

**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

***Canada Safeway Ltd.
(represented by Altus) COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before

***L. Yakimchuk, PRESIDING OFFICER
A. Blake, MEMBER
J. Pratt, 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:	080200603
LOCATION ADDRESS:	524 Elbow Dr. SW
HEARING NUMBER:	62779
ASSESSMENT:	\$14,230,000

This complaint was heard on October 18 and 19, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 - 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *A. Izzard, Altus Group Ltd.*
- *Cam Fong, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *E. Currie, City of Calgary Assessment Business Unit*
- *D. Satoor, City of Calgary Assessment Business Unit*

Jurisdictional and Procedural Matters:

Mr. D. Satoor, City of Calgary, asked that portions of the Rebuttal evidence submitted by Mr. A. Izzard be disallowed as they were submitted late. Mr. Satoor argued that the evidence had been received after 12:00 a.m. on the morning after the last day for disclosure. Citing MRAC 9(2) and further instructions from the General Chairman of the Board which had been issued to all stakeholders, he showed that in 2011 panel member files will contain only what has been lawfully disclosed (more specifically, only that data which has come in according to sections 4 and 8 of MRAC).

Mr. Izzard contended that there was precedent for files that had been sent prior to midnight but received after midnight to be included in the evidence, and further that he had e-mailed some of the excluded files prior to midnight (11:59 p.m.) but they had not been received by the Board until after midnight. He conceded that some files had been sent some time after midnight.

Mr. Satoor stated that the agent in question had sent files which arrived late several times in 2010 and 2011. The City had pointed this out, and it had been discussed as a preliminary issue in other CARB decisions. Given that this agent had not altered his behaviour to mitigate these late submissions, the City asked that the evidence be excluded as indicated by the regulations.

The Board studied MRAC and the letter from Calgary ARB Counsel citing the Chairman's decision (April 13, 2011). The legislation indicates an absolute deadline, and the letter indicates that while in the past previous CARBs have allowed late disclosure, this only happens for reasons of fairness if there are extenuating circumstances to justify it.

In this case a large part of the lengthy rebuttal evidence had been submitted in time, so the Complainant had the opportunity for a fair rebuttal. Further, the Complainant could not demonstrate any extenuating circumstances to justify late disclosure. For these reasons, the Board did not allow the late disclosure.

Property Description:

524 Elbow Dr. SW is the site of a B-quality 1971-built 24,569 square foot Safeway Store. The 1.6 acre (69,544 square feet) commercial (CS2100) property is located on a corner lot in the Cliff Bungalow community. Its land value assessment is \$14,230,000.

Issues:

Does the highest and best use approach to valuing this property best reflect its market value?

Complainant's Requested Value: \$4,000,000 or \$5,240,000 (equity) or \$2,820,000 (land)

Board's Reasons for Decisions in Respect of Each Matter or Issue:

The Complainant, Mr. A. Izard (Altus), on behalf of Canada Safeway, made a lengthy and comprehensive presentation in which he stated

1. That the Safeway store on the property contributes to the value of the property, therefore it should be assessed on its retail income value.

2. That the City had incorrectly applied the principles of highest and best use as vacant land without demonstrating what the site would be redeveloped into, based on a highest and best use analysis (*The Appraisal of Real Estate, Second Canadian edition, p. 12.1*) including, is it

- physically possible
- legally permissible
- financially feasible
- maximally productive

Mr. Izard argued that many types of redevelopment would be physically difficult because the property lies in a flood plain, according to City maps.

He questioned whether redevelopment would be legally permissible, taking into consideration that the property was under DC regulations, supported by the Community Land Use Policy for 524 Elbow Drive SW (p.111 C1-b).

He suggested that redevelopment would not be financially feasible, given that properties with little or no improvements on them are available but not being redeveloped in the current economic environment. He presented a large group of examples, with photographs, of downtown properties where redevelopment is halted, on hold, or did not begin (C-4).

Mr. Izard contended that the property is maximally productive with its current use as a grocery store. The improvements have been well maintained and the store is well-accepted in the community. Mr. Fong stated the store was renovated in 1992.

3. That the subject Safeway store should be assessed at \$13 per square foot, to reflect typical market rent for remote "B" grocery stores, giving the property a value of \$4,000,000. Mr. Izard stated that the current assessment is inequitable with other grocery stores, thereby making it less competitive with them.

4. That the current base land rate used by the City of Calgary was developed using sales which do not reflect current free market sales. Mr. Izard pointed out that there were very few land sales in the downtown area in the assessment period, and these were most commonly distress or non-arm's-length transactions. Given these limitations, he proposed that the Land Value for this parcel would be \$2,820,000 (less than the proposed Income Approach valuation).

Mr. Izard provided the Board with many previous CARB and QB decisions which he believes support his stand on these issues.

The Respondents, Ms. E. Currie and Mr. D. Satoor, on behalf of the City of Calgary, argued that

1. Using the Income Approach to evaluate this property would not reflect its market value, and would make its assessment inequitable with other similar properties. They provided an example of 508 – 15 Ave. SW (p.14, R-1) in which the *Value Using Assessed Income*

Parameters was \$406,500, but the April 16, 2010 sale proved a value of \$1,260,000. The Land Rate assessment was \$1,260,000, with a resulting ASR of 0.34 for the Income Approach assessment and a statistically valid ASR of 1.05 for the Sales Approach.

Further, Ms. Currie and Mr. Satoor pointed out that municipalities must assess properties at market value, which may not be reflected by the economic value of income which is a multi-year function.

2. Some of Mr. Izard's contentions were not accurate:

- The property is not located on a flood plain, but on a flood fringe. Adjustments are not made by the City for flood fringe property.

- The Direct Control bylaw for this lot has been lifted, and it is now designated C-COR (1 and 2), with the corresponding planning requirements, including possible FAR 1 and 3 (Pages 32, 33 R-1).

- There has been some market activity in the downtown, although it is fair to say that much of it is not arm's length. However, the land value is still more reflective of market value than the income value, as confirmed by existing sales trends.

- Considering the small footprint of the existing improvement and its age and condition, it is not maximally productive within the parameters of the land designation. Further, land designations are known to change and are not an absolute restriction on land value.

Ms. Currie presented a list of sales (p.48 R-1) of various beltline properties, four with improvements on them and one which is land only. The mean adjusted residual land rate per square foot of the properties (adjusted by removing the value of the improvements) is \$228, with a median of \$196, supporting the 2011 assessment rate of \$195.

On behalf of the Respondent, Ms. Currie and Mr. Satoor also presented a number of CARB and QB decisions which they believe support the City's current assessment process.

The Board reviewed the Complainant's and Respondent's presentations, and studied the decisions and appendices containing other documentation attached to these presentations. Having given serious consideration to the body of information, the Board found that

1. The Complainant's concerns about the Direct Control Zoning and the Flood Plain limitations were not accurate.

However, because the community had input into the previous Direct Control plans, there is a strong possibility that the same community would have concerns should any proposed changes to the use of the property exclude a grocery store. Given that concern, prospective redevelopment could be slowed by the community at the development permit level depending on what the proposed change might be.

Further, although the lot is not on a Flood Plain but on a Flood Fringe, and has no conditions imposed on it by the city, this does not preclude that prospective buyers would take the geophysical condition of the location into consideration. Mr. Izard's contention that this would disallow any building into the ground was not proven, but may have some merit.

Even with these possible limitations, there is still ample opportunity for a large variety of redevelopment to accommodate the FAR potential within the current land designation.

2. The Respondent is correct in that municipalities must use mass appraisal to find equitable assessments. It would be unfair for properties in the same area, with similar qualities, to be assessed in different ways. If, for example, a property with no improvements had a higher assessment than a very similar one with improvements, this would be inequitable. Although it may be argued that removal of the existing improvements would add extra costs for the prospective purchaser, it may also be argued that existing improvements can finance the cost of holding the property until it is feasible to redevelop it.

3. The City's list of sales supports assessing properties according to Land Value in cases where the value of the land exceeds the value of the income which the improvements are producing in any given year.

4. Although Mr. Izard, for Altus, had a very thorough and sometimes supportable argument about highest and best use, he did not provide enough evidence that the subject property was atypical. He did not prove Land Value was not a fair way to assess this property, nor that this property was so different from other properties assessed in the same way that it would be inequitable to use the Land Value assessment.

For these reasons, the Board supports the City of Calgary's assessment.

Board's Decision:

Assessment is confirmed at \$14,230,000.

DATED AT THE CITY OF CALGARY THIS 9th DAY OF November 2011.


Lana Yakimchuk
Presiding Officer

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

NO.	ITEM
1. C1a, b, c	Complainant Disclosure
2. C2	Appendices
3. C3a,b	Rebuttal
4. C4	Land Only Rebuttal
5. C5	Land Sales Rebuttal
2. R1	Respondent Disclosure

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.*

This information is for MGB Records Only

File Number	Roll Number	Subject Type	Issue	Detail	Sub-Detail
2536	080200603	CARB	Preliminary	Late Disclosure	Sent/Received
2536	080200603	CARB	Commercial - Retail	HBU	Land Value