

## **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:

***1604455 Alberta Ltd. / 1677221 Alberta Ltd. / B M Hardware & Sporting Goods Ltd. and  
1506292 Alberta Ltd.  
(as represented by 1604455 Alberta Ltd.), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***C. J. Griffin, PRESIDING OFFICER  
J. Pratt, BOARD MEMBER  
G. Milne, BOARD MEMBER***

This is a complaint to the Composite Assessment Review Board (CARB) 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(S):** 082042607 / 082042706 / 082042805 & 082042904

**LOCATION ADDRESS:** 3415 / 3413 / 3409 & 3407 – 26 Avenue SW, Calgary

**FILE NUMBER:** 71490 (also incorporating #71491, #71492 & #71494)

**ASSESSMENT:** \$878,500. / \$369,500. / \$632,500. & \$855,000. (Respectively)

This complaint was heard on the 13<sup>th</sup> day of June, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- R. Crowley

Appeared on behalf of the Respondent:

- R. Urban

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

The Complaint requested that all four of the properties which are the subject of this Hearing be heard in a single Hearing as all the properties are adjacent to each other and all deal with identical issues with common evidence. The Respondent had also prepared a single brief to deal with all four properties and had no objection to a single Hearing. Accordingly, the CARB agreed to hear the Complaint(s) for all four of the properties in one single Hearing.

**Property Description:**

[1] The four properties are adjacent to each other and they form the interior units of a six (6) unit Strip Centre which is located on 26<sup>th</sup> Avenue SW in the Killarney/Glengarry community of southwest Calgary. The property is, for the most part, cinder block construction and the year of construction varies from 1953 to 1959. The properties are individually owned and are occupied by local small business operators.

**Issue(s):**

[2] The Complainant contends that the assessed 'quality rating' is incorrect and this has resulted in incorrect assessed values. The Complainant points out that one of these same four properties (Roll # 082042607) was the subject of a CARB Hearing in 2012 (Decision #1256/2012-P) which resulted in a reduction in the assessed value and a return to the previous 'quality rating' of 'C'; however, this year the assessed quality rating has been returned to a 'B' resulting in incorrect assessed value(s). The assessed 'quality rating' determines what typical inputs will be applied by the assessor to derive the assessed value through application of the Income Approach.

**Current Assessment(s):**

- [3]
- |             |                    |
|-------------|--------------------|
| \$ 878,500. | (Roll # 082042607) |
| \$ 369,500. | (Roll # 082042706) |
| \$ 632,500. | (Roll # 082042805) |
| \$ 855,000. | (Roll # 082042904) |

**Complainant's Requested Value:**

- [4] \$ 697,000. (Roll # 082042607)  
\$ 298,000. (Roll # 082042706)  
\$ 509,000. (Roll # 082042805)  
\$ 667,500. (Roll # 082042904)

**Board's Decision:**

- [5] The assessed quality rating is to be returned to 'C'.  
The assessments are **reduced** to: \$ 697,000. (Roll # 082042607)  
\$ 298,000. (Roll # 082042706)  
\$ 509,000. (Roll # 082042805)  
\$ 667,500. (Roll # 082042904)

## Position of the Parties

**Complainant's Position:**

- [6] The Complainant introduced a very well presented and supported brief (Exhibit C1) detailing the facts that there have been no changes to the properties in question that should result in a change in assessed quality rating, that the resulting change in quality rating has resulted in incorrect assessed values as the quality rating is a determinant for the typical rents and other in-puts applied by the assessor in application of the income approach, that similar properties within the area have not had any change applied to their assessed quality rating and that the typical rents utilized by the assessor are inappropriate for the subject properties. Additionally the Complainant provided a copy of the previous CARB decision (#1256/2012-P) which, the Complainant maintains, has been effectively ignored by the assessor.
- [7] The Complainant provided (Exhibit C1 pgs. 30 – 33) a location map together with a list of twenty-seven (27) retail strip properties located within the subject community or adjacent communities with the corresponding assessed values in 2012 vs. 2013 as well as the assessed quality rating for each property in 2012 vs. 2013. The Complainant notes that seven (7) of the properties have had their quality rating and/or assessed value reduced for 2013. Only two (2) of the properties had their quality rating increased and both of these properties are in the 'A' or better category, all other 'B' and 'C' rated properties maintained their quality rating.
- [8] The Complainant also provided (Exhibit C1 pg. 63) a summary of the "Typical Net Annual Rental Value Reports" as prepared by the City Assessor for the years 2012 and 2013. These reports indicate the range, by property classification and CRU size range, of 'typical' rents to be applied in estimating the assessed value of the 'Strip Centre' category of properties. The Complainant pointed out to the CARB that their requested assessed values are based upon the 'typical' rent range for 'C' classed properties; however, they have not used the low end of the respective rent ranges but rather the higher or mid range.

[9] At the request of the Board, the Complainant provided (Exhibit C2) a copy of a letter they sent to the Assessor enquiring as to the change in 'assessed quality' back to a 'C' as directed in CARB Decision #1256/2012-P, noting that they did not receive any answer to this enquiry.

Respondent's Position:

[7] The Respondent introduced (Exhibit R1 pg. 48) a copy of the *City of Calgary Assessment Physical & Economic Characteristics/Quality Classification* chart. The Respondent maintains that the quality classification of the properties was changed as a result of new and relevant sales and lease data derived from the subject property and/or the adjacent portions of this same strip centre that are not a subject of this complaint. Accordingly the Respondent introduced (Exhibit R1 pgs. 32 – 44) the Assessment Request For Information (ARFI) forms for 3403 – 26 Ave. SW and 3419 – 26 Ave. SW (not part of this complaint) as well as for 3413 and 3415 – 26 Ave. SW which are part of this complaint. In the case of 3415 the ARFI for both 2012 and 2013 is provided. The Respondent pointed out to the Board that (Exhibit R1 pg. 33) the 2013 ARFI for the 3403 address indicates a lease with a commencement date of June 2012 and a lease rate of \$20/Sq. Ft. Similarly (Exhibit R1 pg. 43) a lease rate for the 3419 address at \$22.72/Sq. Ft. is indicated. The ARFI pertaining to the 3413 address (Exhibit R1 pg. 35) indicates a June 2012 lease rate of \$16.20/Sq. Ft. but it is noted to be 'owner occupied'. The 2012 ARFI for the 3415 address (Exhibit R1 pgs. 36 – 37) actually pertains to 3415A with a gross lease rate of \$15.34/Sq. Ft. indicated, 3415B with a \$9/Sq. Ft. net lease rate indicated and 3415 with a \$14.12/Sq. Ft. gross lease rate indicated. The 2013 ARFI for these same addresses (Exhibit R1 pgs. 38 – 41) indicate this same information except that the 3415 address shows a lease starting in August 2012 at a rate of \$18/Sq. Ft. net with a 3 month free rent period. The Respondent noted that owner occupied spaces are not included in the rent study.

[8] The Respondent introduced (Exhibit R1 pg. 49) a sale summary, prepared by RealNet Canada Inc., relating to 3407 – 26<sup>th</sup> Ave. SW, one of the subject properties. The sale, reported as an open market transaction, indicates a price of \$840,000 with a transaction date of January 18, 2010. The Respondent also provided (Exhibit R1 pgs 50 – 59) additional documentation in the form of the Transfer Document, the Affidavit of the Transferee, Certificate of Title and corporate searches pertaining to the purchaser, all of which support the contention that the sale was an arms-length, open market transaction. A second sale pertaining to 3413 – 26<sup>th</sup> Ave. SW, also one of the subject properties, was introduced (Exhibit R1 pgs. 60 – 63) by way of a *Non Residential Property Sale Questionnaire* (Sale ARFI). The sale was reported to have had a transaction date of March 3, 2012 with a sale price of \$360,000. Supporting documentation, similar to the aforementioned, is also provided (Exhibit R1 pgs. 64 – 89) to support the contention that this also was an open market arms-length transaction. A third sale relating to 3415 – 26<sup>th</sup> Ave. SW, also one of the subject properties, is summarized (Exhibit R1 pg. 90) by Commercial Edge. The sale was reported to have occurred on May 24, 2011 at a price of \$940,000. Similar supporting documentation to that provided for the first two sales is also provided (Exhibit R1 pgs. 91 -105) in support of the contention that this was also an open market arms-length transaction. The Respondent pointed out to the CARB that while the Direct Sale Comparison Approach to Value had not been used to derive the estimated assessed values of the subject properties, the foregoing sales fully support those values which were derived using 'B' classification in-puts in the income approach analysis.

[9] Insofar as the classification change directed by CARB Decision 1256/2012-P, the Respondent indicated that such a change had been made, although same may not have been recorded on the City Assessment web site. The Respondent apologised on behalf of the Assessment Business Unit for not responding to the letter sent by the Complainant (Exhibit C2), but had no explanation as to why this had happened. The Respondent went on to say that as a result of the aforementioned CARB Hearing and Decision, the subject property assessments were re-examined in more detail for the current assessment year and this re-examination resulted in changing the assessment classification back to 'B' and valuing the properties accordingly.

### **Complainant's Rebuttal**

[10] The Complainant introduced (Exhibit C3) a Rebuttal Brief to show that the evidence introduced by the Respondent actually shows rents in the subject properties to be in the \$9 - \$20/Sq. Ft. range with a typical of \$16/Sq. Ft. Further, the owner occupied portions of the subject properties are applying rent based upon the rent being achieved from tenants by the previous owners and they are therefore indicative of market rents. Additionally the Rebuttal of the Complainant notes that the sales of the subject properties may have occurred beyond the current sales analysis period and should not have been considered by the Assessor and that one of the sales was acknowledged to have been purchased at greater than market value and that this same sale was accordingly not given consideration by the CARB in last years Hearing. A third sale may well have been purchased for more than market value as it also involved the 'good will' from a long established business similar to that of the new purchaser.

[11] With regard to the rents being achieved at the subject properties, the Complainant contends that the tenant at 3403 – 26<sup>th</sup> Ave. SW acknowledges that he is paying a higher than normal rent due to the fact that he purchased the business associated with the location with the intention of retaining as much of the existing client base as possible and expanding the business to include additional services. Only 10 months after the purchase his lease became due and the only other space available within the subject strip centre was also owned by this same landlord. The landlord demanded an increase from the previous \$16/Sq. Ft. to \$20/Sq. Ft. and the tenant, recognizing that he had little alternative as he had not been in the new location long enough to establish a relationship with his new client base, agreed to the rent increase with full knowledge that same was considerably higher than any other properties in this same strip centre. The foregoing is all detailed in a letter from the tenant (Exhibit C3 pg.6). The lease rate paid by the owner/occupant of 3413 – 26<sup>th</sup> Ave. SW is the same \$16.20/Sq. Ft. that was being paid to the landlord prior to the purchase of the property (Exhibit C3 pg. 7). The rent being paid by the new owner of 3415 – 26<sup>th</sup> Ave. SW is the same as that being collected by the previous owner, the only difference being the previous \$20/Sq. Ft. gross was converted to \$9/Sq. Ft. net (Exhibit C3 pg. 13). Additionally, the Complainant indicated the ARFI introduced by the Respondent (Exhibit R1 pg. 33) is not reliable, and in fact is incorrect, due to important information pertaining to gross or net lease rates having been redacted from the exhibit, as explained and shown by the Complainant (Exhibit C3 pgs. 18 - 22). The Complainant provides (Exhibit C3 pgs. 24 – 28) further evidence as to the appropriate and equitable 'typical' lease rates of twelve (12) properties similar to the subject and the assessed rental rates applied to same by the assessor for the 2013 assessments.

[12] With regard to the sales referred to by the Respondent, the Complainant points out (Exhibit C3 pg. 29) that the purchase of 3407 – 26<sup>th</sup> Ave. SW relates to a purchase by a pharmacy of a property previously operated, for many years, as a pharmacy and that the sales price incorporated the ‘good will’ associated with the location. Additionally, the Complainant points out that this sale occurred in January of 2010 and that the sales price had not resulted in significantly increased assessments for the two intervening assessment years (Exhibit C3 pgs. 29 – 30) and raised the question as to why this now 3 ½ year old sale is used to support a dramatically increased assessed value. Referring to the purchase of 3413 – 26<sup>th</sup> Ave. SW the Complainant points out (Exhibit C3 pg. 41) that the property was purchased by the tenant, under the previous owner, as an opportunity to continue his business without having to worry about future rent increases. The Complainant further points out that the Sale ARFI, completed by the purchaser and submitted as evidence by the Respondent (Exhibit R1 pgs. 60 – 63) clearly indicates that the property was purchased to continue the same business operation and was not purchased based upon its ability to achieve Net Operating Income. As additional support for the argument that the assessed value exceeds the market value the Complainant submitted an appraisal of the property (Exhibit C3 pgs. 45 – 104) completed by an experienced, designated appraiser that provides an estimate of the Market Value, in Fee Simple, of the property as at October 14, 2011 to be \$340,000. This appraisal was completed at the request of a potential purchaser for the property; however, that individual did not ultimately purchase the property.

[13] Referring to the sale of the property located at 3415 – 26<sup>th</sup> Ave. SW, one of the subject properties, the Complainant explained that as the purchaser of this property she was aware that the property had not traded at market value for several reasons which were explained in the CARB Hearing of last year (Decision #1256/2012-P). As outlined in the decision, the CARB had determined that indeed the property had evidently traded at more than market value and the sale was not given consideration as a result. In that nothing has changed regarding this sale and the information pertaining to same, the Complainant questions why the Respondent would expect this CARB to treat this sale any differently.

#### **Board’s Decision Reasons:**

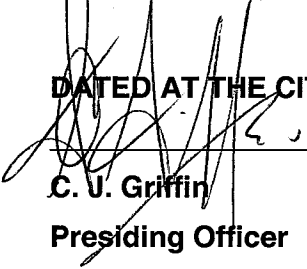
[14] The Board agrees with the Complainant that there is no evidence upon which to base the change in ‘assessment quality’ from the ‘C’ category previously assigned to the ‘B’ category currently assigned. The CARB questioned the Respondent, item by item, as to what changes had occurred to warrant this change given the requirements of the *City of Calgary Assessment Physical & Economic Characteristics/Quality Classification* chart (Exhibit R1 pg. 48) and in every case the Respondent answered “none”. When the CARB suggested to the Respondent that this would suggest ‘sales chasing’, the Respondent concurred. The CARB is of the judgment that the subject property is in fact a ‘C’ quality at best and directs the Assessor to change the assessment category accordingly. Having made the determination that the subject property should in fact be considered a ‘C’ category then the appropriate income approach inputs for that category would result in assessed values in keeping with the requests of the Complainant.

[15] The CARB finds the evidence of the Complainant pertaining to ‘typical rents’ to be more convincing than that of the Respondent and agrees with the Complainant that applying the rental rates of ‘B’ category properties results in the subject properties being treated inequitably with similar properties located nearby.

[16] The CARB finds the evidence and argument of the Complainant pertaining to the sales of some of the subject properties to be compelling and also questions why the Respondent would expect this CARB to treat the sale of 3415 – 26<sup>th</sup> Ave. SW any differently than it was treated by the CARB in last year's Hearing.

[17] The CARB understands the frustration of the Complainant that the Assessor, apparently, showed little regard for the CARB Decision from the previous year as had the 'assessment quality' been changed back to 'C' as directed in CARB order 1256/2012-P, then this Hearing and the time and costs associated with the preparation of their case incurred by the Complainant would not have been necessary. The CARB finds it particularly difficult to accept that, as indicated by the Respondent, as a result of the aforementioned decision the Assessor re-examined the assessments in question in more detail, yet under questioning the Respondent indicated that the interiors of the properties had not been inspected. The CARB cautions the Assessor that such actions in the future may well result in costs being levied.

DATED AT THE CITY OF CALGARY THIS 3 DAY OF July 2013.

  
C. J. Griffin

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C2	Letter from Complainant to Assessor
3. C3	Complainant's Rebuttal
4. 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.*

**For MGB Administrative Use Only**

Municipality: Calgary    Decision No. 71490/P-2013    Roll Nos: 082042607 / 082042706 /  
082042805 & 082042904

<b><u>Property Type</u></b>	<b><u>Property Sub-Type</u></b>	<b><u>Issue</u></b>	<b><u>Sub-Issue</u></b>
Retail	Strip Centre	M.V.	assessment classification