

**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:

Ed's & Embarcadero Restaurants Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER

J. O'Hearn, MEMBER

A. Wong, 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: | 068198803 | 068198605 |
| LOCATION ADDRESS: | 202 17 Ave S.E. | 208 17 Ave S.E. |
| HEARING NUMBER: | 61499 | 61500 |
| ASSESSMENT: | \$1,170,000 | \$1,300,000 |

This complaint was heard on 24th 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:

- *Heesung Kim (owner)*
- *Fred Richards*

Appeared on behalf of the Respondent:

- *Dan Satoor*
- *Kelly Hess*

Procedural or Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties did not have any objections to the panel representing the Board and constituted to hear the matter. No jurisdictional matters were raised at the onset of the hearing, and the Board proceeded to hear the merits of the complaint, as outlined below.

Procedure: Amalgamating Two Files

The Complainant stated that they are the owners of the two properties before the Board this afternoon and that their evidence is the same for both properties. The two subject properties are adjacent to one another, both house conversions and both being used as restaurants. The Respondent acknowledged that their evidence and argument will also be the same for both properties and agreed that it would be most efficient to hear both files at the same time. The Board agreed and heard the appeals of Roll No. 068198803 and Roll No. 068198605 together, and will issue one decision that addresses both subject properties.

Property Description:

The subject property located at 202 17 Ave S.E. is operated as Ed's Restaurant. The property is located at the corner of 17 Avenue and McLeod Trail S.E. This was a house built in 1911, that has since been renovated and converted into a restaurant. According to the Assessment Summary Report, there are a total of 3,978 square feet of building space over two above grade levels and one below grade level. The lot size is 3,613 square feet. There are no legal parking stalls on this property.

The subject located at 208 17 Ave S.E. is operated as Embarcadero Wine & Oyster Bar. The property is located on 17 Avenue S.E. one lot west of McLeod Trail. This was a house built in 1911, that has since been renovated and converted into a restaurant. According to the Assessment Summary Report, the total building area is 3,978 square feet on three levels, one being below grade, on a 3,613 square foot lot. There are four legal parking spaces on this property.

The use of both subject properties are classified as commercial - house conversions by the City for assessment purposes. The assessments were both prepared using a sales comparison approach for house conversions.

Issues:

1. Does the use of different assessment methods result in inequitably high assessments of converted houses compared to other commercial/retail properties?
2. Does the assessor's model used to establish a value for house conversions ignore any key factors and does it meet the valuation standard of market value?
3. Do the assessments reflect the market value of the respective subject properties?

Complainant's Requested Value:

Roll No. 068198803 \$704,500

Roll No. 068198605 \$903,000

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

1. **Does the use of different assessment methods result in inequitably high assessments of converted houses compared to other commercial/retail properties?**

The Complainant argued that the two subject properties (house conversions) were in the same use and competing with businesses located in purpose built commercial buildings. Therefore all the buildings in the area in a similar commercial/retail use should be assessed using a similar method and rate. Until this assessment year, the two subjects were assessed as commercial properties using a per square foot rate applied to the lot size. The rate for the 2011 assessment year is \$195/ft². Applying a sales comparison assessment methodology to only the commercial-converted house category creates an inequality between building types.

The Complainant presented information on two properties located adjacent to one another and on similar sized lots (Attachment 1, Exhibit C1), one a converted house (not the subject properties) and one a purpose-built commercial. The 2011 assessed value of the converted house is \$1,350,000 while the newer and larger commercial building is assessed at

\$1,150,000. In a meeting with the Assessment Department, the Complainant provided this example, which apparently resulted in the assessment on the commercial building being amended to \$1,300,000. The original assessment for this commercial property was done on a rate per square foot of lot, while the amended assessment was done using an income approach.

The Complainant presented a table showing the two subject properties and eight other properties in the immediate area (Attachment 2, Exhibit C1). The purpose of this table was to show that the two subjects and one other house conversion were assessed at rates much higher than the seven purpose built buildings, when the assessment was presented on a per square foot of lot basis.

The Complainant selected commercial sales from the City Assessment website that occurred in the Beltline District beginning from the second quarter of 2009 (Attachment 3, Exhibit C1). The sale price and assessed values were shown and an assessment to sale price ratio (ASR) was calculated. The result was an average ASR of 0.97 and median ASR of 0.98 for the three house conversions in this data set. The six commercial (non-house conversion) properties in this data set had an ASR ranging from 0.33 to 1.05, with an average of 0.63 and median of 0.58. The Complainant stated that this difference in ASR indicates that the house conversions are being assessed too high compared to purpose built properties in the area.

The Respondent provided evidence (page 50, Exhibit R1) showing sales activity of commercial properties in the Beltline District and the percentage of Beltline District house conversions relative to city-wide sales. In the Beltline District, there were 605 non-conversion commercial properties with 22 sales (4%); 91 non-conversion and non-condo retail properties with 3 sales (3%); and 45 house conversion properties with 6 sales (13%). It was the Respondent's position that there were sufficient sales in the City's database to properly assess house conversion as a distinct assessment category (a subclass of the commercial category). The Respondent also stated that house conversion properties had a number of distinct characteristics that resulted in a market value that was sufficiently different from the general commercial category that they warranted their own category. For, example, most house conversions are owner occupied and provide a unique character sought by particular owners. The Respondent also stated that in previous years, grouping house conversions with other commercial properties resulted in the house conversions being under assessed, but no evidence or analysis was provided to support this statement.

Board's Decision:

Both the Complainant and Respondent agreed that the two subject properties were house conversions. The Complainant argued that regardless of building type, the subject properties should be treated in a similar manner as other commercial/retail properties in the immediate area for assessment purposes. The Respondent did not address the issue of equity between assessment categories other than to indicate that each assessment category passes an audit by Alberta Municipal Affairs to ensure that the assessment models are appropriately reflecting market value. The Respondent took the position that if the

assessment reflects market value, then equity is not an issue.

Section 4(1) of Matters Relating to Assessment and Taxation Regulation states that the valuation standard for a parcel of land is market value unless the parcel is used for farming operations. Section 293(1) of the Act requires that the assessor prepare an assessment in a fair and equitable manner, applying the valuation and other standards set out in the regulations. An issue of equity arises when a property assessed at a value that reflects its actual (market) value is well above or well below (outside) the assessed value range compared to other similar properties. This is the test or direction that flows from *Bramalea v. British Columbia*, 2006 BCSC 424.

The Board interprets this to mean that the subject property must be assessed equitably compared to other similar properties. Therefore, the test of equity is based on defining and identifying appropriate "similar" or "comparable" properties. Presumably, by creating its assessment categories, the City sorts or allocates properties into groupings of similar properties based on a host of market characteristics. If the market indicates distinct categories of properties, then it is acceptable for the assessor to use such market created groupings as assessment categories. Such market derived assessment categories should, in turn, result in assessments that accurately reflect market value.

Equity, as a concept, refers to a property owner paying his or her fair share of tax relative to other properties in a municipality base on their respective market values. If properties have different market values, then their assessment values should be different, reflecting the relative market value of these properties. If assessment methodologies are applied appropriately, the result should be an equitable assessment of the tax burden based on a realistic reflection of the market value of each property.

The Complainant did not challenge the creation of the house conversion assessment category *per se*. The Complainant argued that the assessed value calculated by the model for this assessment category resulted in the subject properties' assessments being inequitable compared to other types of properties in the same general area and in the same or potentially the same use. The Board interprets this argument to mean that location and/or use of a property should be the over-riding factor(s) in determining how a property is assessed.

The evidence and argument of the Complainant focused on demonstrating that properties proximal to the subjects are assessed less than the subjects. The evidence presented by the Complainant to demonstrate this inequity (Attachment 2, Exhibit C1) consisted of ten properties (the two subjects and eight comparables), all in the "commercial" property use category. The subproperty use categories include "house conversions", "office/retail", "retail/multi-residential", "office under 20,000 s.f.", and "retail". The properties categorized as "commercial-retail/office" and "commercial-retail/multi-residential" were assessed using an income approach, while the other categories were assessed using a sales comparison approach based on a database unique to each classification. The assessment for each of these ten properties was translated into the unit "assessment per square foot of land" by the

Complainant to demonstrate that the assessment for the three house conversion properties (including the two subjects) was higher than the assessments for the others.

The evidence presented (assessment to price ratios) indicates that the house conversion assessment model reflects market value. The Board agrees that based on a comparison of the subjects to the other "comparable properties" presented by the Complainant that the assessments on the subjects are higher.

Thus, the issue before the Board is whether equity in an assessment is to be determined only within an assessment category, or does equity need to exist between categories? Does equity require that all properties be assessed at the same rate or on the same basis simply because they are located in the same area or may have a similar use?

The evidence presented by the Complainant was not sufficient to demonstrate that the subject house conversion, assessed as such in a house conversion property category, is inequitably assessed compared to other types of properties in different assessment categories. Other than proximity and potential use, other factors determining the comparability of the subject with the "equity comparables" presented in Exhibit C1 was not explored by the Complainant. It is the Board's opinion that the test for deriving equity comparables requires an assessment of many more characteristics than just geographic proximity and/or a broad use category. If, after a comprehensive analysis, it can be concluded that location and use are the only factors determining market value regardless of assessment category (property type), then it would be appropriate to apply only these two factors in considering equity.

As long as each property category reflects the market value of that respective property type, then using these different categories with different assessment methodologies is acceptable. To allow the argument that on an equity basis, a property owner is entitled to the same assessment rate as a neighbouring property assessed at a lower value only based on proximity does not fully address the scope of the equity issue. A fair and equitable assessment does not mean all properties get a lower assessment simply because they are proximal to a property with a lower assessment. Such an approach does not address the requirement of the assessment to reflect market value.

Arguing equity within an assessment category is a much easier task than arguing equity among two or more assessment categories. The Board appreciates the case put forward by the Complainant. The Respondent did not provide any evidence to show how it ensures equity between assessment classes or if in fact this is a consideration when preparing the assessment rolls. While the Complainant demonstrated that the assessments were different between neighboring properties in assessment categories different from the subjects, the evidence presented was not sufficient to convince the Board that an inequity exists between assessment categories and specifically between the house conversion assessment category and various other commercial assessment categories.

2. Does the assessor's model used to establish a value for house conversions ignore any key factors and does it meet the valuation standard of market value?

The Complainant raised this issue in the event that the Board did not find the equity argument in Issue 1 convincing. It was the Complainant's position that the assessment model for commercial-house conversions is flawed in that it does not consider enough factors, and therefore its methodology results in a value that does not reflect the market value of house conversion properties.

The Complainant met with the Assessor to discuss the Complainant's concerns with the valuation model and methodology used to assess house conversions. The assessment model apparently only considers building area above grade, land area and location. The Complainant received a letter from Mr. Edwin Lee of the Assessment Department (Attachment 4, Exhibit C1) explaining in general how the assessment model is set up and some of the data used. As a result of this meeting and letter, the Complainant was not convinced that the assessment model for house conversions was methodologically sound.

The Complainant raised the following factors she believed were not appropriately integrated into the assessment model:

- a) Availability of Parking: The Complainant noted some errors in the input data used by the Assessor. Furthermore, the model does not take this factor into account. Availability of parking is an important factor in the value of a commercial property.
- b) Type of Space: The Complainant indicated that the model did not differentiate main floor and second floor space. In a retail use, main floor space is more desirable.
- c) Location: The valuation apparently includes all the properties in the Beltline District without differentiating the area into better and less desirable areas. The model does not include a negative influence associated with the provincial detoxification facility located adjacent to the subjects.
- d) Redevelopment Potential: The Complainant stated that converted houses are typically purchased for redevelopment, however because of the size and configuration of the subject properties, and the lack of other land adjacent to the subjects to allow for an assembly of a larger unit, the subjects had very poor redevelopment prospects.

The Respondent also provided a copy of the letter from Mr. Lee to the Complainant (pages 15-18, Exhibit R1). As a result of this meeting, the Assessor corrected some of the sales in the database used to assess commercial properties (not house conversions) in the Beltline District. This table of commercial properties (page 16, Exhibit R1) shows an average Assessment to Sales Ratio (ASR) of 0.95 for the 21 sales, with an ASR range of 0.48 to 1.91. This letter also addressed the issue of whether parking stalls were considered in the model. It was the Respondent's position that land size is a surrogate for parking, as property with a larger lot size sells for and is assessed at a higher value.

In rebuttal evidence, the Complainant took issue with whether lot size addresses parking availability (number of on-site parking stalls is considered a positive factor in the value of a property) and presented evidence to the contrary. The Respondent also presented photographs of the availability of parking in the area, to dispute the Complainant's evidence. As part of the rebuttal evidence (Exhibit C3), the Complainant also provided photographs of street parking in the area.

The Respondent presented a table showing the sale of all house conversions in the City over the July 2009 to June 2010 period (page 64, Exhibit R1). Two of these sales involved the same property, that had undergone a major renovation between the two sales events. The assessment to sale price ratio (ASR) for these sixteen sales averaged 0.96%.

The Respondent presented five equity comparables for house conversions located in the Beltline District (page 67, Exhibit R1). These comparables varied in size, building area and number of parking stalls, and were assessed at between \$635,000 to \$1,610,000. The assessment was also provided on a per square foot of building area basis, and ranged between \$398 to \$753. The subject properties are assessed at \$395 (202 17 Ave S.E.) and \$571 (208 17 Ave S.E.) on a per square foot of building area basis.

In rebuttal, the Complainant provided photographs to demonstrate that the subject location, being proximal to the Saddledome and Stampede Grounds was not a "prime" location, and argued that locations further west in the Beltline were more desirable and better for a restaurant business (had a more continuous flow of clients).

The Complainant indicated that Mr. Fred Richards is a licensed realtor and was the source with regard to earlier statements made that free standing and house conversions compete in the market, in the same price range. Mr. Richards was also the source of the statements that converted houses are not as good as purpose built buildings for commercial uses. Mr. Richards was present but did not give any direct testimony to these issues.

The Complainant's rebuttal evidence addressed a number of other issues raised by the Respondent but not in the original evidentiary package (Exhibit C1).

Board's Decision:

The underlying objective of the assessment process is to seek market value within a mass appraisal approach. The City categorizes buildings into different assessment categories based on design, use, size, location, and other factors derived from the market, then presumably applies the most appropriate assessment methodology for that particular category to achieve an assessment that reflects the market value of the properties in that category. House conversions are just one more category that apparently has its own distinct factors that influence market value. Therefore, whether the City can create a category or sub-category for house conversions is not at issue provided that the City has

sufficient data to create a model that results in an assessment that reflects market value. The City's model apparently meets the audit conducted by Alberta Municipal Affairs, so it meets that test. Since there was no detailed information presented to the Board on this matter, it has no choice but to defer to the audit.

So, the issue becomes whether the subject properties are properly assessed within the house conversion category and is the house conversion category sufficiently robust to address all the relevant factors that determine market value? The evidence presented by both the Complainant (Attachment 3, Exhibit C1: ASR for three house conversions in the Beltline is 0.97) and Respondent (page 64, Exhibit R1: ASR for the 6 Beltline house conversions is 1.02) showed that the model reflects market value for these properties, based on the assessment to sale price ratios (ASR's). Based on the ASR data presented, the Board is satisfied that the model reflects the market value of house conversions.

Much of the evidence presented by the Complainant and Respondent focused on the subject properties and whether the subject properties were either negatively or positively influenced by a number of factors. It appeared that the meeting between the Complainant and Mr. Lee of the City (which resulted in his letter to the Complainant) was the reason this evidence was presented. The evidence presented included little quantification as to the impact of these various factors on the market value of the subject properties, or by translation on assessed value. While the Complainant raised some good questions, she did not provide any evidence to indicate how much more accurate or robust the model would be if these factors were included. The Board notes that it may have been helpful to have Mr. Lee appear before the Board to present evidence directly and provide context to the discussions.

The Board notes that the evidence presented and the associated discussion focused on comparing the subject properties with other properties located in the Beltline District. The Complainant argued that properties a few blocks west of the subject properties were superior to the subjects' location because they have fewer negative influences. The Board agrees with the Complainant that the "Beltline District" is not necessarily homogeneous and that the western portion of the Beltline District may be more desirable for commercial uses. It was not clear to the Board how this was to be integrated into the house conversion assessment model.

The Complainant and the Respondent both presented evidence that showed that the assessment to sale price ratio (ASR) for the commercial-house conversion category was at about 1.00, showing a good correlation between these two parameters, and that the model for house conversions was accurately reflecting the market value of these properties. For this reason, the Board concludes that the subject properties are equitably assessed within the house conversion assessment category, and that based on the evidence presented, that the house conversion assessment model reflects market value. The Board has insufficient evidence to determine if the house conversion assessment model would be more robust and improved if some of the other factors raised by the Complainant were integrated.

3. Do the assessments reflect the market value of the respective subject properties?

This was an issue raised by the Respondent. The Respondent presented evidence to demonstrate that the assessments of the subject properties reflected the market value of the subject properties. This evidence relied on the assessment to sale price ratios (ASR's) for the house conversion category averaging very near 1.00, and that the assessment model met the provincial standards in the audit performed by Alberta Municipal Affairs before the assessments were finalized.

Board's Decision:

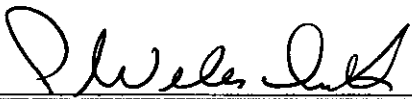
Other than the evidence related to the assessment to sale price ratios, no evidence was provided to demonstrate that the assessed value of the subject properties is or is not reflective of their actual market value. No appraisal evidence was presented to show that in this situation, the assessed value and market value of the subject properties is similar. The issue of assessment to sale price ratios has already been dealt with by the Board.

Board's Decision:

The Board confirms the assessments as follows:

| | | |
|--------------|-------------|-------------|
| ROLL NUMBER: | 068198803 | 068198605 |
| ASSESSMENT: | \$1,170,000 | \$1,300,000 |

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. C2 | Complainant Disclosure (2 pgs) |
| 3. R1-A (202 17 Ave SE) and R1-B (208 17 Ave SE | Respondent Disclosure |
| 4. C3 | 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.*