

**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:

***Lazy B Corporation
(as represented by Altus Group Limited), COMPLAINANT***

and

The City of Calgary, RESPONDENT

before:

***J. Dawson, PRESIDING OFFICER
D. Pollard, MEMBER
J. Lam, MEMBER***

This is a complaint to the Calgary Composite Assessment Review Board [CARB] 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: 101007904

LOCATION ADDRESS: 5908 Macleod Trail SW

LEGAL DESCRIPTION: Plan 4269HS; Block 1; Lot 1

HEARING NUMBER: 68049

ASSESSMENT: \$ 4,170,000

- [1] This complaint was heard on the 29 day of October, 2012 at the office of the Assessment Review Board [ARB] located at Floor Number 4, 1212 31 Avenue NE, Calgary, Alberta, Boardroom 2.
- [2] Appeared on behalf of the Complainant:
- B. Neeson Agent, Altus Group Limited
- [3] Appeared on behalf of the Respondent:
- E. D'Altorio Assessor, City of Calgary
- [4] The following individual was present for all or part of the proceedings and did not appear on behalf of a party:
- W. Paterson Calgary Assessment Review Board

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

Preliminary Issue 1 - Evidence

- [5] The Complainant and the Respondent requested to bring forward all evidence, comments, questions, and answers articulated during previous hearings, and heard before this Board to this hearing: CARB 2320/2012-P, CARB 2323/2012-P, and CARB 2324/2012-P.
- [6] **The Board determined, from the following listed decisions: CARB 2320/2012-P, CARB 2323/2012-P, and CARB 2324/2012-P, that all evidence, comments, questions, and answers, is to be brought forward and incorporated just as if it were presented during this hearing.**
- [7] No additional procedural or jurisdictional matters were raised.

SECTION B: Issues of Merit

Property Description:

- [8] Constructed in 1962, the subject – 5908 Macleod Trail SW, is a retail strip shopping centre located along Macleod Trail just south of 58 Avenue SW in the community of Manchester Industrial.
- [9] The Respondent prepared the assessment on the direct comparison approach showing no value for the 21,332 square foot improvement graded as a 'C' quality. The site area of 53,006 square feet is valued on its land value only as if vacant.

Matters and Issues:

[10] The Complainant identified two matters on the complaint form:

Matter #3 - an assessment amount
Matter #4 - an assessment class

[11] Following the hearing, the Board met and discerned that this is the relevant question which needed to be answered within this decision:

1. *How should the subject site be assessed? 'Direct Comparison Approach' or 'Income Approach'?*

Complainant's Requested Value:

	Income Approach	Alternative Direct Comparison Approach
On complaint form:	\$3,370,000	
Within disclosure:	\$3,450,000	\$3,339,378
Confirmed at hearing:	\$3,450,000	\$3,330,000

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

Matter #3 - an assessment amount

Question 1 *How should the subject site be assessed? 'Direct Comparison Approach' or 'Income Approach'?*

Complainant's position

[12] The Complainant argued that the subject property is retail property used to generate an income and should be equitably assessed using the income approach at a market rental value of \$14 per square foot. In the alternative, if the Board finds for the direct comparison approach appropriate, the Macleod Trail land value should be valued at \$60 per square foot for the first 20,000 square feet. (C1 pp. 2-4)

[13] The Complainant cited numerous court and Board decisions to suggest their methodology is supported by the Board and courts throughout Canada and the United States of America. (C1 pp. 15-16)

[14] The Complainant reviewed the subject details including; 2012 Property Assessment Notice, Property Assessment Public Report, 2012 Assessment Explanation Supplement, maps, and photos. (C1 pp. 10-19)

[15] The Complainant provided information regarding highest and best use; excerpts of the 1996 Alberta Land Use Policies, excerpts of the Act, excerpt of an unknown document, excerpts of 'The Appraisal of Real Estate – Second Canadian Edition' © Appraisal Institute of Canada, and

excerpts of *'Workshop 158 – Highest and Best Use Student Reference Manual'* © 2010 International Association of Assessing Officers. (C1 pp. 21-65)

- [16] The Complainant included a one page report showing how they established their requested Commercial – Corridor [*C-COR*] land value; *'2012 Commercial Sales Summary – Macleod Trail C-COR'*. (C1 p. 67)
- [17] The Complainant outlined their requested assessment showing the inputs of market rental rate, vacancy allowance, vacant space shortfall allowance, non-recoverable allowance, and capitalisation rate. An alternative request is also supplied using the direct comparison approach. (C1 pp. 68-78, 86 and 87)
- [18] The Complainant supplied two previous Board decisions on similar properties on Macleod Trail and 16 Avenue NW. The Board, in those cases, determined that the income approach is appropriate and the rental rate should be \$14 per square foot for 2011. *CARB 2060/2011-P* and *CARB 2061/2011-P*. (C1 pp. 79-84)
- [19] The Complainant provided a second document of 133 pages of information regarding *C-COR* land rates and sales on Macleod Trail and throughout the city. (C2 pp. 1-133)

Respondent's position

- [20] The Respondent indicated that the subject is assessed using the residual land rate method to establish vacant land rates. The values used are consistent with *C-COR* land assessed values along Macleod Trail at \$100 per square foot. (R1 p. 3)
- [21] The Respondent summarised the Retail Property Valuation approaches taken by the Respondent for all retail properties within the municipality. (R1 p. 4)
- [22] The Respondent reviewed the subject property including; 2012 Property Assessment Notice, 2012 Assessment Explanation Supplement – Commercial Land and Cost report, photos and orthorectified image. (R1 pp. 6-10)
- [23] The Respondent provided equity comparables to show the equitable treatment of similar properties. (R1 pp. 13 and 29)
- [24] The Respondent prepared a table to summarise the comparables presented by the Complainant. The five comparables consisted of four properties that are not freestanding retail locations but rather are located within community or neighbourhood centres and as a result were assessed on the income approach. One is a freestanding location that is comparable and assessed using the direct comparison approach. (R1 p. 14)
- [25] The Respondent included information with a heading *'Complaint's Comparables'*, it appears to be information regarding the use of effective age within a Marshall & Swift calculation on the cost approach. The section concludes with a sheet labelled *'Altus Comps'* that shows sales along Macleod Trail with two columns – the differences being; *'Altus effective age'*, and *'Using effective at actual age'*. (R1 pp. 15-27)
- [26] The Respondent presented their 2012 Commercial Land Values table to show how the Respondent developed land rates for commercial properties along Macleod Trail (identified as

MT2, MT3, MT4, and MT5). The rates were developed based on four sales: 1) one at 4504 17 Avenue SE that is adjusted for contamination and corner lot influence; 2) the second sale is at 4523 Monterey Avenue NW; 3) the third sale is at 505 16 Avenue NE; and 4) the last sale is at 210 16 Avenue NE. The report concludes for Macleod Trail properties that, for the first 20,000 square feet, \$100 per square foot is the value; for 20,001 to 155,000 square feet, \$60 per square foot is the value; and, area greater than 155,000 square feet, \$28 per square foot. (R1 p. 32-42)

- [27] The Respondent provided information on a sale located at 6550 Macleod Trail SW. (R1 pp. 43-48)
- [28] The Respondent provided a map entitled '2010 Average Daily (24hr) Weekday Traffic Volumes' (R1 p. 49)
- [29] The Respondent enclosed several pages of definitions, policy, regulation, and *the Act*. (R1 pp. 52-64)
- [30] The Respondent addressed change in assessed value from a year-to-year basis in a one-page report. (C1 p. 66)
- [31] The Respondent included their policy on valuing improved properties as if vacant to maintain equity; *"This methodology ensures that equitable assessments between properties is maintained."* (R1 pp. 68-92)
- [32] The Respondent provided their policy on performing a highest and best use analysis; *"It is the opinion of the ABU (Assessment Business Unit or Respondent) that a highest and best use analysis does not have to adhere to such rigorous standards as is applied for appraisal purposes."* (R1 pp. 93-105)
- [33] The Respondent concluded that the assessment is correct, fair and equitable and requested that the Board confirm the assessment. (R1 p. 51)

Complainant's rebuttal position

- [34] The Complainant disclosed rebuttal documents of 261 and 113 pages with no presentation. (C3)

Board's findings

- [35] The Complainant cited numerous court and Board decisions to suggest their methodology is supported by the Board and courts throughout Canada and the United States of America. The Board, in this case, cannot rely on these decisions because the Complainant failed to provide the referenced material and show the relevance of these decisions to this case. Many of the referenced decisions were discussed in a previous Board decision; *CARB 2020/2012-P*.
- [36] Any of the three valuation approaches are acceptable – sales (direct) comparison approach, income approach, or cost approach; however, the valuation approach that produces the most reliable result is the one that should be selected. Typically, the income approach to value produces the most reliable result for income producing properties. The Respondent must reflect market value with their assessment; therefore, if the income approach does not produce the

most reliable result, than the Respondent should use another approach to value. In the case of the subject, the Board finds the direct comparison approach is the most appropriate.

[37] The Board considered the 2012 Commercial Land Values chart provided by the Respondent. Within the evidence; there is no indication to suggest the subject is contaminated, there is no evidence that the comparable located at 4504 17 Avenue SE is contaminated, there is no evidence that a contaminated property is worth 30% less than a non-contaminated property, and there is no evidence that a corner lot is worth 5% more than a non-corner lot. The Board also has no evidence to demonstrate that properties in northwest, northeast and southeast Calgary are similar in value to properties in southwest Calgary.

[38] The Respondent concluded in their sales chart that Macleod Trail submarkets of MT2, MT3, MT4 and MT5 are valued at \$100 per square foot for the first 20,000 square feet, \$60 per square foot for 20,001 to 155,000 square feet, and \$28 per square foot for remainder. The Board is unable to see the rationale for the three ranges of value from the evidence provided – the sales are for property under 20,000 square feet – no evidence indicates a break point over 20,000 square feet. However, the Complainant provided no evidence or argument against the assessed values set by the Respondent for commercial land greater than 20,000 square feet.

[39] The Board considered six sales comparables in evidence by both parties:

1. **505 16 Avenue NE** – the Board accepts this sale without the corner adjustment because there is no evidence to demonstrate that a corner lot is worth 5% more than a non-corner lot.
2. **210 16 Avenue NE** – the Board accepts this sale as presented.
3. **5720 Macleod Trail SW** – the Board accepts this sale and relies on the calculations provided by the Complainant (adjusted for GST).
4. **7212 Macleod Trail SE** – the Board accepts this sale and relies on the calculations provided by the Complainant (adjusted for GST).
5. **7425 Macleod Trail SW** – the Board accepts this sale and relies on the calculations provided by the Complainant (adjusted for GST).
6. **9110 Macleod Trail SW** – the Board accepts this sale and relies on the calculations provided by the Complainant (adjusted for GST).

[40] As there is agreement, the Board accepts the assessed value of \$60 per square foot value for the 20,001 through 155,000 square foot range and \$28 per square foot value for areas 155,001 square feet and greater. Using reverse math calculations, the Board is able to find the correct value for the first 20,000 square feet of the commercial land comparables.

[41] In the chart below the Board finds, in this case, that the value for commercial land along Macleod Trail is \$80 per square foot for the first 20,000 square feet. The Board chose to round down to the nearest ten dollars.

Address	Time Adjusted Purchase Price	Land Area – Square Feet	Marshall & Swift Costing Improvement Value – adjusted for GST	Underlying Land Value	155,001 square feet or greater at \$28.00	20,001 to 155,000 square feet at \$60.00	1st 20,000 square feet at \$80.00	Land Value / square foot 1st 20,000
210 16 Avenue NE	\$625,000	6,241	-	\$625,000	-	-	\$625,000	\$100.14
505 16 Avenue NE	\$1,931,250	16,988	-	\$1,931,250	-	-	\$1,931,250	\$113.68
5720 Macleod Trail SW	\$3,500,000	31,363	\$1,535,952	\$1,964,048	-	\$681,780	\$1,282,268	\$64.11
7212 Macleod Trail SE	\$2,900,000	44,866	\$458,932	\$2,441,068	-	\$1,491,960	\$949,108	\$47.46
7425 Macleod Trail SW	\$2,900,000	23,980	\$956,957	\$1,943,043	-	\$238,800	\$1,704,243	\$85.21
9110 Macleod Trail SW	\$15,000,000	165,528	\$5,046,667	\$9,953,333	\$294,784	\$8,100,000	\$1,558,549	\$77.93
Median		27,672						\$81.57
Mean		48,161						\$81.42

[42]

The Board finds, for the subject's 53,006 square feet, that the value for the first 20,000 square feet is \$80 per square foot, and for the remaining 33,006 square feet, the value is \$60 per square foot. An influence adjustment has not been applied as there is no evidence to support the adjustment.

Address	Purchase Price	Land Area – Square Feet	Marshall & Swift Costing Improvement Value	Underlying Land Value	155,001 square feet or greater at \$28.00	20,001 to 155,000 square feet at \$60.00	1st 20,000 square feet at \$80.00	Land Value / square foot 1st 20,000
Subject		53,006	\$0	\$3,580,360	\$0	\$1,980,360	\$1,600,000	\$80.00

Matter #4 - an assessment class

[43]

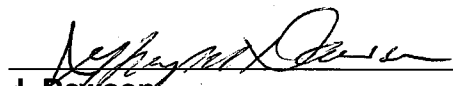
The Board did not hear any evidence requesting a change in an assessment class from its current non-residential designation.

Board's Decision:

[44]

After considering all the evidence and argument before the Board it is determined that the subject's assessment is changed to a truncated value of \$3,580,000 which reflects market value and is fair and equitable.

DATED AT THE CITY OF CALGARY THIS 21 DAY OF December 2012.


J. Dawson,
 Presiding Officer

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

NO.	ITEM
1.	C1 Complainant Disclosure – 108 pages
2.	C2 Complainant Additional Disclosure – 133 pages
3.	R1 Respondent Disclosure – 107 pages
4.	C3 Complainant Rebuttal Document – 261 pages
5.	C4 Complainant Additional Rebuttal Document – 113 pages

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.*

Municipal Government Board use only: Decision Identifier Codes

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Strip Centre	Sales Approach	Land Value