

**CALGARY  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

In the matter of the complaints against the property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

**La Caille 16<sup>th</sup> Avenue Inc.  
(as represented by Altus Group Ltd.), COMPLAINANT**

and

**The City Of Calgary, RESPONDENT**

before:

**J. Krysa, PRESIDING OFFICER  
P. Grace, MEMBER  
R. Kodak, MEMBER**

These are complaints to the Calgary Assessment Review Board in respect of the property assessments prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>045030004</b>	<b>045031309</b>
<b>LOCATION ADDRESS:</b>	<b>832 16<sup>th</sup> Ave NW</b>	<b>904 16<sup>th</sup> Ave NW</b>
<b>HEARING NUMBER:</b>	<b>66830</b>	<b>66831</b>
<b>ASSESSMENT:</b>	<b>\$1,190,000</b>	<b>\$1,300,000</b>

The complaints were heard on June 18, 2012, in Boardroom 5 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- A. Izard

Appeared on behalf of the Respondent:

- E. D'Altorio

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

[1] There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

**Property Description:**

[2] The subject properties are two individually titled parcels of land located along 16<sup>th</sup> Avenue NW and situated on either side of 8<sup>th</sup> Street NW. Both properties currently carry a land use designation of Commercial – Corridor 1. The property located at 832 16<sup>th</sup> Avenue NW is a vacant, 11,971 sq.ft. (square foot) parcel of land. The property located at 904 16<sup>th</sup> Avenue NW is an 11,974 sq.ft. parcel of land, improved with a 3,653 sq.ft. automobile service structure constructed in 1960. The subject properties are assessed as follows:

ROLL NUMBER:	045030004	045031309
LAND VALUE	\$1,190,000	\$1,257,270
IMPROVEMENT VALUE:	-	\$ 50,217
TOTAL ASSESSMENT:	\$1,190,000	\$1,300,000 (Truncated)

**Issues:**

[3] The Complainant raised the following matters in section 4 of the complaint forms:

3. an assessment amount
4. an assessment class
5. an assessment sub-class

[4] The Complainant set out 7 grounds for the complaints in section 5 of the complaint forms with requested assessment values of \$720,000 for each of the properties; however, at the hearing the Complainant did not dispute the assessment amounts with respect to the assessed value of the lands. The Complainant led evidence and argument only in relation to matter number 4 (an assessment class) for both properties; and matter number 3 (an assessment amount) in respect of the assessed value of the improvement located on 904 16<sup>th</sup> Avenue NW. As a result, only the following issues were in dispute before the Board:

**Issue 1:** Is the assessment class of "Class 2 (Non-residential)", properly assigned to the subject properties?

**Issue 2:** Does the improvement located on 904 16<sup>th</sup> Avenue NW contribute to the market value of the parcel?

**Complainant's Requested Values:**

[5] The Complainant requested the following assessment values and assessment class assignment:

	Assessment	Residential	Non-residential	
832 16 <sup>th</sup> Avenue NW	\$1,197,100	89%	11%	[C1, p.84]
904 16 <sup>th</sup> Avenue NW	\$1,257,270	89%	11%	[C1, p.86]

**Board's Decision in Respect of the Issues:**

**Issue 1:** Is the assessment class of "Class 2 (Non-residential)", properly assigned to the subject properties?

[6] The Complainant submitted that the 2012 assessment notices indicate that both properties have been assigned a non-residential assessment classification, applicable to 100% of the assessment value of each property. The Complainant argued that this classification is inconsistent with the legislation as the parcels are destined to be developed into mixed use improvements reflecting a ratio of 88.77% residential areas and 11.23% non-residential areas.

[7] In support of the argument, the Complainant submitted a copy of the preliminary architectural drawings that form part of the development application and illustrate the plans of each of the floors in the proposed development. The Complainant also submitted the municipality's "My Property" website reports indicating that a 2010 development permit, DP2010-4008, applicable to both subject parcels had a status of "Pending Decision" as of May 7, 2012. In rebuttal evidence the Complainant provided updated "My Property" reports indicating the development permit status had changed to "In Advertising" as at June 8, 2012, and argued that the applications were proceeding typically through the municipality's approval process.

[8] The Complainant further argued that the municipality has in other situations, accepted a development or building permit as evidence of an intention to use a vacant parcel for permanent living accommodation for the purposes of s. 297 of the Act. In support of the argument the Complainant provided a copy of a City of Calgary letter to a property owner (name redacted) setting out the criteria relied upon by the municipality in making the classification conclusion, which includes the issuance of a development permit.

[9] The Respondent argued that the non-residential assessment class assigned to the subject properties is appropriate as the development permit application has not yet been approved by the municipality and the current land use designation is Commercial – Corridor 1. Further, the Respondent argued that no formal building plans have been submitted to the municipality, there is no construction activity on site, and there is no evidence of marketing the proposed residential units to the public.

[10] The Respondent provided two examples of proposed construction projects where despite the existence of development permits, the projects did not ever commence construction. Those projects were Stanley Square V located at 3916 Macleod Trail SE and Opus Campus located at 8306 Horton Road SW. The Respondent argued that until construction commences, there is no assurance that the subject properties will be developed into residential units as proposed by the Complainant. In support of that argument the Respondent referred the Board to *697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512, at paragraph 27:

*[27] For example, the second factual conclusion reached by the MGB reads: "Capital improvements are an assessable part of real estate." I accept the Applicants submission that this is only so once the improvements have been done and cannot operate on an anticipatory basis. Circumstances could easily have arisen in which improvements might never have been done. In my view, it was unreasonable to speculate about what might happen in the future, for example, renovating the premises, in order to determine value in the past.*

[11] The Respondent argued that in the present matter, the Board should not speculate about what may become of the property, and that circumstances may arise in which the proposed improvements may never be constructed.

[12] The Respondent did not dispute that the architectural drawings submitted by the Complainant were related to the subject property's development permit application, nor did the Respondent dispute the proportion of residential and non-residential areas put forth by the Complainant.

### **Decision: Issue 1**

[13] The Board finds that as of December 31, 2011 a portion of the subject properties were intended to be used for permanent living accommodation pursuant to s.297(4)(b); therefore, the assessment class of "Class 2 (Non-residential)" is not properly assigned to the subject properties.

[14] The Act sets out the legislated date for which a property's characteristics and physical condition are considered in section 289.

#### **289(2) Each assessment must reflect**

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

[15] The Act further sets out the assessment classes and definitions of those assessment classes in section 297.

**297(1)** When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

- (a) class 1 - residential;
- (b) class 2 - non-residential;
- (c) class 3 - farm land;
- (d) class 4 - machinery and equipment.

#### **(2) A council may by bylaw**

- (a) divide class 1 into sub-classes on any basis it considers appropriate, and
- (b) divide class 2 into the following sub-classes:
  - (i) vacant non-residential;
  - (ii) improved non-residential,

and if the council does so, the assessor may assign one or more sub-classes to a property.

(3) If more than one assessment class or sub-class is assigned to a property, the assessor must provide a breakdown of the assessment, showing each assessment class or sub-class assigned and the portion of the assessment attributable to each assessment class or sub-class.

(4) In this section,

(a) "farm land" means land used for farming operations as defined in the regulations;

(a.1) "machinery and equipment" does not include

(i) any thing that falls within the definition of linear property as set out in section 284(1)(k), or

(ii) any component of a manufacturing or processing facility that is used for the cogeneration of power;

(b) "non-residential", in respect of property, means linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use bylaw passed by a council, but does not include farm land or land that is used or intended to be used for permanent living accommodation;

(c) "residential", in respect of property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential.

RSA 2000 cM-26 s297;2002 c19 s6

[16] The legislation clearly indicates that land that is used or "intended to be used for permanent living accommodation" is excluded from the non-residential assessment class. The Board notes that there is no disagreement on this point by the parties; the point of contention being, at what stage of the development permit process is the legislative requirement satisfied?

[17] MGB 088/06, included in exhibit C1 sets out the Court's definition of an "intention" from *Cunliffe v. Goodman* [1950] 1 All E.R. 720. MGB 088/06 also sets out a definition of "intended to be used" from the Nova Scotia Assessment Act, R.S.N.S. 1967, quoted in *Green Meadows Estates Ltd. v. Nova Scotia (Director of Assessment)* (1984), 64 N.S.R. (2d) as "a present intent supported by some substantial act to carry out the intent".

[18] The Board agrees with the MGB's reasoning with respect to the similar issues in this matter, and sees little merit in repeating the reasoning behind MGB 088/06 with respect to the classification of a property on the basis of its present use until residential construction has commenced, given that the municipality accepts that a development permit is sufficient evidence of an intent to use land for permanent living accommodations as evidenced in the City of Calgary letter included at page 37 of C1.

[19] The Board does not agree with the Respondent that approval of a development permit is necessary to confirm a landowner's intent to use the property for permanent living accommodations; the approval of a development permit is evidence of the approving authority's agreement to the landowner's intended use. As at December 31, 2011, the Complainant's development permit application was progressing in typical fashion through the municipality's normal approval process and there is no evidence before the Board to indicate that the proposed uses in the development permit application are incompatible with current land use bylaws.

[20] The Board does accept that the procurement of detailed architectural drawings and the application of a development permit are evidence of some substantial acts to carry out the stated intent of the Complainant.

[21] In this matter the Board is not speculating about what might happen with the property in the future; the Complainant's intent at December 31, 2011, to use the land for permanent living accommodation determines the assessment class assigned for the 2012 taxation year.

[22] With respect to the Respondent's concern that development may not proceed despite the development permit application, the Board notes that the assessment of property, including the assignment of an assessment class, is an annual function. If the development permit application is abandoned or expires in the future without development proceeding, the assessment class assigned to the corresponding future assessment should accurately reflect the property's use or intended use, at that point in time.

**Issue 2:** Does the improvement located on 904 16<sup>th</sup> Avenue NW contribute to the market value of the parcel?

[23] Although the Complainant's summary of testimonial evidence indicated that the income approach should be relied upon to establish the market value of the property, there was no market evidence submitted relating to any coefficients, nor was there a final income approach valuation in evidence before the Board.

[24] The Complainant did argue that as a result of its intent to redevelop the property, the building located on 904 16<sup>th</sup> Ave NW will be demolished and therefore does not contribute any value to the parcel.

[25] The Respondent submitted that the improvement was assessed on the cost approach to value, and argued that the improvement still contributes to the properties overall market value.

**Decision: Issue 2**

[26] The Board finds that there was insufficient evidence to demonstrate that the improvement located on 904 16<sup>th</sup> Avenue NW does not contribute to the market value of the parcel.

[27] The Act sets out the criteria for which a property's characteristics and physical condition are considered for property valuation in s.289.

**289(2) Each assessment must reflect**

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

[28] In this instance, on December 31, 2011 the parcel of land was improved with a structure that was not vacated or functionally obsolete, but rather, occupied by a tenant under lease, and providing income to the Complainant. Although the Act sets out that an intent to use a property for a specific purpose is a criteria in the assignment of an assessment class pursuant to section 297, there is no such criteria set out in the Act with respect to the valuation of a property pursuant to section 289. Consequently, it would be unreasonable to speculate about a potential future demolition of the improvement in order to determine the subject property's value as of December 31, 2011.

**DECISION:**

- The **Assessment Class** assigned to both properties is **REVISED** as follows:

From: 100% Class 2 (Non-residential)	To: 89% Class 1 (Residential)
	11% Class 2 (Non-residential)

- The **Assessment Values** are **CONFIRMED** as follows:

ROLL NUMBER:	045030004	045031309
LOCATION ADDRESS:	832 16 <sup>th</sup> Ave NW	904 16 <sup>th</sup> Ave NW
ASSESSMENT:	\$1,190,000	\$1,300,000

DATED AT THE CITY OF CALGARY THIS

18

DAY OF JULY, 2012.

  
\_\_\_\_\_  
J. Krysa,  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Submission (Roll 045030004)
2. C1	Complainant's Submission (Roll 045031309)
3. C2 (a – d)	Complainant's Rebuttal Evidence (Applies to both rolls)
4. R1	Respondent's Submission (Roll 045030004)
5. R1	Respondent's Submission (Roll 045031309)

*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**

<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	Other	Vacant Land	Development Land	Assessment Class Intent to Use (s.297)
CARB	Retail	Stand Alone	Development Land	s.289