

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460(4).

between:

Rickard Realty Advisors, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

P. Irwin, PRESIDING OFFICER

K. Kelly, MEMBER

R. Kodak, MEMBER

A hearing was convened on August 24th, 2010 in Boardroom 8 at the office of the Calgary Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta in respect of the Property/ Business assessment prepared by the assessor of the City of Calgary, and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	508002003
LOCATION ADDRESS:	5225 101 ST NW
HEARING NUMBER:	57822
ASSESSMENT:	\$4,910,000

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a 105.66 acre parcel of land in northwest Calgary, on the banks of and just north of the Bow River, owned by the Al Azhar Temple, Ancient Arabic Order of the Mystic Shrine. Of the land, 93.30 acres contain a riding arena and farm buildings and are used for farming and have received a "farmland" exemption from the City. The remaining 12.36 acres have a number of improvements such as the temple for the Al Azhar Shriners (a fraternal charity organization), a football field and a parking lot. The \$325,000 value of the 12.36 acres is at issue before the Board.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

There were no objections to the composition of the Board. The Respondent raised a preliminary issue with respect to the Complainant's rebuttal evidence, stating that it did not receive the rebuttal evidence at least seven days before the hearing. It should have been received on August 16th but was not received until 5:32 p.m. on August 17th. Counsel for the Complainant stated that this was not what had been the practice in the past. In Counsel's opinion, if this was a new position on the City's part, there should have been notice of a change.

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

The Board ruled that the Complainant's Rebuttal evidence was not admissible because it had not been received within the time limit specified in the *Municipal Government Act* Regulation (A.R. 310/2009: M.R.A.C. section 8(2)(c)).

PART C: MATTERS/ ISSUES

1. Can the Board consider an increased assessment for two additional buildings ?
2. Is the assessment greater than market value ?

The Complainant provided an overview of the subject property and its various uses and users. The property is a park-like setting owned by a non-profit society, for the benefit of its members only, with the exception of the four acre football field, which is leased to a non-profit association for children's football programs and games. The property is zoned Special Use – Future Urban Development (S-FUD), however the Complainant described some limitations to the property for further development, such as access Right-of-Way issues, a floodplain to the south, a railway marshalling yard to the north, lack of proximity to schools and other amenities, difficulties in upgrading utility services, etc. He described the property as being a "residual", because it was "end of the line", with the river as a boundary.

The Complainant is requesting a reduction, for 12.36 acres of the site, from the current assessment of \$325,000 per acre. He submitted that the most suitable comparables would be other nearby recreation properties such as Calgary golf courses – zoned Special Purpose - Recreation District (SR) – with assessments in the \$20,000 - \$50,000 range. Also submitted were 18 comparables in the nearby so-called Ratzke area, also zoned S-FUD, with assessments in the ~\$85,000 per acre range. The Complainant requested that consideration be given for a further reduction in value for the irregular shape of the property (trapezoidal) as is done for downtown properties.

The Complainant's witness provided an overview of the Shriner's organization: its history in Calgary, the charitable works of the Al Azhar, and the activities in which its members participate on the property (dog, cattle and horse events, etc.). He described the property, which is mostly farmland which produces crops of hay for some of the animals, but also has a paved, illuminated parking lot, a football field, a number of buildings, including the fez dome, horse barn, etc. Some people (wranglers) live on site 24/7. He also provided information on the utility services on the property.

The Complainant advised the Board that, during the recess related to the preliminary matter, an agreement had been reached with the City in regard to an exemption being sought for four acres of the 12.36 acres under complaint. The Complainant was seeking a tax exemption on that four acre

portion of the property containing the football fields. The exemption was being sought pursuant to the *Municipal Government Act*, sec 362 (1)(n)(ii) and the *Community Organization Property Tax Exemption Regulation* AR 281/98 (COPTER). The four acres of fields are leased to the Calgary and Area Midget Football Association. As this exemption was now agreed upon, today's hearing would be limited to the remaining 8.36 acres.

The Respondent advised that the City is requesting an increase in the assessed value, from \$4,910,000 to \$5,248,097 in order to capture the value of two buildings that had been missed when calculating the assessment. The two additional improvements were valued using Marshall and Swift. The Complainant objected to the revised increased value. There was no Amended Notice in the file.

The Respondent's evidence package included Land Use Bylaw information on the S-FUD and S-R designations including permitted and discretionary uses, noting that agriculture is not permitted in S-R. The package also included a Requested Assessment document, maps, the completed Assessment Request for Information (ARFI), an equity comparable (the Hawkwood subdivision), further information on the Complainant's equity comparables, etc. The Respondent noted that, when the assessments for the farmland and the market land were combined, the overall average assessment for the whole property averaged ~\$50,000 per acre. The Respondent noted that shape of property adjustments are more commonly applicable to very small properties downtown where the shape would somehow reduce the functionality of the property. He argued this was not the case with the subject which is not a downtown property – nor is there a "shape" adjustment for farmland.

Complainant's Requested Value: \$1,301,400.

Board's Findings and Reasons in Respect of Each Matter or Issue:

Issue # 1: Without an Amended Notice of Assessment in the file, and the agreement of the parties, the Board concluded that it could not consider the City's request for an increased assessment, and that the only assessment that could be reviewed was the one for the original \$4,190,000 value.

Issue # 2: The Board considered that the current uses of the subject property were not similar to those of a golf course, and further, that the golf course zoning would not permit the current uses of the subject property, and therefore no weight could be attached to the Complainant's golf course comparables provided. The Board also considered the Complainant's Ritzke comparables, but noted that portions of those properties suffered from localized environmental issues, they had no servicing, and they had access problems, and thus little, if any, weight could be attached to them.

In the final analysis, the Board found that the Respondent's Hawkwood property assessment of \$325,000 per acre supported the subject's assessment of \$325,000 per acre and that the latter was not greater than market value. While the Board understood and appreciated some of the Complainant's concerns about the suitability of the subject for future development, or the concerns with the zoning of the subject, the Board has no jurisdiction to deal with zoning matters. The Complainant and/or the property owner may find it beneficial to consider further discussions with the City's Planning Department to determine if a different zoning such as Direct Control (DC) would be more suitable.

The Board also noted a discrepancy between the Complainant's ARFI, which stated that there was no residential property on the site, compared to the witness' statement that there were wranglers living on site 24/7. With respect to any adjustments for parcel shape, the Board heard no evidence related to reduced functionality of the subject. In any event, when assessing farmland, the assessor is bound

by the procedures set out in the Alberta Farm Land Minister's Guidelines, pursuant to the M.R.A.T. Regulation, and moreover, the farm assessment portion of the overall site was not part of this complaint. Only the value of the 8.36 acre portion of the site was under complaint.

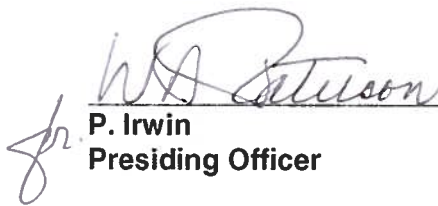
In conclusion, the Board notes that the burden of proof is on the Complainant to demonstrate that the assessment was incorrect and the Board finds that the onus was not met.

PART D: FINAL DECISION(S)

Issue # 1. The Board must only consider the complaint related to the \$4,910,000 Property Assessment Notice.

Issue # 2: The board confirms the assessment at \$4,910,000, of which the taxable portion is \$3,610,000 and the exempt portion is \$1,300,000.

DATED AT THE CITY OF CALGARY THIS 17 DAY OF SEPTEMBER 2010.


P. Irwin
Presiding Officer

APPENDIX "A" : ORAL REPRESENTATIONS

<u>PERSON APPEARING</u>	<u>CAPACITY</u>
Gilbert Ludwig	Legal Counsel for Complainant
Steven Rickard	representing Rickard Realty Advisors Inc.
Gary Bain	Witness for the Complainant
Khristine Haut	Assessor, City of Calgary
Christina Dao	Solicitor, City of Calgary
Iona Saldanha	Solicitor, City of Calgary

APPENDIX "B"

DOCUMENTS RECEIVED BY THE ASSESSMENT REVIEW BOARD

Exhibit C – 1	Complainant's Brief (considered)
Exhibit R – 1	Respondent's Brief (considered)
Document C – 2	Complainant's Legal Submission (not considered)

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.*