



## 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:

***OPUS Properties Corporation (as represented by AEC Property Tax Solutions),  
COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***M. Axworthy, PRESIDING OFFICER  
R. Cochrane BOARD MEMBER  
A. Zindler BOARD 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 2014 Assessment Roll as follows:

**ROLL NUMBER: 067120097**

**LOCATION ADDRESS: 1211 12 AV SW**

**FILE NUMBER: 74762**

**ASSESSMENT: \$5,240,000**

This complaint was heard on 11 day of June, 2014 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:

- *B. Ryan, AEC Property Tax Solutions*

Appeared on behalf of the Respondent:

- *J. Young, Assessor, The City Of Calgary*

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

- [1] A. Zindler recused himself because he was concerned about a potential conflict of interest.
- [2] No other procedural or jurisdictional matters were raised.

**Property Description:**

[3] The subject property is located in the Beltline BL4 Non- Residential Zone (NRZ). It is developed with a 4,529 square foot (SF), one storey retail building constructed in 1987 and occupied by a Tim Horton's fast food restaurant and a Mac's convenience store. The property is designated CC-MHX and has an assessable land area of 17,533 SF. The subject is assessed as land only, using the Sales Comparison Approach.

**Issues:**

- [4] The Complainant argued two issues at the hearing:
  - a) The assessment per square foot of the subject property does not reflect the market price per square foot of similar properties.
  - b) The property should be assessed using the Income Approach methodology.

**Complainant's Requested Value: \$ 4,389,132; revised at the hearing to \$2,140,000.**

**Board's Decision:**

- [5] The Board confirmed the assessment.

**Legislative Authority, Requirements and Considerations:**

[6] Under The Municipal Government Act (The Act) Section 460.1(2) and subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property, other

than property described in subsection 460.1 (1)(a).

[7] The Board was presented with decisions of Assessment Review Boards. While the Board respects the decisions made by those Boards, it is mindful that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless the issues and evidence are found to be timely, relevant and materially identical to the subject complaints.

**ISSUE #1: Should the land rate used to assess the value of the subject property be reduced?**

**Position of the Parties**

**Complainant's Position:**

[8] The Complainant stated that while it did not support the "land only" assessment of the property using the Sales Comparison Approach; should the Board determine that this was the correct methodology, the value that had been used by The City (\$285 per SF) was too high and should be no greater than \$250.34 per SF.

[9] The Complainant stated that for assessment purposes the Respondent had divided the Beltline district into eight sub areas [C1, p.53]. Sub areas BL7, FS1, BL3 and BL4 were all assessed at \$285 per SF.

[10] The Complainant stated that the Respondent's Land Rate study [R1, p. 41] includes nine properties, six located in BL3 and three located in BL4. The Respondent's analysis of Assessment to Sales Ratios (ASRs) [R1, p. 42] demonstrates that the three BL4 properties had ASRs ranging from 1.20 to 2.53, indicating that properties in BL4 should be a separate grouping and were therefore being over assessed by The Respondent. [R2, p. 1].

[11] The Complainant stated that if only the three properties in BL4 were used to determine land value, the median land rate would be \$230 per SF, well below the \$285 per SF used by the Respondent.

[12] In response to questioning, the Complainant noted that its requested \$250.34 rate was based on a mix of BL3 and BL4 properties [C1, p. 25] but that this analysis had been conducted prior to its receipt of information through a section 299 request that suggested that assessed values in BL4 should be lower than those in BL3.

[13] The Complainant argued that the Respondent's Beltline Rental Rate analysis for Class A restaurant/fast food provided further support to its position [C1, pp. 89 and 91]. The Complainant observed that rental rates in BL4 (\$32 per SF) are much lower than those in locations closer to 17 AV SW and 4 ST SW (BL6 and FS1 at \$49 per SF) yet the Respondent contends that land value in these areas are the same. The Complainant contended that there is an inequity in land value with 17 AV SW properties as shown by the rental rates.

**Respondent's Position:**

[14] The Respondent stated that it disagreed with the Complainant that properties in BL4 had a lower value than properties located BL3, noting that the Complainant had not provided any

rationale for excluding the six relevant BL4 sales in proximity to the subject property.

[15] The Respondent stated that the Complainant had not done its own ASR study for the three BL4 properties to demonstrate that the Respondent's study was flawed.

[16] The Respondent stated that the median ASR of the nine properties was .99 and that separating the two areas (BL3 and BL4) would not produce a better analysis as the ASR for the BL3 properties would be too low and would represent an over stratification.

#### **Board's Reasons for Decision:**

[17] The Board accepts the Land Rate study used by the Respondent (\$285 per SF).

[18] The Board could find no reason to separate the properties in BL4 from properties in BL3 to determine the assessed land rate for the subject property.

[19] The Board notes that the Complainant's analysis to support its requested value of \$250.34 [C1, p. 25] includes properties from BL3 and BL4, includes a post facto sale (29/08/2013) at 221 10 AV SW and provides no rationale for excluding sales outside the period July 1, 2012 to July 1, 2013.

#### **ISSUE 2: Should the assessed value of the subject property be based on the Income Approach to value?**

#### **Position of the Parties**

##### **Complainant's Position:**

[20] The Complainant stated that the subject property should be valued on the Income Approach because:

a) the notion that this is a redevelopment property is incorrect as the property owner has two excellent, long term income producing tenants in place (Tim Horton's and Mac's convenience store) and the property is currently developed to its highest and best use; and

b) the land approach to value far exceeds the income potential of the property

[21] The Complainant argued that in order for the land approach to value to be used there must be a high probability of redevelopment in the assessment year.

[22] The Complainant noted that most of the properties used in the Respondent's land rate analysis were either developed as surface parking lots or occupied by dilapidated buildings.

[23] The Complainant ran two scenarios using the Income Approach to determine its estimate of market value for the subject property: one using information from The City's Information Assessment Package (Rental Rate analysis, Vacancy Rate analysis, Cap Rate analysis) that was available to it through a "PAIR request" of another property at 1002, 17 AV SW [C1, p. 45], and the other based on the current rent roll of the subject property [C1, p.44]. The resulting values are \$2,140,000 and \$2,830,000 respectively.

[24] The Complainant suggested that the rates used in the "Assessment Information

Package" be applied to the subject property, with the requested value being \$2,140,000.

### Respondent's Position

[25] The Respondent stated that the subject is a redevelopment property as envisioned in The City's Municipal Development Plan (MDP) which encourages intensification of the developed areas of the city and proscribed in the CC-MHX high density, mixed- use land use designation which applies to the site. The redevelopment character of the site is also evidenced by its low site coverage ratio (.25) and the improvements that are occurring in the immediate vicinity e.g., Luna multi- family /retail project across the road.

[26] The Respondent stated that The City of Calgary ABU is not legislated to apply one specific approach to arriving at market value and that previous Composite Assessment Review Boards (CARBs) had established that where the land value exceeds the capitalized income value estimate, the property's land value best represents its market value [R1, p. 16,17].

[27] The Respondent argued that the logical notion is that any willing seller would be hesitant to sell their property for less than its land value [R1, p. 17].

[28] The Respondent stated that neighbouring properties have been valued in the same manner as the subject property, provided that the respective income values of each are superseded by the established land value, and that this creates and maintains equity [R1, p. 17].

[29] The Respondent stated that it is reasonable to suggest that the income approach to value for assessment cannot represent market value for the subject property and instead the most reasonable representation of market value is the land value of this parcel.

### Board's Reasons for Decision:

[30] The Board agrees with the Respondent that the land rate and not the Income Approach is the best approach to valuing the subject parcel.

[31] The Board acknowledges that the subject property is used for retail purposes with long term tenants in place; however, this does not necessarily mean that the income approach to value should be used to determine the assessed value of the property. If this were the case, a property with minimal improvements would be assessed at a lower value than a neighbouring, vacant property which would be inequitable.

[32] The Board finds that this approach has been consistently applied by the ABU and supported by a number of CARB decisions over the years and that the land rate approach to value is appropriate in this case.

DATED AT THE CITY OF CALGARY THIS 14<sup>th</sup> DAY OF July 2014.

  
M. Axworthy

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
3. C2	Complainant Rebuttal

*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 Only**

<b>Municipal Government Board use only: Decision Identifier Codes</b>				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Strip plaza	Income Approach	Time to development Land Value