

**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:

1356846 Alberta Ltd. (as represented by MCP Consultants Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
J. Rankin, MEMBER
A. Zindler, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	030208110
LOCATION ADDRESS:	135 Whitefield DR NE
HEARING NUMBER:	62415
ASSESSMENT:	\$2,060,000

This complaint was heard on 24th day of June, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- Mr. P. Peterson, MCP Consultants Inc.

Appeared on behalf of the Respondent:

- Ms. Christina Neal, Assessor, City of Calgary

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

The Complainant commenced his presentation and proceeded to identify and elaborate upon an apparent 2010 "Vacancy" issue in the subject, whereupon the Respondent objected.

The Respondent argued that the vacancy issue had not been properly disclosed pursuant to relevant portions of Sections 8 and 9 of Alberta Regulation AR310/2009 being "Matters Relating to Assessment Complaints Regulation" (MRAC). These Sections state in part:

"Disclosure of evidence

8(1) In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing,

(b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the

complainant to respond to or rebut the evidence at the hearing,

(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

Failure to disclose

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.....”

The Respondent argued that since the Complainant had failed to disclose the issue of “Vacancy” in his Brief C-1, therefore this evidence, and any associated with it, should not be allowed into the hearing.

It was noted that while the property owner had submitted the original complaint form containing certain concerns, the agent had opted to develop his own presentation (Brief C-1) which did not include the vacancy matter. It was this document C-1 that was filed with the Assessor and the Board pursuant to Section 8 of MRAC.

The Board immediately reviewed the relevant two documents (complaint form, and Brief C-1) and determined that the vacancy matter had not been properly disclosed pursuant to Sections 8 and 9 of MRAC. Therefore the Board directed that the matter of “Vacancy” be deleted from the Complainant’s presentation.

Property Description:

The subject is a 12,320 Square foot (SF) multi-tenant commercial retail strip centre on 54,360 SF (1.25 Acres) of land in Whitehorn. It was built in 1981 and has positive value “Traffic Main” (TRM) and Corner Lot influences, being on the southeast corner of Whitefield Drive and 36 Street NE. It is rated as “B minus” in quality, and assessed at \$2,060,000 using the Income Approach to Value methodology.

Issue:

1. The subject is over-assessed when compared to similar retail properties and this is inequitable.

Complainant's Requested Value: \$1,800,000

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

Issue #1 "The subject is over-assessed when compared to similar retail properties and this is inequitable"

The Complainant provided his Brief being document C-1, which in its entirety contained a map and the City's Assessment Summary Report for his comparable at 5008 Whitehorn Dr. NE, and the following:

" The Rental income for this property has not changed from July 1, 2009 to July 1, 2010.

Comparing this with a similar strip mall at 5008 Whitehorn Drive NE., we have an assessment higher by \$220,000 or 12%. The building area at 5008 Whitehorn Dr. NE is 11,587 sq. ft. while at 135 Whitefield Dr. NE the building area is 12,320 sq ft. The difference is 733 sq. ft. which means the building at 135 Whitefield Dr. NE is 6.3% greater than 5008 Whitehorn Dr. NE.

The assessment is based on income which depends on the rentable space namely the building. On this basis the assessment at 135 Whitefield Dr. NE should be 6.3% more or \$115,920. This should bring the assessment to \$1,955,920. Taking into consideration the condition of the two properties it would appear that 5008 Whitehorn Dr. NE is superior.

As there has been no change in rental income we would request that the 2010 assessment remain at the 2009 assessment namely \$1,890,000."

In presenting this information however, the Complainant failed to provide a rent roll for the subject, or suggest alternate rents which he might consider more appropriate to use in an Income Approach to Value calculation for the subject. Indeed, other than suggesting that the rents in the subject had remained the same year-over-year, he failed to specifically address any of the City's inputs into the Income Approach to Value calculations for the subject.

Moreover, while the Complainant argued that a difference in size (building area) between the subject and his comparable indicated an over-assessment, the Complainant provided few, if any, details as to why this was so.

The Respondent however clarified that the City is mandated by provincial Legislation to use Mass Appraisal to determine property values throughout the City. In this process, she noted, the City must, on an annual basis, determine "typical" values for rents in retail properties such as the subject. It does so by requesting rental data from many comparable properties in the City. Consequently, she noted, that while the Complainant appears to prefer to use "actual" rents to calculate the assessment, this is an inappropriate methodology under the Mass Appraisal process.

On page 20 and 21 of her Brief R-1 the Respondent provided a copy of the City's "Income Approach Valuation" which identified the various inputs to the calculation used to arrive at the assessed value. She noted the three different "Commercial Retail Unit" (CRU) categories used to evaluate all similar commercial strip properties in the City, and identified the per square foot (per SF) "typical" dollar values applied to each type of rentable space in the subject. She also drew the Board's attention to other input factors such as the "Vacancy Rate"; "Operating Costs"; "Non-Recoverables"; and Capitalization Rate".

On page 31 of her Brief R-1 the Respondent provided a copy of the City's "Capitalization Rates Summary" to support the City's 8.75% Cap Rate used in Income Approach to Value calculations for all similar Retail Strip malls in NE Calgary. She noted that except for an oblique reference to rents, the Complainant had not disputed any of the input values, including the Cap Rate, directly.

On pages 37 to 40 of her Brief R-1, the Respondent provided an Assessment Summary Report; an Income Approach to Value calculation; and a photo of a retail strip mall at 4440 – 44 AV NE which she considered comparable to the subject. In particular she noted that the quality of it and the subject were both B-, and the rents assessed for CRU space in both were identical. Therefore she concluded that this comparable supported the assessment of the subject as fair and equitable, contrary to the Complainant's assertions.

The Respondent argued that while the Complainant had used a strip plaza at 5008 Whitehorn Drive as his comparable, it was not comparable to the subject in several ways. She noted the following:

- that the age of the subject is 1981 whereas the comparable is 1975
- the quality of the subject is B- whereas the comparable is C+
- the subject enjoys direct exposure to very busy 36 ST NE whereas the comparable is internal to the Whitehorn community
- given the exposure to 36 ST NE, the subject is assessed for a "Traffic Main" (TRM) – a positive influence for such properties, whereas the comparable is only assessed a "Traffic Collector" – a lesser value.
- the subject is an aggregate 12,320 SF in size whereas the comparable is 11,587 SF
- the subject has 54,360 SF (1.25 acres) of land whereas the Complainant's comparable only has 25,037 SF (0.57 acres) of land – about half the subject.

In aggregate therefore, the Respondent argued that because the Complainant's comparable strip plaza at 5008 Whitehorn DR NE is not comparable to the subject, any comparisons to it for valuation purposes are flawed and invalid.

On pages 22 to 25 of her Brief R-1 the Respondent provided the Real Net documents capturing the particulars of the sale of the subject for \$2,300,000 in 2007. She compared the 2011 assessed value of \$2,060,000 to it and noted that the City has been effectively "tracking" changing values in the marketplace for such properties. Moreover, she argued that the sale of the subject in 2007 supports the current assessed value.

Finally, on page 45 of her Brief R-1, the Respondent referenced Calgary Assessment Review Board Decision ARB 0481-2010-P which clarified that properties are not assessed and

compared using a per square foot basis. In particular the Respondent referenced page 3 of 5 of the Board's Decision (page 47 of her brief) which stated in part:

"A comparison on an assessment per square foot basis is overly simplistic and inappropriate"

Board's Conclusions

The Board noted that the Complainant relied heavily on comparisons between the subject and another commercial retail strip mall at 5008 Whitehorn DR NE which he argued was very similar. The Board is satisfied from the extensive data and descriptions provided by the Respondent that the Complainant's comparable property is not similar to the subject in many respects, including age and location. Therefore the conclusions the Complainant drew from his comparisons appear to be flawed and unreliable.

Moreover, the Complainant also argued to some degree, what he perceived to be the per square foot difference in value between the subject and his comparable property. The Board accepts the argument of the Respondent that under the Mass Appraisal process mandated by the Province of Alberta, such comparisons are flawed, simplistic, and generally unreliable as indicators of comparative property value – particularly where the properties being compared, display so many dissimilar characteristics. Moreover, the Board notes that at least one other Assessment Review Board reached the same conclusion.

While the Complainant suggested that the rental income derived from the subject had not changed year-over-year, the Mass Appraisal process also mandates that "typical" market rents be used to calculate assessed values. Actual rents from site-specific properties are typically not used in assessment calculations.

Moreover, the Board notes that the Complainant failed to identify any actual rent(s) for any CRU space in the subject, either via a rent roll or otherwise. Nor did he do so for his comparable retail strip mall. Therefore it was unclear to the Board and the parties as to precisely what rents were being charged for any rentable space in the subject and how that might compare to the "typical" values used in the assessment calculation.

Therefore, on balance, the Board considered that the Complainant provided insufficient information to demonstrate to the satisfaction of the Board that the subject is over-assessed. Moreover, the Board is satisfied on the basis of the evidence that the assessment of the subject is fair and equitable.

Board's Decision:

The Assessment is Confirmed at \$2,060,000.

DATED AT THE CITY OF CALGARY THIS 7 DAY OF July 2011.


K. D. Kelly
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
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| 1. C-1 | Complainant Disclosure Brief |
| 2. R-1 | Respondent Disclosure Brief |

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.*