

**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:

La Caille Properties Inc. (as represented by AltusGroup), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member 1, R. Deschaine
Board Member 2, A. Wong***

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: 201193596

LOCATION ADDRESS: 485-8 Street SW

HEARING NUMBER: 63044

ASSESSMENT: \$635,000

This complaint was heard on 21 day of October, 2011 at the office of the Assessment Review Board located at Floor Number Three, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Eight

Appeared on behalf of the Complainant:

- *D. Hamilton*
- *S. Guza*

Appeared on behalf of the Respondent:

- *D. Grandbois*

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

With the agreement of both parties, the property complaint was heard in conjunction with eleven other roll numbers, since all of the properties were considered similar, with similar evidence disclosure.

Property Description:

The subject is a 1,155 s.f. retail condominium unit on the main floor of a high rise residential apartment building referred to as "Five West". The property is situated on the north west corner of the intersection between 5 Avenue and 8 Street SW, near the west end of the downtown core. In this location, 8 Street is a one way north bound artery.

Issues:

The subject property is currently assessed using the direct comparison approach. The assessment calculates to a rate of \$550.00 per s.f. The Complainant argues that the existing assessment is in excess of it's market value, and is not equitable with the assessments of similar properties.

Complainant's Requested Value: The Complainant requests a rate of \$250.00 per s.f, for a total of \$288,750.

Evidence

The assessment is reduced to \$320 per s.f., or \$369,600, truncated to \$369,000.

At the outset of the presentation, the Complainant explained that the equity argument was simply one of "substitution". In other words, assuming that the property assessments of the properties submitted as comparables were actually asking prices, which retail condominium would one opt to purchase? For comparison purposes, the Complainant submitted seven retail condominium units in and around the subject vicinity. The principle data relied on by the Complainant included the Buchanan's Restaurant, at 110-116, 738-3 Avenue SW, and units in the La Caille Place retail condominium at 1 Avenue and 7 Street SW. Seven units are listed. The average and median assessment appeared at \$247.09 and \$250.00 per s.f. The highest assessment of the sampling was reflected by the Buchanan's restaurant, at \$319.36 and \$320.03 per s.f.

The Complainant also submitted 15 retail condominium assessments on properties throughout

SW Calgary. Assessment rates range from \$209.73 to \$344.43 per s.f. The average and median appeared at \$262.00 and \$250.00 per s.f.

The Respondent presented 21 condominium assessments in the subject building, all at a rate of \$550.00 per s.f. All of the comparables are upper level offices. The Respondent also submitted a number of non-residential condominiums sales, in three groups.

- Two sales in a nearby building, at 920-5 Avenue SW: Both occurred in the latter months of 2009. Selling prices per s.f. were \$563.97 and \$526.98. Floor areas were 938 and 945 s.f. Both are fifth floor office space.
- The Respondent presented two sales at 738 – 3 Avenue SW, and one listing at 1053 – 10 Street SW. The sales reflected prices of \$320.75 and \$180.54 per s.f. The \$320.75 per s.f. amount is reflected by a main floor retail unit. The Respondent argued that the 3 Avenue location is inferior to the subject's because of traffic volume. The other selling price and the listing are second level office units. The listing price is \$375 per s.f.
- The third group of transactions included four office condominiums in the building at 888-4 Avenue SW. A four transactions occurred during 2010, prior to the July 31 effective date. Selling prices range from \$525.56 to \$717.44 per s.f.

Of the data submitted by the Respondent, only one was a main floor retail unit. The selling price reflected was \$320.75 per s.f. The Respondent took the position that office and retail condominium units sell at the same rate, and that the office comparables submitted, at \$525.00 to about \$717.00 per s.f, were valid comparables for the subject. The Respondent argued that it was "pride of ownership", and equity build up that drove the condominium market, whether it be for office or retail space, and therefore the two classes of property would sell for the same rates. Finally, the Respondent argued that the Complainant did not meet the onus of proof, because the Complainant's argument it does not comply with the principles enunciated in the Bentall decision. The Respondent has erroneously stated that the Bentall decision stands for the principle that a taxpayer cannot make a complaint based on equity alone.

Board's Decision

The Board disagrees with the Respondent's position regarding onus, and the equity argument of the Complainant. In this regard, the following from *Stade v. Assessor of Area #23 – Kamloops* provided some guidance:

"Questioning the relationship between assessment and the property's estimated market value is a market value argument, with accuracy the measure of success. Equity instead relates to consistency and fairness of assessment. Consistency requires that similar properties be assessed similarly and that differences be accounted for consistently. Fairness means similar treatment under the law, which typically means that if one group of taxpayers is afforded a privilege, such as underpaying taxes, then everyone should be afforded a similar privilege."

In *Dutchcad Bil Investments Ltd. et al v. Area 19* (2008 PAABBC 20081270) it states;

"The board must first be satisfied with the accuracy of the market valuation, which involves correct appraisal techniques and appropriate use of market data. Second, the Board must then be satisfied that the level of assessment is equitable, fair, and consistent, in terms of how the subject's assessment relates to other similar properties. The Courts have regularly interpreted 'consistency' as the proportion of market value being assessed (Bramlea, Lount, supra). In other words, if an Appellant can show that other similar properties are typically assessed below actual values, then the subject should receive this benefit too. This need for consistency is particularly

apparent for commercial properties, where an unfairly distributed tax burden can give one investor a significant competitive advantage”.

In Peard v. Assessor of Area #01

“The Assessment Act and the common law require that assessments be equitable as between taxpayers. A taxpayers land may not be assessed on a view of actual value which results in an assessment significantly higher than would bear a fair and just relationship to assessments on other similar properties as a whole. Where there is a difference between actual value and equity in assessment, the taxpayer is entitled to the lower of the two:”

This Board is satisfied that the Complainant's argument regarding equity can stand on its own merits, without regard to market value, or the use of comparable sales data.

This Board is not satisfied that the office data submitted by the Respondent accurately reflects the market value of a retail unit. The Respondent's own evidence displays a variation between office and condominium units, with the office units being the higher of the two categories. In addition, the comparable assessments submitted by the Complainant reflect a much lower assessment rate being applied to comparable and competitive units. That situation is contrary to the principles enunciated in Stade, Dutchcad Bil Investments and Peard.

The Board is also inclined to consider the Respondent's retail sale at #108, 738 – 3 Avenue SW, at \$320.75 per s.f. as good market evidence of value for a retail unit. The Board disagrees with the Respondent assertion that this location is inferior to the subject for retail purposes, because the subject location is less accessible, because there are parking restrictions during rush hour, and the location is less attractive to pedestrian traffic.

This Board is satisfied that the subject assessments should be equitable with the assessments being applied to competitive units such as the Buchanan's restaurant. That total is also equal to the actual selling price of a retail unit in the same building. Both support an assessment value of about \$320.00 per s.f. or lower.

The assessment is reduced to \$320 per s.f., or \$369,600, truncated to \$369,000.

DATED AT THE CITY OF CALGARY THIS 24th DAY OF NOVEMBER, 2011.



Jerry Zezulka
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:****NO. ITEM**

1. C1 Complainant Disclosure; Industrial Capitalization Rate Analysis, 2011 Assessment Year
2. C2 Evidence Submission of the Complainant
3. C3 Rebuttal Submission of the Complainant
2. R1 Respondent Disclosure; Assessment Brief

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.*

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Decision No. 2863/2011 - P			Roll No. 201193596	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Retail condo	Equity	Sales approach	Market data