



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:

Enjay Holdings Alberta Ltd. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair; J. Zezulka
Board Member; R. Deschaine
Board Member; K. Farn***

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: 068134501

LOCATION ADDRESS: 344 - 12 Avenue SW

FILE NUMBER: 73296

ASSESSMENT: \$2,160,000

This complaint was heard on 17 day of June, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *D. Chabot*

Appeared on behalf of the Respondent:

- *L. Wong*
- *R. Ford*

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

(1) There were no procedural or jurisdictional matters raised by either party, and the CARB proceeded to hear the merits of the complaint as outlined below.

Property Description:

(2) The property is known as Lacey Court, located in the Beltline District in south west Calgary. The building consists of a 6,965 s.f. "C" class office building, constructed in 1956. As of April, 2012, there were 5,639 S.F. occupied by three tenants. Of the three, one space of 2,363 s.f. is held under lease until March 31, 2015. A second space of 1,453 s.f. is leased until December 31, 2014. There is a tax exempt portion of 720 s.f. The 1,326 s.f. of vacant space was actively being advertised for lease by an independent leasing agent. The site area is 10,500 s.f. Site coverage is 66 per cent.

Issues / Appeal Objectives

(3) The premises are currently being assessed as vacant land, at a rate of \$220.00 per s.f. The Complainant disputes the valuation method, whose argument appears to centre on the issue of Highest and Best Use, and equity. The Complainant maintains that the Assessor has disrupted equity, because the subject has not been valued in the same manner as other class "C" office buildings in the area, but rather has been valued as an undeveloped site, which the Assessor maintains is the Highest and Best Use of the site. The Complainant maintains that the City's conclusion of Highest and Best Use for assessment purposes does not result in a fair and equitable assessment in relation to similar properties.

Complainant's Requested Value:

(4) \$1,270,000

Board's Decision:

- (5) The assessment is reduced to \$1,270,000.

Legislative Authority, Requirements and Considerations:

- (6) This Board derives its authority from section 460.1(2) of the Municipal Government Act, being Chapter M-26, section 460 of the Revised Statutes of Alberta. For purposes of this Complaint, there are no extraneous requirements or factors that require consideration.

Position/Evidence of the Parties**Complainant's Position:**

- (7) In addition to the current leasing status of the subject, the Complainant also pointed out that the City has calculated the tax exempt portion of the subject by use of the income approach.

- (8) The inputs used by the Complainant in the income approach calculations are the same as those used by the Respondent in the assessment of class "C" office buildings. These include a rental rate of \$14.00 per s.f., a vacancy rate of 8.00 per cent, operating costs of \$12.00 per s.f., non-recoverable allowance of 1.00 per cent, and a capitalization rate of 5.75 per cent. Although the Respondent disputes the use of income capitalization as the appropriate valuation method, the Respondent did not dispute the individual inputs as adopted by the Complainant.

- (9) The Complainant submitted a credible third party report outlining vacant space, new developments, and annual vacancy in the Beltline area. That report showed 442,757 s.f. of space available in blocks of 20,000 s.f. or greater. In spaces of less than 20,000 s.f. there were about 726,000 s.f. of space available. There are another 1,007,000 s.f. of new space on stream, and another 1,476,000 s.f. on the drawing boards. The vacancy rate for class "C" buildings in the fourth quarter of 2012 is shown at 15 per cent.

Respondent's Position:

- (10) The Respondent maintains that the subject should be valued as a vacant land parcel, at \$220.00 per s.f. There was no market data submitted to support the adopted rate.

- (11) The Respondent submitted past Carb decisions that support the City's position on Highest and Best Use, and subsequent valuation methodology.

Board's Reasons for Decision:

- (12) Neither party submitted any evidence to test the accuracy of the City's assessed land rate. The Board is therefore left to speculate that the \$220.00 rate is a reasonable reflection of market value for undeveloped land in the subject vicinity.

- (13) The past CARB decisions submitted by the Respondent are sometimes of interest to the Board. However, they are not considered as evidence, and have only limited value. Without

hearing all of the evidence that led to the decision, it is difficult to place much reliance on the result.

(14) Looking into the future is conjectural at best. The evidence submitted by the Respondent failed to persuade the Board that alternative uses for the subject property would be manifest in the near future, or even in the foreseeable future. Rather, the opposite is true. The evidence of the Complainant reveals that there is substantial vacant space available and forthcoming in the Beltline. The vacancy rate is relatively high at 15 per cent, and it seems unlikely that a prudent owner would evict existing tenants with remaining lease terms, demolish a viable building, and construct a new building to compete with an already existing market with ample vacant space available for lease.

(15) The Respondent did not submit a Highest and Best Use analysis on the subject property. The Respondent simply prepared a land value which suggests that the subject property is a redevelopment site. In any Highest and Best Use analysis, an alternative use cannot be based on conjecture. Unless there is a proper study done, any argument that the current use is not the Highest and Best Use can only rely on speculation and unsupported opinion which may not meet the test of onus.

(16) The approximate timing of an alternative use is also critical, but none was provided in the evidence submitted. And, because assessment of property is an annual, or at least a periodic function, the Highest and Best Use conclusion should be one that can be manifest in the relevant time frame; i.e. the immediate future. Such is not the case in this instance.

(17) Section 289(2) of the Municipal Government Act states (among other things);

"Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed".

As of the relevant date, the subject was being occupied as an office building. There were no development applications, or development permit in place to indicate that a change in use was forthcoming, or even being contemplated.

(18) This Board is also persuaded by the notion of fairness and equity. In this regard, the following from *Stade v. Assessor #23- Kamloops* provided some guidance;

"Questioning the relationship between assessment and the properties estimated market value is a market value argument, with accuracy the measure of success. Equity instead relates to consistency and fairness of assessment. Consistency requires that similar properties be assessed similarly and that differences be accounted for consistently. Fairness means similar treatment under the law, which typically means that if one group of taxpayers is afforded a privilege, such as underpaying taxes, then everyone should be afforded a similar privilege."

(19) In *Dutchad Bill Investments Ltd. Et al v. Area 19* (2008 PAABBC 20081270) it states;

"The Board must first be satisfied with the accuracy of the market valuation, which involves correct appraisal techniques and appropriate use of market data. Second, the Board must then be satisfied that the level of assessment is equitable, fair, and consistent, in terms of how the subject's assessment relates to other similar properties. The courts have regularly interpreted 'consistency' as the portion of market value being assessed (Bramalea, Lount, supra). In other words, if an appellant can show that other similar properties are typically assessed below actual value, then the subject should receive this benefit too. This need for consistency is particularly apparent for commercial properties, where an unfairly distributed tax burden can give one investor a significant competitive advantage".

(20) In *Peard v. Assessor of Area #01*:

"The Assessment Act and common law require that assessments be equitable as between taxpayers. A Taxpayers

land may not be assessed on a view of actual value which results in an assessment significantly higher than would bear a fair and just relationship to assessments on other similar properties as a whole. Where there is a difference between actual value and equity in assessment, the taxpayer is entitled to the lower of the two

(21) The subject is still occupied as an office building. This Board is persuaded that equity can only be maintained if the subject is assessed on the basis as other class "C" office buildings in the area.

DATED AT THE CITY OF CALGARY THIS 23rd DAY OF July 2013.



Jerry Zezulka

Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
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| 1. | C1 Complainant Disclosure |
| 2. | R1 Respondent 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 MGB Administrative Use Only

Decision No. 0887/2012 - P			Roll No. 116013608	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Land	Highest and Best Use	N/A	Valuation Methodology