

**CALGARY  
COMPOSITE 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:**

***Eisenberg's Properties Ltd. (The tenant, Peacock Boutique Ltd. as "a taxpayer" is the )***

**COMPLAINANT**

**And**

***The City Of Calgary, RESPONDENT***

**Before:**

***D. H. Marchand, PRESIDING OFFICER  
D. Cochrane, MEMBER***

The Panel hearing and deciding the matter of complaint consists of a quorum pursuant to 458(1) and (2) of the Act.

**Quorum**

**458(1)** Two members of a local assessment review board referred to in section 453(1)(d)(i) constitutes a quorum of the local assessment review board.

**(2)** The provincial member and one other member of a composite assessment review board referred to in section 453(1)(c)(i) constitutes a quorum of the composite assessment review board.

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:

<b>ROLL NUMBER:</b>	<b>058111600</b>
<b>LEGAL DESCRIPTION:</b>	<b>Plan 24480; Blk. 1; Lots 13,14</b>
<b>LOCATION ADDRESS:</b>	<b>140 - 10 ST NW</b>
<b>HEARING NUMBER:</b>	<b>62624</b>
<b>ASSESSMENT:</b>	<b>1,160,000</b>

This complaint was heard on 29<sup>th</sup> day of September, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *J. Duban and A. Huskinson*

Appeared on behalf of the Respondent:

- *E, Lee and K Hess*

Both Parties swore an oath and no objection was raised as to the composition of the CARB Panel.

**Property Description and Background Facts :**

- The subject is described by the Complainant as a retail building located in the community of Hillhurst/Sunnyside and within the shopping district known as Kensington Shopping District. The one-storey retail building was built in 1911 with very few upgrades. It has approximately 2,660 square feet of main floor space and 2,060 square feet of lower storage space; a total of 4720 square feet. The subject property has a new lease, dated August 1, 2010, for a term of 5 years (5 years renewal option) at the rate of \$15.70 per sq. ft
- The land use designation is C-COR1.
- The parcel has a site area consisting of 5,988 square feet.
- The previous years assessment was predicated on the subject's capitalized typical income and an assessment of \$592,000 was concluded.
- The Respondent submits under the heading ***Land Valuation for Improved Properties*** the following statement:  
*The City of Calgary has derived a land value as well as an improved value for all properties in its jurisdiction. When a improved property is of such an age, design or other influence that the property is incapable of producing a capitalized income value which exceeds the established land value the land value represents the market value of the property.*
- The 2011 assessment is based on the subject's land value only.
- Within the subject's Assessment Review Board Complaint form under *Section 5 – Reason(s) for Complaint* the Complainant wrote; *The assessment should reflect the actual value of the property. The rental rate on the Business is reasonable; that rate should be applied to the calculation of the market value of this improved/occupied property.*

**Issues:**

Does the direct comparison approach that compares the subject to similarly properties yield an assessment at the market value standard or should the capitalized income approach based on the actual be used?

**Legislation:**

***The Municipal Government Act, R.S.A. 2000, c. M-26***

**1(1)** In this Act,

- (n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

**289(2)** Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property.

**467(1)** An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

**(3)** An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

***Matters Relating to Assessment and Taxation Regulation (AR 220/2004)***

**2** An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

**Complainant's Requested Value:**

The Complainants at the hearing revised their requested assessment amount to \$650,000. This request is based solely on wanting equity with the property at 130 – 10<sup>th</sup> street NW; a couple of doors from the subject. The comparable property's assessment was predicated on it's capitalized income at \$1,100,000 for 7,980 square feet of space. This equates to a rate of \$138.00 per sq. ft. of building area. The complainant is requesting that the same rate of \$138.00 per sq. ft. be applied to the subject's total area of 4,720 sq. ft. (\$138.00 x 4720 sf = \$650,000).

**The Respondent requested a CARB decision:**

The Respondent at this point makes the claim that at the Complainants has not provided any evidence in support of the requested assessment and that the onus to defend the assessment has not been made.

**The Board's Decision:**

- The tenant who is responsible for the property tax had noted a sharp increase in taxes as the assessment year over year increased from \$592,000 in 2010 to \$1,160,000 in 2011. The tenant has concluded that there is perhaps some added economic viability in the subject property and has entered into a new 5 year lease with a 5 year renewal option. The owner must be of similar mind or would have chosen an alternate use for the property.
- The CARB had a query as to the year over year increase and is satisfied that a change in assessment methodology took place in 2011. The CARB was advised that a valuation predicated on the "land value only" is greater than the subject's valuation based on level of income the subject property can achieve.
- The CARB is interested in the support for the "land value only rate" and the reason why the comparable cited at 130 – 10<sup>th</sup> Street NW was assessed on its potential typical net income.

**Respondent's Position:**

The Respondent submitted 11 equity assessment comparables along either 10<sup>th</sup> street or Kensington Road. Each of the 2011 assessments are based on a land only rate of \$195.00 per square foot; the same as the subject.

Also provided was the supporting documents and data relative to three improved property sales within the subject's location; two on 10<sup>th</sup> street and 1 on Kensington Road (ref. exhibit R1, page 18). The sale on 10<sup>th</sup> street at 120 - 10<sup>th</sup> street sold for \$1,600,000 in August 2008. This property has a land area is 2,994 sq. ft. and is improved with a 1963 two-storey retail building with a combined area of 3,993 square feet. The second sale on 10<sup>th</sup> street at 225 - 10<sup>th</sup> street sold for \$1,654,000 in July 2010. This property has a land area is 3,741 sq. ft. and is improved with a 1980 two-storey retail building with a combined area of 4,000 square feet.

The comparable at 130 – 10<sup>th</sup> street is assessed at \$1,100,000 based on the income approach applied to stand alone retail stores with 7,980 square feet of leasable space. The comparable has a land area of 5,666 square feet.

The Respondent points out that for this comparable the application of a "land only rate" at 195.00 per sq. ft. would yield the same assessment.

**Board's Findings and Reasons:**

The rate of \$138.00 per sq. ft. developed by the Complainant is based on the relationship of comparable's lease space to its assessment. It is not reasonable to apply that same relationship to a space that is considerably smaller.

The sales of improved lands on the same street and in close proximity to the subject are over 1.5 million dollars. An assessment at the Complainant's requested amount is not reasonable.

The CARB did not receive any "market value" supporting evidence that could serve as the base for the requested assessment amount.

**Board's Decision:**

The assessment is confirmed at \$1,160,000.

DATED AT THE CITY OF CALGARY THIS 28 DAY OF OCTOBER 2011.



**D. H. Marchand**  
**Presiding Officer**

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

<b>NO.</b>	<b>ITEM</b>
1. C1 - complete with pictures at the hearing	Complainant Disclosure
2. C2 - complete with pictures at the hearing	Complainant Rebuttal
3. R1 complete with pictures at the hearing	Respondent Disclosure

**BOARD ORDERS AND LEGAL CASES PROVIDED IN SUMMARY:**

2315/2010-P

0867/2010-P

0818/2010-P

0819/2010-P

1852/2011-P

1853/2011-P

British Columbia Supreme Court - Bentall Retail Services Inc. v. Vancouver Assessor, Area No. 09.

Court of Appeal for British Columbia Assessor for Area 9(Vancouver) and Bramalea Ltd.  
*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.*

*For MGB Administrative Use Only*

<i>Decision No. 2482/2011-P</i>					<i>Roll No. 058111600 (Calgary)</i>				
<u><i>Appeal Type</i></u>	<u><i>Property Type</i></u>	<u><i>Sub Property Type</i></u>	<u><i>Issue</i></u>	<u><i>Sub - Issue</i></u>					
CARB	Retail	Stand alone	Development land	Zoning					