

**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:

Action Hobby Canada Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
J. Rankin, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	201559457
LOCATION ADDRESS:	7012 Ogden Road S.E.
HEARING NUMBER:	61715
ASSESSMENT:	\$216,500

This complaint was heard on 26th day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *Doug Hyslip*
- *Donette Hyslip*

Appeared on behalf of the Respondent:

- *Denis Desjardins*

Procedural or Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The Panel consisted of two members, one provincial member (appointed to the Municipal Government Board) and one local assessment review board member. This panel therefore met quorum under Section 458(2) of the Municipal Government Act, which states:

"(2) The provincial member and one other member of a composite assessment review board referred to in section 453(1)(c)(i) constitutes a quorum of the composite assessment review board."

The parties did not have any objections to the panel representing the Board and constituted to hear the matter. No jurisdictional or procedural matters were raised at the onset of the hearing, and the Board proceeded to hear the merits of the complaint, as outlined below.

The property is owned by Victory Outreach Foundation, and that was the "assessed person" shown on the 2011 Property Tax Assessment Notice. Action Hobby Canada Ltd. is a tenant who is responsible for paying the property tax on the leased space. Because Action Hobby Canada Ltd. is responsible for the property tax on the leased area, they are the Complainant. A duly executed agent form was also presented authorizing Action Hobby Canada Ltd. to represent Victory Outreach Foundation in this tax appeal.

Property Description:

The subject property is located at 7012 Ogden Road S.E., and is about a one hundred year old hotel backing onto the Ogden Railway Yards. It is owned by Victory Outreach Foundation, which operates a halfway house in most of the building. The Complainants, Mr. and Mrs. Hyslip operate a hobby shop business in 2,887 square feet of the main level (formerly the kitchen and lounge area of the hotel). Victory Outreach Foundation is an exempt use, and does not pay property tax on the portion of the building they occupy. The subject space is leased and is assessed under a separate roll number, with Victory Outreach Foundation receiving the property assessment notice. Under the lease arrangements, Action Hobby Canada Ltd. is

responsible for the property tax on the space they occupy (referred to as Unit A by the Complainant).

The subject space does not have any direct exposure to Ogden Road S.E. The space has not been renovated to any extent in the last few decades. The heating is poor and there is no air conditioning. The Complainant leases this space because it is inexpensive, paying a gross lease of \$8.90 per square foot (\$5.50 per square foot rent plus \$3.40 per square foot utilities, parking and waste removal).

Issues:

1. Did the municipality meet its obligation under Section 299 of the Municipal Government Act with regard to providing the Complainant with "sufficient information to show how the assessor prepared the assessment"?
2. What is the appropriate market value of the subject property for assessment purposes?

Complainant's Requested Value:

\$31,500

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

1. Did the municipality meet its obligation under Section 299 of the Municipal Government Act with regard to providing the Complainant with "sufficient information to show how the assessor prepared the assessment"?

The Complainant stated that they attempted to obtain information from the City with regard to how their assessment was prepared, and why their assessment increased from \$31,500 in 2010, to \$216,500 in 2011. The Complainant first became aware of the increase in the assessment in January 2011, when the land lord showed them the assessment and property tax notice. The Complainant acknowledged that because of becoming aware of this matter at this late point in time, that they had missed the consultation period. In part, this limited the interaction that was possible with the City, and led to filing a complaint to resolve this issue. However, the Complainant also raised some issues related to the quality of information that they obtained, and the frustration in using the City's assessment data bases to obtain information.

An Assessment Summary Report was obtained (Exhibit C1) but the "valuation approach" and "land use designation" were shown as "not available". After a series of telephone calls to the City's assessment department, the Complainant was told that the subject property

was assessed on a per square foot basis, and that the rate used was \$75 per square foot. No support data was apparently provided. The Complainant included a copy of a report entitled "Getting it Right: An investigation into the transparency of the property assessment process and the integrity and efficiency of decision-making at the Municipal Property Assessment Corporation" prepared by the Ombudsman of Ontario to highlight the principle that property owners must be provided with sufficient and timely assessment information to allow them to understand and evaluate their property assessments.

The Respondent acknowledged that the subject was a unique property that offered some challenges from an assessment perspective, and that this likely accounted for the information in the file being less than what would be expected in a typical file. He also indicated that because the consultation period had lapsed, the assessor has less ability to amend an assessment based on discussions with the owner.

Board's Decision:

The Board does not intend to opine as to whether the municipality met its obligations under Section 299 of the Municipal Government Act. This issue is beyond the scope of the evidence before this Board, which related to only one assessment file. Clearly, the experience of one tax payer is insufficient to address such a large and complex matter.

The Board acknowledges the Complainant's frustration in attempting to navigate through the assessment process after making efforts that exceeded what would normally be considered reasonable. In part, this was due to the circumstances that unfolded. In part, this was also due to the unique nature of this property. The Board recognizes the substantial efforts made by the Complainant to obtain information from assessment staff and databases available to the public on the assessment department's website. The experience described suggests that an explanation of the data available to the public, how it is categorized and what data is included in each respective database may assist members of the public wishing to utilize this database.

Because this matter unfolded the way it did, the appeal process was the only avenue available to the Complainant to address the accuracy of the assessment. While this may not be the most efficient way to address disputes over assessments, and while it may not be the preferred approach of the Complainant, it is the method prescribed in the Municipal Government Act and does provide both the Complainant and Respondent with a fair process to resolve disputes. The complaint process exists to provide the tax payer an impartial hearing where the assessment and how it is calculated can be disclosed and discussed, and an assessed value determined.

2. What is the appropriate market value of the subject for assessment purposes?

The Complainant described the unique nature of the property, being located in a one hundred year old building, and in the Ogden community that is essentially isolated from the rest of the city due to the river, railway yards and major roadways. It is also surrounded by industrial developments making this a small residential island.

The Complainant attempted to obtain details regarding the 2011 assessment and specifically how the assessment was prepared. Very little detail was obtained from the City, and in the Complainant's opinion was insufficient to understand how the assessment was prepared. The Complainant attempted to use the databases available to the public to find the category of property that was assigned to the subject, to determine whether it was properly categorized. The Complainant searched a number of databases and was unable to find the subject roll number. After a substantial attempt to gain an understanding of how the subject property was assessed, the Complainant was unable to find any information that allowed them to understand the basis of the assessment. Furthermore, the Complainant indicated that they could not find any market value or equity comparable properties in the City's databases.

The Complainant then described their efforts related to the business tax on this property and their considerable history of appealing the business tax. A copy of the latest Assessment Review Board Decision (ARB 0356/2010-B) was included in Exhibit C2 to demonstrate that that Board found the subject space "atypical" and that it was not comparable to the other properties in the category used to calculate the business tax.

The Respondent agreed that the subject property was unique. The evidence (Exhibit R1) indicated that the subject was assessed in accordance with the rate per square foot applied to multi residential low rise mixed use commercial properties. The Respondent provided examples of typical properties in this category. The subject apparently is located in Market Zone 5, but no map showing the configuration of this market zone was provided. All such properties in this category in this market zone are assessed on a rate of \$75 per square foot. No support data was presented to support the \$75 per square foot rate. According to the copy of the Assessment Request for Information dated November 15, 2010 in the Respondent's evidence (page 20, Exhibit R1), the subject rental rate is \$5.50 per square foot.

Board's Decision:

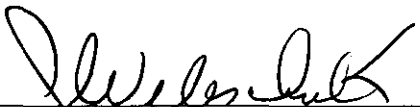
After reviewing the evidence presented, the Board concluded that the subject property is unique in a number of ways. It is also atypical of the properties that constitute the multi residential low rise mixed use commercial category in Market Zone 5. The rental rate being achieved on the subject space is considerably less than the \$75 per square foot for this category and market zone. The Respondent did not present any evidence to support its position that this is the appropriate category and rate for the subject property.

Finding that the rate of \$75 per square foot is not appropriate, and in the absence of any other evidence, the Board accepted the Complainant's requested assessment of \$31,500, which is the 2010 assessment.

Board's Decision:

The Board reduces the assessed value to \$31,500.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF September 2011.


Ivan Weleschuk
Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C1	Complainant Rebuttal

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.*