

**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:

The Uplands In Hawkwood Homeowners' Association Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

M. Vercillo, PRESIDING OFFICER

P. Charuk, MEMBER

J. Massey, 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: 015213309

LOCATION ADDRESS: 645 HAWKSIDE ME NW

HEARING NUMBER: 62454

ASSESSMENT: \$88,500

This complaint was heard on the 31st day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *C. Besenyi*

Appeared on behalf of the Respondent:

- *T. Johnson*

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

The Calgary Composite Assessment Review Board (CARB) derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below.

Property Description and Background:

The subject property is vacant lot and is part of a residential development known as "Hawkwood" located in the NW quadrant Calgary. The property is being used as a recreational vehicle storage lot for the benefit and use of members of the homeowners association.

According to the information provided, the property has an area of approximately 0.22 acres or 9,590 square feet (sf), with a land use designation of "Direct Control". The subject is assessed using the Sales Comparison approach to value, at a base rate of \$36.97 per square foot (psf), but reduced 75% to account for its land use restrictions and utility right of way encumbrances.

Issues:

The Complainant raised the following matter or issue on the complaint form and at this hearing:

- 1) The subject property has a direct control land use designation as a recreational vehicle (rv) storage lot. The property cannot be developed for residential use and therefore should not be assessed as such.

Complainant's Requested Value:

\$27,500

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

ISSUE 1: The subject property has a direct control land use designation as a recreational vehicle (rv) storage lot. The property cannot be developed for residential use and therefore should not be assessed as such.

The Complainant provided a 4 page document that was entered as "Exhibit C1" during the hearing. The Complainant along with Exhibit C1 provided the following evidence with respect to this issue:

- A narrative referred to as Attachment #1. The narrative is taken from a 2002 City of Calgary assessment roll of the subject property dated June 10, 2002. The following was stated:
 - "This is a residential lot with services available however the lot cannot be developed due to underground and overhead encumbrances....Therefore a raw land rate of \$100,000/acre has been applied less 50% for the encumbrances...."
- The Complainant concluded that the conditions that existed on the property in 2002 exist today and therefore it should be similarly assessed. The Complainant asserted that the subject property is assessed as though comparable to residential property that is developable. The subject is non residential and not developable.
- A copy of page 19 of Amendment No. 90/062, Bylaw No. 69Z90 that was approved by council on July 16, 1990. Article 1 of that bylaw states that the subject land use "shall be for private recreational vehicle storage lot."
- An aerial view of the subject property. The aerial photograph showed that the subject property has an electrical substation directly behind it, significantly limiting the subject's development potential.

The Respondent provided a 91 page document entitled "Assessment Brief" that was entered as "Exhibit R1" during the hearing. The Respondent along with Exhibit R1 provided the following evidence with respect to this issue:

- An assessment history of the property. The past assessments for the subject property were as follows:
 - 1999 to 2001 - \$74,000.
 - 2002 to 2004 - \$11,000. This calculation was supported by the evidence provided by the Complainant in Exhibit C1.
 - 2005 to 2006 - relatively minor increases to the assessments of 2002 to 2004.
 - 2007 - \$19,950.
 - 2008 - \$20,000.
 - 2009 - \$27,500.
 - 2010 - \$27,500. The assessment in 2010 was reduced by a CARB from an originally assessed \$137,500.
 - 2011 - \$88,500.
- A property comparison report schedule. The Respondent provided 4 land only residential comparables. The comparables were zoned R-C1 to the subject's DC/R-1 zoning. The report detailed 2011 residential vacant land assessments for the 4 properties as follows:
 - Site areas ranged from 5,095 sf to 7,932 sf.
 - Assessment values ranged from \$178,000 to \$397,500, with no reductions given for any negative influences.
 - Assessment values psf ranged from \$31.97 to \$50.11
 - The Complainant determined the subject was equitably assessed at \$36.97 psf. Further, the subject's assessment was reduced by a maximum 75% to account for

encumbrances and restrictions inherent in the property relative to its development potential.

- A copy of the Hawkwood Phase 23 subdivision survey plan.
- A copy of the Hawkwood Phase 23 subdivision survey of utility right-of-way plan.
- A copy of the Hawkwood Land use Bylaw No. 69Z90.
- Copies of land title certificates with restrictive covenants.

The CARB finds the following with respect to this issue:

- That the Complainant failed to provide a reasonable alternative valuation for the subject. The request to have the subject valued the same as the prior year must be supported by evidence to suggest that value is a reasonable representation of its fair market value and/or is equitable with the assessment values of similar properties. The onus of proving that an assessment is incorrect lies with the Complainant.
- That the Respondent used a reasonable approach in valuing the subject property. The CARB agrees that the property is part of a residential development and is most likely comparable to vacant residential land. The CARB is satisfied that the Respondent applied the maximum reduction of 75% to recognize the significant encumbrances and restrictions affecting the subject property.

Board's Decision:

The complaint is denied and the assessment is confirmed at \$88,500.


The Complainant failed to provide any evidence as to why the assessment is incorrect or why their alternative value to the assessment would be more reflective of the subject's fair market value. While the CARB agrees that the subject property is unique and therefore difficult to assess value, the CARB finds that the Respondent used a reasonable approach and met his obligation in assessing the subject. In accordance with *The Matters Relating to Assessment and Taxation Regulation (MRAT) part 1, section 2*:

2. An assessment of property based on market value

- (a) must be prepared using mass appraisal,*
- (b) must be an estimate of the value of the fee simple estate in the property, and*
- (c) must reflect typical market conditions for properties similar to that property.*

The CARB is convinced that the subject property is reasonably comparable to residential properties, is assessed at an assessment rate psf that is equitable with other vacant residential land assessments, and is assessed with due consideration given to the significant encumbrances and restrictions affecting the property.

DATED AT THE CITY OF CALGARY THIS 7 DAY OF November 2011.



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.*