



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:

***Pasutto's Hotels (1984) Ltd. (Represented by AEC Property Tax Solutions),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***W. Kipp, PRESIDING OFFICER
K. Farn, BOARD MEMBER
P. Loh, 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 2014 Assessment Roll as follows:

ROLL NUMBER:	757121801
LOCATION ADDRESS:	400 Midpark Way SE, Calgary AB
FILE NUMBER:	74339
ASSESSMENT:	\$9,430,000

This complaint was heard by a Composite Assessment Review Board (CARB) on the 21st day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- B. Ryan *Agent, AEC Property Tax Solutions*
- A. Sivalingem *Observer, AEC Property Tax Solutions*

Appeared on behalf of the Respondent:

- T. Johnson *Assessor, The City of Calgary*
- D. Grandbois *Assessor, The City of Calgary*

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

[1] The Complainant had filed its disclosure document with the CARB and the Respondent on May 29, 2014. The Respondent's disclosure was filed July 7, 2014 and a two part rebuttal disclosure was filed July 10, 2014. The Complainant made two requests that were acceptable to the Respondent and agreed to by the CARB:

- 1) That the two part disclosure be carried forward to Files 74748, 74765, 75856 and 76010, all of which were to be heard as part of the same agenda.
- 2) That part one of the rebuttal disclosure (marked as Exhibit C2A by the CARB) be sealed to restrict public access to information within the document.

[2] There were no jurisdictional matters to be decided by the CARB.

[3] Neither of the parties had concerns or objections to the CARB panel as constituted.

Property Description:

[4] The property that is the subject of this assessment complaint is a hotel known as the Wingate Inn (Wingate By Wyndham Calgary). It is located at the northeast corner of the intersection of Macleod Trail and Sun Valley Boulevard SE but it does not access from either of those major roadways. Access to the property is from Midpark Way SE which passes along a portion of the north property line of the 3.55 acre site.

[5] Built in 2001, the four storey hotel building accommodates 103 hotel rooms, two small meeting rooms, a swimming pool and a small fitness room. An automobile rental agency (Avis) leases a small space in the hotel lobby. There are 170 outside parking stalls around the buildings. A restaurant (The Plow) occupies all of a freestanding building that shares the parking lot with the hotel building. The hotel owner shows a building area of 6,948 square feet being leased to the restaurant operator. The assessment record shows a floor area of 70,541 square feet in the hotel building plus 7,654 square feet in a "retail" building. At the hearing, neither party explained why there were variances in reported floor area for the restaurant/retail building.

[6] For assessment purposes, the Respondent describes the hotel as a "limited service" hotel. There are five category types within the general accommodation property sector. One of those is limited service hotel which is described as possessing these characteristics: usually a multi-storey establishment with interior entrances but containing fewer rooms than full service hotels. A variety of guest unit styles are offered, however, public areas including food and beverage facilities, pools and spas are usually limited.

[7] Hotel properties are assessed based partially on property specific criteria with consideration given to industry norms for operating expenses and costs not directly related to the real estate. For the current assessment, the subject is shown to have a stabilized total revenue of \$4,375,803 and a net income to real estate of \$580,825. A suburban hotel capitalization rate of 8.75 percent converted the net income into a hotel value of \$6,637,998. The restaurant building was assessed by application of a typical market rental rate of \$31.00 per square foot to the 6,948 square feet of leased area. After deductions for potential vacancy and operating costs associated with ownership, the net operating income of \$181,722 was capitalized at the "freestanding retail" capitalization rate of 6.5 percent to yield a value of \$2,795,723. When the hotel value is added, the assessment is \$9,432,998 which is truncated to \$9,430,000.

Issues:

[8] The Assessment Review Board Complaint form was filed February 20, 2014 by AEC Property Tax Solutions on behalf of Pasutto's Hotels (1984) Ltd, the "assessed person." Section 4 – Complaint Information had check marks in the boxes for #3 "an assessment amount", #6 "the type of property" and #7 "the type of improvement."

[9] In Section 5 – Reason(s) for Complaint, the Complainant stated numerous grounds for the complaint.

[10] At the hearing, the Complainant pursued the following issue:

- 1) The freestanding restaurant is part of a single property that includes the hotel and the income from the two components should be combined and then capitalized at the 8.75 percent capitalization rate.

Complainant's Requested Value: \$8,710,000

Board's Decision:

[11] The CARB finds that this is a single property with two separate buildings that are parts of a hotel operation. The assessment is reduced to \$8,710,000.

Legislative Authority, Requirements and Considerations:

[12] The CARB is established pursuant to Part 11 (Assessment Review Boards), Division 1 (Establishment and Function of Assessment Review Boards) of the Act. CARB decisions are rendered pursuant to Division 2 (Decisions of Assessment Review Boards) of the Act.

[13] Actions of the CARB involve reference to the Interpretation Act and the Act as well as the regulations established under the Act. When legislative interpretation is made by the CARB,

references and explanations will be provided in the relevant areas of the board order.

Position of the Parties

Complainant's Position:

[14] Exhibit C1, the complainant's disclosure of evidence was filed with the CARB administration and the Respondent on May 29, 2014. On July 10, 2014, after receipt of the Respondent's disclosure, the Complainant filed a two part rebuttal, marked by the CARB as Exhibits C2A and C2B. These rebuttal documents are also part of rebuttal disclosure for files 74748, 74765, 75856 and 76010 which are other hotel assessment complaints to be heard on the same agenda.

[15] The site of the subject property comprises a single lot with Midpark Way SE frontage along a portion of its northerly boundary. The single access/egress point is from that street. The property is restricted from access from both Macleod Trail and Sun Valley Boulevard SE because both of those roadways are major thoroughfares. The lot could probably not be subdivided.

[16] When the subject property development was approved in October 2000, a schedule to a restrictive covenant agreement set out land use restrictions. It stated that the site shall not be used for any purpose other than those in a short list that followed. That list included hotels and restaurants/drinking establishments but it did not contain any retail types of uses.

[17] As at December 31, 2013, the "condition date," there was a single title to the property and both the hotel and restaurant buildings were on the lot. Because this is a single property with two buildings, it should be assessed using the hotel property capitalization rate (8.75 percent) against all income. The land use bylaw that was in effect when the property development was approved contained the following definition: "*accessory use means a use which is subordinate or incidental to the principal use of the site.*" The restaurant use is a subordinate use to the principal use of a hotel and is therefore an accessory use to the hotel.

[18] The retail and restaurant properties put forward by the Respondent as comparable properties are all freestanding single buildings, whether on their own lot or on a "pad" on a shopping centre site. Those that are on shopping centres are assessed using the applicable shopping centre capitalization rate and those that are freestanding single building properties are assessed using the 6.5 percent "freestanding retail" capitalization rate. None of those other properties have comparable characteristics to the restaurant on the subject hotel site.

Respondent's Position:

[19] The Respondent's disclosure of evidence marked as Exhibit R1 was filed with the CARB administration and the Complainant on July 7, 2014.

[20] The Alberta Assessors' Association "Hotel/Motel Valuation Guide – June 1998" states that for mixed use properties or hotels with large retail components, each part should be assessed separately: "*If the hotel property contains a large retail or office component, these parts of the property should be valued separately as discussed in the Shopping Centre and Office Valuation Guides. The totals of all such values should be added together to form the total property value.*" That is the situation in the subject instance and that is the reason for valuing each of the components separately using valuation inputs specific to the two types of uses.

[21] All of the input factors, including rent rate, vacancy allowance, operating cost rates and the capitalization rate for the retail building assessment are supported by market evidence.

Board's Reasons for Decision:

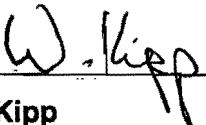
[22] The CARB finds that the restaurant is an accessory use on the property and it is subordinate or incidental to the principal use which is that of a hotel. The hotel has no food and beverage facility. If it did, that facility could comprise restaurant and bar/lounge space either within the hotel building or in an adjoining freestanding building. In some hotels, the owner/operator operates the food and beverage services and in other cases, those business components are left to others.

[23] Midpark Way SE is not a heavily travelled roadway that would attract retail uses. The CARB does not accept the Respondent's argument that the restaurant building is a "large retail component." This is a single property and the two buildings (hotel and restaurant) complement one another. The restaurant tenant leases a 6,948 square foot building, not a pad site. The "Hotel Additional Value" calculation by the Respondent applies a typical rent rate to the building floor area, not the pad or site area. For rental income production purposes, the restaurant tenant is no different than Avis, the small tenant in the hotel building. Both tenancies are created by leases.

[24] Neither the Complainant nor the Respondent addressed the following at the hearing or in filed evidence but the CARB notes that the revenue from both the Avis and the restaurant leases is a part of the revenue reported in the Assessment Request For Information (ARFI) response and the exact amounts from the ARFI response are included in the assessment calculation (stabilized "Other Departments" revenue of \$318,150). The rent from retail tenants is included in the total revenue amount of \$4,375,803. Under "Undistributed Operating Expenses," there are annual and stabilized amounts for "Other" which approximate \$500,000 per year. There is no explanation for this expense deduction but the CARB sees no reason for the rental income from tenants to be included first as an income and then as an expense. This suggests that the restaurant could be assessed twice – once as an income component of the hotel and once as a freestanding retail building. There is insufficient evidence before the CARB to compel it to make any assessment adjustment for this possible error.

[25] The CARB alters the assessment by application of the 8.75 percent capitalization rate to the hotel income and the net operating income from the restaurant lease. The hotel assessment remains at \$6,637,998 but the restaurant assessment is reduced to \$2,076,823. The revised total assessment is \$8,710,000 (truncated).

DATED AT THE CITY OF CALGARY THIS 19 DAY OF August 2014.



W. Kipp

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. C2A (Document Sealed by the CARB)	Complainant Rebuttal Part 1
4. C2B	Complainant Rebuttal Part 2
Note: C2A and C2B are common rebuttal documents to files 74748, 74765, 75856 and 76010.	

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

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	OTHER	HOTEL	INCOME APPROACH	EXPENSES