

**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-26.1, Section 460(4).

between:

Linnell Taylor Assessment Strategies, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***W. Kipp, Presiding Officer
C. McEwen, Board Member
J. O'Hearn, Board Member***

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: 067226506
LOCATION ADDRESS: 1304 – 17 Avenue SW, Calgary AB
HEARING NUMBER: 56227
ASSESSMENT: \$3,140,000

This complaint was heard on the 5th day of July, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- J. David Sheridan

Appeared on behalf of the Respondent:

- Emilia Borisenko

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

As a preliminary issue, the Respondent objected to the admission of rebuttal evidence from the Complainant because that evidence had apparently been submitted three days past the due date (June 28, 2010 rather than June 25, 2010). The Complainant conceded that, according to the time lines set by the City of Calgary, the submission was late. With no objection from the Complainant, the CARB ruled that the rebuttal evidence was not admissible.

Subsequent to the hearing, the Complainant contacted the City Clerk's Office of The City of Calgary regarding the interpretation of rebuttal due dates. Mr. Gregory Dawson of the City Clerk's Office subsequently responded by e-mail on July 6, 2010, clarifying the Clerk's Office position on due dates. With apologies, Mr. Dawson confirmed that the Complainant's rebuttal evidence due date was actually June 28, 2010. The rebuttal had therefore been filed within the proper timelines.

The CARB had received the same rebuttal evidence in the course of other hearings during the same week and had considered it in the context of those hearings.

The CARB confirms that the rebuttal had not, in fact, been filed too late for consideration at the hearing on July 5, 2010. That rebuttal has been considered in conjunction with this hearing.

Property Description:

The property that is the subject of this complaint is a commercial retail property located on the north side of 17th Avenue SW, in the area of south downtown Calgary known as The Beltline. The property comprises a purpose-built Wendy's Restaurant building containing 3,338 square feet, built on a 13,915 square foot commercial lot in 1987. Since its construction, it has been occupied by Wendy's Restaurant pursuant to a lease that started January 25, 1987 and will expire on December 13, 2017. This lease information is from a January 1, 2009 rent roll. It is noted that the Assessment Request for Information (ARFI) completed by the property manager on April 17, 2009 shows a 40 year lease term rather than the 30 year, 11 month term indicated by the rent roll dates.

For 2010, the property is assessed as "land only" at a unit rate of \$225.66 per square foot of land area.

Issues:

The Complainant raised the following matters in section 4 of the complaint form:
Assessment amount

The Complainant also raised the following specific issues in section 5 of the Complaint form:

- Highest and Best Use as interpreted by the ABU is flawed
- Assessment calculated on Land-as-if-Vacant is incorrect and inequitable
- Assessment is excessive
- Assessment is excessive on an actual land value basis

As of the date of this hearing all issues remained in dispute.

Complainant's Requested Value:

\$2,270,000

Board's Decision in Respect of Each Matter or Issue:

Issue 1: Highest and Best Use

The Complainant referred to the Respondent's assessment method as "anticipatory" in that it anticipates a use for the subject property that was not probable as at the condition date of December 31, 2009 or at the valuation date of July 1, 2009.

The concept of highest and best use requires consideration of a number of factors which includes legal and physical factors. By assessing the property as vacant land, the Respondent has determined that there is a higher and better and more profitable use that can be made of the land.

In coming to this conclusion, the Respondent has failed to recognize all legal factors, including the fact that the property continues to be encumbered by a lease that does not expire until 2018, some 17.5 years beyond the valuation date. Furthermore, there has been no consideration given to the physical characteristics and their impact on any alternative development of the 13,915 square foot corner lot. With consideration given to setbacks, parking requirements and the like, the existing building may be the optimum development for the lot.

The building is modern and it continues to function and operate as an income producing property.

The Respondent acknowledged that no highest and best use study had been undertaken for this property prior to the finalization of the 2010 assessment. The Respondent's valuation approach for properties such as the subject is to value that property, first by use of the income approach and second, as vacant land and then select the higher of the two values as the assessment. The rationale is that "*some improved properties would not reach their market value if valued based on the income approach*". The Respondent did not provide the Board with any other valuation that could be compared to the land as if vacant value.

Findings

In view of the above considerations, the CARB finds as follows with respect to Issue 1:

Firstly, there is conflicting evidence put forward by the Complainant regarding the lease of the subject property. The CARB accepts the lease data from the rent roll which states a December 31,

2017 expiry date which is 8.5 years beyond the effective valuation date of July 1, 2009.

The CARB does not concur with the Respondent's concept of highest and best use. The quote shown above suggests that the Respondent will value a property such as the subject by more than one valuation approach, without regard to highest and best use and then adopt the highest valuation as the assessment of that property. There are situations, and the subject is one of those, where the value of the vacant land might be greater than the value as improved but it is not possible to achieve vacant land status within a reasonable period of time. In the subject instance, there is a lease for the property with a remaining term of 8.5 years. The costs to the property owner for an early lease termination could more than offset the difference in the two values. In making this assessment that potential cost was not investigated.

The CARB finds that highest and best use must be the foundation for a market valuation of the property and that it cannot simply be valued as land without full consideration of all components of highest and best use.

Issue 2: Assessment calculated on Land-as-if-Vacant is incorrect and inequitable

This issue is very much the same as Issue 1. The Complainant maintains that the assessment is incorrect because it did not consider all characteristics of the subject property, including its highest and best use.

The inequitable assessment argument stems from a comparison of the subject property to other properties improved with functioning and in good condition improvements where those other properties have been valued as improved properties and not as vacant land. No comparison properties were provided by the Complainant but the argument was intended to stand on logic.

In reply, the Respondent stated that inequities would exist where a property was assessed with consideration to its improved state when other, similarly improved properties are assessed at a higher amount as vacant land.

Findings:

The CARB finding is the same as for Issue 1. Participants in the marketplace would recognize the status of the subject property and assign a value to it on the basis of that status. It may very well be that the value of the improved property is less than what its value would be as a vacant site but if it is not legally or economically possible to achieve vacant site status, then the improved property market value would prevail.

Equity does not mean that similar properties should be assessed at the same rate or value. It means that similar properties should be assessed in a like manner.

Issue 3: Assessment is Excessive

From the point of view of the Complainant, the subject property must be valued in accordance with its highest and best use and that optimum use is as an income producing investment property. In the marketplace, such properties are valued by the income approach. The valuation as vacant land results in an assessment that is excessive.

Revenue producing properties are most often valued by the income approach and that is the

valuation technique chosen by the Complainant. A net income capitalization technique was used wherein a market or typical rent rate is determined from an analysis of lease data from other similar premises, appropriate market supported vacancy and vacancy shortfall allowances are made and the resulting net income amount is capitalized at a market derived capitalization rate.

In this instance, the Complainant reported that the subject premises were currently leased at a rental rate of \$55.42 per square foot. A table of lease data for other properties was presented wherein rental rates ranged from \$23.00 to \$95.00 per square foot. From all of that data, the Complainant selected a rate of \$55.00 per square foot as the typical rent for the subject.

A vacancy allowance of 1.0% was chosen after consulting market survey reports dealing with retail vacancies in various sectors of Calgary and with particular regard to the national tenant and long term lease in the subject building. An \$8.50 per square foot vacancy shortfall allowance and an 8.0% capitalization rate were taken from assessments of other income producing properties in the city.

Using these input amounts and rates, the Complainant arrived at a market value amount of \$2,268,375.

The Respondent had not valued this property by the income approach. There was no evidence put forward to challenge the vacancy, shortfall or capitalization rate input factors used by the Complainant but questions were asked about how the Complainant arrived at a \$55 rent rate for this property and a \$40 rent rate for the property in the earlier hearing when identical rental evidence was presented in each case. A table in the Respondent's evidence included comments about the retail leasing comparables used by the Complainant. Several of the comments did not relate to the subject property (this same table had been included in Respondent's evidence briefs for other Beltline property complaints) but some referenced "post-facto" lease dates and some pointed out inconsistencies between the Complainant's details and those found on ARFI's.

Findings:

The CARB finds that having established that the highest and best use of the subject property is as a revenue producing investment property, the most reliable estimate of market value will come from the income approach. Other than questioning the rent rate used by the Complainant, the Respondent found no fault with any of the other inputs so the CARB accepts the vacancy allowance, the shortfall allowance and the capitalization rate. The Complainant's reasoning that lead to the \$55 rate as typical was essentially unchallenged and that rate is supported by the rent payable by the tenant during the valuation year.

The CARB has found that the income approach is the appropriate valuation approach for determination of the assessment of the subject property. It finds that the Complainant's application of this approach is unchallenged by the Respondent on the basis of its input factors and that the value conclusion is a reasonable one.

Issue 4: Assessment is excessive on an actual land value basis

In the event that the CARB determined that the subject property is appropriately valued as vacant land, the Complainant presented evidence to show that the \$225.66 per square foot rate used in the assessment is excessive. A number of comparables were presented and most of these were challenged by the Respondent.

Findings:

The CARB did not dwell on the land value evidence. The Board has determined that the subject property should be assessed using the income approach to value.

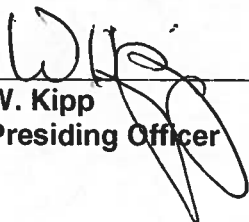
Board's Decision:

In summary, the CARB finds that properties such as the subject must be assessed with regard to their highest and best use. In the subject instance, highest and best use analysis would indicate that the property is a revenue producing investment property and it should be valued as such, by use of the income approach.

The Complainant's application of the income approach is accepted.

The 2010 assessment is reduced to \$2,270,000.

DATED AT THE CITY OF CALGARY THIS 19th DAY OF July 2010.



W. Kipp
Presiding Officer

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.*