



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:

100 – 7TH AVENUE SW (ART CENTRAL) INC.
(as represented by DuCharme, McMillen & Associates Canada Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Earl K Williams, PRESIDING OFFICER
J Kerrison, MEMBER
A Zindler, 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 2013 Assessment Roll as follows:

ROLL NUMBER: 068075902

LOCATION ADDRESS: 100 7 AVE SW

FILE NUMBER: 71771

ASSESSMENT: \$8,500,000

This complaint was heard on 30th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- M. Pierson Agent, DuCharme, McMillen & Associates Canada, Ltd.

Appeared on behalf of the Respondent:

- D. Grandbois Assessor, The City of Calgary

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

- [1] No Procedural or Jurisdictional Matters were raised by the parties.

Property Description:

[2] The subject property at 100 7 AVE SW is a 27,127 square foot 2 storey (level) restored retail building in the Non Residential Downtown 1 Zone on 0.30 acres of land with a 1929 approximate year of construction (ayoc). The profile of the subject's 27,207 sq. ft. of retail space is as follows; 8,548 sq. ft. on the main level; 9,121 sq. ft. on the upper level (second floor), and 9,538 sq. ft. on the lower level (below grade). Three of the tenants in the subject property are tax exempt. There is no onsite parking.

[3] The assessment was prepared on the Income Approach Valuation with a capitalization rate (cap rate) of 6.00%; a market rental rate of \$32.00 per square foot (psf) for the main floor retail, \$25.00 for the upper floor retail space and \$20.00 psf rental rate for the lower level retail space.

Issues:

[4] Should the subject property be assessed on the Income Approach as if 100% retail or 51% retail and 49% office.

[5] Should the September 2011 sale of the subject property be the best indication of the market?

Complainant's Requested Value: \$7,040,000

Board's Decision:

[6] Based on the evidence and arguments presented the Board confirms the assessment as \$8,500,000.

Position of the Parties

[7] The Complainant and Respondent presented a wide range of evidence consisting of relevant and less relevant evidence. 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.

[8] The Complainant's evidence package included amongst others a Summary of Testimonial Evidence, a map identifying the location of the property, photographs of the exterior of the subject property, the City of Calgary 2013 Property Assessment Detail Report, the City of Calgary Non-Residential Properties – Income Approach Valuation work sheet. In support of the sale of the subject property the evidence included details on the sale. In support of the tenant mix and market rental rates an analysis of the subject property and market analysis was presented.

[9] The Respondent's evidence package included a Summary of Testimonial Evidence, a map identifying the location of the property, the 2013 Property Assessment Notice, the Assessment Explanation Summary, the City of Calgary Non-Residential Properties – Income Approach Valuation work sheet and details on the tenant profile in the subject property.

[10] Both parties placed numerous technical, professional and academic excerpts before the Board in support of their position. This Board finds that any specific passage or quote (i.e. excerpt) from a larger document may not capture the true intent of document and is, therefore, seen by the Board as incomplete material and may be given limited weight.

[11] As noted above, both parties placed a number of Assessment Review Board and Municipal Government Board decisions before this Board in support of their position. These decisions were made in respect of issues and evidence that may however be dissimilar to that before this Board.

Issue**Complainant's Position:**

[12] The Complainant reviewed with the Board the basis for the requested assessment value. Specifically the market value would be based on the \$8,500,000 sale price less the tax exemptions applicable to three of the tenants yielding the requested assessment of \$7,040,000.

[13] The Complainant argued that the September 2011 arm's length sale of the subject property for a sale price of \$8,500,000, 10 months before the assessment date, is the best indicator of value and not the application of the Income Approach.

[14] The Complainant argued that Interpretation section 1(1) of the Municipal Government Act, R.S.A.2000, states: "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.

[15] As support for the use of the September 2011 sale of the subject property in the determination of the assessment value the Complainant reviewed with the Board selected paragraphs (pages 21 and 22 of Exhibit C-1) from two decisions of the Court of Queen's Bench of Alberta (ABQB):

- 1) Mountain View (County) v. Alberta (Municipal Government Board), 2000 ABQB 594 (page 62 to 69 of Exhibit C-1), and
- 2) 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512 (page 70 to 76 of Exhibit C-1).

[16] In addition a number of Composite Assessment Review Board (CARB) decisions (page 23 of Exhibit C-1) were reviewed with a focus on demonstrating that a sale date of up to 16 months prior to the July valuation date is acceptable as evidence as the best indicator of value.

[17] Details of the sale as reported by Commercial Edge were provided on page 26 of Exhibit C-1. In the Remarks Section of the Commercial Edge document there is a reference to the purchaser acquiring 5 buildings including the subject, at a total cost of \$142 million. The purchase of the subject was part of a portfolio acquisition. Supporting documentation is presented on pages 27 to 37 of Exhibit C-1.

[18] The Complainant argued that although the sale of the subject property was part of a portfolio sale the purchase price of \$8,500,000 is supported by the Affidavit Re: Value of Land on page 33 of Exhibit C-1.

[19] The Complainant argued that Respondent's classification of the subject as 100% retail space is not reflective of the actual profile of the building. In support of this position the Complainant reviewed the February 2013 Assessment Request for Information (ARFI) (pages 39 – 54 Exhibit C-1) and the December 31, 2012 Tenant Rent Roll provided by the owner (pages 55-59 Exhibit C-1). Based on the Tenant Roll the Complainant prepared a Tenant Roster (pages 59-60 Exhibit C-1) which classified the space as retail, office and vacant for each of the three levels of the property (below grade, main level and second level). An analysis of the total 27,127 sq. ft. determined the property is 44.4% retail, 42.5% office and 13.2% vacant. Based on the occupied space 51.1% is retail and 48.9% is office.

[20] Based on the Tenant Roster, the classification of the space, the exempt tenants and rental rates as determined by the Respondent a Revised Assessment Calculation was prepared which is further support for the requested assessment.

[21] In summary the Complainant argue that the arm's length sale of subject property for \$8,500,000 is the best indicator of value. Adjustments which recognize the three tax exempt tenants the assessed value is \$7,040,000.

Respondent's Position:

[22] The Respondent reviewed with the Board the Non-Residential Properties - Income Approach Valuation of the subject property presented on pages 9 and 10 of Exhibit R-1. Supporting documentation including the September 2012 ARFI and a January 2012 Tenant Roll provided on pages 20 to 38 of Exhibit R-1.

[23] In response to the Complainant's argument that the subject property should be classified as office/retail rather than retail, the Respondent argued that the property is described and marketed as a retail property. The renting of space to office tenants rather than retail tenants is the decision of the owner.

[24] In regards to the sale of the property the Respondent presented the Non Residential Property Sale Questionnaire (pages 50 to 53 of Exhibit R-1) completed by the purchaser. In response to the questions on Sale/List Price the purchaser reported:

- 1) the list price as \$8,500,000, and
- 2) an appraisal report or opinion of value was prepared July 2011 and the final estimate of value was \$9,300,000.

[25] In summary the Respondent argued that the evidence supports classification as a retail complex and the response in the Non Residential Property Sale Questionnaire that the June 2011 estimate of value was \$9,300,000 supports the assessed value.

Board's Reasons for Decision:

[26] Following an examination of the arguments and the evidence the Board determined:

- 1) the subject property is a retail building,
- 2) the September 2011 sale of the subject property, as reported by Commercial Edge, was part of \$142 million purchase of a 5 building portfolio from the same Vendor, and
- 3) the purchase price of \$8,500,000 was supported by an Affidavit of Value.

[27] Based on the evidence and arguments presented and the September 2011 purchase price as an indicator of value the Board confirms the assessment.

DATED AT THE CITY OF CALGARY THIS 24th DAY OF October 2013.

E. Williams

Earl K Williams

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. R1 | Respondent Disclosure |

NOTE APPENDICES DIFFERENT FOR THIS ONE

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

| Appeal Type | Property Type | Property Sub-Type | Issue | Sub-Issue |
|--------------------|----------------------|--------------------------|-----------------|------------------|
| CARB | Retail | Stand Alone | Income Approach | Leasable Area |