



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:

ENVIRONMENTALLY YOURS INC., COMPLAINANT

and

THE CITY OF CALGARY, RESPONDENT

before:

PRESIDING OFFICER: P. COLGATE

BOARD MEMBER: A. ZINDLER

BOARD MEMBER: D. STEELE

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: 068105907

LOCATION ADDRESS: 105 8 AVENUE SW

FILE NUMBER: 70530

ASSESSMENT: \$3,560,000

This complaint was heard on the 16th day of October 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *Marga Betz, Owner*

Appeared on behalf of the Respondent:

- *Emilia Borisenko, City of Calgary*

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

Preliminary Matter:

[2] The Respondent with respect to the Complainant's rebuttal document raised a preliminary matter. The Respondent argued the Complainant had introduced new evidence in the document that was not a proper rebuttal to the Respondent's evidence.

[3] Following a review of the rebuttal document, after hearing the original disclosures by both the Complainant and the Respondent, the Board found there was new evidence within the rebuttal document that should have been disclosed in the Complainant's original disclosure. Based on the Board's review of the document the following portions of the rebuttal were removed from the submission – the first paragraph of page 3, C2; the table on page 4 of C2; and the map on page 8 of C2.

[4] The balance of the document was ruled to be summary and copies of pages submitted in the Complainant's C1 disclosure.

Property Description:

[5] The subject property is comprised of two adjacent buildings dating from 1898, located in the old sandstone section (Stephen Avenue Mall) of downtown Calgary, a designated National Historic District. A party wall separates the buildings. The easterly building is a 3-storey structure with retail on the main and residential units on the upper floors. The westerly building is two storeys, but only 25' back from the facade on the second level, with the balance being one storey. A mix of retail businesses occupies the main floor. The lot dimensions are 50 feet by 130 feet. The structures have always been mixed commercial and residential use.

[6] The commercial component consists of three retail bays on the main floor and fourteen (14) single residential occupancy suites on the upper floors.

[7] The 2013 property assessment is \$3,560,000, based upon a 51.83% residential and 48.17% retail split, based upon square footage. The total area is 9,632 square feet, distributed 4,992 square feet living area at a rate of \$10.00 per square foot and 4,640 square feet retail at a rate of \$36.00 per square foot. The applied Income Approach variables are 5.0% vacancy rate, \$12.00 operating costs and 2.0% non-recoverable rate. The Net Operating Income (NOI) was capitalized at 5.50%.

Issues:

[8] The Complainant submitted numerous reasons for the complaint which the Board has defined as three basic issues:

Issue 1: the assessable area;

Issue 2: the typical rental rate applied to the main floor

Issue 3: market value.

Complainant's Requested Value: \$2,300,000

Board's Decision:

[9] Despite the references to problems by the Complainant occurring within the subject property, the Board found there was insufficient documentation to support a change to the assessment for the subject property.

[10] The assessment was confirmed at \$3,560,000.

[11] The Board directs the City of Calgary and the Complainant to determine the correct areas for the components of the subject property. The evidence presented to this Board was so confusing as to be unsuitable to draw any conclusion.

Legislative Authority, Requirements and Considerations:

[12] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[13] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports, amongst others.

Position of the Parties**Issue 1: Assessable Area****Complainant's Position:**

[14] The Complainant submitted the area assigned to the residential component of the structures was incorrect as it failed to recognize the thickness of the outer wall and the party wall. The Complainant submitted the correct area should be 4,280 square feet, not the currently assessed 4,992 square feet. The Complainant did not challenge the area of the retail component of the structure at 4,640 square feet. (C1. Pg. 7)

[15] The Complainant submitted no plans of the structures to show the source of the suggested areas.

Respondent's Position:

[16] The Respondent submitted a diagram of the dimensions found when a Data Collector with the Assessment Business Unit conducted an inspection. (R1, Pg. 24)

[17] On the Income Approach Valuation page, the Respondent noted the area used for the living area space at 4,992 square feet was sourced from the site inspection by the City of Calgary

Board's Reasons for Decision:

[18] The Board attempted to rationalize the differences in the areas as submitted by the two parties:

Sub Component	Income Approach Valuation	Complainant Areas	Site Inspection (Net sq. ft.)	ARFI Area
Living Area (sq. ft.)	4,992	4,280	7,754	
Retail Area (sq. ft.)	4,640	4,640	5,307	4,640
Total Area (sq. ft.)	9,632	8,900	13,061	13,050

[19] The Board found the site sketch provided more confusion than clarity in that the total residential area was significantly higher than the totals presented by both parties. The Complainant failed to provide supporting documentation for the requested change to the residential component.

[20] It was the decision of the Board that the issue of the square footage cannot be resolved by this hearing due to the lack of and confusion of the data provided. The Board directs the Assessment Business unit to arrange a meeting with the Complainant and reach a consensus on the correct areas to be assessed.

Issue 2: The typical rental rate applied to the main floor retail**Complainant's Position:**

[21] The Complainant argued the typical rate applied to the retail space at \$36.00 per square foot was excessive in relation the actual lease rates paid by the three tenants at \$16.00 and \$21.00 per square foot. The argument was put forward the Effective Net Income is lower than what is used in the Assessment Business Unit calculation to determine the assessment when the rate and the correct square footage was used.

[22] The Complainant submitted a chart of the nine leases provided in the Respondent's analysis table to visually illustrate the relationship between the various lease rates. (C1, Pg. 34)

[23] The Complainant submitted a revised Income Approach Valuation for the subject property with changes to the area and retail rental rate. While adjusting for the area and rental rate, the Complainant used the typical rates for vacancy, operating costs and non-recoverable as set by the City of Calgary. With an NOI of \$130,423.20 and a capitalization rate of 5.50%,

the Complainant determined a value of \$2,371,331.00 (C1, Pg. 7-8)

Respondent's Position:

[24] The Respondent submitted the 2013 Rental Analysis for Stephen Avenue main floor retail space. (R1, Pg. 43) A total of nine leases were found commencing between August 1, 2009 and July 1, 2011. Three of the leases for spaces in the Alberta Block were removed from analysis as the leases were significantly higher than the market norm. The only lease from the subject property was part of the analysis at \$21.00 per square foot. The resulting mean was \$35.67 per square foot and the median was \$35.50 per square foot.

[25] The Respondent noted that the Stephen Avenue Mall was treated as a separate market zone and only leases from the area are used in the analysis to determine the market rental rates.

Board's Reasons for Decision:

[26] The Complainant did not submit evidence of the rates being charged for the retail space, forcing the Board to use the Assessment Request for Information (ARFI) provided by the Respondent. The Board noted the ARFI, submitted October 10, 2012 lists three leases for the retail space - the lease for 105B 8 Avenue SW, commencing in 2010 on a month-to-month basis, for \$21.00 per square foot, 107 8 Avenue SW, commencing in 1998 on a month-to-month basis, at \$16.00 per square foot and 105 8 Avenue SW, commencing June 2011 for a three year term, at \$21.00 per square foot.

[27] The Board found the Respondent's evidence as to the typical rental rate was more compelling than the site specific evidence provided by the Complainant. The Municipal Government Act (MGA) and its regulations specify the assessment must be done on the basis of typical rates established through mass appraisal of the market place. The Board noted the subject property has a lease at the low end of the group of leases analyzed, but there was a lack of evidence as to why when neighbouring properties generated higher leases rates. A copy of the lease document may have provided some clue to the reason, but no leases were provided.

Issue 3: Market Value**Complainant's Position:**

[28] Through verbal testimony and photographs, the Complainant submitted to the Board the property had 'sustained serious damage since 2008 and incurred extensive damage for which repairs were ongoing. These damages included heating system problems, shifting foundations and damages to windows.

[29] The Complainant testified the damage was a result of the construction of the foundation and basement for the Le Germain development located to the south of the subject building.

[30] The Complainant submitted two tables illustrating the change to assessment for the period 2001 to 2013 for the subject and comparable buildings. (C1 , Pg. 31-32)

[31] The Complainant noted the area has been designated a National Historic District which places some restrictions on its development, but was unable to provide the Board with the specifics of the restrictions.

Respondents Position:

[32] The Respondent argued that while the subject property was in a National Historic District the subject was neither listed as nor requested a Historical Building designation.

[33] The Respondent submitted six sales on Stephen Avenue Mall to illustrate the market value of similar structures and the Assessment to Sales Ratio (ASR) to support the assessed values. (R1, Pg. 54-73)

Board's Reasons for Decision:

[34] The Board noted, that while the Complainant had referenced documentation from the Engineers and the costs to repair damage, no evidence was submitted to support the statements.

[35] The Board found that while the Complainant testified and referenced existing problems it failed to provide the necessary supporting documents, such as engineers' reports, expenses statements for repairs to damages, or income and expenses statements to show a trend within the subject property and the effect on the property revenues.

[36] For the reasons provided, the Board confirms the assessment at \$3,560,000.

DATED AT THE CITY OF CALGARY THIS 21st DAY OF November 2013.



PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. 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.*

LEGISLATIVE REQUIREMENTS**MUNICIPAL GOVERNMENT ACT****Chapter M-26**

1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Division 1**Preparation of Assessments****Preparing annual assessments**

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

289(2) Each assessment must reflect (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

ALBERTA REGULATION 220/2004**Municipal Government Act****MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION**

1(f) "assessment year" means the year prior to the taxation year;

Part 1**Standards of Assessment****Mass appraisal**

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.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Income Approach	-Equity -Leasable Area -Net Market Rent/Lease Rates