

**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:

***Lansdowne Equity Ventures Ltd.
(as represented by Assessment Advisory Group Inc.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Zacharopoulos, PRESIDING OFFICER
J. Rankin, MEMBER
R. Roy, MEMBER***

[1] 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: 124166257

LOCATION ADDRESS: 9639 MACLEOD TR SW

HEARING NUMBER: 63920

ASSESSMENT: \$23,980,000

[2] This complaint was heard by a Composite Assessment Review Board (the Board) on October 13th, 2011 at the office of the Assessment Review Board located at 3rd floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

[3] Appeared on behalf of the Complainant:

- *Mr. S. Cobb* *Assessment Advisory Group Inc.*

[4] Appeared on behalf of the Respondent:

- *Mr. R. Ford* *City of Calgary Assessment*

BOARD'S DECISION IN RESPECT OF PROCEDURAL OR JURISDICTIONAL MATTERS:

[5] The record before the Board shows the Complainant submitted a rebuttal document on October 6th, 2011. The deadline for such submission was in fact October 5th, 2011 and the Complainant was so advised. The Respondent objected to the document being heard by the Board.

[6] The Board finds the matter at hand is addressed by the **Matters Relating to Assessment Complaints Regulation 310/2009 (MRAC)**, specifically under Division 2. In that the Complainant's rebuttal was not disclosed as directed by Sec. 8(2)(c) and the Respondent did not agree to an expansion of time as per Sec. 10(3), the Board did not see fit to expand the time for disclosure under Sec. 10(2) of **MRAC**.

[7] The Board therefore looked to Sec. 9(2) and did not hear any evidence not disclosed as per Sec. 8 of **MRAC**.

PROPERTY DESCRIPTION:

[8] The subject property is identified as a neighbourhood shopping centre located on the west side of Macleod Trail SW, north of the intersection with Southland Drive and across the street from 94th Avenue SE. The record shows the parcel to be 4.94 acres and improved with an 86,289 square foot (sf) development constructed circa 1989. The assessment is as per the Income Approach to Value (IAV) based on the following inputs:

- Potential Net Income (PNI): \$1,811,655
- Vacancy rate: 1% for the Jr. Big Box; 4% for the remainder
- Operating costs: \$7.00/sf
- Non recoverables: 1%
- Cap rate: 7.25%

The result is a Net Operating Income (NOI) of \$1,739,165 and an assessed value of \$23,980,000 (rounded).

REGARDING BREVITY:

[9] In the interests of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on

the evidence presented and examined by the parties before the Board at the time of the hearing.

MATTERS/ISSUES:

[10] The matter identified by the Complainant as the basis for this complaint is "an assessment amount".

[11] The Board finds the Complainant has presented the following issues for deliberation:

1. **Does the Complainant's income analysis produce appropriate assessment parameters for the subject property as of July 1, 2010?**

COMPLAINANT'S REQUESTED VALUE:

[10] At the time of the hearing the Complainant requested an assessment revision to \$21,370,000, revised from \$20,963,516 as per Doc. C-1, pg 12 and \$17,000,000 as per the Assessment Review Board Complaint form.

BOARD'S DECISION IN RESPECT OF EACH MATTER OR ISSUE:

[11] Along with the evidence the parties presented at the hearing the Board referenced the Municipal Government Act (MGA) and associated Regulations in arriving at its decision. We found the following to be particularly applicable to the complaint before us:

- **Municipal Government Act** Part 9 and Part 11.
- **Matters Relating to Assessment and Taxation Regulation 220/2004** (MRAT) Section 1; Part 1 and Part 5.1.
- **Matters Relating to Assessment Complaints Regulation 310/2009** (MRAC) Division 2 and Schedule 1.

[12] Jurisprudence has established that the onus of showing an assessment is incorrect rests with the Complainant. Evidence and argument was put before the Board by the Complainant in that regard; to show the assessment is incorrect and to provide an alternate market value as of July 1, 2010. The Board is to determine if (within the direction of the MGA and associated Regulations) it has been swayed to find the assessment before us to be incorrect and if the market value determination as of July 1, 2010 should be revised.

[13] With regard to the issue identified above the Board's findings are as follows:

1. **Does the Complainant's analysis produce appropriate assessment parameters for the subject property as of July 1, 2010?**

[14] The assessment record shows the subject property is assessed in accordance with the following space breakdown:

- Basement/cold storage: 2,023 sf @ \$2/sf.
- CRU 0-1,000sf: 605 sf @ \$34/sf.

- CRU 1,001-2,500sf: 16,834 sf @ \$34/sf
- CRU 2,501-6,000sf: 2,519 sf @ \$26/sf.
- CRU 6,001-14,000sf: 6,217 sf @ \$26/sf.
- Jr. Big Box: 58,091 sf @ \$17/sf

[15] The Complainant's requested the following changes:

- Basement/cold storage: 2,128 sf @ \$2/sf.
- CRU 0-1,000sf: 605 sf @ \$26/sf.
- CRU 1,001-2,500sf: 16,341 sf @ \$26/sf
- CRU 2,501-6,000sf: 7,459 sf @ \$26/sf.
- CRU 6,001-14,000sf: 6,217 sf @ \$26/sf.
- Jr. Big Box: 53,151 sf @ \$17/sf

[16] The reallocation of space requested by the Complainant is as per the rent roll of the subject property submitted under C-1, pg 11. The Respondent did not dispute this space reallocation.

[17] The Complainant's requested rental rate revisions are further to a review of the rental rates from the subject property as per the aforementioned rent roll. The request is based on the most recent transactions; those being unit #9659 (1,250sf @ \$25.50/sf as of April 2010); #9669 (1,070sf @ \$26.50/sf as of Nov 2009); #9673 (1,254sf @ \$25.00/sf as of April 2010) and #9679 (1,250sf @ \$28.50/sf as of Oct 2009).

[18] In return, the Respondent provided 4 purported comparable market leases under R-1, pg 19. These locations are identified by address, market area and city quadrant; range from 1,087 to 2,337sf, and show lease start dates from July 2008 to March 2009.

[19] The Board finds the Complainant's rental data does not support a revision of the CRU 0-1,000 sf segment. In that there is only one space within that segment (shown to be leased @ \$32/sf as of June 08) the Board is not swayed to accept this solitary reference as an effective and timely rent indicator.

[20] The Board finds the Complainant's rental data to be current and well qualified to represent the CRU 1,001-2,500 sf space within the subject property. The Respondent's data is more dated and (in that it is located in different market area than the subject and not effectively identified) not established as comparable to the subject property.

[21] The Complainant also requested an adjustment to the vacancy allowance on all space from the current levels as shown under [8] above to a uniform 6% in recognition of the "chronic" vacancy for unit #W639 as shown under C-1, pg 11. Failing that, the Complainant submits the Jr. Big Box vacancy allowance can be maintained at 1% but the resulting CRU vacancy allowance should be raised to 15% (in recognition of this "chronic" situation). The Complainant's fall-back position is based on the CRU to Jr. Big Box ratio within the subject property as follows: $(85,901 \text{ total sf} - 53,151 \text{ sf of Jr. Big Box}) = 32,750 \text{ sf of CRU space}$. The actual CRU vacancy of 4,940 sf is indicative of 15%.

[22] The Board finds the Complainant's ratio analysis for the purposes of allocating vacancy allowance to be reasonable; however, a revision of the vacancy allowance is dependant on a determination of "chronic" vacancy. While the Board accepts the Complainant's testimony that unit #W639 was vacated in 2008, it finds this does not establish a "chronic" situation as to

override the typical allowance factors as shown under R-1, pg 18.

[23] The Complainant also challenged the Respondent's vacancy determinations as per R-1, pg 18, noting that neighbourhood centres across Macleod Trail (being in SE Calgary) would see a typical vacancy allowance of 7.25% as opposed to the subject's 4%. While the Board agrees this appears to be debatable, there is no market evidence provided by either party to support an overall consideration or determination of typical neighbourhood centre vacancy rates.

[24] In summary, the Board finds:

- the Complainant's reallocated area breakdown for the subject premises has been accepted by the Respondent;
- the Complainant's rental data does not support a revision of the CRU 0-1,000 sf segment;
- the Complainant's rent data for the CRU 1,001-2,500 sf segment is established as an effective reflection of market value for the subject property and that rate is revised to \$26/sf;
- the Complainant has not established the grounds for an adjustment of the vacancy allowance.

[25] In keeping with the above, the Board finds the assessment should be calculated under the following parameters:

- Potential Net Income (PNI): \$1,708,835
- Vacancy rate: 1% for the Jr. Big Box; 4% for the remainder
- Operating costs: \$7.00/sf
- Non recoverables: 1%
- Cap rate: 7.25%

The result is a Net Operating Income (NOI) of \$1,638,019 and an assessed value of \$22,590,000 (rounded).

BOARD'S DECISION:

[26] The assessment is reduced to \$22,590,000.

DATED AT THE CITY OF CALGARY THIS 1st DAY OF November 2011.



I. Zacharopoulos
Presiding Officer

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

NO.	ITEM
1. Doc. C-1	Complainant's Disclosure
2. Doc. R-1	Respondent's 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.*