

**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:

Libtel Investments Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member 1, D. Pollard
Board Member 2, J. Kerrison***

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: 048054118

LOCATION ADDRESS: 1904 - 19 Street NE

HEARING NUMBER: 68058

ASSESSMENT: 919,000

This complaint was heard on the 17th. day of September, 2012 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Six.

Appeared on behalf of the Complainant:

- *K. Fong*
- *D. Main*

Appeared on behalf of the Respondent:

- *T. Johnson*

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

- (1) There were no procedural or jurisdictional matters to be dealt with.

Property Description:

- (2) The subject is a Mac's store located on the north west corner of 18 Avenue and 19 Street in NE Calgary. The building has an area of 2,100 square feet (s.f.). The date of construction is 1987. The site size is 21,313s.f.

Issues:

- (3) The premises are currently assessed as vacant land, at a rate of \$55.00 per s.f. for the first 15,000 s.f. and \$3.00 per s.f. for the remaining 6,313 s.f.. The City then added a positive 5 per cent adjustment for corner influence. The total, truncated assessment appears at \$ 919,000, or \$43.12 per s.f. of land area. However, the Board notes that a mathematical error exists, and that the correct assessment based on the City's inputs should be \$886,000.
- (4) The Complainant disputes the valuation method. It is the Complainant's position that the City has incorrectly applied an assessment based on a vacant land value without regard to the mandatory test for highest and best use. The Complainant further argues that the subject should be assessed using the income approach, which is the same basis as other retail space in the City.

Complainant's Requested Value: \$640,000

Evidence

- (5) The Board notes that the assessment has increased from \$630,000 in 2011 to the current level in 2012.
- (6) The Complainant's argument centers on the issue of Highest and Best use, and equity. The Complainant maintains that the assessor has disrupted equity, because the subject has not been valued in the same manner as similar retail buildings in the area, but rather has been valued as an undeveloped site, which the assessor maintains is the Highest and Best Use of the site. The Complainant argues that the City's conclusion of Highest and Best Use does not result in a fair and equitable assessment in relation to similar properties.

(7) The Complainant presented one property which the Complainant held as being comparable to the subject. The Complainant's income calculation for the subject is based on the same inputs used by the City in the assessment of the comparable property.

(8) The Respondent's evidence consisted of four land sales comparables, reflecting per s.f. prices ranging from \$5.25 to \$56.77 per s.f. The median of the four is \$16.32 per s.f. One of the comparables is a 6.65 acre site that this Board does not feel has much in common with the subject. If this property is removed from the sampling, the median is \$17.04, and the average is \$29.04.

(9) The Complainant's income capitalization result is equal to \$30.03 per s.f. of land. That total is approximately equal to the average of the three City land sales, after the 6.65 acre site is removed.

Board's Findings

(10) Section 289 of the Municipal Government Act states that each assessment must reflect *"the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed....."*. As of the relevant date, the subject was being occupied as a convenience store. There were no development applications, or development permit in place to indicate that a change in use was forthcoming, or even being contemplated.

(11) The Respondent provided no evidence to indicate that the existing use of the subject was not the highest and best use. Having said that, looking into the future is conjectural at best. In any Highest and Best Use analysis, an alternative use cannot be based on conjecture and unsupported opinion. The approximate timing of an alternative use is critical, but none was provided in the evidence submitted. Assessment of property is an annual, or at least a periodic function. The Highest and Best Use conclusion should be one that can be manifest in the relevant time frame; i.e. the immediate future. The evidence of the Respondent failed to convince the Board that there was any immediate alternative use for the subject land.

(12) This Board is also persuaded by the notion of fairness and equity. In this regard, the following from *Stade v. Assessor #23 – Kamloops* provided some guidance; *"Questioning the relationship between assessment and the properties estimated market value is a market value argument, with accuracy the measure of success. Equity instead relates to consistency and fairness of assessment. Consistency requires that similar properties be assessed similarly and that differences be accounted for consistently. Fairness means similar treatment under the law, which typically means that if one group of taxpayers is afforded a privilege, such as underpaying taxes, then everyone should be afforded a similar privilege."*

(13) In *Dutchad Bil Investments Ltd. Et al v. Area 19 (2008 PAABBC 20081270)* it states; *"The Board must first be satisfied with the accuracy of the market valuation, which involves correct appraisal techniques and appropriate use of market data. Second, the Board must then be satisfied that the level of assessment is equitable, fair, and consistent, in terms of how the subject's assessment relates to other similar properties. The courts have regularly interpreted 'consistency' as the portion of market value being assessed (Bramalea, Lount, supra). In other words, if an appellant can show that other similar properties are typically assessed below actual value, then the subject should receive this benefit too. This need for consistency is particularly apparent for commercial properties, where an unfairly distributed tax burden can give one investor a significant competitive advantage"*.

(14) In Peard v. Assessor of Area #01:

"The Assessment Act and common law require that assessments be equitable as between taxpayers. A Taxpayer's land may not be assessed on a view of actual value which results in an assessment significantly higher than would bear a fair and just relationship to assessments on other similar properties as a whole. Where there is a difference between actual value and equity in assessment, the taxpayer is entitled to the lower of the two....."

(15) The subject is still occupied as a retail store, in a similar fashion as the income based comparable submitted in evidence. This Board is persuaded that equity can only be maintained if the subject is assessed on the same basis as similar properties; i.e. the income approach.

Board's Decision

(16) The Board finds the Complainant's income calculations to be the most accurate representation of a fair and equitable assessment for the subject.

(17) The assessment is reduced to \$640,000.

DATED AT THE CITY OF CALGARY THIS 10 DAY OF OCTOBER, 2012.



Jerry Zezulka
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

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1. C1 Complainant Submission of Evidence,
 2. C2 Complainant Rebuttal Submission
 3. R1 City of Calgary Assessment 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.

For MGB Administrative Use Only

Decision No. 0677/2012-P		Roll No. 067233411		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	3. Office	Highest and Best Use	Income approach v. Market Comparison	Method of valuation.