

**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

Lazy B Corporation., (as represented by Altus Group Ltd.), COMPLAINANT

And

The City Of Calgary, RESPONDENT

Before

M. Chillbeck, PRESIDING OFFICER

J. Joseph, MEMBER

D. Pollard, 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: 067243105

LOCATION ADDRESS: 919 – 9 AV SW

HEARING NUMBER: 63260

ASSESSMENT: \$2,340,000

This complaint was heard by the Composite Assessment Review Board on 4th day of October, 2011 at the office of the Assessment Review Board located in Boardroom 6 on Floor Number 4 at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- S. Sweeney-Cooper

Appeared on behalf of the Respondent:

- D. Grandbois

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

Neither party raised any objections to a member of the Board hearing the subject complaint.

There were no preliminary matters raised by either party.

Property Description:

The subject property is located on 9th avenue adjacent to and south of the CPR railway in the DT2E (Downtown 2 East) market zone in the downtown commercial area of the City of Calgary. It comprises of an office/retail building containing 3,000 sq. ft. on a parcel of land containing 10,011 sq. ft. The property is occupied by Crystal Glass.

Issues:

The Complainant identified the matters of an assessment amount and assessment classification on the Assessment Review Board Complaint (complaint form) and attached a list outlining several reasons for the complaint. At the hearing the complainant advised that the assessment amount is under complaint. The Board summarized the issue as follows:

1. The assessed base land rate is not fair and equitable.
2. The assessment should be determined as improved by the income method.

Complainant's Requested Value:

\$1,755,000 per the complaint form.
\$1,659,300 as land value or
\$530,000 as improved value via the income method per
the evidence disclosure.

Board's Findings in Respect of Each Issue:

The subject property, though improved with an office/retail type building, is assessed on the basis of the value of the land without an improvement because the capitalized income value as an improved property is less than its land value.

In assessing the property the Respondent has applied a base rate of \$275 per sq ft of land area and applied influence factors which in this case recognizes the negative influence of abutting the train track in the amount of a negative 15 per cent of the base land rate which results in an

effective assessed rate of \$234 per sq ft.

1) Assessed Base Land Rate

The Complainant contends that the base land rate should be \$195 per sq ft based on four sales, dated October, 2009 to July, 2010, of vacant land in the downtown area of Calgary. These sales are the most recent sales available in downtown Calgary and are in the analysis year prior to the valuation date of July 1, 2010. The Board finds that these sales do not support the Complainant's request. Two sales are in the EVG (East Village) market zone, one of which is a "distress court order" sale. The other two sales are in the same market zone as the subject and are either a "distress court order" or "distress foreclosure" sale.

The Board finds that the two EVG sales are located in an inferior market zone. Land in the EVG market zone is assessed at a base rate of \$145 per sq ft versus land in the DT2E zone at \$275 and land in the DT2W zone at \$180. These rates recognize the different market values for land for each of the market zones.

The Respondent provided three vacant land sales in the subject market zone DT2E that range in sale date from August, 2007 to August, 2008 with a mean of \$421 and a median of \$367, not adjusted for time, in support of the assessed base rate of \$275 per sq ft. The Board finds the Respondent's land sales analysis, although not time adjusted, persuasive support for the assessed base rate of \$275 per sq ft for DT2E zone.

Also, seven sales were provided in market zone DT2W, adjacent to the west of the subject zone, that range in sale date from November, 2006 to July, 2009 with a mean of \$241 and a median of \$243, not adjusted for time, in support of the assessed base rate of \$180 per sq ft. The Board finds the DT2E sales support of the assessed base rate of \$275 for the subject land and the DT2E and DT2W sales, not adjusted for time, support the fact that the market zones as established by the Respondent each have different market land rates.

The Complainant provided the Respondent's vacant land sales analysis for four sales in DT1 and two sales in CHNA (Chinatown). The DT1 sales range in sale date from May, 2007 to October, 2008 with a mean rate of \$589 and median rate of \$566, not adjusted for time, in support of the \$375 per sq ft assessed base rate. The CHNA sales range in date from December, 2006 to May, 2007 with a mean and median rate of \$340, not adjusted for time, in support of the assessed base rate of \$180 per sq ft. This analysis persuaded the Board that the market zones have different market land rates.

The Board finds the distress sales are not reflective of market value as defined in the Municipal Government Act (MGA). Section 1(1) of the Municipal Government Act defines market value as follows:

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

These properties were not sold by a willing seller as defined in the Act; the seller was forced to sell the property.

The Board also finds in evidence a paired land sale, 919 – 5 Av SW, which sold under duress in May, 2009 at \$349 per sq ft and subsequently sold in November, 2010 at \$424 per sq ft, a

21.4% increase. The Board recognizes that the November sale is post facto the valuation date of July 1 however it sold in the relevant assessment year. The Board placed weight on the November sale that indicates a market sale price is greater than a "duress" sale price. This sale supports the assessed base rate of \$275 for the subject land.

2) Assessment As Improved by the Income method

The Complainant also argued that the subject should be valued as an improved property by the capitalized income method. In so doing the estimate of value was determined to be \$530,000.

The Complainant made reference to highest and best use workshop material and quoted as follows;

"Because the assessment of a property is an annual function, or at least a periodic function, the market value established is an assessment that should really reflect the highest and best use of the property in the immediate future. This time frame constraint tends to eliminate the speculative element from a highest and best use analysis in an assessment function. If an assessor/appraiser knows the use of a property over the next year and that he/she will be held accountable for his/her estimate of property value for a period of one year, then he/she generally does not have to speculate what the highest and best use of the property is or will be."

The Complainant argued there is an over supply of lots for development and a limited demand for these lots due to the restrained market and therefore the subject property should be valued as an improved property based on its income producing potential, not on a speculative potential.

The Board notes that the workshop material says "some basic characteristics/thoughts that should be considered in any highest and best use analysis:" and among other considerations says as follows.

"The analysis of an improved property determines highest and best use if the property were vacant and the highest and best use as currently improved."

"The highest and best use as if vacant may be different from the highest and best use of the property as currently improved. As improved, it may be necessary to modify, remodel, repair, renovate or alter the improvements to bring them to the property's highest and best use. The highest and best use of the property as currently improved will cease if the value of the land as vacant, plus the cost of removing the improvements exceeds the property value as currently improved."

In this case there is no dispute that the subject property is improved with a 3,000 sq ft building that is currently used by Crystal Glass to supply automotive services. The Complainant argued that the estimated value of the land as improved is \$530,000 and agreed, when questioned by the Respondent, that their estimated value of the land, as though vacant, is \$1,659,000. This indicates to the Board that the value of the underlying land is significantly greater than its value as currently improved. The actual use may or may not represent the highest and best use as of the condition date. However, the market value of the subject property obviously lies in the land and not in its income potential as improved.

The Board finds the subject property should be valued as though vacant because its value as improved is less than its value as though vacant and finds the Complainant's sales evidence does not support a change to the assessed base rate. The Sales are in an inferior market location or are not valid market sales. The Board was persuaded by the Respondent's vacant land sales in the subject's market zone, although somewhat dated, support the assessed base rate.

Board's Decision:

The Board confirms the assessment at \$2,340,000.

DATED AT THE CITY OF CALGARY THIS 7 DAY OF November 2011.



M. Chilibeck
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure
2. R2	Respondent's Disclosure
3. R3	CARB 2110-2011-P

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.*

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Decision No. 046-2501-2011-P			Roll No. 067243105	
Complaint Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Low-Rise	Sales Approach	Land Value