

**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:

***H. M. & P.S. Holdings Ltd. and 671396 Alberta Ltd., (as represented by Wilson Laycraft,
Barristers & Solicitors), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***L. Wood, PRESIDING OFFICER
J. O'Hearn, MEMBER
A. Zindler, MEMBER***

These are complaints to the Calgary Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBERS:	079128401 200842763
LOCATION ADDRESSES:	115- 17 AV SW 111- 17 AV SW
HEARING NUMBERS:	64764 64765
ASSESSMENTS:	\$3,320,000 \$6,250,000

These complaints were heard on 15 day of June, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- Mr. B. Dell Wilson Laycraft, Barristers & Solicitors
- Mr. C. Hartley Colliers International Realty Advisors
- Mr. D. Keeping (observer)

Appeared on behalf of the Respondent:

- Ms. C. Dao City of Calgary Law Branch
- Ms. E. Currie City of Calgary Assessment Branch
- Mr. D. Satoor City of Calgary Assessment Branch

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

The parties requested that these two properties, which are adjacent properties, be heard together as the evidence and argument submitted will be similar for both complaints. The Board agreed with the parties' request.

At the commencement of the hearing, the Respondent raised a preliminary matter in regards to the Complainant's disclosure package on the basis that part of it was filed late. The Complainant's disclosure was due on May 3, 2011. The Complainant submitted that they tried scanning the original package (218 pages) to the Respondent on the night of May 3, 2011; however, their network failed. As such, the Complainant faxed approximately 60 pages of that document on May 3, 2011 and hand delivered the remainder of the document to the Respondent on May 4, 2011. He indicated the Board should allow the disclosure that was filed on May 4, 2011 because it is mostly backup information of the Respondent's land sales and the Respondent has not suffered any prejudice by receiving the disclosure 12 hours late. The Board ruled that the Complainant's back up documentation that was filed on May 4, 2011 was late. It was not filed in accordance with section 8(2)(a) of *Matters Relating to Assessment Complaints Regulation* AR 310/ 2009 (*MRAC*) and in accordance with section 9(2) of *MRAC*, the Board must not hear it.

During the hearing, the Complainant objected to a portion of the Respondent's sales evidence on the basis that three sales were not provided to the Complainant at the time of his section 299/300 request regarding sales that the City used to derive their land rate (Exhibit R1 pages 110-116). The Respondent stated that the third sale could be disregarded but to consider the remaining two sales (Exhibit R1 pages 115-116). The Board ruled the two sales would not be considered as part of the land sales chart (Exhibit R1 page 40); however, the Board did consider the two sales as part of the Respondent's land residual or extraction method.

Property Description:

The subject properties are two adjacent properties located in the Mission Community. The facilities operate as a dental manufacturing laboratory that supply crowns, bridges, dentures etc. to the dental industry.

The first property located at 115 17 Avenue SW is an office/high-rise, built in 2001. It has a building area of 22,089 square feet and is situated on a 0.39 acre parcel of land. The land is designated as C-COR 2, Commercial Corridor 2.

The second property located at 111 17 Avenue SW is a medical dental/low-rise, built in 1977. It has a building area of 28,844 square feet and is situated on a 0.74 acre parcel of land. It has a land designation of C-COR 2, Commercial Corridor 2.

The two improved properties were assessed on the direct sales approach based on the land rate of \$195.00 psf (as though vacant).

Issues:

1. The assessment is in excess of market value.
2. The assessment is not equitable when considering comparable properties.

Complainant's Requested Values: \$2,320,000 (property located at 115- 17 Avenue SW)
\$4,330,000 (property located at 111- 17 Avenue SW)

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

The Board notes that the Complainant checked the following matters on the complaint forms: (3) assessment, (4) assessment class, (6) the type of property and (7) the type of improvement. The Board will only address those issues that were raised at the hearing, which in this case, pertained to (3) assessment; therefore, the Board does not deem it necessary to make findings on the remaining issues.

1. The assessment is in excess of market value.

The Complainant submitted that the land sales do not support the assessments. The subject properties, although improved, are predicated on land value alone. The Complainant submits that this is an error because in valuing the properties and taking into consideration the highest and best use, consideration must be given as to whether a market exists for the properties as a redevelopment site. If so, the Complainant submitted, then the probability must be greater than 50% if redevelopment is going to occur and submitted the following court cases in support of his position: *T. Eaton Co. v. Alberta (Assessment Appeal Board)* [1995] A.J. No. 859 and *Petro Canada inc. v. British Columbia (Assessor of Area No. 12- Coquitlam)* [1991] B.C.J. No. 2896.

The Complainant submitted that if the lands are valued as redevelopment sites, then the land rate should be reduced from \$195.00 psf to \$145.00 psf with a further reduction to \$135.00 psf to capture the demolition costs for removing the improvements (Exhibit C1 pages 26, 32- 36).

The Complainant submitted 15 sales of both improved and land only sales (the 16th sale was a foreclosure). He applied a monthly time adjustment of 2% based on a paired sales analysis of several properties (Exhibit C2 pages 28-31). Based on those sales, the Complainant suggested the mean rate is \$141.31 psf and the median rate is \$136.50 psf (Exhibit C1 page 28).

The Respondent submitted that the subject properties, although improved, were assessed based on their land value using the Direct Sales Approach. The Respondent indicated the income generated by the subject properties did not exceed the land value. The Respondent presented several board decisions that supported valuing improved properties, where the land value best reflects the market value, when the land value exceeds the income value (Exhibit R1 pages 241-311).

The Respondent applied a land rate of \$195.00 psf based on 5 Beltline land sales that had sold within 18 months of the valuation date (Exhibit R1 page 40, 41-108). Four of the five sales had improvements on the properties of which the Respondent applied a Marshall & Swift Depreciated Improvement Value to extract the value of the improvement from the land. The land areas ranged between 1,251- 19,526 square feet and have a residual land rate of \$151.00-\$324.00 psf for a median of \$196.00 psf.

The Respondent submitted the RealNet documents for the sale of the property at 115- 17 Avenue SW on January 1, 2010 for \$4,270,000 as further support of its current assessment although this was a non-arm's length transaction (Exhibit R1 pages 25-26). He also submitted the Non-Residential Sale Questionnaire that indicated an appraisal was completed for the subject property in December 2009 which valued the subject property for \$4,565,000 (Exhibit R1 page 27).

The Respondent submitted court ordered sales and Beltline listings as indicators of the marketplace as further support for the current assessments (Exhibit R1 pages 171, 172-231, 233-238).

The Board finds the Complainant failed to provide sufficient evidence to suggest the current assessed land rate of \$195.00 psf should be reduced to \$135.00 psf. The Complainant's time adjustment analysis was unreliable based on the length of time between sales (3 to 4 years), the inclusion of court ordered sales and the failure to account for any changes in a property's physical state between sales. The Board finds the Complainant's four land sales that occurred between 2009 and 2010 (prior to the valuation date of July 1, 2010) indicate a rate between \$184.00- \$299.00 psf which supports the current assessed land rate of \$195.00 psf (Exhibit C1 page 28).

2. The assessment is not equitable when considering comparable properties.

The Complainant submitted the income producing ability of the property located at 111-17 Avenue SW does not support the current assessment. The Complainant submitted that given the proliferation of stalled projects in the time frame leading up to the valuation date, a potential purchaser would have to consider the economic conditions. It is probable that under these circumstances that the purchaser would not pay more for the properties than their income generating potential.

The Complainant submitted three income approaches of valuation for the property located at 115 17 Avenue SW in which he presented three net rental rates: an assessed rate (\$14.00 psf), a market rate (\$13.50 psf) and an equitable rate (\$12.00 psf) (Exhibit C1 page 38). Based on the equitable rate of \$12.00 psf and applying the valuation parameters as set out (13.00% vacancy allowance, \$13.00 psf operating costs; 2.00% non recoverable expense; 8.5% capitalization rate), he derived a value of \$2,380,000. (The Board notes the Complainant's

requests of \$2,790,000 based on the \$14.00 psf assessed rate and \$2,690,000 based on the \$13.50 psf market rate; however, it was the equitable rate that the Complainant stressed at the hearing).

The Respondent stated that properties cannot be assessed lower than the basic land value (as vacant) and suggested that the Complainant's Income Approach would value the property for less than its land value. The Respondent also questioned the parameters used in the Complainant's Income Approach particularly that there is no basis for the requested equitable rent of \$12.00 psf and no support for the use of the 8.5% capitalization rate. The Respondent submitted the Assessment Requests for Information from 2010 for the subject properties, and based on the actual income using the Complainant's 8.5% capitalization rate, (but no other income parameters), and derived a land rate of \$185.00 psf and \$254.00 psf for the subject properties (Exhibit R1 pages 161-169)

The Board is not persuaded by the Complainant's equity argument as there was little, if any, evidence in regards to how the Complainant derived the \$12.00 psf rental rate (based on equity) or the 8.5% capitalization rate.

Although this is an income producing property, the Board finds that all three income approaches as presented by the Complainant produces values that are less than the subject's land value, which is the minimum value. The Board acknowledges that this same issue has been addressed in previous board decisions including CARB #1191-2010-P in which that Board stated the following:

"The Assessor went on to say that the value derived through application of the Income Approach, as applied by the Complainant was less than the bare land value estimated for the subject property and that is precisely why the land value has been applied. The reasoning of the Assessor is clear to the CARB and it is based upon well founded valuation theory. If the improvements to a given property are of such age or design or other influence that results in that property being incapable of producing a capitalized income value that exceeds the established land value, then the land value represents the market value of the property".

Although previous CARB decisions are not binding on the Board, this panel finds there was insufficient evidence presented which would cause it to deviate from the line of reasoning set out in CARB 1191-2010-P.

Board's Decision:

The decision of the Board is to confirm the 2011 assessments of the subject properties as follows:

- The assessment for the property located at 115-17 Avenue SW is confirmed at \$3,320,000; and,
- The assessment for the property located at 111-17 Avenue SW is confirmed at \$6,250,000.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF JULY 2011.



**Lana J. Wood
Presiding Officer**

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

EXHIBIT NO.	ITEM
1. C1	Report by Colliers International Realty Advisors
2. R1	City of Calgary Assessment Brief (#64764)
3. R2	City of Calgary Assessment Brief (#64765)

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.*