

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:

***678486 Alberta Ltd. C/O Loblaw Property Limited (as represented by Altus Group Ltd),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***K. Thompson, Board Chair
J. Rankin, MEMBER
J. Mathias, 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: 129178208

LOCATION ADDRESS: 10506 Southport Rd SW

FILE NUMBER: 73672

ASSESSMENT: \$1,200,000

This complaint was heard on 3rd and 4th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Ave. NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- A. Izard Agent, Altus Group Ltd.

Appeared on behalf of the Respondent:

- T. Johnson Assessor, City of Calgary

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

[1] The Board heard several complaints regarding gas bars. The Parties requested that common evidence, argument and questions be cross referenced.

Property Description:

[2] The subject property is a separately titled, free-standing gas bar and kiosk constructed in 1989 known as the Real Canadian Gas Bar. It is located at 10506 Southport Road SW across the road from the Real Canadian Superstore just off Macleod Trail South. The gas bar and kiosk are located on .55 acres of land zoned Commercial Corridor 3 (C-COR3) in the community of Southwood. For the purposes of assessment this is a non-residential property with the improvements assessed on the Cost Approach to value and the land value assessed based on the Sales Approach to value. This parcel received three influences for traffic main, shape and corner lot. The total assessed value is \$1,200,000.

Issues:

[3] **Issue 1** – Is it more appropriate to use the Income Approach to value this property using a capitalization Rate of 7.5% rather than 7.0% as seen in the City's Free-Standing Retail study?

[4] **Issue 2** – If the value for the subject property is not valued on the Income Approach, would the value be better represented with a Land-only value making appropriate reductions for the perceived stigma of being a gas bar site and removing 2025 sq. ft. of non-assessable roadway?

Complainant's Requested Value:

- a) \$565,500 Income Approach/ 7.5% Capitalization Rate
- b) \$606,000 Income Approach/ 7.0% Capitalization Rate
- c) \$879,500 Land-only assessment with 25% for stigma and non-assessable roadway

Board's Decision:

- [5] Assessed value is reduced to \$936,000.
- 1) Issue 1 – the property will remain on the Cost Approach to value
 - 2) Issue 2 – no reduction for stigma or roadway was allowed however the Board did apply a negative 25% limited access allowance to the land value

Position of the Parties

[6] **Complainant's Position: Issue 1** – Request that the Income Approach be used to value this property –The Complainant contends that there is leasing and marketing information available for this type of property within this municipality, making this the preferred approach to value this property. The Complainant presented evidence of a number of 2010 and 2011 leases of Gas Bars (provided to him by the City of Calgary in various rental rate analyses) to show that there is leasing information available.

[7] In using the Income Approach to value, the Capitalization Rate should be 7.5 %, not 7.0% as seen in the City's Free-Standing Retail Capitalization Rate Summary. Resulting values of free-standing retail properties would then more accurately reflect market. The requested value is \$565,500.

[8] Further, the Complainant stated that inequities are caused between the subject property, a free-standing gas bar with Kiosk on a separate title, and similar property types of Gas bars with Kiosks not on separate titles. The Cost Approach and the Income Approach and produce very different values.

[9] The Complainant provided a chart with 39 equity comparables of gas bars with Kiosks from across the City, five of which have been costed and the rest done on the Income Approach. The difference in the resulting values was pointed out. The Cost Approach produced values that were considerably higher.

[10] In using the Income Approach to value the Capitalization Rate should be 7.5%:

- 1) The Complainant gave evidence of six valid, free-standing retail market transactions occurring in the assessment timeframe that were not included in the City's typical 2013 Capitalization Rate analysis for this property type. The inclusion of the six extra sales in this study (along with the three sales used in the City's analysis) would result in the Capitalization Rate being raised to 7.5%.
- 2) The Complainant included RealNet and Commercial Edge information, 2013 assessment information, Land Title documents, and Corporate Searches on each of the six additional sales transactions.
- 3) The City did use three sales in the 2013 Free-Standing Retail Capitalization Rate analysis. The Complainant had no issue with any of these and included these in their study.

[11] Should the Capitalization Rate remain at 7.0%, the requested value would be \$606,000.

[12] **Issue 2** - If the property's assessed value remains on the Cost Approach to value, it is requested that the land value be reduced by 25% due to the perceived stigma of potential contamination and that 2,025 square feet (sq. ft.) of roadway be removed as it should be non-

assessable according to the Municipal Government Act. Resulting value on the property should then be based on the land-only value at \$879,500.

[13] Nine commercial land sales were presented for C-COR sales analysis, three being former gas bar sites. Seven sales of C-N land were also presented with 2 being former gas bar site. The Complainant attributes the lower sale price per sq. ft. to having a stigma attached to former gas bar sites, despite remediation. The Influence adjustment chart from the City was included showing a -30% reduction for sites proven to be contaminated, along with some remediated land sales and information.

[14] A map was supplied to show where the subject property lines intersect with the public road. The Complainant contends that this area is non-assessable based on Municipal Government Act (MGA) sec. 1(1) (z)(ii) and non-assessable property under the MGA sec. 298 (1)(i).

Respondent's Position:

[15] Income vs. Cost Approach to value - This property is a separately titled free-standing gas bar with a kiosk on a separate title. In the valuation guide prescribed to by the Province, the suggested best method for valuing this type of property is the Cost Approach to value. The City is audited by the Province on that basis. These properties are a separate legal entity even though they appear the same as gas bars not on their own title. This property has received a positive adjustment of 5% for a corner lot and a negative adjustment of 25% for shape. Valuation Guides were included in the evidence package.

[16] Gas bars that are not on a separate title and which are part of a larger site such as a shopping centre are assessed using the Income Approach to value. The land is captured through the income attributed to the shopping centre in such an instance.

[17] One separately titled gas bar sale was introduced. It was a \$1,085,000 sale at 7404 Ogden Rd. SE and was used to support the value of the subject property.

[18] The Respondent noted that the values requested by the Complainant based on the income calculations are less than the land value on this property. A number of vacant land sales were produced to show values of C-COR and C-N land throughout the city with one being noted as the best comparable for this property at 132 Southland Cres. SW. The sale price was \$1,000,000 for a 22,216 sq. ft. parcel.

[19] The Respondent stated that the Cost Approach to value was not a proxy for market value but one of the three accepted approaches to value.

[20] Issue 1 - Capitalization Rate analysis – subsequent to the evidence exchange and prior to the hearing, the City did agree with one of the six sales provided by the Complainant and added it into their Capitalization Rate study for free-standing retail with no resulting change in the typical Capitalization Rate. The City contested the other five sales, two were declared non-arm's length, one had additional rental income from signage, one include vendor take-back financing and one was purchased to convert to an office building. All documentation to support their position was provided, including assessment property summary report, income calculation sheet, RealNet, corporate search, non-residential sales questionnaire (where available), Assessment Request For Information (ARFI), and land title documents.

[21] **Issue 2** - Request for land-only value recognising stigma and non assessable roadway - The City does not recognize perceived potential stigma as there is no way to quantify how it would affect the Market Value of a property. The Respondent did provide Environmental

Information on contamination and showed the subject site did not have anything registered with Alberta Environment.

The Respondent stated that the 2,025 sq. ft. cited by the Complainant as part of the roadway was not registered on title. The land area used by the City is that which is registered at Land Titles.

Board's Reasons for Decision:

[22] **Issue 1 - Income vs. Cost Approach** – The Board accepts the Cost Approach as a valid approach for this property. It is noted that for this property there is a considerable difference in the resulting value between the two approaches. The Income Approach value is lower than even the Complainant's proposed land value of this property.

[23] The Board takes the position that gas bars on a separate title are not truly comparable to gas bars that are part of a larger shopping centre parcel. The compelling distinction is the separate title. The Complainant's proposed income value calculation was developed by taking the components of value derived from one set of properties and applying it to a different set of properties. The property should remain valued on the Cost Approach. Having determined this, the remaining parts of the Income argument such as the appropriate Capitalization Rate are moot.

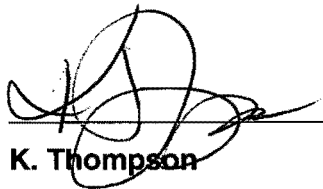
[24] Gas bars are properties that produce an income, however they do not trade frequently on the market (only one sale could be produced). The leases that are available are not straightforward market leases (at least one of the examples given was a land lease). The scarcity of reliable market data for this type of property makes it difficult to test the results of an Income Approach calculation.

[25] **Issue 2 – Reduce the Land Value for stigma, value on Land-Only** – Application of the Cost Approach for separately titled gas bars appears to be consistent across the city. The Board did not see any evidence suggesting that the property was not operating at its Highest and Best Use as a gas Bar. The Board therefore finds no reason use a land-only value assessment for this property. There was no compelling evidence produced to show that a perceived stigma existed on this property, or that there might be future impact on the market value if the owner were to sell it.

[26] With regard to the reduction of the land size by 2025 sq. ft. for roadway (therefore non-assessable under the MGA) the Board saw no compelling evidence that this area was in fact surveyed and legally on title as a roadway. There is not sufficient evidence to alter the assessable land area.

[27] The Board's decision regarding the reduction of the land value of this property - The Board did review the value of the land component of the Cost Approach in relation to the vacant land sales presented by the parties. The Board gave this parcel an additional adjustment of negative 25% to better reflect the limited/restricted access in and out of this property. The negative 25% access in part offsets the positive corner influence of 5%. The Board also notes that the subject is located on Southport Road and does not have direct MacLeod Tr. access.

DATED AT THE CITY OF CALGARY THIS 9th DAY OF August 2013.

A handwritten signature in black ink, appearing to be 'K. Thompson', is written over a horizontal line.

K. Thompson
Presiding Officer

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

NO.	ITEM
1. C1	
2. C2	
3. C3	
4. C4a, C4b	
5. C5	
6. C6	Complainant Disclosure
7. 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.*