

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:

Canada Safeway Limited (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER

I. Fraser, BOARD MEMBER

R. Kodak, BOARD MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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:	080200603
LOCATION ADDRESS:	524 Elbow Drive SW
FILE NUMBER:	72394
ASSESSMENT:	\$16,060,000

This complaint was heard on the 24th day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212-31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *A. Izard, Altus Group Limited*
- *K. Fong, Altus Group Limited*

Appeared on behalf of the Respondent:

- C. Fox, City of Calgary

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

[1] There were no procedural or jurisdictional matters raised. However, the Parties advised that several of the documents submitted for this complaint were previously submitted for CARB 72370, CARB 72381 and CARB 72133 and would also be submitted for other complaints to be heard by this Board during this hearing week. The Parties requested that those documents be carried forward as noted in each complaint and, likewise, that all presentations, questions, responses, summaries and arguments be carried forward. The Board concurred and C2, C3, C4 and C5 from CARB 72370 and C6 and C7 from CARB 72381 and CARB 72133 were carried forward for this hearing.

Property Description:

[2] The subject is a freestanding, retail supermarket located in the Beltline, area FS1, at 524 Elbow Dr. S.W. and known as the Mission Canada Safeway. It is considered to be a B class building, constructed in 1971, encompassing 24,569 square feet (sq.ft.) on a 69,544 sq.ft. parcel of land. The land use designation is Commercial – Corridor 1 and Commercial – Corridor 2 and it is assessed as vacant land using the Sales Comparison approach to value with a base land value of \$220 per sq.ft. A corner lot influence fact of 5% was applied to the base land value.

Issues: The matters identified on the Complaint Form were reduced, at the hearing, to the correct assessed value:

[3] Issue Number 1: Does the Income Approach to value more correctly reflect the market value of the property on July 1, 2012?

[4] Issue Number 2: If the Board determines that the Income Approach is the most appropriate method of determining the assessment, what are the correct parameters to be used in the calculation?

Complainant's Requested Value:

[5] The Complainant requested that, if the Income approach is used and the rental rate is assessed at \$15 per sq.ft. and a capitalization rate (cap rate) of 6 per cent (%) is applied, then the 2013 Assessment should be corrected to \$5,710,000.

[6] As an alternative, the Complainant requested that, if the rental rate is assessed at \$15 and the cap rate is applied at 5.5% then the corrected assessment should be \$6,210,000.

[7] As a second alternative, if the Board does not accept the Income approach, then the 2013 assessment, using a land only valuation, after an increase for corner influence and a decrease for flood plain influences, should be \$3,140,000.

Board's Decision:

[8] The 2013 Assessment is decreased to \$7,450,000 using the Income approach to value and using the parameters consistently applied by the Respondent to other Beltline grocery stores and as reflected in CARB decisions 72381 and 72133 heard by this Board during this hearing week: specifically, by applying a rental rate of \$18 per sq.ft. and a cap rate of 5.5%.

Position of the Parties:

Issue Number 1: Approach to Value

Complainant's Position:

[9] The Complainant noted that this was one of three supermarkets in the Beltline area that this Board had dealt with during this hearing week; the other two had been assessed using the Income approach to value and, as a matter of equity, the subject should be assessed in a similar manner.

[10] He noted that although the store had been temporarily closed during the June 2013 flood, it was re-opened and was functioning in its former capacity.

[11] He noted that the land use districting on this parcel is very restrictive, the majority being C-COR 2 which has a Floor Area Ratio (FAR) of 1 and a maximum height of 10m. Only a small portion, approximately 20% of the parcel, adjacent to 4th Street is designated C-COR 1 which has an FAR of 3 and a maximum height of 16m. He concluded that there was very little redevelopment potential on this site with the current land use districts and that a public process to redesignate the lands would be required prior to ensuring that a higher and better use could potentially be achieved on the land.

[12] It was the Complainant's position that to value the property at its highest and best use, as a redevelopment parcel, the Respondent must have regard to what is physically possible, legally permissible, financially feasible and maximally productive. It was his contention that the Respondent has not done any of this analysis and, furthermore, that the owner has made no application for a change in land use or a development permit.

[13] With respect to the land rate applied by the Respondent, the Complainant noted that the properties presented by the Respondent have land use districts that permit much higher densities of development, including FARs as high as 8, without the necessity of redistricting their sites and none of them are grocery stores.

[14] It was the Complainant's contention that, if land rates are to be applied then they should reflect the current, allowable, buildable densities with adjustments for corner influences and location within a flood plain.

Respondent's Position:

[15] It was the Respondent's position that the subject site is underutilized with respect to its development potential, not only under the current land use districts but also with respect to other land use districts that could be available to it upon application. The Respondent contended that

the underlying value of the land far exceeds the assessment of the parcel using the Income approach to value. In instances like this, he said, it is the City's practice to value the land, as if vacant, at its highest and best use. The City, he said, can choose the valuation method it deems most appropriate and is not restricted to using only the Income approach even if the site is an income producing property.

[16] It was the Respondent's position that assessing the subject as land only, for highest and best use, is consistent with the assessment of other properties along the 4th Street corridor, whether they are improved or not. To apply a different valuation method would be inequitable to those properties.

[17] The Respondent stated that the City would approve an application for higher density on this site and, in support, provided extracts from the Land Use Bylaw for various districts, extracts from the Municipal Development Plan and copies of newspaper articles, and etcetera.

[18] He pointed out that, while the Complainant had not made any application to redevelop the property, a request for information about zoning issues and timelines had been made on December 1, 2011. It appeared that no further action occurred after February 9, 2012.

[19] The Respondent provided documentation to support its land rates and noted that there is no adjustment made for flood fringe influences in the Beltline.

Issue Number 1: Income Approach to Value - Board's Findings and Reasons for Decision:

[20] The Board agreed with the Respondent that there is no legislated approach to value that must be used in certain circumstances and that the Assessor can use the approach that best reflects, in his opinion, market value on July 1 of the valuation year. However, the assessment must also "reflect typical market conditions for properties similar to that property." (s.2, *Matters Relating to Assessment and Taxation* Regulation, AR 220/2004 [MRAT]).

[21] In this instance, there are two other supermarkets in the Beltline that this Board dealt with during this hearing week, evidence from which was carried forward to this hearing with the consent of the Parties. Both of those properties were assessed using the Income approach to value and exhibit similar site coverage and assessed values per sq.ft. when adjacent parking on a separate title is considered.

[22] The property in CARB 72133, for example has approximately 38% site coverage compared to the subject at 35%. With a parcel size of just over 100,000 sq.ft. and an assessment of \$12,200,000 its assessed value equals \$120 per sq.ft. as opposed to \$230 per sq.ft. for the subject. And, it is these properties that compete with the subject in the market place, not other retail, office or food and beverage establishments in the neighbourhood.

[23] The Board concurred that there is a potential for redevelopment of the site under complaint. However, there is no evidence of an active application; only evidence of an ongoing retail grocery operation. This Board knows that the redesignation and redevelopment process can be lengthy and costly and subject to public scrutiny and political approval. The Respondent has no practical basis, even with the best will in the world, to categorically state that an application incorporating increased densification would be approved.

[24] The Respondent has provided no analysis of what could be achieved on the parcel, assuming the existing buildings are removed, only extracts from the Land Use Bylaw which, the Board noted, demonstrate very few uses that are permitted while the majority are discretionary and therefore subject to appeal or objection from the public.

[25] The Board noted that both Parties submitted numerous CARB, LARB and MGB decisions arguing different conclusions on this issue; however, it was the Board's determination that equity, in this situation, requires that very similar properties in the same sector of the City, the Beltline, be valued using the same methodology. Accordingly, the Board supports the application of the Income approach to value in assessing this property. Having made that determination, the Board did not evaluate the two different approaches to land rate values submitted by the Parties.

Issue Number 2: Calculation of Value Using the Income Approach

Complainant's Position

[26] The Complainant referenced his income approach valuation as previously requested in CARBs 72381 and 72133 and asked that those arguments be carried forward to this Complaint.

Respondent's Position:

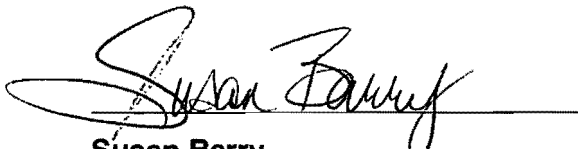
[27] The Respondent likewise referenced his income approach valuation as previously requested in CARBs 72381 and 72133 and asked that those arguments be carried forward to this Complaint.

[28] The Respondent also noted that although the subject is actually a B building because of its prime location in the Beltline, it is considered to be A quality for assessment purposes and referenced the Safeway at 813 11 AV SW, CARB 72381 for the valuation parameters using the Income approach

Issue Number 2: Calculation of Value Using the Income Approach - Board's Findings and Reasons for Decision

[29] Having determined that the Income approach to value is the most appropriate method of determining market value in this instance, the Board was mindful of its decision in the two immediately preceding hearings of grocery stores in the Beltline (CARB 72133 and CARB 72381) and confirmed the assessed rates of \$18 per sq.ft. and a cap rate of 5.5%. In making the calculation that resulted in an assessment of \$7,450,000 the Board applied these rates to the Complainant's 2013 Alternate Requested Retail Assessment Valuation template on page 170 of C1, in evidence for this hearing.

DATED AT THE CITY OF CALGARY THIS 7 DAY OF November 2013.



Susan Barry
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure – Mission Safeway
2. C1-A	Complainant's Disclosure - Mission Safeway Evidence Appendix
2. C2	Complainant's Disclosure – Grocery Leasing "A"
3. C3	Complainant's Disclosure – Grocery Leasing "B"
4. C4	Complainant's Disclosure – "A" Group Supermarkets Rebuttal
5. C5	Complainant's Disclosure – "B" Group Supermarkets Rebuttal
6. C6	Complainant's Disclosure - Altus 2013 Beltline Retail Capitalization Rate Analysis
7. C7	Complainant's Disclosure – Beltline Retail –Rebuttal Submission
8. R1	Respondent's 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 Purposes Only

Municipality	Roll Number	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary	080200603	Retail	Stand Alone	Vacant Land	Income