

**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:**

***678486 ALBERTA LTD, as represented by Altus Group, COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***R. Glenn, PRESIDING OFFICER***

***R. Roy, MEMBER***

***D. Julien, 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: 129178208**

**LOCATION ADDRESS: 10506 Southport RD SW**

**HEARING NUMBER: 60817**

**ASSESSMENT: \$1,230,000**

This complaint was heard on the 9th day of November, 2011 at the office of the Assessment Review Board located on Floor Number 4, at 1212 – 31 Avenue NE, in Calgary, Alberta, in Boardroom 3.

Appeared on behalf of the Complainant: Brendan Neeson ( Agent )

Appeared on behalf of the Respondent: Paul Sembrat and Tyler Johnson ( Assessors )

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

No issues of procedure or jurisdiction were raised.

**Property Description:**

The subject is a .550 Acre plot which incorporates a free standing Gas Bar, constructed in 2002, and located just west off Macleod Trail South in the community of Southwood. The subject is located immediately adjacent to a large supermarket. Both properties are owned by the same party, but the properties have separate titles.

**Issues:**

Whether the subject property is properly assessed, in light of queries regarding:

1. Whether the subject property is properly assessed as a "Special Purpose" property.
2. Whether the "Alberta Assessor's Association Valuation Guide" should be strictly applied to the subject assessment.
3. Whether the concept of "Highest and Best Use" should be applied to the subject assessment

**Complainant's Requested Value:**

\$540,000, based on an Income Approach to Value

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

The basic issue as stated by the Complainant is whether the subject property should be assessed on a Cost Approach, as advocated by the Respondent, or, an Income Approach as advocated by the Complainant. The Respondent is using the same approach as it did last year. Last year the Board decision on this property relied on the Complainant's Income Approach.

The Complainant says the Highest and Best Use Approach is not correct. The Gas Bar is on its own parcel of land. The original 2010 Assessment for the subject was \$1,300,000. That assessment was reduced to \$530,000 by the Board.

Using the Income Approach, the subject's Net Rentable Area is treated as though it was only one square foot. In other words, it does not seem to matter whether there are 2 gas pumps, or 12 gas pumps, the assessment of the rent rate on the improvement would seemingly be the same, at \$45,000.

The Respondent in pursuing the Cost Approach states the total land area is 24,004SF which is valued at \$47.06/SF for a base land value of \$1,129,690. To this is added the improvement value of \$108,522, for a Total Assessed Land Value of \$1,238,212, rounded to \$1,230,000.

The Respondent argues the concept of Highest and Best Use, but provides little credible evidence to support their contention. In order to prove their admonition, they must show that the current use, being well maintained, is not the best use for a property. Further, a Highest and Best Use argument cannot be properly advanced without a full consideration of all four factors which are components of highest and best use. This was not done here. The Respondent also provides lease comparables, but most of them are a gas bar with an attached carwash.

The Complainant presents some Equity Comparables, where the gas bar is a part of a larger commercial complex and is assessed on an Income Approach.

The Respondent goes on to argue that the subject is a "Special Purpose" property, and historically, appraisers have concluded that the Cost Approach is the only approach of significance in the valuation of this type of property. They later admit in argument that gas stations are not special purpose properties.

The Complainant argues that the subject is not a special purpose or special use property per se, and that the cost approach is specifically reserved for special purpose or special use properties. They go on to say that the cost approach is the last option that should be considered when choosing a valuation method.

The Respondent argues that the value in the subject is in the land, and provided a considerable number of comparables which utilized the cost approach valuation and a separate listing of equity comparables.

However, the main thrust of the Respondent's argument is to rely on the Alberta Assessors Association Valuation Guide for Gas Stations, wherein the recommended method of valuation is the cost approach. They say: "We use the cost approach at the direction of the Minister". They say they do not have the freedom to deviate from the cost approach, and that all gas stations should be valued on the cost approach.

The Respondent says the Legislation has changed, but the Complainant counters that the job at hand is to determine the subject market value as at July 1st, 2010. The Complainant goes on to argue that the Respondent has no evidence that the market value is what the Respondent says it is. The Respondent counters that the Complainant has likewise put in no market evidence.

The Respondent carries on, arguing that much of the income information from gas stations is unreliable for assessment purposes, so it is not feasible nor practical to use the income approach. On rebuttal, the Complainant does put in sales evidence which supports their assertion that the assessment is too high.

On summary, the Complainant argues that the highest and best use for the subject is as a gas

bar, because there was no evidence to controvert that assertion, and also, that the Board should rely on neighboring properties as comparables.

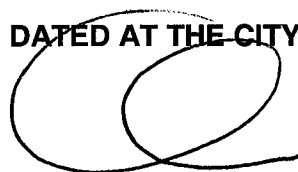
The Respondent summarizes by saying they will not subvert the Minister's instructions, and that they respect the Auditor's authority. They also complain that the evidence regarding sales was not brought forward in the Complainant's original package, but only in the rebuttal package. They finish by saying that the income approach is not easy for this type of property.

Given the last word, the Complainant argues that there is no credible evidence of land value put forward by the Respondent, and that the Complainant did ultimately provide market value evidence.

On the whole of the evidence, the Board finds that the Respondent ( in this set of facts ) can make exceptions to the Audit Manual, and that their hands are not "tied". The evidence called by the Complainant has convinced the Board that the subject assessment is excessive and ought to be reduced.

Accordingly, the subject assessment is herewith reduced to: \$540,000.

DATED AT THE CITY OF CALGARY THIS 24<sup>th</sup> DAY OF NOVEMBER, 2011.



R. Glenn  
Presiding Officer

#### APPENDIX "A"

#### **DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. C3	Complainant Rebuttal
4. C4	Complainant Rebuttal Appendix
5. 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 MGB Administrative Use Only*

Decision No. 2819-2011-P		Roll No.129178208		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Retail	Gas Station	Income Approach	Market Value