



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:

976663 Alberta Ltd., COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

J. Krysa, PRESIDING OFFICER

D. Pollard, MEMBER

Y. Nesry, 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 2013 Assessment Roll as follows:

| | |
|--------------------------|-----------------------|
| ROLL NUMBER: | 075002709 |
| LOCATION ADDRESS: | 4909 17 Ave SE |
| FILE NUMBER: | 70348 |
| ASSESSMENT: | \$7,500,000 |

This complaint was heard on the 2nd day of July, 2013, in Boardroom 10 of the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- B. Luong, N. Ewing (Counsel)

Appeared on behalf of the Respondent:

- A. Hendrata

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

[1] **Jurisdictional Matter:** At the commencement of the hearing, Counsel for the Complainant conceded that the Complainant's evidence was not disclosed in accordance with s. 8 of *Matters Relating to Assessment Complaints Regulation*, AR 310/2009; however, he maintains that the evidence is relevant to the matter before the Board and should be considered by the Board. The Respondent objected to the Complainant's evidence on the ground that the Respondent would be prejudiced by (new) evidence that he was not able to respond to in his submission.

[2] **Legislation:** Matters Relating to Assessment Complaints Regulation, AR 310/2009.

8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,
(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and...

(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in 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.

9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

[3] **Decision:** The Board finds that the Complainant's evidence was not disclosed in accordance with s.8 of *Matters Relating to Assessment Complaints Regulation*, AR 310, 2009, and pursuant to s.9 (2), the Complainant's evidence is inadmissible.

[4] **Reasons:** The Complainant's fax cover sheet indicates a transmission date of June 27, 2013; the date being subsequent to the required disclosure dates for both the Complainant's evidence submission and rebuttal evidence submission. The Board agrees with the Respondent that the Complainant's evidence would prejudice the Respondent as the Respondent's submission, which was disclosed within the proper time, was prepared in response to only the argument provided in section 5 of the complaint form and without regard to the Complainant's undisclosed evidence.

Property Description:

[5] The subject property is a 3.30 acre parcel of land, improved with a 44,529 sq.ft. (square foot) "strip" shopping centre development. The improvements were constructed in 1978, and are assessed as C+ quality structures at an overall unit rate of \$168.42 per sq.ft.

Issues:

[6] The issue of the complaint was identified as follows:

Is an approximate 18% increase in assessment from the 2012 taxation year justified in relation to the market value of the subject property?

Complainant's Requested Value: \$6,300,000.

Board's Decision: The assessment is revised to **\$7,250,000**.

Positions of the Parties:**Complainant's Position:**

[7] The Complainant argues that the approximate 18% increase in assessment from the previous taxation year (2012), is unjustified as the local commercial real estate market has increased by approximately 1% to 2%, and no significant physical improvements have been made to the subject property. The Complainant further argues that whereas the current assessment is predicated on market rent rates ranging from \$14.00 to \$16.00 per sq.ft., the subject's contract rent rates average \$10.00 per sq.ft.

[8] In support of the argument, the Complainant submits that the subject property generates gross revenues averaging \$880,000 per year, with operating expenses of \$450,000 per year. The resulting average net rental income of \$430,000 per year capitalized at the Respondent's 6.75% capitalization rate indicates a market value of approximately \$6,300,000. The Complainant further submits that the assessment was also overestimated in the 2009 taxation year and was revised by the Board to a value reflective of the subject's actual revenues at that time.

Respondent's Position:

[9] The Respondent concedes that the current assessment of \$7,500,000 is inappropriate, and submits that an amended assessment in the amount of \$7,250,000 has been prepared and mailed to the Complainant, reflecting an allocation of value to an exempt tenant sub-account. In response to the Respondent's submission, the Complainant maintains that an amended assessment notice has not been received.

[10] With respect to the Complainant's requested assessment, the Respondent submits that the Complainant has not provided any relevant market evidence to demonstrate that the assessment is incorrect. Moreover, the Respondent argues that the 18% increase in assessment from the previous year is of itself, not a reason for the Board to vary an assessment without relevant evidence of the subject's current market value.

[11] As there was no documentary evidence of an amended assessment notice before the Board, in response to the Board's inquiry the Respondent indicated he was prepared to recommend a reduction of the subject's assessment to \$7,250,000.

Legislative Authority:

[12] Decisions of assessment review board

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration


- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

Board's Reasons for Decision:

[13] The Board finds that there was insufficient relevant market evidence to demonstrate that the approximate 18% increase in assessment from the 2012 taxation year is unjustified, or that the current assessment of the subject property is incorrect.

[14] The Board notes that the Complainant is in agreement with the Respondent's recommended total exempt tenant sub-account area of 7,190 sq.ft., and accepts the Respondent's recommendation in respect of re-allocation of value to an exempt tenant.

DATED AT THE CITY OF CALGARY THIS 15th DAY OF AUGUST, 2013.



J. Krysa
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

| NO. | ITEM |
|------------|-------------------------|
| 1. R1 | Respondent's 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.*

FOR ADMINISTRATIVE USE

| Subject | Property Type | Property Sub -Type | Issue | Sub - Issue |
|----------------|----------------------|---------------------------|--------------|--------------------|
| CARB | Retail | Shopping Centre - Strip | Market Rent | |