

**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:

***Waterfront Site One Owners Association and Anthem Riverfront Holdings Ltd.(as
represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***T. Golden. PRESIDING OFFICER
R. Deschaine MEMBER
E. Reuther. 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 2012 Assessment Roll as follows:

ROLL NUMBER	201480605	201473295	201473303	201480654
LOCATION ADDRESS	100 222 Riverfront AV SW	208 Riverfront AV SW	102 2 ST SW	222 Riverfront AV SW
FILE NUMBER	66631	66633	66565	66630
ASSESSMENT	\$7,970,000.00	\$15,210,000.00	\$11,890,000.00	\$31,110,000.00

This complaint was heard on 29 day of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- K. Fong,
- A. Izard

Appeared on behalf of the Respondent:

- B. Tang
- A Czechowskyj
- H. Neumann

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

[1] Two preliminary issues were decided upon by the Board. Firstly should portions of the rebuttal document not be accepted into evidence, and secondly how the board would consider the four related complaints

[2] The Respondent objected to the rebuttal document submitted by Complainant. The rebuttal document in their opinion contains new information and should not be accepted by the Board. In the rebuttal evidence the Complainant included a parking stall agreement for stalls in the subject which was not referred to in the original disclosure. In addition the Respondent pointed to the Alberta Regulation 310/2009 Section 8 (2)(c) in particular:

"...rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing."

[3] The Complainant disagreed with the statement that the rebuttal was new information. Rather the rebuttal is a response to the Respondent's evidence questioning a main argument of the Complainant regarding common property. The parking stall agreement is intended to answer the objection that the parkade is common property.

[4] The Board considered the presentations and reserved the decision on the validity of portions of the rebuttal document until the merit evidence was presented at which time the role of the rebuttal evidence could be determined.

[5] After hearing the merit of the complaint the Board decided that the Complainant's rebuttal evidence could be entered as evidence. In the Board's opinion, the parking stall agreement was a reasonable response to the Respondent's disclosure. In both disclosure and testimony, the Respondent argued against the concept that the parkade was common property. The rental agreement was presented as part of the rebuttal of that position and therefore accepted into evidence by the Board.

[6] The Respondent suggested that the Complaints regarding files 66630, 66565, and 66633 be withdrawn since the disclosure from the Complainant did not question the land rate applied. The Complainant was of the opinion that depending on the decision of the Board, these other roll numbers could be adjusted and they wished the Complaints to remain before the Board. The parties agreed to hear the evidence for file 66631 and include the related files in the same Board decision.

Property Description:

[7] The subject 4 roll numbers are portions of a new residential condominium complex. Development has been in phases with approximately 47% of the total development complete. At this point the subjects include two towers of 27 stories at addresses 222 Water Front AV SW and 208 Waterfront AV SW. Approximately 305 units are available for occupancy of the total project eventually containing 591 units. The site at 102-2 ST SW is a sales office and 100 222 Waterfront AV SW is a 905 parking stall 4 level parkade. Additional development will include an additional tower and a series of townhouse style residential areas. The complex is located in the Chinatown area of the downtown.

[8] The parkade is the subject of the Complaint and the assessed rate of \$225.00 per square foot (sq ft) is not in question.

Issues:

[9] 1. Is the assessment value attributed to the parkade, captured in the assessment elsewhere in the condominium complex?

[10] 2. Is the parkade area common property and therefore should not be assessed?

Complainant's Requested Value: Each of the two arguments presented result in no assessment on the subject parcel.

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

[11] Issue 1. The assessment attributed to the parkade is not captured elsewhere in the assessment of other portions of the condominium complex.

[12] In the opinion of the Complainant the assessment of the subject is captured in other portions of the condominium complex and the current assessed value of the parkade is being charged to both the assessed person and the condominium complex or double counted.

[13] The Complainant drew the Boards attention exhibit C-1 page 25. This document is the Assessment Explanation Supplement for 222 Riverfront AV SW and shows an assessment of \$31,110,000.00. This assessment is for the completed portion of the building project. The supplement portion of the document shows the building value to be 47% of the value of a 2008 construction permit application or, \$21,910,000.00 (rounded). Since the parkade has been complete, the assessed value of the parkade is included in the assessment of 222 Riverfront AV SW. The Respondent has captured the value in the completed portion of the complex and again in the assessment placed directly on the roll number of the parkade, the Complainant said..

[14] The Respondent explained that the Current assessment on the parkade was a \$7,970,000.00 land only value. In the 2011 tax year the assessed value of the parkade was \$23,030,000.00 and included the uncompleted structure and the land value. This year the Respondent recognized that the structure was complete and moved the value of the building to

roll 201480654 at 222 Riverfront AV SW. The value of the land remains on the roll number for the parkade. Again the land value is not contested.

[15] Reviewing the Assessment Explanation Supplement for 222 Riverfront AV SW the Respondent pointed to pg. 19 of Exhibit R-1 and argued the permit value was for the structural improvements only and not land. It was pointed out to the Board that the assessment for 222 Riverfront AV SW, assessed the land value and improvements separately and the land value did not include the land for the parkade. The 47% of permit value is improvements only. The Respondent suggested the values underestimated the values of the improvements and likely resulted in an under assessment. This will be adjusted as the project is completed as well it is very likely further condominium plans will be registered as the legal and business issues are resolved.

The Board reviewed both the Assessment Explanation Supplement for 222 Riverfront AV SW and the Development approval. It is noted the actual value of construction does not appear on the Approval document, however the value is not contested. The Development Approval states; *"scope: New Building (Parkade and Phase 1B Tower B)"* and this is indicative of the improvement excluding land, exhibit R1 pg 19. The assessment for 222 Riverfront AV SW includes 47% of the permit value which is improvements only. This opinion is supported by the 2011 assessment that did include land and buildings compared to the much lower 2012 assessment that has had the improvements allocated to 222 Riverfront AV SW. The land portion of the parkade is not captured in the completed part of the complex.

[16] Issue 2. The parkade area is assessable.

[17] The Complainant summarized the position by stating that the parkade is in the same category as other common spaces in the complex including hall ways and elevator shafts. To demonstrate this position the Complainant began by pointing to the assessment notice and the ownership of the subject being the non-profit residents association named Waterfront Site One Owners Association. They said the parkade then is owned by the residents of the condominium complex and is therefore common area. Care and control of the subject is entirely with the residents association and for the use of the residents. Access to the individual stalls in the lower 4 floors is restricted to the individual unit owners. This is the same access as is available with other types of common property in the condominium complex. The Complainant presented examples in other condominium projects in the downtown that have parking provided in common and for the exclusive use of the unit owners. The subject is a parking structure for the residents and is not public parking. In response to claims the parking may be public the agreement for parking was submitted to demonstrate that the parking is exclusive to the residents of the complex.

[18] The Complainant maintained that the parkade is common property then as with other common property the area is not assessed by the City. There should be no assessment on the subject.

[19] The Respondent explained that the subject parkade is titled to the owners association being transferred by the developer, however that in itself does not constitute common property. An example is that the parkade contains 905 parking stalls and only 591 condominium residential units. This leaves a considerable number of stalls over the amount required by the

complex and may be available to the public. In addition although the parking agreement presented by the Complainant mentions that a stall is available to each unit sold, the agreement does not establish how the stall will be legally allocated. The management details as with many aspects of the entire complex have yet to be finalized.

[20] With respect to the other downtown examples of common property parking areas the Respondent notes these examples show the common property areas marked on the condominium plan as common. The subject parkade is not shown on a condominium plan as common. When an area is designated in a condominium plan as common a number of unit factors are assigned. The unit factors are added to the unit factors of the residential units giving each residential unit a total number of unit factors. In terms of assessment, the unit factor assigned to the individual residential unit in part determines the assessment. In this way the assessment accounts for the common property. In these cases the value of common property is distributed among the various units and not individually assessed. It is noted that the subject parkade is not designated on a condominium plan and is not a common property.

[21] The Board notes that a property does not avoid assessment if the unit is common property. In a condominium plan all units are assigned unit factors to a total of 10,000 unit factors. The common property unit factors may be demised to the various condominium units in the complex and the assessed value of is then distributed as well. In this case the Complainant needs to demonstrate firstly; the subject is common property and secondly; the unit factors are demised to the other condominium units in the complex.

[22] The Board referred to the Condominium Act in order to determine if the subject property is common property. Section 1(1)

"In this Act,

(f) "common property" means so much of the parcel as is not comprised in a unit shown in a condominium plan, but does not include land shown on the condominium plan that has been provided for the purposes of roads, public utilities and reserve land under Part 17 of the Municipal Government Act;"

[23] The parkade is registered as strata lot 4 however it is unclear it is part of a condominium plan and unclear the lot is a common property in a condominium plan. Once the final plans are registered it may be common property however at the assessment date it is not in the opinion of the Board common property. Secondly: For the assessment to be captured in the other units of the condominium plan the unit factors for the parkade need to be distributed to other units. The Complainant was unable to demonstrate the unit factors are actually added to each condominium unit in the complex which would then be responsible for their portion of the assessment.

[24] The Board understands that the entire project is still under construction and many of the legal and procedural issues are yet to be completed however at the assessment date the land for parkade is assessable on its own. The ownership of the parkade by the Waterfront Site One Owners Association also does not mean the subject is common property. The Board notes the assessment is for land only and is not accounted for in the assessment of other portions of the complex and therefore confirms the assessment.

[25] The Board is not altering the assessment in hearing 66631, assessments for hearings

66633 66565 66630 are also confirmed.

Board's Decision:

[26] The assessment is confirmed at:

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DATED AT THE CITY OF CALGARY THIS 13 DAY OF November 2012.



Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Rebuttal
3. 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.*

Appeal Type	Property Type		Issue	Sub-Issue
CARB	parking	Condominium	Common property	Captured elsewhere