



**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:**

***Michael Katz, Larry Katz and Max Feldman, COMPLAINANT***

**and**

***The City of Calgary, RESPONDENT***

**before:**

***J. Krysa, PRESIDING OFFICER***

***D. Pollard, BOARD MEMBER***

***Y. Nesry, BOARD 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:

<b>ROLL NUMBER:</b>	<b>028166809</b>
<b>LOCATION ADDRESS:</b>	<b>265 Falshire Drive NE</b>
<b>FILE NUMBER:</b>	<b>71237</b>
<b>ASSESSMENT:</b>	<b>\$3,310,000</b>

This complaint was heard on the 3<sup>rd</sup> 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:

M. Feldman

Appeared on behalf of the Respondent:

J. Lepine

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

[1] **Jurisdictional Matter:** During the course of the hearing the Respondent raised a jurisdictional matter in respect of a 2013 ARFI (Assessment Request For Information) response included in the Complainant's rebuttal evidence submission. The Respondent argues that no information was provided in response to the 2012 request for information; therefore the 2013 document should not be heard by the Board. Moreover, the Respondent argues that the Complainant's 2013 ARFI response is information subsequent to the valuation date for the assessment, and is irrelevant to the current matter.

[2] The Complainant argues that the 2013 ARFI response is relevant as it contains information in respect of leases that were in place during 2012, and that a response with the same lease information was provided by the building manager in response to the 2012 request for information. Notwithstanding the testimony, the Complainant concedes that there is no documentary evidence before the Board to confirm that a 2012 response was made.

[3] **Legislation:** *Matters Relating to Assessment Complaints Regulation* AR 310/2009

9(3) A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.

[4] **Decision:** The Board allows the Complainant's documentary evidence to be admitted only as rebuttal evidence in response to the Respondent's Gas Bar Rental Rate Analysis at page 29 of R1.

[5] **Reason:** The rebuttal document was properly disclosed pursuant to s.8 of *Matters Relating to Assessment Complaints Regulation* AR 310/2009.

**Property Description:**

[6] The subject property is a 41,981 sq.ft. (square foot) parcel of land, improved with a 10,530 sq.ft. strip shopping centre, containing 8162 sq.ft. of CRU (Commercial Retail Unit) area, a 2,368 sq.ft. convenience store, and a 4 pump gas bar.

**Issue:**

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

Issue. Is the sale price of the subject property a better indication of its market value than the estimate of value prepared by the Respondent?

**Complainant's Requested Value:** \$3,100,000.

**Board's Decision:** The assessment is revised to \$3,100,000.

**Positions of the Parties:**

**Complainant's Position:**

[8] The Complainant submits that the subject property was purchased in a valid and arms-length transaction 3 months prior to the valuation date for this assessment at a cost of \$3,100,000. The Complainant argues that the sale best represents the market value of the property as it reflects the current revenue stream of the property with recent leasing in place. The Complainant further argues that, in contrast, the Respondent's estimate of market value is excessive as it is based on estimated revenues that exceed the subject's market rents.

[9] In particular, the Complainant submits that the Respondent has estimated a market rent of \$95,000 per annum for the convenience store / gas bar in contrast to the contract rent of \$74,805 per annum. Moreover, the Complainant submits that the annual rent rate of \$92,607 in the last 5 year option period ending October 2029, remains less than the Respondent's current estimated market rent rate.

**Respondent's Position:**

[10] The Respondent argues that the legislation requires the assessment of property to be prepared by mass appraisal, and the sale of the subject property was included with other recent property transactions to establish typical valuation parameters for the preparation of assessments. The Respondent further argues that the 6.8% variance between the assessment and the sale price is reasonable.

[11] In support of the \$95,000 market rent rate assigned to the convenience store / gas bar, the Respondent provided an analysis of ten, 2010 or 2011 convenience store / gas bar leases ranging in size from 1,800 sq.ft. to 11,945 sq.ft., and displaying annual rent rates ranging from \$60,322 to \$129,000. The analysis concluded mean and median annual rental rates of \$95,412 and \$100,248 respectively.

[12] In cross-examination the Respondent conceded that the range of lease rates was wide and without explanation; however, the Respondent argues that the subject's lease rate of \$74,805 falls within the range evident in the analysis.

[13] In rebuttal, the Complainant testified that he had inspected several of the properties in the Respondent's analysis, and submits that the Respondent's analysis displays a wide range of lease rates because it includes a wide range of properties that are physically dissimilar amongst themselves. The Complainant argues that the Respondent's analysis considers only the lease area of the convenience store, and fails to include significant factors such as the number of gas pumps which typically generate significant revenue. The Complainant maintains that the Respondent's analysis is flawed as a result of this oversight; and properties with a large number of gas pumps are undervalued at the average \$95,000 rate, and properties, including the subject with only 4 gas pumps, are overvalued at the identical rate.

**Legislative Authority:****[14] 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:**

[15] The Board agrees with the Respondent that the 6.8% variance between the assessment and the recent sale price is not unreasonable from a mass appraisal perspective; however, the Board was not persuaded that the Respondent's \$95,000 per annum (average) rent rate, fairly and equitably predicts the values of convenience stores / gas bars with significantly differing physical characteristics as established by the Complainant's testimony. With respect to the Complainant's 2013 ARFI information, the Board does not apply significant weight to the "stepped-up" contract lease rates through to October 2029, as the lease rates may, or may not reflect typical current market rents throughout the 20 year term of the lease.

[16] Accordingly, the Board finds that the recent sale price of the subject property best reflects the physical characteristics of the property, and is the best indicator of the subject's market value for the current taxation year.

**DATED AT THE CITY OF CALGARY THIS 13 DAY OF AUGUST, 2013.**

  
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**J. Krysa**  
**Presiding Officer**

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Evidence
2. R1	Respondent's Evidence
3. C2	Complainant's Rebuttal Evidence

*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**

<b>Subject</b>	<b>Property Type</b>	<b>Property Sub -Type</b>	<b>Issue</b>	<b>Sub - Issue</b>
CARB	Retail	Shopping Centre - Strip	Sale Price	Market Rent