

**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:

***Benny Katz and Frieda Katz(as represented by Cushman & Wakefield Ltd),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
E. Reuther, 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:	088083001
LOCATION ADDRESS:	3508 14A Street SW
HEARING NUMBER:	63729
ASSESSMENT:	\$342,500

This complaint was heard on 24th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *Jan Goresht,*

Appeared on behalf of the Respondent:

- *Scott Powell*

Jurisdictional and Procedural 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 procedural matters were raised. The Board proceeded to hear the merits of the complaint, as outlined below.

Property Description:

The subject property is a 5,358 square foot (ft²) vacant property at 3508 – 14A Street S.W., in the Altadore district of southwest Calgary. It is a rectangle-shaped parcel that is paved and used for parking. The neighbourhood is an established retail area just south of 34th Avenue SW. The taxpayer also owns the two properties immediately to the north of the subject. 1519 – 34 Avenues SW is improved with a free standing retail store. 1515 – 34 Avenue SW is improved with retail on the main floor and two apartments on the upper floor.

The subject is assessed using a sales comparison approach, for a value of \$342,500.

Issues:

1. The subject parcel is required for parking by adjacent commercial properties. What is the appropriate market value of the subject property for assessment purposes?

Complainant's Requested Value:

**\$500.00 (complaint form)
Nominal at \$100 (at hearing)**

Board's Decision:

- 1. The subject parcel is required for parking by adjacent commercial properties. What is the appropriate market value of the subject property for assessment purposes?**

The Complainant stated that the owner of the subject property (3508 – 14A Street SW) also owns the two properties immediately north of the subject, at 1519 – 34 Avenue SW and 1515 – 34 Avenue SW. These two properties are improved with a stand-alone store on 1519 – 34 Avenue SW and a two-story retail/residential building on 1515 – 34 Avenue SW. Parking on these two adjacent properties is limited. Therefore, the parking provided by the subject property is necessary for the two adjacent properties to operate. The two adjacent properties are assessed using the Income Approach. The Complainant argued that because the subject property provides parking for the two adjacent properties, and that because the two adjacent properties are assessed on an Income Approach basis, that the value of the subject property is reflected in the assessment of the two adjacent properties. Therefore, assessing the subject at more than a nominal value results in double taxation on the subject. The Complainant did not address the calculation of the assessed value of the subject property specifically.

To support the position that the subject is required for parking for the two adjacent properties, the Complainant presented the Commercial-Neighbourhood 2 (C-N2) District requirements from Calgary Land Use Bylaw 1P2007. It was the Complainant's interpretation of this Bylaw that some twenty parking stalls were required for the commercial operations, plus the parking requirements for the two residential units. The Complainant did not know how many parking stalls were available on the two adjacent properties, but based on the site plan, concluded that there was substantially less than the 20 required.

The Complainant stated that the Bylaw parking requirement adversely impacts any new tenants in the commercial spaces from getting their business licenses, as it is at that time that the City reviews all bylaw requirements to ensure that the property complies. This situation forces the owner to offer rental discounts below market to maintain the existing tenants.

The Respondent indicated that there is nothing registered on the title of the two adjacent units related to a parking easement or similar instrument on the subject property. The subject was a separate, unencumbered parcel that could be sold separately, therefore had its own value for assessment purposes. With regard to the parking requirement, the Respondent indicated that when zoning bylaws change, property is "grand-fathered". The new bylaw requirements would only apply if the footprint of the existing improvements was to be altered or changed.

Board's Decision:

No evidence was presented to demonstrate that the subject property and its parking utility was in any way tied or committed to the adjacent two properties, or to leases in place on those adjacent properties. No evidence was presented to show who was using the subject for parking and whether any additional income was being generated by leasing parking stalls on the subject. The subject property is a titled parcel that can be sold if and when the owners choose.

The evidence regarding the parking requirements and which bylaw is in effect for the adjacent properties, and the discussion about when these bylaw requirements are triggered is not germane to the matter before the Board. Those are issues that will impact the adjacent properties at some future point, the adjacent properties are not before this Board at this hearing, and the issues raised did not occur or exist during the assessment period.

Based on the evidence presented, the Board concludes that the value of the subject property is not integrated into the value or use of the adjacent properties, or in any way diminished as a stand-alone parcel. The Complainant did not argue that the assessment is otherwise incorrect.

Board's Decision:

The Board confirms the assessment of \$342,500 for the reasons discussed above.

DATED AT THE CITY OF CALGARY THIS 18 DAY OF November 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

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.*