

**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:

Superior Holdings Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
J. O'Hearn, MEMBER
B. Jerchel, 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:	101044709
LOCATION ADDRESS:	5914 – 3 ST SW
HEARING NUMBER:	62915
ASSESSMENT:	\$1,510,000

This complaint was heard on 20th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Ave. NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *Mr. B. Neeson, Altus Group LTD.*

Appeared on behalf of the Respondent:

- *Mr. R. Ford Assessor, City of Calgary*

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

The Board was advised by written communication from Administrative staff that the Complainant's Rebuttal brief was filed late. The Board advised the Parties that the Rebuttal document would not be admitted into this hearing.

Property Description:

The subject is a 6,903 square foot (SF) stand-alone retail/commercial building (Jordan's Floor Coverings) on 0.64 acres (27,777 SF) of land in Manchester Industrial area. It was constructed in 1997 and is zoned Commercial Corridor 3 (C-COR3). The site lies two blocks east of Chinook Centre which fronts onto MacLeod Trail, and just south of 58 AV SW. The subject has been assessed on the principles of "Highest and Best Use" - as if vacant land, at \$1,510,000.

Issue:

The subject was assessed using a "Highest and Best Use" - as if vacant land methodology which is incorrect. The subject should have been assessed using an "Income Approach to Value" methodology as a functioning retail property.

Complainant's Requested Values:

- 1) \$583,500 based on a \$14 per SF retail area lease rate using an Income Approach to value calculation, or,
- 2) \$862,500 based on a \$21 per SF retail area lease rate typical to similar MacLeod Trail properties using an Income Approach calculation.

Board's Review in Respect of the Issue:

Complainant's Position

The Complainant presented his Brief C-1 and argued that the subject is a relatively new building constructed in 1997 and retains a considerable amount of economic life. He argued that the site is a fully-functioning income property with a thriving business operating from the site. Therefore

the property should be valued using the Income Approach to Value and not as if vacant land value only. He argued that it is incumbent on the City to “assess what is there” – that is land, building, and operating business, and not some speculative use based on the current zoning and a potentially vacant parcel. He clarified that no building permits have been applied for or issued to construct anything on the site to either supplement or replace the current building.

On page 15 of C-1 the Complainant provided a hypothetical income approach calculation designed to illustrate how the subject assessment of \$1,510,000 might be calculated using what he determined to be “typical” input values. Using a rent rate of \$39.25 for the subject’s 3,283 SF of leasable retail space; \$1.00 per SF for 894 SF of mezzanine; and \$2.00 per SF for the 2,323 SF of storage space, he calculated a hypothetical assessment of \$1,590,000. He noted that while his calculations resulted in a value that slightly exceeded the City’s assessment, nevertheless they indicate that the methodology is appropriate.

On page 40 of C-1 the Complainant repeated his hypothetical Income Approach calculations, but instead used \$14 per SF for the retail area which he argued was typical for the area. He argued that his calculations using this methodology indicate a value for the subject of \$583,500.

On page 357 of C-1 the Complainant repeated his hypothetical Income Approach calculations, but instead used \$21 per SF for the retail area which he argued was typical for retail properties along MacLeod Trail. He clarified that while the subject is not directly fronting onto MacLeod Trail, nevertheless, one might argue that adjacent properties like the subject could attract rents of \$21 per SF for retail space. On pages 267 to 269 the Complainant provided several matrices of sample market rents specific to properties either on or in close proximity to MacLeod Trail. He argued that his calculations using this methodology and \$21 per SF, indicate a value for the subject of \$862,500.

From pages 92 to 250 of his Brief C-1 the Complainant provided various selected excerpts and copies of Legislative materials, and Court and Review Board Decisions related to the principles of “Highest and Best” use as applied to property assessment. In particular, on page 125 of C-1 the Complainant referenced a key point from the Appraisal Institute of Canada document “The Appraisal Of Real Estate – Second Canadian Edition”. The Complainant noted in the document the following principle:

“Testing Criteria in Highest and Best Use Analysis

In addition to being reasonably probable, the highest and best use of both the land as though vacant and the property as improved must meet four implicit criteria. That is, the highest and best use must be:

- Physically possible
- Legally permissible
- Financially feasible
- Maximally productive”

The Complainant argued that the City has not met the foregoing criteria in its application of the “Highest and Best Use” principles and therefore the assessment was flawed. On pages 27 to 38 the Complainant provided an excerpt of Part 7, Division 8 of the City’s Land Use Bylaw related to the Commercial Corridor 3 district (C-COR3). He argued that required setbacks on the subject lot, and certain building height restrictions, virtually eliminate any meaningful or financially feasible re-development of the site. He clarified that there have been no recent building or Development Permits applied for or issued for the site. He argued that vacant land is

only as valuable as what one can do with it, and his reading of the Land Use Bylaw leads him to believe that redevelopment of the site would be difficult to achieve economically and practically.

On pages 42 to 68 the Complainant provided three property comparables – all on MacLeod Trail and all zoned C-COR3 like the subject, which he argued demonstrated that the land value attributed to the subject by the Respondent is incorrect. The three properties were all restaurant or former restaurant sites at 6808; 9223; and 7212 MacLeod Trail SE respectively. The Complainant identified that a former Pasquales's restaurant at 6808 MacLeod TR SE sold in 2008 for \$1,800,000, and a former McDonald's restaurant site at 7212 MacLeod TR SW had sold in 2009 for \$2,900,00. He noted that the latter site was currently undergoing re-development and had been purchased for that purpose in 2009. On pages 44 and 45; and, 62 to 65 of C-1 he provided the RealNet transaction sheets confirming the details of the sales.

The Complainant noted that the total area of the subject parcel is 27,777 SF. He argued that in examining the Respondent's seven market sales, it was unclear as to how the City calculated that \$65 per SF for the first 20,000 SF, and \$28 per SF for the remaining 7,777 SF of the subject, is an appropriate vacant land value. He noted in contrast that the land value of the former McDonald's site at 7212 MacLeod TR SW, if it is assumed it sold for land value only, represented \$58 per SF. He argued that the City's vacant land values used to assess the subject are too high and therefore it is important to assess the subject using the Income Approach to Value methodology as he had demonstrated in his examples.

Respondent's Position

The Respondent presented his Brief R-1 and argued it is not the City's position that the improvements on the subject are dilapidated, but rather that the land value parameters demonstrate the subject's true value in the marketplace. He noted on page 13 of R-1 that;

"The City of Calgary's Assessment Business Unit operates on an annual assessment cycle. Each year new analyses are performed and the results can be different depending on market evidence. The relationship between the typical assessment of a property as improved and as vacant is analyzed each year to determine which most accurately reflects market value.

The approach to value improved properties as land, on the surface appears to be similar to highest and best use principles.....What has to be clarified is that "highest and best use".....is intended to be a thorough analysis of a property to help derive the context in which to appraise or assess its value.

The City of Calgary has derived a land value as well as an improved value for all properties in its jurisdiction. When an improved property is of such an age, design or other influence that the property is incapable of producing a capitalized income value which exceeds the established land value then the land value represents the market value of the property."

The Respondent argued that the City has consistently assessed properties in the City in this manner as a distinct, workable, and acceptable methodology in order to maintain fairness and equity in assessments between properties. The subject is no different he argued.

The Respondent argued that the City has received the City's Assessment Request For Information (ARFI) for the subject which he provided on pages 143 to 145 of R-1. He noted that the ARFI illustrates the demised spacing in the subject, and that as an owner-occupied space, the \$16.50 per SF for their entire 6,500 SF is not typical of the market. He argued that while the Complainant has argued for an Income Approach, and provided several lease comparables on page 268 of C-1, he has provided no information on the property class, age, condition, etc. of

his lease comparables that would allow for a proper comparison of them both to each other, and to the subject. He also noted that the Complainant did not provide the lease value for the subject in his analysis. He argued therefore that the Complainant's arguments for lease values of \$14 per SF and \$21 per SF for his Income Approach calculations are largely unsupported and the ultimate value conclusions are flawed and unreliable. He argued that the typical rate for a retail space 6,001 – 14,000 SF in that locale is \$19 per SF and not the owner-occupied indicated rate of \$16.50, nor the requested \$21 or \$14 per SF. He referenced page 146 of R-1 where the calculation was illustrated.

The Respondent argued that besides the "land value only" calculation, the City had completed an alternate Income Approach to Value calculation for the subject and noted that the indicated value was \$1,430,000, which is some \$80,000 less than the assessed land value. On pages 147 to 149 he provided several examples of identical and consistent approaches (income vs land) applied to other similar properties – including the Complainant's.

Therefore, he argued, pursuant to the City's assessment policies as noted above, the subject was assessed using the land value only principles. He also argued that the Complainant has rebutted none of his seven market sales upon which the land value used to assess the subject is based. He argued that the Complainant has merely indicated that his three property comparables are closer to the subject, and hence more reliable as indicators of value than the Respondent's.

On page 22 of R-1 the Respondent presented his matrix of 7 time-adjusted market sales. He noted that all sales occurred from 2008 to 2010 – all were zoned C-COR3 like the subject, and the adjusted prices ranged from \$31.15 to \$112.16 per SF. He noted that he had included the Complainant's sale of the former McDonald's site at 7212 MacLeod TR SE. He clarified that the sale was adjusted downward due to the state of the market in 2009, and its value was \$58.03 per SF. He argued that for all C-COR 1,2,3 Zoned sites in the City, the first 20,000 SF was assessed at \$65 per SF and the remainder at \$28 per SF due to "diminishing returns" identified during the City's analysis of the market. Therefore, the subject is effectively assessed at an average of \$54 per SF.

The Respondent argued that several Assessment Review Boards have confirmed the City's "as if vacant" land value methodology for C-COR 1,2,3 lands last year and this year, and the identical methodology was applied to the subject. Commencing on page 27 to page 141 of R-1, the Respondent provided several 2010 and 2011 Calgary Composite Assessment Review Board Decisions which he argued support his position and the City's methodology. In particular, on page 34 of R-1 the Respondent referenced item 6 on page 4 of 5 of ARB 1191/2010-P.

The Respondent requested that the assessment be confirmed at \$1,510,000.

Board's Decision - Reasons:

The Board finds that the Complainant's position in this appeal fails for the following reasons;

1. The Respondent has consistently used a methodology of identifying the market value of properties using both an Income Approach to Value calculation, and, a land value as-if-vacant calculation. The Board finds that in assessing the subject, the Respondent has employed a methodology which is appropriate, and supported with what the Board considers to be defensible data, contrary to the assertions of the Complainant.

2. Notwithstanding #1 above, the Board finds that in the Complainant's Income Approach To Value calculations, the market rent rate comparisons (pages 268/9) he employed, lack essential details regarding the individual characteristics of the selected property comparables. The Board has been provided with no data as to property class, age, quality, etc. by which the comparables could be compared both with each other, and the subject. Their applicability to an Income Approach calculation of value for the subject is therefore unclear.
3. The Board finds that the ARFI data for the subject indicates clearly that the typical lease value for the subject is not \$14 per SF as requested by the Complainant.
4. The Board finds that the Complainant failed to provide any market or other data to support his argument that the Respondent's seven market sales were inappropriate or invalid to use as property comparables for the subject.
5. The Board finds that both parties identified the market sale of a property at 7212 MacLeod Trail SE (former McDonalds restaurant) which they compared in detail to the subject. The Board is struck with the similarities of this property to the subject. Both this site and the subject:
 - a. contain(ed) improvements that are/were +/- 6,500 SF in area.
 - b. are zoned C-COR3 in the City's Land Use Bylaw and have similar development opportunities.
 - c. are valued in the market similarly – the subject assessed at an average \$54 per SF, and the McDonalds site selling at \$58 per SF.
 - d. are in reasonable physical proximity to each other.
6. The Board finds that both the Respondent's and the Complainant's market data demonstrate that the average \$54 per SF used to assess the subject is supported and appropriate, particularly based on the sale of 7212 MacLeod Trail SE at \$58 per SF.
7. The Board finds that the Complainant provided no market or other data to demonstrate that the Respondent's consistent practice of assessing the first 20,000 SF of land in the subject at \$65 per SF and the remaining 7,777 SF of land at \$28 per SF is either incorrect or inappropriate as he had alleged.
8. The Board finds that the subject is assessed in a correct, fair, and equitable manner.

Board Decision

The Assessment is confirmed at \$1,510,000.

DATED AT THE CITY OF CALGARY THIS 29 DAY OF November 2011.


K. D. Kelly,
Presiding Officer

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

NO.	ITEM
1. C-1	Complainant Disclosure
2. R-1	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.*

For Administrative Use Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Retail	Stand-alone	Highest and Best Use VS Income Approach to value	Market valuation and Comparisons