

**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:

Colliers International Realty Advisors, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***R. Mowbrey, PRESIDING OFFICER
D. Pollard, 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 NUMBERS: 067092205
 067092106

LOCATION ADDRESSES: 731 10 AV SW
 739 10 AV SW

HEARING NUMBERS: 58579
 58565

ASSESSMENTS: \$2,790,000
 \$1,460,000

This complaint was heard on the 9th day of September, 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:

- *Did not appear*

Appeared on behalf of the Respondent:

- *R. Natyshen*

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

The Presiding Officer advised the Respondent that one of the Board members was unable to attend the hearing. The Respondent, upon questioning, by the Presiding Officer indicated he had no problem with a panel of two and no problem with the composition of the Board. It was further noted that the Complainant was not in attendance.

Property Description:

The subject properties, 731 and 739 10th Ave. SW, are multi-tenant buildings constructed in 1958 and 1928 and rated as a D and B quality buildings respectively. The land use designation to the properties is Centre City Mixed use. The subject properties were undergoing renovations as of December 31st 2008 and were entirely vacant as of July 1st 2009.

Issues:

What is the highest and best use of the subject property?

Complainant's Requested Value: \$2,010,000 and \$1,050,000

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

What is the highest and best use of the subject property?

While the Complainant did not appear at the hearing, the Board did review the Complainant's evidence. The evidence showed the subject property assessment should be based on the income approach as evidenced by 3 rental rate comparables of \$18.00, \$17.00 and \$18.00 PSF. The Complainant's evidence requests the rental rate to be \$17.00 PSF. The agent's listing sheets indicate the asking rental rate is \$17.00 PSF, the operating costs of \$10.00 PSF, vacancy allowance of 5% and a capitalization rate of 8% gives a rounded requested amount of \$2,830,000 and \$1,170,000 respectively. This works out to a value of \$190 PSF.

The evidence showed that the highest and best use was as an income producing property and should not be assessed as vacant land only, because the subject property was being completely

renovated and would then be leased to tenants, making it an income producing property. There was no probability in the near future that the property would sit as vacant land.

The Complainant's evidence cited a number of third party sources to support the capitalization rate. Additional evidence showed that a previous decision had amended the assessment of the 2 properties to \$155 PSF. The Complainant's evidence cited a number of authorities regarding support for the complainant's position regarding the income approach and why the direct sales approach is suspect.

The Respondent argued that the subject property has been assessed on the direct sales approach. The subject property is in BL 3 and assessed with a land rate of \$215 PSF and the second property was assessed an additional 5% because of a corner lot influence. (Exhibit R-1 pages 18-19). The Respondent further advised the Board that the 2 assessments had decreased 22% and 18% respectively during the last year. (Exhibit R-1 pages 20-21). The Respondent advised the Board that both properties had gone to the MGB and both properties had been confirmed by the MGB. (Exhibit R-1 pages 55-56).

The subject property was sold in April 2009 for \$4,000,000 covering both properties. Regarding the Assessment Request For Information (ARFI) form the Respondent noted to the Board that the owner had indicated that the sales price was not based on the net operating income. (Exhibit R-1 page 59, #25).

The Respondent advised the Board that #739 had a lease agreement for possession on October 1st 2009 for \$20.00 PSF for year 1-3, \$21.00 PSF for year 4 and \$22.00 PSF for year 5.

The Respondent presented a 2010 beltline commercial land (CC-X, CC-COR) sales for the years 2008 and 2009. (Exhibit R-1 page 97). The 5 sales including the sale of the subject property had a mean of \$262 PSF, a median of \$221 PSF and a weighted average of \$281 PSF. The Respondent indicated that these land sales well support the assessment of \$215 PSF. In addition, the Respondent included a *post facto* sale as an indicator of a trend that still supports the \$215 PSF.

The Board finds that the best indicator of market value to be sales in the same or similar economic zone which are valid arms length sales. The Respondent's sales were reflective of vacant land sales in the same or similar economic zone as the subject property and did support the assessment of both properties.

The subject property was sold for \$4,000,000 on April 1st 2009, which approximates the assessed value of the 2 properties of \$4,250,000. The sales were not time adjusted to the valuation date of July 1st 2009 and the Complainant did not raise the sale of the subject property as an issue, so the Board will not deal with this issue.

The Board notes that the Complainant's analysis on the two properties (R-1 pages 84-85), indicate the 2 properties are valued at \$4,000,000, the same as the sale of the property. Since this is the Complainant's own evidence, this seems to be directly opposed to the revised requested assessment by the Complainant. The Complainant's income approach assessment for 2010 is \$4,000,000 and the revised requested assessment is \$3,060,000. The Board found this confusing and the fact that the Complainant was not present to illuminate the Board on this issue did not help the Complainant's case. The income analysis at \$17 PSF on pages 84-86 still resulted in a total value of \$4,000,000.

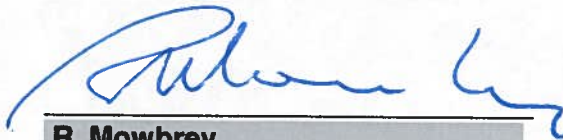
The Board was influenced by a number of authorities in the Respondent's evidence that clearly

zone.

Board's Decision:

The Board's decision is to confirm the 2010 assessments of \$2,790,000 and \$1,460,000 respectively.

DATED AT THE CITY OF CALGARY THIS 24 DAY OF SEPTEMBER 2010.



R. Mowbrey
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.*

Exhibits

C-1 Complainant's evidence (working copy from file.)

R-1 Respondent's evidence (237 pages)