

**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:**

**Anthem Level Erlton Ltd.  
(as represented by Altus Group Ltd.), COMPLAINANT**

**and**

**The City Of Calgary, RESPONDENT**

**before:**

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

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>201341708</b>
<b>LOCATION ADDRESS:</b>	<b>2399 Macleod Trail SW</b>
<b>HEARING NUMBER:</b>	<b>66649</b>
<b>ASSESSMENT:</b>	<b>\$427,500</b>

The complaint was 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 property is a titled 17,115 sq.ft. (square foot) parcel of land, improved with a paved roadway, curb and gutters, boulevards and sidewalks, and municipal street lighting. The property is rectangular in shape with a cul-de-sac at the eastern end of the parcel abutting Macleod Trail.

[3] The parcel was sold to the Complainant by the Respondent, subsequent to a Road Closure Bylaw as set out on the Certified Copy of Title at page 13 of R1.

**Issues:**

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

3. an assessment
4. an assessment class
9. whether the property or business is assessable

[5] During the hearing, the Complainant led evidence and argument only in relation to matter #9, whether the property or business is assessable, and the specific issues before the Board are set out below:

1. Is the subject property a "road" as defined in Section 1(1)(z) of the Act?
2. Is the subject property non-assessable pursuant to Section 298(1)(i) of the Act?

**Complainant's Requested Value:**

The Complainant requested an assessment of \$0.

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

**Issue 1:** Is the subject property a "road" as defined in Section 1(1)(z) of the Act?

[6] The Complainant submitted that although the subject property is privately held, the property is used as a public road and meets the definition of a road pursuant to section 1(1)(z) of the Act.

[7] In support of the argument, the Complainant provided photographs of the subject property illustrating the roadway improvements to the parcel as described above, as well as copies of the current title, transfer documents and registered caveats of the subject property.

[8] The Complainant further argued that the property was considered a non-assessable road for the 2010 taxation year as a result of an agreement with the Respondent. The Complainant also submitted the 2011 Assessment Review Board decision wherein the Board determined the subject property was a non-assessable road for the 2011 taxation year.

[9] The Respondent argued that the subject property is a privately held parcel of land, and although the parcel may currently be used by the public as a road, it is so at the express consent of the Complainant who may choose to terminate the public's access at any time. The Respondent submitted that there are no restrictions on the land title requiring the Complainant to provide public access to the parcel, with the exception of an easement allowing the Respondent unfettered access for the sole and exclusive purposes set out in the construction and maintenance use of the easement area.

[10] The Respondent submitted that the assessment was prepared by applying standard market value land rates to the subject's land area. From this value, the maximum 75% allowance permitted by City of Calgary policy was deducted to reflect the loss in value attributable to the development restrictions as a result of the Respondent's easement.

**Decision: Issue 1**

[11] The Board finds that the subject property is a "road" as defined in Section 1 (1)(z)(ii) of the Act.

The definition of a road is set out at section 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,

and includes a bridge forming part of a public road and any structure incidental to a public road;

[12] The evidence of the subject property's current and sole use as a road, open to the public, clearly meets the definition of a road as defined in the Act, in the plain meaning of the words.

[13] The Respondent is not entitled to impose a more stringent definition than that set out in the Act, and there is no requirement set out in the Act, that a use as a public road must be registered on a land title in order to be considered a "road" pursuant to section 1(1)(z)(ii).

**Issue 2:** Is the subject property non-assessable pursuant to Section 298(1)(i) of the Act?

**Decision: Issue 2**

[14] The Board finds that the subject property is non-assessable pursuant to Section 298(1)(i) of the Act.

[15] Section 298(1)(i) of the Act sets out the assessment exemption criteria related to roads.

**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 as a road;

[16] Having found that the subject property meets the definition of a "road" as defined in the Act, and further, that the property is not held under a lease, licence or permit from the Crown in right of Alberta or Canada or from a municipality and is not used for a purpose other than as a road, the subject property is non-assessable.

**Decision:**

The assessment is revised from: \$427,500 to **\$0 (Non-assessable)**

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
2. C2	Complainant's Rebuttal Evidence
3. R1	Respondent's Submission

*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:**

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Types	Land	Road s.1(1)(z)	Non-assessable property (s.298)