

**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(4), Revised Statutes of Alberta 2000 (hereinafter the Act).

between:

***Medallion Development Corporation, COMPLAINANT,
as represented by Altus Group Limited***

and

The City Of Calgary, RESPONDENT

before:

***T. Helgeson, PRESIDING OFFICER
Y. Nesry, MEMBER
J. Joseph, 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 2012 Assessment Roll as follows:

ROLL NUMBER: 201610268

LOCATION ADDRESS: 1700 18 Street NE

HEARING NUMBER: 67797

ASSESSMENT: \$984,500

This complaint was heard on Monday, the 11th of June, 2012, at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *D. Chabot*

Appeared on behalf of the Respondent:

- *S. Powell*

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

[1] No procedural or jurisdictional matters were raised.

Property Description:

[2] The subject property is a vacant, oblong parcel of 2.59 acres adjacent to 16th Avenue NE. A portion of the subject property is designated "CCOR3" under the Land Use Bylaw, but the majority of the subject has no land use designation. The subject property is owned by the City of Calgary. On the 10th of July, 2010, the City granted a licence of occupation to the Complainant. for a period of five years, with a commencement date of September 1st, 2010. The 2012 assessed value is \$984,500.

Regarding Brevity

[3] In the interests of brevity, the Board will restrict its comments to those items the Board finds relevant to the matters at hand. Furthermore, the Board's findings and decision in this matter reflect the evidence that was presented and examined by the parties before the Board at the time of the hearing.

Issues:

[4] The Board found the determinant issues in this complaint to be as follows:

1. Is the subject property a road?
2. If the subject property is a road, is the subject property non-assessable pursuant to Section 298(1)(i) of the *Act*?

Complainant's Requested Value:

[5] Nil value, as exempt from assessment.

Summary of the Complainant's Submission:

[6] The subject property is part of Road Plan 8070JK. It is a road, but the Respondent does not recognize it on its website. Furthermore, although part of the subject property is assessed as CCOR-3, the rest of the subject property has no land use designation. How can the Respondent apply value to land that has no land use designation? Similar properties, at 1315 Heritage Drive SE, 1199 Heritage Drive SE, and 44 Lynx Meadows Drive NW, have been given nil assessments because they are roads. The Respondent gives a -80% influence adjustment to the base rate of other properties, but only a -75% rate to the subject. The Complainant has been paying rent on the subject property for 1.5 years, without being able to develop the land.

Summary of the Respondent's Submission:

[7] The Complainant's request for an assessment of \$0 is supported by the following evidence:

- that the City of Calgary website does not recognize the address of the subject property, and
- a map that supports the contention that the most of the subject parcel is not located within a C-COR3 land use designation.

[8] Non-titled accounts are created when land is subject to a lease, and that is why they are not identified with a certificate of title. The subject property generates a lease income for the Respondent of \$117,631 per annum. Based on an income approach, the cap rate for an assessed value of \$984,500 would be 0.12%. Merely stating that the land use relied on in the valuation of the subject property is wrong is not sufficient to meet the legal test for onus.

[9] The Complainant has failed to state what the correct land use is. The Complainant's three comparables are in fact roads. The lease of the subject property authorized its use as a parking lot, therefore it is understandable that roads receive different assessments from land used for parking, and why roads are not comparable to the subject property.

[10] As for the argument that the Complainant has been unable to develop the land, the subject property was approved for a parking lot on April 25th, 2012. There is no evidence of undue delay. Section 298(1)(i) of the *Act* allows the assessment of roads.

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

[11] Firstly, there is nothing in the *Act* or the regulations that would require a land use designation to be in place before property can be assessed. Further to this, the Respondent's evidence is that a development permit can be issued despite the absence of a land use designation, and it now appears that a development permit for the subject property has been issued.

[12] As for the -80% adjustment given to other properties, the Complainant simply put a question before the Board, i.e., why is the subject property given a -75% adjustment? The Complainant failed to provide evidence that would support a -80% adjustment for the subject property.

[13] With respect to other properties that are roads, hence have not been assessed, the

differences between the subject property and those other properties are dealt with in the consideration of the issues set out in paragraph [4].

[14] With respect to the first issue, the Board looked to the definition of "road" in s.1(1)(z) of the Act.

(z) "road" means land

(i) shown as a road on a plan of survey that has been filed or registered in a land titles office, or

(ii) used as a public road.

[15] The subject property is not used as a public road, but from the evidence it is a road on a plan of survey filed or registered in a land titles office, i.e., Road Plan 8070JK, hence is a "road" as defined in the Act, and the answer to the first issue is "yes." That said, is the subject property exempt from assessment?

[16] Section 298(1) of the Act defines roads that are non-assessable as follows:

298(1) No assessment is to be prepared for the following property:

(i) roads, but not including a road right of way that is held under a lease, licence or permit from the Crown in right of Alberta or Canada or from a municipality and that is used for a purpose other than a road

[17] Section 298(1)(i) contains an exception to the exemption of roads from assessment. That exception applies where a "road right of way" is held under a lease, licence or permit from, *inter alia*, a municipality, and the road right of way is not used as a road. Clearly, the intent of s.298(1)(i) is to allow such road rights of way to be assessed if they are not used as roads.

[18] "Road right of way" is not defined in the Act, but the Board takes quasi-judicial notice that the term "right of way" is commonly used to mean the legal metes and bounds of a road. There is support for this use of the term in *Black's Law Dictionary*, 5th Edition, where "right of way" is defined as follows:

Right of way. Term "right of way" sometimes is used to describe a right belonging to a party to pass over land of another, but it is also used to describe that strip of land upon which railroad companies construct their road bed, and, when so used, the term refers to the land itself, not the right of passage over it.

[19] Accordingly, the Board finds that "road right of way" in s.298(1)(i) means the legal metes and bounds of a road. Part of the road in question is subject to a licence agreement between the Complainant and the Respondent that permits the Respondent to park motor vehicles on the road. In the licence agreement, that part of the road subject to the licence is described as follows:

A PORTION OF THE ROAD IN:
PLAN 8070JK

Comprising 10,484 sq. m (112,866 sq. ft.) more or less,
as more particularly shown in Schedule "B" attached hereto.

[20] On the evidence, the Board finds that the subject property is part of a road right of way within the meaning of s.298(1)(i), and is held by the Complainant under a licence from a municipality (the Respondent), and used for a purpose other than a road. Accordingly, the answer to the second issue is "no."

Board's Decision:

Accordingly, the assessment of the subject property is confirmed at \$984,500.

DATED AT THE CITY OF CALGARY THIS 28 DAY OF June 2012.


Presiding Officer

Exhibits:

C-1, Complainant's Written Argument

R-1, Respondent's Assessment Brief

C-2, Complainant's colour air photo of the subject property and environs

C-3, Complainant's colour plan of Heritage Drive SE and environs

C-4, Complainant's colour plan of Lynx Meadows NW and environs

C-5, Complainant's larger scale colour plan of Heritage Drive SE and environs

C-6, Complainant's rebuttal

<u>Appeal type</u>	<u>Property type</u>	<u>Property sub-type</u>	<u>Issue</u>	<u>Sub-issue</u>
CARB	Other	Parking	Exemption	Land Value

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;

- (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.*