



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:

7-ELEVEN CANADA INC
(as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Earl K Williams, PRESIDING OFFICER
J Mathias, MEMBER
A Maciag, 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: 175154509

LOCATION ADDRESS: 166 CROWFOOT WY NW

FILE NUMBER: 72954

ASSESSMENT: \$1,560,000

This complaint was heard on 9th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- B. Neeson Agent, Altus Group Ltd

Appeared on behalf of the Respondent:

- G. Good Assessor, The City of Calgary
- N. Sunderji 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 166 Crowfoot Way NW is a Convenience Store (C store) Gas Bar on 0.47 acre of land with a 1998 year of construction(yoc) assigned a B quality rating in the community of Arbour Lake with the Property Use: Commercial and Sub Property Use: CM0711 Vehicles/Accessories - Convenience Store Gas Bar. The subject is in the Power Shopping Centre known as Crowfoot Crossing.

[3] The assessment of \$1,560,000 was prepared on the Cost Approach.

Issues:

[4] Is the subject assessed inconsistently and inequitably with comparable convenience store/gas bars?

[5] Is the subject assessed in excess of market value by virtue of utilizing a Cost Approach based on an incorrect land rate that fails to account for a reduced value due to potential environmental concerns?

[6] Should convenience store/gas bars be regarded as retail properties and therefore assessed using the Income Approach?

Complainant's Requested Value: \$1,360,000 (based on the Income Approach)

Board's Decision:

[7] The Complainant has failed to demonstrate that the alternative use of the Income Approach to Valuation would produce a more reliable and accurate estimate of market value for the subject property.

[8] The Complainant has not convinced the Board that the subject property is assessed in excess of market value.

[9] The assessment of is confirmed at \$1,560,000.

Position of the Parties

[10] 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.

[11] 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 Cost Approach versus the Income Approach Rental Rate the evidence included details on assessment methodologies, a market analysis of leases for comparable properties and supporting documentation for the comparables. In support of the cap rate issue the Complainant submitted an Altus Group study titled Power Centre Retail 2013 Capitalization Rate Analysis & Argument (Altus Cap Rate Study), an analysis of a number of comparable properties, excerpts from applicable legislation, excerpts of technical information related to capitalization rate methodology, excerpts from the City of Calgary Capitalization Rate Approach, excerpts from the Alberta Assessor's Association Valuation Guide related to the method to determine the market rental rate and the Capitalization Rate calculation as well as a number of Assessment Review Board and Municipal Government Board decisions in support of its position.

[12] 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 and a rental rate analysis of supermarkets including supporting documentation for the comparables. In regards to the matter of the cap rate the Respondent's evidence included a response to the Complainant's Cap Rate Study, relevant information related to the calculation of cap rates, an analysis of the cap rates for comparable properties as well as a number of Assessment Review Board and Municipal Government Board decisions in support of its position.

[13] 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.

[14] 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.

Complainant's Position:

[15] The Complainant advised the Board that the use of the Cost Approach creates an inequity between the subject property and the market as many gas bars are assessed using the income approach. Further the Cost Approach is typically reserved for "Special Purpose Properties" as a proxy for market value when there is an absence of market evidence.

[16] In support for the argument that the Cost Approach is to be used for Special Purpose Properties, the Complainant referred to Exhibits C-3 and C-4 which provided copies of decisions from the City of Calgary and other jurisdictions in support of the position that the Cost Approach be used for Special Purpose Properties.

[17] The Complainant argued that the City of Calgary is inconsistent in the application of assessment approaches to properties similar to the subject. In support of this position the Complainant reviewed a table titled "2103 Auto Convenience Store with Gas Bar Rental Rate Analysis (1000+SF)" on page 28 of Exhibit C-1. The table presented lease particulars on 10 comparables to the subject. Based on the supporting Property Assessment Summary Reports provided in Exhibits C-1 and C-2 only 3 of the comparables were assessed using the Cost Approach while the other 7 were assessed on the Income Approach.

[18] As further support for the use of the Income Approach when assessing Service Stations, the Complainant advised that of the 39 Service Station comparables presented in a table on page 43 of Exhibit C-1 only 5 were assessed using the Cost Approach.

[19] The use of the Income approach will require that the Potential Gross Income ("PGI") be established. To determine the PGI the Complainant reviewed, with the Board, a table titled "Service Station Market Data – 2013 Market Leasing Information" (page 43 of Exhibit C-1) which presented the profile of 39 service stations. The profile included tenant, address, shopping centre, assessed components of a Gas Station, Convenience Store (C Store), Car Wash, and Auto Repair, Annual Rent, Lease Start and Lease End dates.

[20] An analysis of the Annual Rent for the 17 comparables that were a Convenience Store with a Gas Bar reported in the table referenced in paragraph [17] determined that the median annual rent was \$90,003 and the mean was \$92,455.

[21] As further support for the PGI the Complainant advised that the median Annual Income presented in the table referenced in paragraph [16] is \$95,412. These analyses support the use of a PGI of \$95,000- that being the typical assessed PGI for C store with gas bars using the Income Approach.

[22] The Complainant provided an alternative assessment request based on the Cost Approach. Details of the alternative are presented on page 112 of Exhibit C1. The Complainant accepted that all of the Respondent's valuation parameters utilized in the Cost Approach with the exception of applying an -30% influence adjustment to the land rate for environmental concerns.

[23] In summary the Complainant argued that the most appropriate valuation for the subject would use the Income Approach which, when calculated using a PGI of \$95,000, supports an assessment of \$1,360,000 (page 110 of Exhibit C-1).

Respondent's Position:

[24] The Respondent argued that Cost Approach is an appropriate methodology for the subject property. Properties such as Gas Bars on a separate title can be sold as a standalone asset; however, if the Gas Bar is part of a larger retail complex or on the same roll number as the large property, the Income Approach is applicable. In the case of the subject property, the Respondent argues that the subject is a standalone Gas Bar.

[25] As further support for the use of the Cost Approach, the Respondent reviewed with the Board the Alberta Assessor's Association Valuation Guide-Gas Stations (page 202-208 Exhibit R-1).

[26] The Cost Approach for the subject used a land value of \$63.00 per square foot (psf) which the Respondent argued is supported by the 7 comparables presented in the table titled Commercial Land Sales 2013 (page 97 of Exhibit R-1). No evidence was presented by the Respondent in respect to the Marshall and Swift Cost Value of \$570,000.

[27] The Respondent presented as a comparable, a September 2011 sale of a Gas Bar located at 7404 Ogden Road SE. The unadjusted sale price was \$1,085,000. This property is assessed on the Cost Approach at \$1,040,000 which yields an Assessment to Sale Ratio of 0.959 which is within the accepted range and is viewed by the Respondent as support for the assessment of the subject property. Details on the sale including the RealNet Retail Transaction Summary are presented on pages 312 – 320 of Exhibit R-1.

[28] In summary the Respondent argued that the Alberta Assessor's Association Valuation Guide - Gas Stations (the Guide) applies to the subject property, and that further the Gas Bar sale comparable and the land value comparables support the use of the Cost Approach and that the assessment should be confirmed.

Board's Reasons for Decision:

[29] The Respondent's Exhibit R1 (pages 202 – 228) presented the Guide which in the Introduction on page 206 states the following:

"Before applying this guide the assessor must determine whether the property is a gas station or a retail outlet that includes fueling operations."

This determination of the predominant nature of the operation is fundamental to the assessment of the subject property. This lack of clarity as to the whether the subject property is a gas bar or retail outlet that includes fueling operations, created confusion in determining the assessed value.

[30] Further Section 1 Introduction of the Guide defines the terms Gas Station, Gas bar, Service Stations, Car Wash and Retail Operations (pages 206 and 207 of Exhibit R-1). The review determined:

- 1) In reference to a gas bar the following comments are provided: *Gas bars have minimal structures on the property. A gas bar is likely to have only pump islands and a free standing booth for the attendant.*
- 2) In reference to Retail Operations the following statement is provided (page 207 Exhibit R-1): *Increasingly common at gas stations are more elaborate structures containing convenience store and/or fast food*

operations. These are to be distinguished from a simple free-standing booth that may sell automotive-related products and snack foods.

[31] Further the Guide advises that where convenience stores and fast food outlets also contain fueling operations the assessor must determine the predominant nature of these types of operations. In a text box (page 207 Exhibit R-1), the Guide makes the following statement:

*"If the **predominant nature** of the operations is a **retail store** and/or a fast food restaurant, the property should be **valued as a strip commercial operation** (refer to the Strip Commercial Valuation Guide). In these circumstances the pumps, associated gas booth (if any) and the car wash should be valued separately, according to this guide. The total value of the gas station improvements (not including the land) can then be added to the value of the retail operation to arrive at an overall estimate for the entire property."*

[32] Caution is noted:

"Before applying this guide the assessor must determine whether the property is a gas station or a retail outlet that includes fueling operation"

[33] It goes on to say:

"The term "gas station", as it is used in the guide, represents properties whose primary function is the fueling of vehicles."

[34] The Respondent also included the 2012 Alberta Assessment Quality Minister's Guidelines. The Respondent stated (page 123 of Exhibit R1):

"Failure to apply the cost approach will result in failure to pass the detailed audit test for fairness of assessments."

[35] This seems to the Board a rather extreme statement, given that assessment and audit guides both use the word "recommended" as opposed to "must use". Further, failure to fully consider the predominant use might actually cause a failed audit.

[36] The subject property was assessed on the Cost Approach which would be the approach recommended by the Guide if the predominant nature for the subject is a gas bar. No evidence was provided by the Respondent to the Board to answer the question:

What was the predominant nature of the subject property and further how it was determined?

[37] Without addressing this question, the determination of the assessed value of the subject property is a challenge.

[38] The Complainant chose to provide the Board with a requested assessment based on the Income Approach and, in the alternative, on the Cost Approach.

[39] In respect of the Income Approach being the assessment method applicable to the subject property, the Complainant argued:

- 1) A study (Page 55 of Exhibit C-1) of 39 comparable Service Stations reported that 34 of the comparables are assessed using the Income Approach and 5 using the Cost Approach.
- 2) In support of the Annual Income, the PGI in the Income Approach, the Complainant's evidence in paragraphs [19], [20] and [21] supports an Annual

Income of \$95,000. The Annual Income was used in the determination of the assessment valuation on page 18 of Exhibit C1.

- 3) The Complainant also applied a 2.0% vacancy, \$7.00 per square foot shortfall and a 1.0% non-recoverable allowance to arrive at a valuation conclusion of \$1,360,000 using the Income Approach. There was no support, however, for these three valuation parameters.

[40] In respect of the Complainant's alternative assessment request based on the Cost Approach, the Complainant accepted the Respondent's land value and Marshall Swift Cost value. The only difference was an adjustment of -30% for Environmental Concerns. Page 68 of Exhibit C1 provides the Respondent's 2013 Non-Residential Commercial Land Influence Adjustments. A -30 % adjustment is noted to be applied for environmental concerns in the following instance:

"Is applied to contaminated properties where sufficient information has been provided to the Assessment business unit to determine the nature and extent of the issue, as well as remediation cost estimates."

The Complainant provided no supporting documentation for this adjustment.

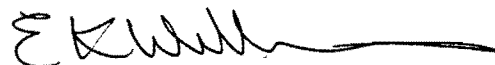
[41] The Cost Approach requires the calculation of the Marshall Swift Cost Value of the improvements. The Respondent provided no evidence to support the reported Marshall Swift value of \$570,000.

[42] In summary the Board determined:

- 1) As required by the Guide, neither party addressed the matter of the predominant nature of the subject property (is this a gas bar or a retail outlet that includes fueling operations?)
- 2) The Complainant's evidence lacked back up for:
 - i. parameters required for the Income Approach with the exception of the amount of the Annual Income and capitalization rate, and
 - ii. The requested adjustment for environment concerns in the Cost Approach.
- 3) The Respondent failed to show support for how the assessment was calculated using the Cost Approach with the Marshall Swift Cost Valuation.

[43] Based on the evidence and arguments presented, the Board reluctantly confirms the current assessment value of \$1,560,000 as it was not shown to be in excess of market value and the Complainant's Income Approach could not be verified.

DATED AT THE CITY OF CALGARY THIS 21st DAY OF November 2013.



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 Disclosure
3. C3	Service Stations – Market Evidence Complainant Disclosure Service Stations – Cost Approach as Proxy for Market Value
4. C4	Complainant Disclosure - Decisions
5. 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	POWER CENTRE	APPROACH COST VS.INCOME	