

**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:

***MCDONALD'S RESTAURANTS OF CANADA LIMITED, COMPLAINANT
(Represented by Colliers International Realty Advisors)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member S. ROURKE
Board Member R. DESCHAIINE***

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: 067203307

LOCATION ADDRESS: 1422 17 AVENUE SW

HEARING NUMBER: 64612

ASSESSMENT: \$4,640,000

This complaint was heard on 23 day of August, 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:

- *Michael Uhryn, Colliers International Realty Advisors Inc – Representing McDonald's Restaurants of Canada Limited*
- *David Porteous, Colliers International Realty Advisors Inc – Representing McDonald's Restaurants of Canada Limited*

Appeared on behalf of the Respondent:

- *Jim Toogood – Representing the City of Calgary*

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

The board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties had no objections to the panel representing the Board as constituted to hear the matter. No jurisdictional or procedural matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

Property Description:

The subject is a free standing McDonald's restaurant in the Beltline community. The property is assessed as land value only.

Issue:

Is the assessed land value in excess of market value?

Complainant's Requested Value: \$3,330,000.00

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

Complainant's Evidence:

The Complainant is requesting a rate of \$140.00 per square foot for land value.

The Complainant provided photographs of the subject property to show it was improved with an operating McDonald's Restaurant.

The Complainant provided a table of 15 sales in the Beltline, Mission, Cliff bungalow and Sunalta communities (C1, Pg 17). Statistical analysis indicated a range of \$106.09 to \$181.54 per square foot for time adjusted sales. The mean was calculated to \$141.31 and median to \$136.51 per square foot. Supporting documentation for the sales was provided.

A monthly time adjustment of 2.0%, based upon the paired sales analysis, was applied to the

sale price of the properties used to determine the land rate.

The Complainant included an additional sale in the submission for the property at 2207 4th Street SW (C1, Pg. 71-72). According to the Alberta Data Search document the vacant parcel sold May 31, 2010 for \$3,600,000.00. The parcel had an assessable area of 12,002 square feet. This equated to \$300.00 per square foot for an unadjusted sale price. The property was not used in the analysis of sales presented by the Complainant, but entered as an 'outlier'.

The Complainant provided a chart (C1, Pg 73) to show the method to determine the time adjustment applied to the analysis of sales.

Respondent's Evidence:

The Respondent provided maps and photographs to identify the location and condition of the subject property. A 2011 Beltline Non-Residential Land Rate map shows the subject is located in the BL6, with a land rate of \$195.00 per square foot.

The Respondent presented a Beltline Land Sales chart (R1, Pg 18) which provided five sales, occurring in the last 18 months, used by the City of Calgary to establish the land rate of \$195.00.

The methodology used by the City of Calgary is to use either vacant parcels or improved parcels which have sold for redevelopment, so buildings are to be demolished. For the improved parcels the value of the building, determined through Marshall & Swift Depreciated Improvement Value, is removed from the sale price to derive a residual land value, which is divided by the area to determine a sale price per square foot. No time adjustment is made to the sale price.

Statistical analysis indicated a mean value of \$228.00 and a median value of \$196.00 per square foot for residual land value. The City of Calgary has set the land rate at \$195.00 per square foot.

The Respondent has provided documents to support the five sales. (R1, Pg. 19-86)

The Respondent reviewed the 16 sales submitted by the Complainant and explained why or why not the sale should be used in the analysis to determine the land rate for the area. (R1, Pg 90) Reasons given for excluding the sale ranged from the age of the sale (sales 1 thru 7), post facto sales (sales 15 & 16), Court ordered sales (sale 10), non-arms length sale (sale 11) or different market zone (sales 7 & 12). Supporting documentation for the Respondent's position was presented in the submission. (R1, Pg. 91-122)

Rebuttal documents were submitted by the Respondent with respect to the time adjustment technique used by the Complainant and the use of post facto sales in their calculations of a land rate. (R1, Pg. 123-128)

The Respondent submitted CARB 0801-2011-P for the Board to review. The Respondent brought to the Board's attention the agent, Colliers International Advisors, was involved and the same evidence was presented for the prior hearing and this hearing, with respect to the Beltline land sales and the time adjustments. (R1, Pg.129-141) Also submitted was CARB 1190-2011-P which in its decision confirmed the land rate at \$195.00.

The Respondent presented a review of the sales identified as Court Order or Foreclosure sales in the Beltline, with supporting documentation. (R1, Pg. 144-204)

The last documents submitted by the Respondent were listings for commercial properties in the Beltline area. (R1, Pg.205-211)

Findings of the Board

Complainant's Submission:

The Board finds the complainant has failed to provide sufficiently compelling evidence to support a reduction in the assessed land rate of \$195.00 per square foot to \$140.00 per square foot.

The time adjustment employed by the Complainant was not accepted by the Board due to the period of time involved between the sales. The period involved, 2007 to 2010, was a time of major change in the Calgary market, which the Board believes was not adequately recognized in the percentage change determination.

The Respondent's use of court ordered sales and non-arms length sales placed further concern before the Board.

Finally, the exclusion of the sale at 2207 4 Street SW as an 'outlier' concerns the Board as no evidence was submitted to justify the removal of the property from the analysis. The inclusion of the excluded sale, with the land only sales for 2009 and 2010, results in a mean value supporting the City of Calgary rate for land of \$195.00.

Respondent's Submission:

The Board finds the evidence presented by the Respondent is most compelling and supports the land rate of \$195.00 per square foot. The Board finds the Respondent, through the evidence presented, raised sufficient concerns with regard to the sales and techniques employed as to bring the Complainant's analysis into question.

Board's Decision:

The decision of the Board is to confirm the 2011 assessment at \$4,640,000.00.

DATED AT THE CITY OF CALGARY THIS 21 DAY OF SEPTEMBER 2011.



Philip Colgate
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure

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.*