

**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:

830112 Alberta Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, Mr. J. Fleming
Board Member 1, Ms. S. Rourke
Board Member 2, Mr. J. Rankin***

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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:	057591182
LOCATION ADDRESS:	288, 1623 Centre ST NW
FILE NUMBER:	66908
ASSESSMENT:	\$587,000

This complaint was heard on 24th day of July, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *Mr. D. Seto for the Complainant*

Appeared on behalf of the Respondent:

- *Ms. V. Lavalley, for the Respondent*

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

There was no objection to the composition of the panel hearing the Complaint. There were no preliminary matters raised.

Property Description:

The subject is part of a restaurant (Central Grand Restaurant) located on the second floor of a condominium mall at the above address. The mall is serviced by a small elevator and a main entry stairway. There is also second floor access from a 2 storey parking structure at the rear of the building. The mall is structured as a retail/office condominium. There are 134 parking stalls located on 4 lots, 3 lots are at the area of the property accessed from 15th Ave NW (this is also the location of the second level parking). The 4th lot is located at the west end of the property and is accessed from 16th Ave. NW and 1st St. NW. The property is of "B" quality, and was built in 1997. The building contains approximately 33,800 square feet (sq. ft.) in 34 units on 2 levels, with roughly 22,500 sq. ft. on the ground floor. The land use is Commercial – Condo Retail, and the property was assessed on the Sales Comparison method. The location was "Corner Lot" and "Traffic Main" influences.

Issues:

The Complaint form outlined a number of issues. There were primarily three issues discussed at the hearing.

1. Is a significant increase in the year over year assessment an adequate basis to challenge an assessment?
2. Do the second floor units under appeal merit a valuation which is equal to the units on the first floor?
3. Should there be a difference in assessment per sq. ft between 2 units that are part of the same business?

Complainant's Requested Value:

\$449,500

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

The Complaint is denied and the assessment is confirmed at \$587,000.

Board's Decision:

The Complainant argued that the value of the second floor units had increased significantly (between 29.75% & 42.25% yr. over yr.), but that main floor units had stayed the same or even decreased in the same period. They said this didn't make sense because common sense

should dictate that ground floor units are more valuable than second floor, especially when one considers that many of the uses on the second floor are office/professional as opposed to the main floor which were largely retail. In support of this, they provided photographs of second floor access, and businesses which showed the office/professional type of tenancy and the business hours of these tenants.

They did acknowledge the subject restaurant as a retail tenant on the second floor, and they noted that the Restaurant had 2 condominium units whose value varied significantly (\$419.14 per sq. ft. for the smaller unit (Unit 288) and \$334.03 per sq. ft. for the larger unit (Unit 295)). They highlighted a plan of the restaurant (Ex. C1 pg. 10) showing that both unit 288 and unit 295 were located in close proximity and in fact were part of the same restaurant, although the complainant acknowledged that the 2 areas were separated by a hallway which was common property for the whole mall. They noted that both units share the same main entrance to the restaurant and have the same interior decorations. Unit 288 (the subject) is often used as a meeting/dining room and is separately demised within the restaurant.

They questioned the City's comparables saying that the closest "ethnic" comparable was downtown at 4th Ave & Centre St. SE and argued this was a different market.

Finally, the Complainant noted there were 3 vacant units (2 on the ground floor, and 1 on the second floor). They indicated that these were vacant due to high condo fees, high property taxes and no customer traffic, although no evidence was provided to support these assertions. They did highlight that a pending sale of 3 units had a price of \$310.23 per sq. ft., but subsequent questioning determined that the sale had not closed, and in any event, the transaction would be "very" post facto if it were to close. The Respondent also questioned the validity of the sale given the relationship between the agent and the purchaser (father & daughter).

In closing they asked that the assessment remain at the same level as the previous year as shown above.

The Respondent indicated that their valuation was based on an analysis of sales. They provided 2 sales comparables (completed 3 mths. prior to the valuation date) for units in the subject property (Ex. R1, pg. 12) which showed sales prices much higher than the assessments. These units were on the ground floor, but the Respondent argued that they still supported the general level of assessments in the building, and perhaps suggested the assessments were low.

In discussing the difference in value between Units 288 and 295, they noted that each unit was separately titled (and demised), and they indicated that the significant difference in size (Unit 288, 1,400 sq. ft. & Unit 295, 3,921 sq. ft.) accounted for the difference in values due to economies of scale. As further evidence of the impact of economies of scale, they pointed out that Unit 183 on the ground floor was three times the size of Unit 295, and the assessment was \$203.12 which was \$131 per sq. ft. (39%) less than the assessment on Unit 295.

They also noted that when the impact of these economies of scale was analyzed, it showed that prices were slightly lower on the second floor.

In questioning, the Respondent advised that the City could find no evidence in these types of properties for the assessment year in question which showed there was a difference in the sales rates between main and second floors.

With respect to the high year over year assessment increases, the Respondent noted that the increases were based on market evidence, and they further pointed out that, as been noted in several MGB & ARB decisions (see Ex. R1 pg. 32), year over year increases were not in and of themselves a reason to change an assessment.

In summary, the City indicated that any change in assessment from last year to this was simply resulting from market evidence, and asked that the assessments under complaint be confirmed.

The CARB considered all the evidence and argument. With respect to the significance of the high year over year increases in assessments, the CARB agrees with the Respondent that year over year increases are not evidence of a need to change the assessment and they agree for the same reasons outlined in Ex. R1 pg. 32. The CARB also notes that the City explains that the large increases are based on an increase in the value of similar properties, although the sales to support this issue are not provided.

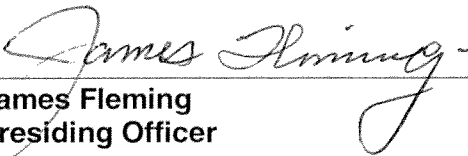
With respect to the impact of economies of scale and the differential values for the 2 units which are part of the same restaurant, the CARB understands and supports the concept of "economies of scale" even though the Respondent had no market evidence to support the wide range of values shown in the mall. The Complainant however had no market evidence to refute the values of the Respondent, and it is up to the Complainant to show that the value is wrong. As to the fact that the units were a part of the same restaurant and should have the same value, the CARB concludes that because Unit 288 is separately titled, separately demised and is not contiguous to 295 in that it is separated by a common hallway, it is in fact a separate unit which should be valued in accordance with its own attributes.

The CARB noted that the Complainant had not supplied market evidence demonstrating that the second floor units were worth less than the ground floor units. The "only current" evidence was the "pending" sale and the CARB concluded that this transaction (if it were to close) was too post facto to allow the CARB to place much weight on the listing/potential sale. In addition, the CARB noted that the relationship between the sales agent and the purchaser, while not demonstrated to have an impact on value, might be seen by some as influencing the transaction. It should be noted that the Complainant had additional sales present with them at the hearing, but because they had not been disclosed properly to the Respondent, they were not allowed to be introduced as evidence.

According to the Respondent, the sole reason for the increase in the second floor assessments was that the sales used by the City substantiated an increase in the value of the units on the second floor. The City provided "no" evidence to support this contention; however neither did the Complainant provide suitable evidence to refute this contention, although they did make some arguments based on common sense. As noted above, little weight could be placed on the pending sale, because it was "still" in fact a listing, and the timeframe of the sale (if it were completed) was too far past the valuation date for it to be considered a reliable estimate of value as of July 1st, 2011.

The Complainant has an obligation to prove that the valuation is wrong, and without good evidence of that fact, the City valuation is presumed to be correct. Accordingly, the assessment of the 7 properties under complaint is confirmed as noted above.

DATED AT THE CITY OF CALGARY THIS 24th DAY OF August 2012.


James Fleming
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	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.*