

**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:

***337915 Alberta Ltd.,
as represented by Wernick Omura Limited, COMPLAINANT,***

and

The City Of Calgary, RESPONDENT

before:

***T. Helgeson, PRESIDING OFFICER
D. Steele , MEMBER
R. Roy, MEMBER***

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

ROLL NUMBER: 075020305

LOCATION ADDRESS: 4601 17th Avenue S.E.

HEARING NUMBER: 65106

ASSESSMENT: \$991,500

This complaint was heard on Tuesday, the 13th of March, 2012 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:

- *B. Boccaccio*

Appeared on behalf of the Respondent:

- *K. Gardiner*

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

[1] No procedural or jurisdictional matters were raised.

Property Description:

[2] The subject property is a stand-alone Dairy Queen restaurant with a drive-through, located at the corner of 45th Street and 17th Avenue S.E. in Forest Lawn. The building is 2,142 square feet in area on 14,529 square feet of land. The subject property was assessed on land only, based on the sales comparison approach. The original assessment for 2011 was \$939,000. In October of 2011, the assessment was amended to \$991,500. A McDonald's restaurant (at 4615 17th Avenue S.E.) is adjacent to the subject property.

Regarding Brevity:

[3] In the interests of brevity, the Board will restrict its comments to those items the Board finds relevant to the matters at hand. Furthermore, the Board's findings and decision in this matter will reflect the evidence that was presented and examined by the parties before the Board at the time of the hearing.

Issues:

[4] During the course of the hearing, the Board identified one issue, as follows:

- Does the assessment reflect market value of the subject property?

Complainant's Requested Value: \$760,000

Summary of the Complainant's Position:

[5] The preliminary 2012 assessment of the subject property was \$1,135,764 based on the cost approach, but the subject was subsequently re-assessed at \$915,000, based on the sales approach. This suggests inconsistency in assessment. The Respondent used sales comparables to value the subject property despite the fact that there have been no sales along 17th Avenue in Forest Lawn. Fairness and equity demands that the subject property be

assessed the same way similar properties are assessed. Fast-food restaurants in the vicinity of the subject property, including McDonald's, Pizza Hut, and Burger King, have been assessed using the income approach. All three have land-to-building ratios similar to that of the subject property.

[6] For example, the McDonald's has a building area of 5,436 sq. ft., and a site area of 36,110 sq. ft., for a land to building ratio of 15%, the same as the subject property. The McDonald's has been assessed at \$1,920,000, or \$353 per sq. ft. of building area. Had the subject property been assessed at \$353 per sq. ft. of building area, the assessment would be \$760,000 (as rounded up), and that is our requested assessment.

Summary of the Respondent's Position:

[7] The subject property was assessed based on the sales comparison approach because it better reflects the value of the subject property (a stand-alone fast-food outlet on corner lot) than does the income approach. We have discussed the requested value with the owner of the property and the agent. The complainant has asked that the subject be valued using the income approach, but has failed to present any lease rates, or cap rates, to support a value based on the income approach. Instead, the complainant has relied on the assessment of an adjacent property to arrive at its requested value. Composite Assessment Review Board decisions have shown that comparisons of assessed values on a per square foot basis are useful only if properties are similar. In this case, the Complainant's key comparable is the McDonald's restaurant next door to the subject property.

[8] How comparable is the McDonald's property? The subject property has a building area of 2,142 square feet on 14,529 square feet of land. The McDonald's property, with a building area of 5,436 square feet and a land area of 36,110 square feet, is more than twice the size of the subject. It is to be expected that the assessment of the McDonald's will be lower on a per square foot basis given the greater amount of land. A prudent buyer would take into account the differences in building and parcel size, as well as diminishing returns for surplus land.

[9] As the Respondent to this complaint, we do not bear the burden of proof. That burden is on the Complainant. The Complainant has submitted no evidence to support his requested value, hence has failed to meet the burden of proof. We respectfully request that the assessment be confirmed.

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

[10] The Complainant's request of an adjustment to the assessment is based entirely on equity. In support of its request for an adjustment to the assessment, the Complainant relies on the direct comparison approach to value. Three properties said to be comparable to the subject property were put in evidence in support of the Complainant's requested assessment. The property the Complainant relies on as most comparable to the subject is the McDonald's restaurant at 4615 17th Avenue S.E. The two other fast-food restaurant properties mentioned in the Complainant's evidence as comparables are a Pizza Hut at 4710 17th Avenue S.E., and a Burger King at 4818 17th Avenue S.E.

[11] The Pizza Hut is part of a neighbourhood shopping centre, and the Burger King shares its site with OK Tire & Auto Service. In the view of the Board, these two properties can hardly be said to be comparable to the subject property, a stand-alone fast-food restaurant. That leaves

the McDonald's property.

[12] Only very rarely is the Board asked to alter the assessment of a property based on the assessment of a single comparable. To alter an assessment in such a case, the Board must find *on the evidence* that the characteristics of the comparable and the subject property are the same, or very nearly so. Even then, further evidence of value should be introduced.

[13] The Board finds that the McDonald's property is not sufficiently similar to the subject property to support an adjustment to the assessment. Both building area and land area are more than twice the size of the subject property, and, unlike the subject, the McDonald's site is not a corner parcel. The only attributes the two properties appear to share is that they are fast-food restaurants located in the same neighbourhood. In the result, the Board finds the Complainant has failed to adduce evidence sufficient to establish that the assessment of the subject is not fair and equitable.

The Board's Decision: The assessment is confirmed at \$991,500.

DATED AT THE CITY OF CALGARY THIS 13th DAY OF April, 2012.



Presiding Officer

Exhibits:

C-1, Complainant's Evidence Submission.

R-1, Respondent's Assessment Brief.

<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Retail	Stand alone	Income Approach	Equity Comparables

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.*