



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:

***Larry Katz, Michael Katz (as represented by Cushman Wakefield Property Tax Services),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER

J. Lam, BOARD MEMBER

J. Massey, 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:

ROLL NUMBER:	067117101
LOCATION ADDRESS:	1301 12 Avenue SW
FILE NUMBER:	71702
ASSESSMENT:	\$2,250,000

This complaint was heard on 11th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *J. Goresht*

Appeared on behalf of the Respondent:

- *E. Currie*

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

- [1] Neither party objected to the members of the Board, as introduced, hearing the evidence and making a decision regarding this assessment complaint.
- [2] The Board noted that the file included a completed copy of the Assessment Review Board Complaint form and Assessment Complaints Agent Authorization form.
- [3] No preliminary issues were raised by either party.

Property Description:

- [4] The subject property is located at 1301 12 Avenue SW, in the Beltline District (subarea BL4). The land area is 9,764 square feet (SF) with a 4,059 SF single storey automotive service building built in 1945. The property is leased to a company that operates an automotive repair shop on the premises. The property is zoned as City Centre Multi-Residential High Rise Support Commercial District (CC-MHX). The property is assessed using a Sales Comparison Approach as land value only for a value of \$2,250,000.

Issues:

- [5] The Complainant disputed the Property Assessment Class indicated on the 2013 Property Assessment Notice, arguing that the subject property was incorrectly classed as "non-residential" and requested that the property class be changed to "residential".

Complainant's Requested Value:

- [6] The Complainant did not dispute with the 2013 assessment of \$2,250,000.

Board's Decision:

- [7] The Board confirms the 2013 Assessment classification as "non-residential".

Legislative Authority:

- [8] Section 460(5)(d) indicates that a complaint may be about an assessment class as shown on an assessment or tax notice. 467(1) of the Act gives the Board the authority to make any changes to an assessment roll or tax roll, or decide that no change is required. The issue raised by the Complainant refers to the assessment class as appears on the 2013 Property Assessment Notice. The Board has authority to hear this matter and make any changes, as may be required.

Issue 1: What is the correct assessment class for the subject property?**Complainant's Position:**

- [9] The Complainant argued that under Section 297(1) of the Act, the assessor must assign a property into one or more of the following classes: residential, non-residential, farm land or machinery and equipment. Section 297(4)(c) of the Act defines "residential" as property that is not classed as farm land, machinery and equipment or non-residential, therefore is the default zoning. Section 297(4)(b) defines "non-residential" as linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use bylaw passed by council, but does not include farm land or land that is used or intended to be used for permanent living accommodation.
- [10] The Complainant presented a portion of Land Use Bylaw 1P2007 (the current Land Use Bylaw) referring to the subject CC-MHX zoning (page 12-19, Exhibit C1) and noted in Section 1132 of this Bylaw that the purpose of the CC-MHX zoning was predominantly multi-residential development, with some limited commercial and community service uses. The Complainant argued that the CC-MHX zoning demonstrated that the intended use of the property is for multi-residential development, therefore the correct property classification should be "residential". Multi-residential development is the predominant use under the zoning, and any of the other uses would only be allowed as part of the multi-residential development.

- [11] The Complainant presented an excerpt from the Centre City Mixed Use District (CC-X) Land Use Bylaw (page 20-30, Exhibit C1) to contrast the much wider range of permitted and discretionary uses in this zoning category. For properties zoned CC-X, the Complainant argued that it is not clear what the intended use is by reading the Bylaw. For properties zoned CC-MHX, the Complainant argued that it was quite clear that the bylaw intends that these properties are to be multi-residential. Because of the clear direction provided in the CC-MHX zoning, the subject property is clearly intended to be residential.
- [12] In rebuttal, the Complainant presented zoning information related to properties that were the subject of the various Board and court decisions presented by the Respondent to demonstrate that in those cases, the zoning did not provide for a clear intended use. This is in contrast to the clear intention of the CC-MHX zoning for the subject property.

Respondent's Position:

- [13] The Respondent stated that the subject is a commercial retail property that is operating as an automotive service facility. An Assessment Request for Information (ARFI) was presented for the subject property showing that the property is leased by Meineke Car Care (page 11-13, Exhibit R1). Photographs of the subject property showing that it was operating as an automotive repair facility (page 15-16, Exhibit R1) and an online ad from Meineke Car Care Centre showing the subject location were also presented. Because the property was operating as a commercial venture on both the valuation and condition dates, the assessment class is properly designated as "non-residential".
- [14] In response to the Complainants argument regarding the intended use, the Respondent presented Board Order MGB 088/06, which addressed the issue of assessment classification and the interpretation of intent. In this decision, the Board found that although a development permit had not yet been issued for the proposed multi-residential development, the Complainant had obtained financing, presold many of the proposed units and was well into preparing the application for a development permit. Therefore, the Board found that the Complainant demonstrated an intention to change use to multi-residential and changed the assessment class. The Respondent then presented Alberta Court of Queen's Bench Decision No. 0701-01387 (Justice Hart) that dealt with the City's appeal of Board Order MGB 088/06, in which Justice Hart agreed that the Board had sufficient evidence on which to conclude that the intended use of the subject property was multi-residential, and dismissed the appeal. The Respondent stated that prior to the decision by Justice Hart, the City defined intended use based on the commencement of construction; construction triggers a change in assessment class. After the decision by Justice Hart, the City recognizes a change in intended use when a development permit is issued. The City reviews development permits issued to determine if and when a change in assessment class is warranted for a specific property. (The Respondent provided the Board with copies of these two decisions, but as they are in the public record, these documents were not marked as an Exhibit in these proceedings.)

- [15] The Respondent presented a printout of all development and building approvals issued for the subject property (page 35, Exhibit R1) noting that the last development permit issued was in 1994 for exterior renovations and addition of a shed and signage.
- [16] The Respondent referred to Section 643 of the Act, which addresses non-conforming uses created when a Land Use Bylaw is changed. The Respondent noted that the subject property is such a non-conforming use, and therefore as long as there is no substantial change to the property, the existing development permit (permits related to the construction of the subject improvements) remain in effect. Based on this Section of the Act, the Respondent argued that the subject property did not fall under the current Land Use Bylaw and would not be subject to the current land use regulations until a new development permit was issued.

Findings of the Board on this Issue:

- [17] The issue before the Board is to determine if the “non-residential” assessment class as indicated on the 2013 Property Assessment Notice is correct. The Board is mindful of Section 297(4) of the Act, and particularly the definition of “non-residential” which states:

“...but does not include farm land or land that is used or intended to be used for permanent living accommodation...”.

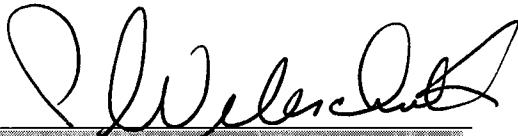
- [18] The Complainant did not presented evidence or argue that the subject is currently being used for permanent living accommodation, therefore the issue before the Board is to determine whether the property is “intended to be used for permanent living accommodation”.
- [19] The Complainant relied on the current Land Use Bylaw (1P2007) and an interpretation of Section 1132 of this Bylaw which refers to the CC-MHX zoning for the subject property (page 12, Exhibit C1) to demonstrate that the intended use of the subject is for multi-residential development. The Complainant did not present any evidence to demonstrate that the owner was in the process of, or even contemplating, a change in use from the current commercial use to a multi-residential development.
- [20] Board Order MGB 088/06, states “the MGB agrees with the respondent that zoning is not determinative of intended use for the purpose of section 973 of the Act. Rather, the phrase “intended to be used” within section 297 of the Act refers to the intention of the landowner”. Alberta Court of Queen’s Bench Decision No. 0701-01387 agreed with this interpretation, stating “In my view, the Board was correct in this interpretation. Not only does it accord with the words used in the statute, when read in the context of the Act as a whole, but it is also in accordance with the relevant case law:...”.

- [21] The Board concurs that zoning in and of itself does not determine intended use. Even within the CC-MHX zoning, there is provision for non-residential uses for portions of a multi-residential development, especially at street level. This would result in some mix of non-residential uses. The Board is also mindful of the status of the subject property, as legally non-conforming to the current Land Use Bylaw. The Board finds that the zoning argument based on the current Land Use Bylaw, without any evidence showing that the owner is actively pursuing a change in use, is not sufficient to demonstrate that the "intended use" of the subject has changed from "non-residential" to "residential".

Board's Decision:

- [22] The Board concludes that zoning is not determinative of a change in intended use. The subject property is in a commercial use. No evidence was presented to demonstrate that the owner has contemplated or initiated a change in use to a multi-residential development. For these reasons, the Board confirms the 2013 assessment classification as "non-residential".

DATED AT THE CITY OF CALGARY THIS 1 DAY OF August 2013.



Ivan Weleschuk
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal 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

Subject	Type	Sub-type	Issue	Sub-issue
CARB	Residential/ Retail	Assessment Class		