

**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:

**Mancal Property Holdings Inc.
(as represented by Altus Group Ltd.), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**J. Krysa, PRESIDING OFFICER
R. Roy, MEMBER
A. Zindler, MEMBER**

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	067233007
LOCATION ADDRESS:	1215 9 Ave SW
HEARING NUMBER:	63467
ASSESSMENT:	\$12,830,000

The complaint was heard on October 25, 2011, in Boardroom 4 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- A. Izard; D. Genereux

Appeared on behalf of the Respondent:

- D. Grandbois

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

There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

Property Description:

The subject property is a 79,222 sq.ft. (square foot) parcel of land, improved with a 24,215 sq.ft. freestanding retail structure constructed in 1995, and currently occupied by "Staples Business Depot". Although the parcel is improved, the property is assessed at the estimated market value of the underlying land, as though vacant.

Issues:

The Complainant raised the following matters in section 4 of the complaint forms:

3. an assessment
4. an assessment class

At the commencement of the hearing, the Complainant withdrew matter #4, and led evidence and argument only in relation to matter #3, an assessment amount.

The Complainant set out 20 grounds for the complaint in section 5 of the complaint form with a requested assessment value of \$3,670,000; however, at the hearing only the following issue was in dispute:

Issue: The subject's current use is the highest and best use of the property; therefore, the income approach is the most appropriate valuation method for the subject property.

Complainant's Requested Value:

The Complainant requested an assessment of \$5,300,000. [C1, p.26]

The Complainant put forward alternate requests of \$7,330,000 and \$6,640,000.

Board's Decision in Respect of the Issues:

Issue: The subject's current use is the highest and best use of the property; therefore, the income approach is the most appropriate valuation method for the subject property.

The Complainant submitted that the Respondent has incorrectly applied the principles of highest and best use in assessing the subject property at the value of the land, as though vacant.

The Complainant further argued that the Respondent's highest and best use analysis is simplistic and rudimentary, as it fails to demonstrate through a site specific and exhaustive highest and best use analysis what the site would be redeveloped into, when redevelopment would take place, and even if the property owner, the development authority or various community stakeholders approve of the subject's site redevelopment; which would be an arduous process and undertaking with no guarantee of approval. The Complainant further argued that there is no evidence that redevelopment would take place as the immediate area includes a multitude of vacant parcels and vacant structures that are not being redeveloped due to changing economic conditions. In support of the arguments, the Complainant provided a copy of the Alberta Land Use Policies planning document approved by the Lieutenant Governor in Council on November 6, 1996, an excerpt from "The Appraisal of Real Estate", and Amendment No. 95/044 to Bylaw No. 53Z95, indicating the subject parcel is restricted to a 12 meter maximum building height; or alternatively 30 meters if the development is a hotel. [C1]

Accordingly, the Complainant argued that the subject's current use is the highest and best use of the parcel, and the market value of the property is appropriately estimated by the amount of income it is currently capable of generating. The Complainant submitted that as the current improvement is a large retail structure, the \$17.00 per sq.ft. net rent rate and other valuation parameters typically applied to similarly sized 'A' class grocery stores and junior big box stores should apply to the subject property, demonstrating a \$5,300,000 estimate of market value.

The Complainant further provided two alternate calculations reflecting the \$23.50 per sq.ft. net rent rate typically applied to 'A' category box stores, demonstrating a \$7,330,000 estimate of market value; and the subject's current contract rent rate of \$21.30 per sq.ft., demonstrating a \$6,640,000 estimate of market value.

Business assessment notices, photographs, valuation worksheets and other examples were provided for a multitude of other properties located in various locations throughout the municipality, exhibiting a wide range of retail parameters, commensurate with the property types and locations. [C2, pp. 209-283]

The Complainant further argued that the Respondent's base land rate was developed from sales of properties that include court ordered transactions, closed market transactions, vendor "take back" transactions or properties with improvements located thereon which would affect the sale price. In support of the argument, the Complainant provided sales transaction documents and photographs to demonstrate that several of the current improvements were not demolished, but rather, renovated and continue to be income generating.

In argument, the Complainant provided several decisions of the Assessment Review Board, the Municipal Government Board, and Court of Queen's Bench of Alberta in support of his positions, including 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512, and Globexx Properties Ltd. v. Edmonton (City), 2011 ABQB 464.

The Respondent submitted that the assessment of the subject property reflects only the value of the land as the improvement is deemed to contribute no additional value to the site. The Respondent argued that the methodology is not unique to the subject property and has been applied throughout the municipality where the income generated by an improvement, capitalized, does not establish a market value higher than the market value of the underlying land, were it vacant. The Respondent provided a decision of the Assessment Review Board, CARB 0867/2010-P, wherein the Board sets out a basic Highest and Best Use test that reflects the current "land value" methodology employed by the assessor. [R3]

The Respondent argued that in this instance, the income approach methodology is inappropriate for the subject property as the current improvement represents only 10.2% of the permitted development density. The Respondent submitted that the subject property is a 79,222 sq.ft. parcel of land, and its current zoning allows for an FAR (Floor Area Ratio) of 3.0; therefore the parcel could legally accommodate a development of 237,666 sq.ft., in contrast to the current 24,215 sq.ft. improvement.

The Respondent submitted that the subject property is assessed "as though vacant" at a base land rate of \$180.00 per sq.ft. Adjustments to the base land rate reflecting the subject's location abutting a train track (-15%), and "corner" location (+5%) result in the effective assessed land rate of \$162.00 per sq.ft.

The Respondent conceded that there was a dearth of recent reliable sales transactions in the immediate vicinity of the subject property, however, the sales that are available, plus sales from other nearby market areas demonstrate an hierarchy of land values for the downtown and beltline market areas. In support of the \$180.00 per sq.ft. base rate, the Respondent provided seven, DT2 (West) sales transactions that transferred between September 2006 and July 2009, and exhibit a range of sale prices from \$152.19 to \$448.27 per sq.ft., and mean and median rates of \$241.79 and \$243.51 per sq.ft. A further summary of five, DT2 (East) sales transactions that transferred between August 2007 and July 2010, exhibit a range of sale prices from \$183.90 to \$630.81 per sq.ft., and mean and median rates of \$421.58 and \$316.96 per sq.ft., with one of the properties again transferring, subsequent to the valuation date, and exhibiting a sale price of \$435.00 per sq.ft.

The Respondent also provided a summary of four sales with the same 53Z95 zoning, exhibiting sale prices greater than \$200.00 per sq.ft., with the exception of one property, purportedly affected by contamination and inferior access that transferred at \$152.00 per sq.ft., in support of the assessed base land rate, and demonstrating that the subject's 53Z95 zoning is not a significantly negative factor that would warrant a reduced base land rate.

In response to the Complainant's evidence and arguments, the Respondent argued that the Complainant has included only a partial sample of the total sales transactions in his evidence, and no market evidence to demonstrate that the subject property would sell for the requested assessment values.

Decision

The Board finds that the Complainant's capitalized income value does not reflect the market value of the subject property.

The Complainant's alternative income approach valuations clearly demonstrate that the current improvement is incapable of producing a capitalized income value in excess of the established market value of the underlying land; therefore the Board finds that the improvement does not contribute any additional value to the property. The Board also finds the Respondent's evidence of the subject parcel's permitted development density, compelling evidence that the subject property is significantly underdeveloped, at approximately 10% of the maximum allowable.

The Board is not persuaded that an exhaustive highest and best use study is necessary to apply a basic highest and best use test for the purposes of mass appraisal. The highest and best use test employed by the assessor is based upon well founded valuation theory, and is an effective method to minimize equity discrepancies in a mass appraisal process, as detailed in ARB 0867/2010-P. [R3]

With respect to the base land rate of \$180.00 per sq.ft., although the Complainant's evidence identified several limitations in the sales relied upon by the Respondent, there was little evidence of superior market indicators provided by the Complainant. Although the Board agrees that the limited number of recent, reliable land sales is a concern, the Board accepts that the assessor is obligated to prepare market value assessments annually, regardless of the volume of market activity available. In this instance, the Board finds that the assessor's \$180 per sq.ft. land rate, and location hierarchy conclusions are not unreasonable in relation to the sales evidence available.

The Board is persuaded that the 2008 sale of the property at 907-9 Ave SW, in proximity of the subject, is the most reliable indicator of market value for the subject property. This property is located on 9 Ave SW within 3 blocks of the subject property, it is subject to equivalent zoning restrictions, and exhibits a (footprint) site coverage of 35.5%, in contrast to the subject's 30.6% site coverage. The Board finds that the sale price of this comparable property is supportive of the assessment, in respect of both the land and improvement values per sq.ft.

		Subject		907 9 Ave SW
	Assessment	\$ 12,830,000	Sale Price	\$ 8,250,000
Improvement Area	(Sq.Ft.)	24,215		16,500
Parcel Size	(Sq.Ft.)	79,222		30,928
\$ per Sq.Ft. (Improvement)		\$ 530		\$ 500
\$ per Sq.Ft. (Land)		\$ 162		\$ 267

The Board did not find the multitude of comparable assessment valuations displaying various valuation parameters to be compelling evidence of appropriate parameters for the subject property, as the properties included a restaurant, bank premises, supermarkets, department stores, large warehouse stores, suburban power centres, etc., in various locations throughout the municipality. The Board would not expect that the parameters applied to this wide ranging sample of properties would be identical, and there was no evidence to refute that those parameters were not appropriate for the property types and locations. Further, there was no evidence that the comparable assessments provided by the Complainant, were underdeveloped to a similar degree as the subject property.

The Board did not find the Alberta Land Use Policies planning document provided by the Complainant, relevant in relation to the property valuation matter before the Board as it pertains to general planning issues, and not valuation matters. Further, the Complainant failed to provide any correlation to the subject matter to the Board.

The Board also does not find the circumstances in *697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512* similar to the matter before the Board, as the Respondent did not determine current market value based on some anticipated future improvement value which was not in existence on the valuation date. On the contrary, the current assessment, as though vacant land, attributes no contributory value to the improvements as they existed on the valuation date.

With respect to Municipal Government Board 095-04, (Ford Motor Company of Canada), the Board notes that the Appellant in that matter contended that the improvements add no contributory value to the value of the underlying land, and argued that the assessment should reflect the "land value only". In contrast, the current assessment before the Board is prepared as "land value only", and the Complainant is seeking a value below that of the vacant land.

The Board did not find *Globexx Properties Ltd. v. Edmonton (City), 2011 ABQB 464*, provided by the Complainant to be relevant in relation to the matter before the Board, as the Complainant failed to provide any correlation to the subject matter to the Board.

Decision:

The assessment is **confirmed** at: **\$12,830,000.**

DATED AT THE CITY OF CALGARY THIS

20th

DAY OF DECEMBER, 2011.


J. Krysa,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission – Part 1
2. C2	Complainant's Submission – Part 2
3. C3	Appendices
4. C4	Complainant's Rebuttal Evidence
5. C5	CARB 0817/2010-P
6. C6	CARB 1853/2011-P
7. C7	CARB 1950/2011-P
8. C8	CARB 2034/2011-P
9. C9	CARB 2190/2011-P
10. C10	CARB 2313/2011-P
11. R1	Respondent's Submission
12. R2	Bylaw 53Z95 Amendment No. 95/044 Schedule B
13. R3	CARB 0867/2010-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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Freestanding	Development Land Income Approach	Land Value Zoning