

**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:

***WEST HOLDINGS LTD., COMPLAINANT
(Represented by ALTUS GROUP)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member Y. NESRY
Board Member D. POLLARD***

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: 075173302

LOCATION ADDRESS: 4019 17 AVENUE SE

HEARING NUMBER: 63184

ASSESSMENT: \$1,360,000.00

This complaint was heard on 17 day of October, 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:

- *Kam Fung, Altus Group Ltd. – Representing West Holdings Ltd.*

Appeared on behalf of the Respondent:

- *Margaret Byrne – Representing the City of Calgary*

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

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties had no objections to the panel representing the Board as constituted to hear the matter. No jurisdictional or procedural matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

Property Description:

The subject property is designated a CM0210 Strip Centre located at 4019 17 Avenue SE. The 0.459 acre parcel is improved with a retail operation of 9,318 square feet. The records show the parcel is zoned C-COR2 f2.0h12 and is valued at a rate of \$65.00 per square foot. The parcel has received a +5% influence adjustment for being a corner lot.

The property has been assessed using the vacant land approach.

Issue:

Should the subject property be assessed on a vacant land value only or is the income approach to valuation more applicable?

Complainant's Requested Value:

\$965,000.00 based upon land value only **OR** \$936,000.00 based upon an income approach to value.

Board's Decision in Respect of Each Matter or Issue:

In the interest 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.

Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

Both parties also placed Assessment Review Board Decisions before this Board in support of

their positions. While the Board has respect for the Decisions rendered by those tribunals, it is also recognized that those Decisions were made in respect of issues and evidence that may be dissimilar to the evidence before this Board. The Board will therefore not give much weight to those Decisions unless issues and evidence were shown to be timely, relevant and materially identical to the subject complainant.

Complainant's Evidence:

The Complainant requested the assessment, based upon an income approach to valuation, be reduced to \$965,000.00.

In support to the Income Approach to Valuation the Complainant used the current leases in the complex as the rent rates in the calculation. (C1, Pg 21 & 23), but used the City of Calgary typical for vacancy, operating costs, non-recoverable allowance and capitalization rate.

With respect to the land value, the Complainant submitted one sale, 4504 17 Avenue SE, to show the land value for property in the vicinity of the subject. The sale, which occurred May 6, 2010, transferred for \$954,000.00 or \$48.34 per square foot. (C1, Pg 24) It was the Complainant's position the sale was a better indicator of market value for land in Forest Lawn than the analysis prepared by the City of Calgary.

The Complainant submitted numerous Assessment Review Board Decision from 2010 and 2011 which did not supporting the use of the Direct Comparison Approach to establish a market value predicated on vacant land sales. Highlighted passages in the Decisions were referenced by the Complainant for the Board's attention. Special note was made by the Complainant to the Decision CARB 1853/2011-P which ruled in favour of using an Income Approach to Valuation as opposed to the Land Value of a highest and Best Approach. (C1, Pg. 265-272)

In the evidence packages, the Complainant submitted extensive material relating to the application of Highest and Best Use in the valuation of property published by the International Association of Assessing Officers and Alberta Municipal Affairs

Respondent's Evidence:

The Respondent submitted the eight sales used by the City of Calgary to establish the vacant land rate for Land Use Designation C-COR 1, 2, 3 used in the valuation of the subject property. The sales are located in all quadrants of the City of Calgary, ranging in size from 3,670 square feet to 218,323 square feet. The time adjusted sale price per square foot ranged from \$29.99 to \$112.16. The City of Calgary analysis determined the application of a rate of \$65.00 per square foot for the first 20,000 square feet and a rate of \$28.00 for the remaining area over 20,000 square feet. (R1, Pg. 24-25)

The subject parcel was assessed an additional 5% for being a corner lot. (R1, Pg 20)

The Respondent submitted the 2011 Non-Residential Properties – Income Approach Valuation for the subject to show the value for the property if the Income Approach was applied. (R1, Pg. 21- 22) Based upon typical income the subject property would have been assessed for \$1,280,000.00 versus the Land Value Approach which calculated at \$1,360,000.00. (R1, Pg. 20)

The Respondent submitted seventeen Assessment Review Board Decision from 2010 supporting the use of the Direct Comparison Approach to establish a market value based upon vacant land sales, when vacant land value exceeds the value based upon the Income Approach to market valuation. Highlighted passages in the Decisions were referenced by the Respondent for the Board's attention.

Findings of the Board

Complainant's Submission:

The Board notes the Complainant's use of actual rents and typical rates, provided by the City of Calgary, to determine a revised assessment is a procedure generally found to be unacceptable. If a site specific valuation is being determined then a consistent application of actual rates should be employed, such as vacancy rate, operating costs and non-recoverable allowances. In this case the Complainant had testified the strip centre was fully occupied, so vacancy would be 0%.

The Board found the sale at 4504 17 Avenue SE indicated a lower land value for the subject property. There was no challenge to the application of a +5% adjustment for being a corner lot.

The Board notes a number of documents were repeated in the evidence packages submitted for the Board to review.

Respondent's Submission:

The Board was concerned by the City of Calgary's relying on only eight sales to establish its use of a 'highest and best' approach to the valuation of all properties with the zoning of C-COR 1, 2, 3. The dissimilarity between the parcels with respect to location and size has resulted in a rate which, when applied to the sales used by the City of Calgary, result in differences between time adjusted sales price and the projected assessment to be upwards of ten million dollars below market value. Assessment to sale ratios (ASR) ranged from 0.37 to 1.42. The Board found only one sale would have an assessment which falls within ASR tolerance.

The Board noted there was one sale in the vicinity of the subject on the list provided by the Respondent – 4504 17 Ave SE – which had a time adjusted sale price per square foot of \$45.63. Due to the proximity of this sale to the subject the Board finds this a better indicator of market value land rate than the analysis presented by the City of Calgary.

Board's Decision:

The Board was presented with two approaches to the valuation of the subject property – land value approach or income approach.

An application of the land value approach employing the rate for the area, as established by the sale at 4504 17 Avenue SE, resulted in a value indication of \$957,944.44 (19,994.04 square feet (0.459 Acres) X \$45.63 X 105.0%).

While the Income Approach Valuation for the subject property is flawed, with the use of typical

rates, the resulting valuation is sufficiently similar to provide the Board with another indication of market value for the subject.

The Board found the application of a 'Highest and Best' approach to the valuation of the subject property was not inappropriate, but the rate applied by the City of Calgary was not accepted by the Board. The Board found the vacant land rate for the property at 4504 17 Avenue SE was a better indicator of local market conditions than the study presented by the Respondent.

The Board amends the assessment to \$950,000.00

DATED AT THE CITY OF CALGARY THIS 17 DAY OF November 2011.


Philip Colgate
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. C2A	Complainant 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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	-Strip Plaza	- Income Approach	-Net Market Rent/Lease Rent
		-Vacant Land	- Cost/Sales Approach	-Land Value

LEGISLATIVE REQUIREMENTS

MUNICIPAL GOVERNMENT ACT

Chapter M-26

1(1)(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;

Division 1

Preparation of Assessments

Preparing annual assessments

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

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,

ALBERTA REGULATION 220/2004

Municipal Government Act

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION

1(f) “assessment year” means the year prior to the taxation year;

Part 1

Standards of Assessment

Mass appraisal

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.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.