

**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:

***D.H.H. Holdings Ltd., Worthwhile Enterprises Ltd.
(as represented by Prestigious Properties), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Fleming, PRESIDING OFFICER
D. Morice, MEMBER
S. Rourke, 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:	028204402
LOCATION ADDRESS:	79 Castleridge Dr. NE
HEARING NUMBER:	62794
ASSESSMENT:	\$15,340,000

This complaint was heard on 3rd day of October, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *M. Hammerlindl*

Appeared on behalf of the Respondent:

- *N. Domenie*

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

There were no preliminary issues raised.

Property Description:

The property is a 120 unit low rise apartment spread over 4 buildings. The suite mix is 84 One Bedroom and 36 Two Bedrooms and the property is located in Market Zone 7. The property was valued on the Income approach to value using the Gross Income Multiplier (GIM) method.

Issues:

Should the sale price of the subject be used for the assessment?

What is the best GIM to use for the valuation: the 11.4 times suggested by the Complainant or the 12.0 times used by the City?

Complainant's Requested Value:

\$14,650,000.

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

The sales price provided insufficient evidence to form the basis for the valuation.

There was insufficient evidence to change the GIM.

Board's Decision:

The Complaint is denied and the assessment is confirmed at \$15,340,000

Reasons:

The Complainant advised that they had agreed to purchase the subject property in September of 2010, with a closing in December 2010, but that the sale had been negotiated in July 2010. The price was \$14,650,000, and this is the assessment value the Complainant was requesting. The essence of the argument was that the price was negotiated so close to the valuation date (though admittedly post facto), that the sale value is the most accurate representation of the value.

As a test for that value, the Complainant also provided three sales all of which they believed were superior to the subject; two were concrete construction and one was a townhouse. Each of these they argued would have a higher GIM because they were superior. The Complainant calculated the GIM, using "actual" reported income, at 11.88, 11.53, and 11.91 respectively, and argued that the subject should have a lower GIM suggesting 11.4 would be appropriate. The value resulting from that calculation was \$14,582,333. In conclusion, the Complainant reiterated that \$14,650,000 was the best estimate of value for the property,

The Respondent provided the support for their inputs including their market zone vacancy analysis (supporting the 6%) and the GIM study for low-rise, high-rise and high rise mixed use properties all of which had GIM's in excess of 11.75 times. Through questioning it was determined that the 3 sales in the low rise GIM study had been sales to the City of Calgary or the Calgary Homeless Foundation which brought into question whether these were true "market sales" given the purchasers. The Respondent indicated that these sales had been thoroughly researched and were deemed to be market sales.

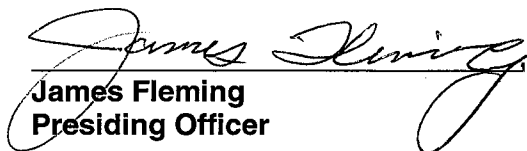
The CARB reviewed all the evidence and argument. The CARB found that neither of the parties' comparables were compelling. The Complainant used 3 comparables. The first was 205 Heritage Dr. SE which the City noted was a distress sale, and was condominium titled (Ex R1 pg77), both of these facts suggest it was not a good comparable to the subject. The second was 215 Fairview Dr. SE which was used by both parties (Ex. C1 not consecutively numbered but noted as page 51 & Ex. R1 pg 51). This sale, based on the City's evidence, was such that the income stream was not the primary motivating factor. As well, it was not a brokered deal. Both of these facts limit its comparability. The Complainant's final sale was a townhouse project which was superior to the subject according to the Complainant.

On the Respondent's side, as noted, all three low rise properties in the GIM study were subject to question because all were sold to public sector entities, and as was noted in the Real Net Data (Ex. R1 pg. 52) for at least 2 of the sales "the rental income stream was not the primary motivating factor for the acquisition" for all of these sales. As a result, the CARB concluded that little weight could be placed on any of the properties to determine a GIM.

Based on the weakness of the comparables, the CARB turned to the sale price argument which was the primary basis for complaint. The CARB acknowledges that the courts and tribunals have decided that sale of the subject property proximate to (and preferably before) the valuation date is a strong indicator of value. In the case of this complaint, there are factors which mitigate against this. One is somewhat technical, to the extent that the closing date of the sale is almost 6 months after (post facto) the valuation date. Another and more substantive reason is the fact that the RealNet description of the subject purchase (Ex. R1 pgs. 95 – 97) indicates that the purchasers intend to raise the rents to market level. This suggests that the property is not achieving market rents. Because assessment is based on "typical" rents, and with no evidence on the details of the sale with respect to the income (or any other potential special factors that might affect value, for that matter), the CARB is not convinced that the sale value is based on typical rents. Finally, the courts and tribunals have ruled that value for assessment purposes falls within a range, which has "generally" been defined as plus or minus 5%. The CARB notes that the requested value by the Complainant is within 5% of the Assessment.

In summary, the CARB puts greater weight on the fact that the rents may not be at market which if used (and assuming market is close to typical) would result in a higher value, and as well, because the requested value is within 5% of the assessment (\$15,340,000 versus \$14,650,000), the CARB finds insufficient evidence to disturb the assessment as noted above.

DATED AT THE CITY OF CALGARY THIS 27 DAY OF OCTOBER 2011.


James Fleming
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.*