

**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:

Ralph Buonincontri and Giuseppina Buonincontri. (as represented by Colliers International, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***P. Petry, PRESIDING OFFICER
A. Huskinson, BOARD MEMBER
R. Kodak, BOARD 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 2012 Assessment Roll as follows:

ROLL NUMBER: 046146700

LOCATION ADDRESS: 2705 Centre Street N.W.

FILE NUMBER: 65828

ASSESSMENT: \$1,680,000

This complaint was heard on the 23rd day of August, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue N.E. Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *J. Havrilchak*

Appeared on behalf of the Respondent:

- C. Neal

Property Description and Background

The subject property is a small "B- class" Retail - Shopping Strip with office and recreational use on the second level. The improvement was constructed in 1971 and consists of a total of 11,406 square feet (sq. ft.) of rentable area.

The subject property has been valued by the Assessor using the capitalized income approach to value. The assessment methodology is not in dispute; however, the Complainant proposes changes to the rental rate for the second level space and to the allowance made for operating costs.

Issues:

- [1] Does the condition and age of the subject property make it unique within its class and thereby unable to compete with other similar "B- class" Retail/office properties?
- [2] Should the rental rates of \$12 per sq. ft applied to second floor recreation space and the rate of \$15 per sq. ft. applied to office space be reduced to \$6.00 per sq. ft.?
- [3] Should the typical operating cost allowance of \$8 per sq. ft. that has been used in determining the assessment be increased to \$10.70 per sq. ft.?
- [4] Other matters and issues were raised in the complaint filed with the Assessment Review Board (ARB) on March 2, 2012. The only issues, however, that the parties sought to have the Composite Assessment Review Board (CARB) address in the hearing on August 23, 2012 are those referred to above, therefore the CARB has not addressed any of the other matters or issues initially raised in the Complaint.

Complainant's Requested Value:

- [5] Based on the changes proposed by the Complainant the request is to reduce the assessment to \$1,150,000.00.

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

[6] The CARB found no conclusive basis to set the subject property apart from other properties in its class because of its condition.

[7] The CARB found that there is no basis to alter the typical rental rates that have been applied by the Assessor to the subject.

[8] The CARB found that there is no basis to alter the typical operating cost allowance of \$8.00 per sq. ft..

Summary of the Party's Positions**Complainant**

[9] The Complainant argued that the condition and location of the subject does not allow it to compete with other properties in its class. Therefore the rental rates applied to the second floor should be reduced from the \$12 and \$15 per sq. ft. rates used in the assessment to \$6 per sq. ft. The Complainant presented the Assessment Request for Information (ARFI) that had been submitted to the City of Calgary (City). This document shows 2000 sq. ft. on the second floor is rented by Red Phoenix Tae Kwon Do and Martial Arts Centre at a rate of \$7.81 per sq. ft. and another 1600 sq. ft. on the second floor rented to DAD International also at a rate of \$7.81 per sq. ft.. These leases are noted as gross rates. The Complainant indicated that the owner of the subject property believes that \$6 per sq. ft. is the highest rent that can be expected in the future.

[10] The Complainant also submitted 5 photographs of the stairway access to the second floor, hallways and one of an interior space suggesting that the second floor space is sub-standard and cannot be leased at the net rate of \$12 per sq. ft. used by the Assessor.

[11] The Complainant also relied on the ARFI to show that operating costs are higher than the Assessor has allowed. The ARFI shows operating costs for individual spaces ranging from \$7.81 to \$38.00 per sq. ft.. These values tend to be the same values used to indicate the lease rate for each space. The Complainant provided a Revenue Canada document listing various expenses totalling \$115,617.89. Based on this information and the ARFI data the Complainant argued that the actual operating costs exceed \$14.00 per sq. ft., however, the request is that a value of \$10.70 per sq. ft. be applied.

[12] In response to the Respondent's submissions the Complainant argued that it had concerns about all of the equity comparables for recreation space brought forward but in particular number one and two. The first comparable located at 2705 Centre Street N.W. was suggested to include a non arms length transaction. In the case of the comparable located at 2020 12 Avenue N.W. the tenant, Free House Dance Plus, is located on the ground floor and therefore is not comparable with the subject's recreation lease on the second floor.

[13] The Complainant argued that the Respondent's comparables are also superior to the subject and are located in Hounsfield Heights/Briar Hill and Rosemount which are better neighbourhoods than that of Tuxedo Park where the subject is located. The Complainant presented a large number of statistical reports to show income and demographic differences between these neighbourhoods.

Respondent

[14] The Respondent indicated that the typical rental rates are the result of its analysis of triple net leasing activity over a three year period and the Complainant has not brought forward any analysis to show that these rates should be changed.

[15] The Respondent provided a photograph of the subject's exterior to demonstrate that the subject is in generally good condition with a good location on Centre Street N.W.. A photograph of the rear of the building shows covered parking beneath the overhanging second story.

[16] The Respondent brought forward a Real Net document showing that the subject property sold on January 17, 2011 for the sum of \$1,520,000. It was acknowledged that this sale was non arms length but the property was fully occupied at the time of the sale.

[17] The Respondent provided an equity table showing three recreational spaces all assessed at the rate of \$12 per sq. ft.. While the Complainant stated that the Free House Dance Plus lease is for ground floor space, the Respondent stated that their lease includes both ground floor and second floor space.

[18] The Respondent presented an assessment comparable at 3400 14 Street N.W. to demonstrate that this property, like the subject have both been assessed using a rental rate of \$15 for the office space and \$12 for the second floor.

Findings and Reasons for the Board's Decision:**Issue 1) Condition and Characteristics of the Subject**

[19] The subject property was built in 1971 and appears to be in reasonable good condition based on the exterior photograph. The interior photographs were very dark and of poor quality. Four of the five photos showed hallway or stairway but nothing out of the ordinary was pointed out or could be seen from this information.

[20] The Complainant failed to bring forward any other evidence such as any marketing of the space, leases, or third party confirmation of conditional features which may place the subject in a different market than other "B" class office/retail properties. Argument alone is not compelling.

[21] The subject property is located on Centre Street which is a busy roadway and is not a negative influence based on the evidence before the Board.

[22] The CARB decided it had insufficient reason to downgrade the subject property based on the evidence respecting condition and location.

Issue 2) Rental Rate – Second Floor Space

[23] The CARB notes that the parties were not clear as to the amount of space on each floor of the subject. Over 3,394 sq. ft. of storage space has been assessed, however, the location of this space was not known by the Complainant. Even if the CARB were to conclude that there should be a differential between ground floor space and second floor space, the Board would have faced a problem with the allocation. This matter for other reasons addressed below did not require a resolution by the CARB.

[24] The Complainant relies primarily on the ARFI document and the gross rents it portrays for space on the second floor of the subject at \$7.81 per sq. ft.. No actual lease documents were available to allow the CARB to determine whether the leases are arms length or whether there may be other conditions that may explain the low rates. The Complainant failed to bring forward

any comparable leasing activity to justify its proposed rate of \$6.00 per sq. ft. for the second floor space. The rate of \$6.00 per sq. ft. apparently is the rate the owner expects to lease second floor space for in the future. This estimate is without the support of any evidence before the CARB and is rejected as a unrealistic value.

[25] The CARB agrees with the Complainant that the equity comparables brought forward by the City are in different communities and it was not shown that the rental rates achievable in these communities are equivalent to that of the subject's location. The CARB placed no weight on the financial and demographic statistical information brought forward by the Complainant as there is no direct and quantifiable link of this information to the rental rates under complaint.

[26] The Complainant must go beyond showing a weakness in the Respondent's defence of the assessment. The Complainant bears the onus to provide sufficient and compelling evidence to support an alternate value. Such a value must be shown to be a better reflection of the property's market value on July 1, 2011.

Issue 3) Operating Costs

[27] The Complainant provided a list of expenses that had apparently been prepared for some other purpose. The operating expenses were not extracted or analyzed by the Complainant and therefore the CARB could not comprehend the information or the potential relevance of this information.

[28] The Complainant also pointed to the high operating cost shown on the ARFI for the subject. This information defied reasonableness or understanding as the operating cost as shown varied from \$7.81 to \$38.00 per sq. ft. depending on the space. There was no explanation as to how these values were determined. The Complainant stated that the actual operating costs for the subject property are \$14 per sq. ft.. The CARB was not able to determine where or how this value was derived.

[29] Likewise the Complainant requested that the CARB apply an operating cost allowance of \$10.70 per sq. ft. but failed to show the analysis leading to that value.

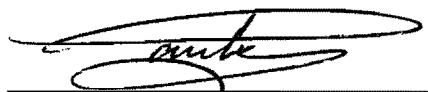
[30] Based on the forgoing the CARB decided that there is no basis for a change from the typical operating cost allowance of \$8.00 per sq. ft. used in preparing the assessment.

Summary

[31] The Complainant sought to have the CARB amend a number of factor values within the capitalized net income approach applied by the Assessor. The Complainant advanced a number of plausible arguments but failed to bring forward sufficient and compelling evidence in support of these arguments. While the Complainant presented an effective argumentative challenge to some of the information the Respondent relied upon in defence of the assessment, this is not sufficient where there is inadequate evidence to support the alternate value recommended by the Complainant, Nor was this value shown to be a better representation of the subject property's market value than is the current assessment. The assessment is therefore confirmed at \$1,680,000.00.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 19th DAY OF September 2012.



Paul Petry, Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. R1	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) *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.*

470(2) *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).*

470(3) *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

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
	Retail/Office	Street Strip	Rental Rate	Operating Costs