

**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(4), Revised Statutes of Alberta 2000 (the *Act*).

between:

***Anthem Level Ertlon Ltd., COMPLAINANT,
as represented by Altus Group***

and

The City Of Calgary, RESPONDENT

before:

***T. Helgeson, PRESIDING OFFICER
Y. Nesry, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 201341708

LOCATION ADDRESS: 2399 Macleod Trail SW

HEARING NUMBER: 61221

ASSESSMENT: \$1,110,000

This complaint was heard on Thursday, the 10th of November, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *D. Genereaux, A. Izard*

Appeared on behalf of the Respondent:

- *M. Ryan*

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

During the hearing, the Board, upon viewing a photograph which showed a manhole cover on the subject property, asked if there was an easement on the subject property. Mr. Izard answered "yes," and produced the easement document, with copies to the Board and the Respondent. Mr. Ryan for the Respondent objected to the production of the easement on grounds that it should have been included in the Complainant's evidence-in-chief, and informed the Board that he was requesting costs in the amount of \$3,000.00.

The Board then asked Mr. Ryan if he would like some time to examine the easement, and Mr. Ryan said he would. The Board asked Mr. Ryan how much time he would need, and the Hearing was then recessed to allow Mr. Ryan sufficient time to examine the easement. The Costs Hearing was scheduled for November 28th, 2011.

Property Description:

The subject property, 17,115 sq. ft. in area, is rectangular in shape, and improved with a paved roadway. It is zoned DC. On both sides of the roadway, there are boulevards and sidewalks. The pavement ends in a cul-de-sac at the eastern end of the property next to Macleod Trail. There are parking control signs on the boulevards, and automobiles routinely park on the subject property. The subject property was assessed using the sales comparison approach. The 2011 assessed value is \$1,100,000.

Regarding Brevity

In the interests of brevity, the Board will restrict its comments to those items the Board finds relevant to the matters at hand. Furthermore, the Board's findings and decision in this matter reflect the evidence that was presented and examined by the parties before the Board at the time of the hearing.

Issues:

1. Is the subject property a road within the meaning of Section 1(1)(z) of the *Act*?
2. Is the subject property non-assessable pursuant to Section 298(1)(i) of the *Act*?

Complainant's Requested Value: Nil value

Summary of the Complainant's Submission:

The subject property is a roadway. Automobiles park on it. There are road signs on the subject property. Granted, the subject is privately owned; it was part of a land consolidation. The Complainant purchased the subject property from the Respondent in 2008, and an easement was registered on it. Last year, the Respondent recognized the subject property as a road, and reduced the value to zero. The subject is used as a road, and maintained as a road by the Respondent. We submit that the subject property is a road within the meaning of s.1(1)(z)(ii) of the Act, and is non-assessable pursuant to s.298(1)(i) of the Act. We request that the assessment of the subject property be reduced to zero.

Summary of the Respondent's Submission:

The subject is no longer shown as a "road" on the title. The road signs on the subject property say "no parking," and the Respondent's parking control could ticket vehicles there. The subject property ends in a cul-de-sac. Had the subject property gone through to Macleod Trail, it would have been given zero value as a road.

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

There is an easement on the subject property. By the easement, the Complainant granted to the Respondent the following rights over the subject property:

1. *The full and free right and liberty to have right of ingress and egress and to pass and re-pass over the subject property by vehicle or any other form of transportation permitted by the Respondent to be used on roads owned by the Respondent for construction and maintenance,*
2. *The full and free and liberty to erect, maintain and remove signage on the subject property pertaining to the Respondent's use of the subject property,*
3. *The full and free right and liberty to have ingress and egress and to pass and re-pass over the subject property for the purpose of maintaining, repairing, replacing and inspecting the subject property, and*
4. *That the subject property shall remain open at all times for the use and access of the Respondent.*

The above provisions allow the Respondent to use the subject property as a road, and maintain it as a road. The definition of "road" in Section 1(1)(z) of the Act is as follows:

(z) "road" means land

(i) shown as a road on a plan of survey that has been filed or registered in a land titles office, or

(ii) used as a public road.

The evidence of the Respondent is that the subject property is no longer shown as a road on a

registered plan of survey. The Board accepts this evidence. In the result, the question is whether the subject property is used as a public road pursuant to Section 1(1)(z)(ii). In answering that question, the Board considered the following indicia:

- (a) motor vehicles driven by members of the general public routinely travel on the subject property, and park on it,
- (b) the Respondent has the right to drive its vehicles over the subject property,
- (c) the Respondent has the right to maintain the subject property as it is, i.e., a road,
- (d) there are traffic signs on the subject property,
- (e) the Respondent's evidence is that the Respondent's parking control could ticket vehicles parked in "no parking" zones, and finally,
- (f) the subject property looks like a road; it is paved, has curbs and gutters, boulevards, a storm drain with a manhole cover, traffic signs, and at least one light standard.

In the result, the Board finds that the subject has all the earmarks of a public road, therefore the answer to the first issue is "yes." The next step is Section 298(1) of the Act, which defines non-assessable roads as follows:

298(1) No assessment is to be prepared for the following property:

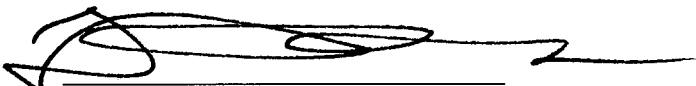
*.
(i) roads, but not including a road right of way that is held under a lease, licence or permit from the Crown in right of Alberta or Canada or from a municipality and that is used for a purpose other than a road;*

Clearly, the subject property is not held under a lease, licence of permit from the Crown in right of Alberta or Canada or from a municipality, because it is owned by the Complainant. Accordingly, the Board finds that the subject property is a road within the meaning of s.298(1)(i), hence the answer to the second issue is "yes." Finally, the Respondent's statement that the subject property would have been recognized as non-assessable had it connected with Macleod Trail, relies on a distinction without a difference. All roads end somewhere.

Board's Decision:

Accordingly, the value is adjusted to nil, or zero,

DATED AT THE CITY OF CALGARY THIS 13 DAY OF December 2011.



Presiding Officer

Exhibits:**C-1, Complainant's Evidence Submission****R-1, Respondent's Assessment Brief****C-2, Complainant's Land Title Evidence**

<u>Appeal type</u>	<u>Property type</u>	<u>Property sub-type</u>	<u>Issue</u>	<u>Sub-issue</u>
CARB	Other	Parking	Develop- ment Land	Land Value

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.*