

**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 c/o Atlas Property Services Inc.
(as represented by Altus Group Ltd.), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

J. Krysa, PRESIDING OFFICER

P. Grace, MEMBER

R. Kodak, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	101046407
LOCATION ADDRESS:	6606 Macleod Trail SW
HEARING NUMBER:	66379
ASSESSMENT:	\$2,680,000

The complaint was heard on June 18, 2012, in Boardroom 5 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- A. Izard, K. Lilly

Appeared on behalf of the Respondent:

- E. D'Altorio

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

[1] There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

Property Description:

[2] The subject property is a 31,432 sq.ft. (square foot) parcel of land, carrying a land use designation of C-R3. This land use designation allows for a maximum development density of 0.32 and a maximum structure height of 18 feet. The parcel is improved with a 9,043 sq.ft. retail bank structure constructed in 1976. The structure is of a C+ quality and has had recent renovations, and reflects a development density of 89.91% of the maximum allowable.

[3] The assessment of the subject property has been prepared on the basis of the market value of the underlying land, as though vacant, determined by the following formula:

Formula	Area (Sq.Ft.)	Rate / Sq.Ft.	Value
1st 20,000 Sq.Ft.	20,000	\$ 100.00	\$ 2,000,000
Area > 20,000 Sq.Ft.	11,432	\$ 60.00	\$ 685,920
Total	31,432		\$ 2,685,920
Effective Land Rate		\$ 85.45	
Truncated to:			\$ 2,680,000

Issues:

[4] The Complainant raised the following matters in section 4 of the complaint forms:

3. an assessment
4. an assessment class

[5] However, at the hearing the Complainant led evidence and argument only in relation to matter 3, an assessment amount. The Complainant set out 20 grounds for the complaint in section 5 of the complaint form with a requested assessment value of \$2,050,000; however, only the following issues were in dispute at the hearing:

Issue 1: Is the assessment equitable in relation to the assessments of similar properties?

Issue 2: If the property is properly assessed at the value of the underlying land, what is the correct land rate applicable?

Complainant's Requested Value:

The Complainant requested an assessment of 2,110,000 (by means of the Income Approach).

The Complainant requested an alternate assessment of \$1,880,000 (as though vacant land).

Board's Decision in Respect of the Issues:

Issue 1: Is the assessment equitable in relation to the assessments of similar properties?

[6] The Complainant argued that the assessment does not reflect the typical market value of the subject property, and is inequitable with similar and comparable properties that are valued by means of the income approach to value. The Complainant submitted that the majority of similar properties are assessed by means of the income approach, employing the following coefficients:

- Rental Rate \$25.00 per sq.ft.
- Vacancy Allowance 4.00 %
- Capitalization Rate 7.25%

[7] In support of the argument, the Complainant provided a list of 23 retail bank properties, each constructed prior to 1989, and each assessed by means of the income approach with the above noted coefficients. [C1, p.211]

[8] The Complainant argued that, in contrast, the assessment of the subject property has been prepared by means of a formula applied to the area of the parcel as though vacant, resulting in a total assessment value per sq.ft. greater than that of the comparables; and a value that would equate to an effective net rent coefficient of \$29.75 per sq.ft. were the property valued by the income approach.

[9] The Complainant further argued that the 7.25% capitalization rate coefficient applied in the valuation of the similar properties should be 7.75%. In support of the 7.75% capitalization rate, the Complainant provided an analysis of seven sales of shopping centres that transferred between January 2009 and May 2011, exhibiting capitalization rates ranging from 6.38% to 8.89% by one methodology, and 7.34% to 8.65% by an alternate methodology.

[10] The Respondent submitted that the assessments of all similar properties are prepared by means of the income approach to value; however, where the indicated market value is less than the value of the underlying land, as though vacant, the vacant land value is determined to be the market value of the property. The Respondent argued that the approach is not a valuation of the highest and best use of the property as argued by the Complainant, and provided several Assessment Review Board decisions in support of the methodology.

[11] In support of the land rates applied, the Respondent provided four time adjusted sales of parcels that occurred between February 2010 and May 2011. In support of the \$100 per sq.ft. land rate applied to the subject property, the Respondent called the Board's attention to the two parcels located on 16th Ave NE; both with C-COR1 zoning that transferred at time adjusted rates in excess of \$100 per sq.ft.

[12] To demonstrate that the assessment was equitable, the Respondent provided three improved property comparables located along Macleod Trail that were also assessed by means of the Respondent's vacant land formula.

[13] The Respondent did not challenge the Complainant's equity (income approach) coefficients, nor provide any market evidence to refute the Complainant's capitalization rate evidence.

[14] In rebuttal, the Complainant argued that the Respondent's sales in support of the \$100 per sq.ft. land rate applied were dissimilar to the subject property in terms of location and zoning. The Complainant further argued that the sale of 505 16th Ave NE was not exposed to the market through a realtor or MLS, and therefore not a reliable indicator of market value; and the sale at 210 16th Ave NE was of an improved property where the improvement value would affect the sale price, with no adjustment made. The Complainant also argued that the Respondent's remaining two sales were invalid.

Decision: Issue 1

[15] The Board finds that the assessment of the subject property is inequitable in relation to the assessments of similar properties.

[16] The Board did not find the Respondent's two C-COR1 land sales to be compelling evidence of the market value of C-R3 land located along Macleod Trail as both sales are significantly superior to the subject property with respect to potential development density, exhibiting maximum floor area ratios of 4.0 and 4.5 in contrast to the subject's maximum allowable floor area ratio of 0.32. Further, there was no market evidence provided to demonstrate that the C-COR1 zoning, and locations along 16th Avenue were comparable to the subject's C-R3 zoning and Macleod Trail location. The Respondent's two remaining C-COR2 land sales were also found to be unsupportive of the \$100 per sq.ft. rate applied to the subject property as they exhibited sale prices of \$46.24 and \$59.10 per sq.ft.

[17] Although the Board accepts the Respondent's "land only" methodology in practice and agrees that it is not a valuation of the "Highest and Best Use" of the subject property, without market evidence of typical C-R3 land values along Macleod Trail, the Respondent has failed to demonstrate that the value of the underlying land, as though vacant, exceeds the Complainant's unchallenged equity (income approach) indication of market value.

[18] The Board did not accept the Complainant's argument for a 7.75% capitalization rate as this (preferential) rate would serve to contradict the equitable assessment sought by the Complainant, and contravene the key points of *Jonas v. Gilbert*, [1881] S.C.J. No.356, set out at point 14 of the Complainant's summary of testimonial evidence. [C1, p.6]

Issue 2: If the property is properly assessed at the value of the underlying land, what is the correct land rate applicable?

[19] The Complainant argued that the Respondent's land rates applied to the subject property were in excess of typical land rates evident along Macleod Trail. In support of that argument the Complainant provided four sales of improved parcels located along Macleod Trail that transferred between November 2009 and July 2010, and sold at rates ranging from \$64.64 to \$120.93 per sq.ft., with a median rate of \$101.11 per sq.ft. of land area. From each sale price, the Complainant deducted an improvement value as determined by the cost approach to arrive at residual land values ranging from \$53.90 to \$79.03 per sq.ft., with a median rate of \$59.39 per sq.ft.

[20] The Respondent argued that the Complainant's sales were not sales of vacant properties, but rather, of improved properties with significant building values, and as a result could not be relied upon to establish the market value of the land. The Respondent further submitted the ASR (Assessment : Sale Ratio) for each of the properties to demonstrate that the median ASR was 0.86, suggesting that the assessments were not excessive in relation to this sample.

Decision: Issue 2

[21] The Board finds that the subject property is properly assessed by means of the income approach, as referenced in issue 1 above.

[22] Although the Board has some concerns with respect to the "land residual" methodology employed by the Complainant, the Complainant's land value conclusion is exceeded by the estimate of market value established by the Complainant's (unchallenged) income approach. Accordingly, the Board finds that the estimate of market value established by the Complainant's income approach best reflects the market value of the property, exclusive of the requested 7.75% capitalization rate, for the reasons set out in issue 1 above.

Decision:

The assessment is **revised** from: \$2,680,000 to: \$2,262,000

DATED AT THE CITY OF CALGARY THIS

25

DAY OF JULY, 2012.


J. Kyysa,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission (300 pages)
2. C2	Complainant's Submission (230 pages)
3. C3	Complainant's Rebuttal Evidence (166 pages)
4. R1	Respondent's Submission (87 pages)

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

Appeal Type	Property Type	Property Sub-Type	Issues	Sub-Issue
CARB	Retail	Stand Alone (Bank)	Equity Land Value/Zoning Capitalization Rate	Vacant land value exceeds Income Approach value