

## **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:

***209 8<sup>TH</sup> AVENUE SW (LEESON LINEHAM BUILDING) 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: 068107408**

**LOCATION ADDRESS: 209 8 AVE SW**

**FILE NUMBER: 71774**

**ASSESSMENT: \$11,200,000**

This complaint was heard on 30<sup>th</sup> 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 additional Procedural or Jurisdictional Matters were raised by the parties.

**Property Description:**

[2] The subject property at 209 8 AVE SW is a 34,895 square foot 6 storey office/retail building in the Downtown Zone DT8 on 0.15 acres of land with a reported 1910 year of construction(yoc) and moderately renovated in the period 2004-2012. The space profile of the subject is as follows: 25,383 sq. ft. of office space; 5,176 sq. ft. of retail space, 4,336 sq. ft. of storage space and 4 on-site parking stalls.

[3] The assessment was prepared on the Income Approach valuation with a capitalization rate (cap rate) of 5.50%; a market rental rate of \$36.00 per square foot (psf) for the main floor retail, \$18.00 for the upper floor office space and \$5.00 psf rental rate for the storage space.

**Issues:**

[4] Should the subject property be assessed on the Income Approach or is the January 2012 sale of the subject property more reflective of the market value?

**Complainant's Requested Value: \$10,500,000**

**Board's Decision:**

[5] Based on the evidence and arguments presented the Board supports that the January 2012 sale price is reflective of the market.

[6] The assessment is reduced to \$10,500,000.

**Position of the Parties**

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

[8] The Complainant's evidence package included 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 as well as a number of decisions of the Court of Queen's Bench of Alberta, Composite Assessment Review Board and Municipal Government Board decisions amongst others in support of their position.

[9] The Respondent's evidence package included a Summary of Testimonial Evidence, a map identifying the location of the property, photographs of the building, the 2013 Property Assessment Notice, the Assessment Explanation Summary, the City of Calgary Non-Residential Properties – Income Approach Valuation work sheet and an analysis of comparable sales including supporting documentation for the comparables. A number of Composite Assessment Review Board and Municipal Government Board decisions and a document prepared by the City of Calgary on "market value" was presented amongst others in support of their position.

[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 – Assessment Approach****Complainant's Position:**

[12] The Complainant argued that the arm's length sale of the subject property, 6 months before the assessment date, is the best indicator of value and not the application of the Income Approach.

[13] The Complainant argued that Interpretation section 1(1)(n) 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.

[14] As support for the use of the January 2012 sale of the subject property in the determination of the assessment value the Complainant reviewed with the Board selected paragraphs (pages 12 and 13 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 (pages 29 to 36 of Exhibit C-1), and
- 2) 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512 (pages 37 to 43 of Exhibit C-1).

[15] In addition a number of Composite Assessment Review Board decisions (page 13 of Exhibit C-1) were reviewed with a focus on demonstrating that a sale date 16 months prior to the July valuation date is acceptable as evidence as the best indicator of value.

[16] The subject property sold in an arm's length transaction in January 5, 2012 for a sale price of \$10,500,000. Details of the sale as reported by Commercial Edge were provided on page 16 of Exhibit C-1. In the third line of the Remarks Section of the Commercial Edge document there is a reference to "the purchase price for the three properties ....." which implies that the subject was part of a portfolio acquisition. Supporting documentation is presented on pages 17 to 27 of Exhibit C-1.

[17] The Complainant argued that the sale of the subject property was a single sale and not part of a portfolio sale.

[18] As further support for their position that the sale of the subject must be recognized in the determination of the assessed value, the Complainant advised the Board that the Respondent included the sale in their list of commercial sales titled Calgary Assessment Non-Residential Commercial Sales Excerpts on page 28 of Exhibit C-1.

[19] In summary the Complainant argued that the Municipal Government Act, decisions of the ABQB and the inclusion by the City of Calgary as a 2013 sale supports the January 2012 sale, 6 months prior to the July assessment date, for \$10,500,000 as the best indicator of value.

### **Respondent's Position:**

[20] The Respondent reviewed with the Board the evidence that supports the input variables such as capitalization rate, market rental rates, operating costs, and vacancy which is used in the Non-Residential Properties - Income Approach Valuation of the subject property presented on pages 6 and 7 of Exhibit R-1. Supporting documentation provided on pages 11 to 31 of Exhibit R-1.

[21] As further support the Respondent reviewed the table titled SALES – Stephen AV Mall (page 32 of Exhibit R-1) which presented details on 6 sales with transaction dates between March 2010 and January 2012. Supporting documentation for the 6 sales is reported on pages 33 to 46 of Exhibit R-1. The Respondent emphasized that an analysis of the Assessment Sale Ratio (ASR) for the 6 sales determined a mean of 0.98 and a median of 1.01 which support the assessed value for the subject. It was noted that ASR for 4 of the 6 sales are outside of the ASR range of .95 to 1.05.

[22] In support of their position the Respondent reviewed a City of Calgary prepared document titled "Market Value" and its Relation to Assessment" (pages 50 to 55 of Exhibit R-1). The Respondent argued that the reliance solely on the sale of a single market indicator (the sale of the subject property) to establish an assessment will contravene the legislative

requirements of the Matters Related to Assessment and Taxation Regulation (MRAT) of the Municipal Government Act (MGA).

[23] In summary the Respondent argued that the Income Approach is supported by the legislation and prevailing practice and to use the sale of the subject property contravenes MRAT. Further the calculation of the assessed value as documented in the Income Approach Valuation work sheet for the subject property is supported by market transactions.

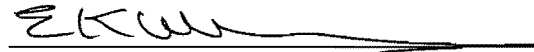
**Board's Reasons for Decision:**

[26] Following an examination of the evidence argued on whether the sale of the subject property in January 2012 is a basis for establishing the assessed value the following was determined:

- 1) ABQB decisions support the consideration of a market sale of a subject property and that failure to rely on this evidence fails to meet the test of reasonableness.
- 2) The evidence supports that the sale was an arm's length transaction even though it may have been one of 3 properties purchased at the same time. There was no compelling evidence to support the transaction was a portfolio purchaser from one vendor. As a stand-alone transaction the sale price of \$10,500,000 is reflective of the market property
- 3) The sale is recognized by the City of Calgary as a transaction to be utilized in the preparation of assessments.
- 4) The sale of the subject property in January 2012 was an arm's length transaction 6 months before the July 2012 assessment date.

[27] Based on the evidence and arguments presented, the January 2102 transaction of the subject property is representative of the market value of the subject.

DATED AT THE CITY OF CALGARY THIS 6<sup>th</sup> DAY OF November 2013.



**Earl K Williams**

**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. 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**

<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB				