

**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:

Complainants as identified below (all represented by D. Seto), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

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

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

Complainant:	ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:	ASSESSMENT:
127137 Alberta Inc.	057591208	272, 1623 Centre St. NW	66906	\$641,500
Cheers Acupuncture & Herbs Inc	057591224	262, 1623 Centre St. NW	66905	\$280,000
Chow Ken W K	057591265	238, 1623 Centre St. NW	66904	\$117,500
Multi Business Enterprise Ltd.	057591307	226, 1623 Centre St. NW	66257	\$140,000
Setam Consulting Ltd.	057591323	218, 1623 Centre St. NW	66909	\$405,000
Setam Consulting Ltd.	057591349	225, 1623 Centre St. NW	66915	\$74,500
Multi Business Enterprise Ltd.	057591364	231, 1623 Centre St. NW	66244	\$50,500

These complaints were 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 Complainant*

Appeared on behalf of the Respondent:

- Ms. V. Lavalley *for Respondent*

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

Because of the common arguments and with the agreement of both parties, the decision for those roll numbers outlined on page 1 of 6 are combined in one document.

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

Property Description:

All 7 properties are 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 properties were assessed on the Sales Comparison method. The land and improvement were given "Corner Lot" and "Traffic Main" influences.

Issues:

The Complaint form outlined a number of issues. There were primarily two 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?

Complainant's Requested Values:

ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:	Requested Value
057591208	272, 1623 Centre St. NW	66906	\$494,500
057591224	262, 1623 Centre St. NW	66905	\$206,000
057591265	238, 1623 Centre St. NW	66904	\$84,000
057591307	226, 1623 Centre St. NW	66257	\$100,500
057591323	218, 1623 Centre St. NW	66909	\$303,500
057591349	225, 1623 Centre St. NW	66915	\$52,500
057591364	231, 1623 Centre St. NW	66244	\$35,500

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

In each case, the Complaint is denied and the assessments are confirmed as noted below.

ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:	DECISION
057591208	272, 1623 Centre St. NW	66906	CONFIRM
057591224	262, 1623 Centre St. NW	66905	CONFIRM
057591265	238, 1623 Centre St. NW	66904	CONFIRM
057591307	226, 1623 Centre St. NW	66257	CONFIRM
057591323	218, 1623 Centre St. NW	66909	CONFIRM
057591349	225, 1623 Centre St. NW	66915	CONFIRM
057591364	231, 1623 Centre St. NW	66244	CONFIRM

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 existence of the restaurant as a retail tenant on the second floor, and they also 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)). It emerged through questioning that the difference in valuation probably resulted from economies of scale based on the unit sizes. As well, the units were not contiguous.¹

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.

1) A complaint was filed for Unit 288 (but not for Unit 295) and addressed in this package of evidence (Ex. C1). Although heard at the same time as the subjects' in this decision, at the request of the Complainant, a decision on the Complaint on Unit 288 will be delivered in a separate document.

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 assessments 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.

They also noted that economies of scale needed to be considered, and argued that when this was properly factored, 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.

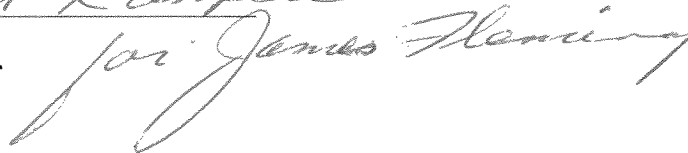
The CARB noted that the Complainant had not supplied market evidence demonstrating that the second floor units were worth less than the ground floor units. The "only current" evidence was the "pending" sale and the CARB concluded that this transaction (if it were to close) was too post facto to allow 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


for James Fleming

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.*

For Official Use Only:

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Strip Plaza (Unit Ownership)	Cost/Sales Approach	Improvement Calculation