the circumstances surrounding this property?

Complainant Requested Value:

- [3] The Complainant requests a reduction in the assessment to \$110,000.

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

- [4] The CARB concludes that the subject property is atypical and cannot compete in the open market place on equal footing with other properties.
- [5] The CARB accepts the valuation approach and outcome as proposed by the Complainant.

Summary of the Party's Positions

Complainant

[6] The Complainant explained that the subject property is owned by the City of Calgary (City) and is leased to Louise Block Capital CORP. for a term of 15 years. This term expires June 13th, 2013 and the City on February 1, 2012, gave notice that it would not be renewing the lease. Under the terms of the lease the tenant must remove any chattels or improvements, fill and compact any excavations and leave the lands in a neat, clean and level condition. The Complainant provided an extract from the lease and the City's letter of February 1, 2012 to support these facts.

[7] These lands have been held by the City for municipal purposes and in early 2012 the City announced its plans to develop a new park in this area which will incorporate the subject lands. The City's published materials respecting the new park show how the development has been planned and discusses opportunity for public input and general timing for the development. The Complainant argues that these lands have been held for municipal purposes and have now been committed to that intended purpose. Therefore the subject lands are not available on the market and cannot be compared to private or public lands that are not similarly encumbered.

[8] The Complainant indicated that it has a short and finite term during which it is able to recapture its investment and therefore argued that best method to value the subject property, under the presenting circumstances, is the capitalized income approach. The Complainant provided evidence showing the typical income parameters the City has applied to other parking facilities and these were applied to the subject but with significant modification to the capitalization rate (cap rate) in recognition of the short remaining life issue. The Complainant developed its proposed cap rate as follows:

- Typical cap rate 7.75%
- Less recapture rate (100%/15years) 6.67%
- Assessed discount % 1.08%
- Plus ½ remaining recovery period (100%/2years) 50.00%
- Total of discount and recapture values (short life cap rate) **51.08%**

[9] The Complainant applied the short life cap rate to the typical income of \$59,400, which produces a value of \$116,280. The Complainant's requested value is \$110,000.

[10] The Complainant referred the CARB to other CARB and Municipal Government Board (MGB) decisions where encumbered municipal lands resulting in short life considerations have been decided in a similar manner to that requested in this case. Of particular note is CARB 1391/2012-P that deals with almost identical issues respecting an adjacent property to the subject also leased to Louise Block Capital CORP.. The CARB in that case accepted the Complainant's position as it has been presented in this case and reduced the assessment accordingly. The Complainant argued that the facts are the same in the previous case to those in the subject case and urged the CARB to reach the same decision.

Respondent

[11] The Respondent argued that the Complainant has known that the lease could terminate

at the end of the fifteen year period and that is all that is happening. There have been no previous appeals or complaints with respect to assessments at typical market values. The Respondent argued that the subject should not be singled out for special treatment but rather should be assessed in the same manner as other similar properties in the neighbourhood.

[12] The Respondent indicated that the subject has been assessed using the direct sales comparison approach. A land rate of \$155 per square foot (sq. ft.) has been established for this market area of the Beltline and after -15% adjustments for both "light rail transit" and "abutting train track" influences, the assessment calculates to \$1,220,000. This assessment is fair and equitable with other similar properties.

[13] The Respondent argued that the income approach in this case cannot possibly produce a value approximating the subject property's market value as it is not being utilized at its highest and best use. The Complainant has not provided the CARB with the actual income for the subject and this information may not support the Complainant's income projection.

[14] The Respondent presented five Beltline sales in support of the land value of \$155 per sq. ft.. These sales produced a mean residual land rate of \$172 per sq. ft., a median rate of \$153 per sq. ft. and a weighted average of \$160 per sq. ft.. The Respondent also provided equity comparables to show other similar property assessments are based on the same criteria.

[15] The Respondent referred the CARB to a number of previous CARB decisions stating that these decisions support the position the Respondent is taking in this case.

Findings and Reasons for the Board's Decision:

Issue 1: Typical vs Atypical

[16] The Complainant argued that the subject property is atypical and cannot be assessed as though it has no encumbrances and is similar to other vacant land parcels. The Respondent on the other hand sees no reason whatsoever to value the subject property in a different manner than any other vacant land in the Beltline. The subject property is held by the City for immediate or future municipal purposes. The short term lease with short termination provisions would appear to be in the City's best interest and in keeping with the intended purpose. The City has not renewed the current lease and has announced plans to develop a park for public use. The City also has constructed its light rail transit directly below these lands. Based on these significant encumbrances the CARB finds that the subject land is not typical and cannot be assessed as though these encumbrances do not exist. These lands cannot be sold in the typical environment by a willing seller to a willing buyer as they have already been dedicated to municipal uses by way of light rail transit and a public park.

[17] The CARB concludes that given the uses present and future that have already been decided, there could only be a few short term and nonintrusive interim uses for the subject land and parking would be an obvious choice. The current tenant has less than two years to benefit from the use of the subject property given the clean up requirements that must be completed before June 30, 2013. The CARB finds that the subject property is atypical and should be assessed as such.

Issue 2: Valuation Approach

[18] The Complainant has brought forward several CARB and Municipal Government Board decisions dealing with atypical and short life matters. These decisions are helpful as they set out approaches to manage the valuation of properties with similar encumbrances. The CARB in this case adopts similar reasoning and the same base decision as was reached in CARB 1391/2012-P. This decision is with respect to an adjacent parcel of land where the facts are the same as for the case before this Board.

[19] The CARB gives little weight to the assessment and supporting evidence brought forward by the Respondent as the Respondent has failed to recognize the realities that are present and binding on the subject property.

[20] The Complainant has taken a fairly aggressive approach; however the Respondent has not offered any evidence in the alternative which recognizes the short life and atypical encumbrances associated with this property.

[21] For all of the above reasons the CARB has decided to accept the Complainant's income based short life valuation that results in a value of \$116,280.

Summary

[22] The subject lands are owned by the City and currently are encumbered with the light rail transit tunnel and are soon to be used for a city park. The Respondent had assessed the subject land as though the full fee simple interests were available to trade on the open market. This is not the case as the land is held, used and dedicated for immediate and exclusive use by a level of government that being the City of Calgary. The Complainant, following the approach use is similar cases, has valued the property using the income approach and a modified cap rate to deal with the short life and the recapture issues. The CARB decision is to accept the Complainant's valuation and set the assessment for the subject property at a truncated value of \$116,000.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 6th DAY OF Nov 2012.



Paul Petry, Presiding Officer

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

| NO. | ITEM |
|------------|---------------------------|
| 1. C1 | Complainant Disclosure |
| 2. C2 | CARB Decision 1391/2012-P |
| 3. R1 | 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*

FOR ADMINISTRATIVE USE

| Subject | Property Type | Property Sub-Type | Issue | Sub-Issue |
|------------|---------------|-------------------|------------|------------|
| Commercial | Vacant Land | Surface Parking | Short Life | City Lease |