



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 Hotels (1984) Ltd.
(as represented by AEC Property Tax Solutions), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER
I. Fraser, BOARD MEMBER
R. Cochrane, BOARD MEMBER

This is a complaint to the Calgary Assessment Review Board [CARB or the 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:	068229806
LOCATION ADDRESS:	221 9 AV SE
FILE NUMBER:	75300
ASSESSMENT:	\$18,210,000

This complaint was heard on 23rd day of June, 2014 at the office of the Assessment Review Board [ARB] located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *J. Smiley* *Agent, AEC Property Tax Solutions*
- *M. Kudrycki* *Analyst, AEC Property Tax Solutions*

Appeared on behalf of the Respondent:

- *V. Lavalley* *Assessor, City of Calgary*
- *R. Luchak* *Assessor, City of Calgary*
- *T. Nguyen* *Assessor, City of Calgary (first 10 minutes)*

Present as an observer:

- *A. Sivalingam* *Agent, AEC Property Tax Solutions (first 10 minutes)*

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

[1] The Respondent requested that the Board dismiss the complaint and confirm the assessment because the Complainant failed to respond to an Assessment Request for Information [ARFI].

[2] Provisions within section 295 of the Act permit the Respondent to request information from an assessed person (the Complainant) in order to prepare an assessment and if the information is not provided the assessed person loses their ability to file a complaint on the property that the information is requested of.

[3] The Complainant argued the information requested was not required to prepare an assessment citing a court decision; ***Boardwalk Reit LLP v. Edmonton (City), 2008 ABCA 220*** [Boardwalk].

[4] In the Boardwalk decision the complainant attempted to answer the request of the respondent, failing to satisfy, despite providing more than 1000 pages of information.

[5] In this case, the Complainant failed to respond to the request for information; however, as reported in the Boardwalk decision, the Respondent may only ask for information necessary to prepare an assessment or to determine if a property is assessable.

[6] The Board denied the request of the Respondent for a number of reasons:

- a. The Respondent failed to satisfy to the Board that the information requested was necessary in order to make an assessment. The information requested was income related, while the property is an unimproved parcel of land serving as a parking lot

and it is assessed on the Direct Sales Comparison Approach, as are all similar properties within the municipality. The Respondent has the right to request information that is necessary to prepare an assessment and ought not to seek information it finds useful to assess other properties;

- b. Even if the Board found the information necessary, the Respondent allegedly became aware of the non-compliance in September of 2013; however, waiting until the beginning of this hearing to try and dismiss the Complainant's right to a complaint. The Respondent should have requested a preliminary hearing once a complaint is filed, which in this case was February 28, 2014, rather than attempting to ambush the Complainant at the merit hearing;
- c. And, the Respondent failed to disclose evidence to prove that a request was made. Evidence was available at the hearing and testimony was provided indicating that a request was made; however, the Respondent failed to disclose such evidence, therefore the Board may not consider it, as per Matters Relating to Assessment Complaints Regulation [MRAC] section 9;

[7] There are no additional preliminary, procedural, or jurisdictional issues.

Property Description:

[8] The subject is a vacant land parcel of 54,706 square feet located on the south-west corner of Macleod Trail and 9th Avenue SE in the downtown commercial non-residential zone [NRZ] of DT3. The land use designation is direct control [DC] using guidelines typical in the Downtown Business District. The property abuts a train track and is currently used for a surface parking lot. The property is assessed using the Direct Sales Comparison Approach.

Issues:

[9] Four issues are identified on the complaint form with the Complainant verifying at the hearing that the primary issue is the assessment amount calculation. The Respondent used a typical vacant land rate \$370 per square foot for the 54,706 square foot area then deducted fifteen percent (15%) for abutting a train track and added five percent (5%) for being located on the corner of an intersection. The Complainant does not dispute the calculation; however, is asking for an additional thirty percent (30%) reduction to account for environmental concerns.

Complainant's Requested Value: \$12,740,000

Board's Decision:

[10] The Board found the assessment to be correct and confirmed the assessment value at \$18,210,000.

Legislative Authority, Requirements, and Considerations:

The Municipal Government Act

Revised Statutes of Alberta 2000 Chapter M-26

Interpretation

1(1) *In this Act,*

(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;*

Duty to provide information

295(1) *A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed.*

(4) *No person may make a complaint in the year following the assessment year under section 460 or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request.*

Matters Relating to Assessment Complaints Regulation

Alberta Regulation 310/2009 with amendments up to and including Alberta Regulation 215/2012

Disclosure of evidence

8(2) *If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:*

(b) *the respondent must, at least 14 days before the hearing date,*

(i) *disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing,*

Failure to disclose

9(2) *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

(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.*

Position of the Parties**Complainant's Position:**

[11] The Complainant argued that the subject site is contaminated and that the Respondent is aware of it. As a result, the subject should receive an additional thirty percent (30%) downward adjustment to reflect the condition as at December 31, 2013.

[12] The Complainant provided emails, letters and testimony describing the contamination and the possible source. No actual environmental study is provided to confirm the extent of the condition or actual costs required to remediate the property; however, ballpark estimates are provided (C1 pp. A-8 – A-33).

Respondent's Position:

[13] The Respondent argues that the emails, letters and testimony provided do not satisfy the requirements in order to adjust for contamination. The Respondent has a process for evaluating contamination which includes receiving a phase two environmental impact study. The Complainant is aware of the requirements which are also mentioned in the 2012 CARB decision for the subject; CARB 1333-2012-P (C1 pp. A-3 – A-6).

Board's Reasons for Decision:

[14] The Board found the Complainant was aware prior to purchasing the subject in 2010 that the property had environmental concerns. The Complainant was made aware at the hearing in 2012 of the need to follow a process in order to be considered contaminated and receive a reduction in their assessment. The Complainant has failed to respond to information requests and follow the procedures to be considered contaminated.

[15] The Board acknowledges that the cost of satisfying the Respondent's process maybe onerous; however, no evidence is provided to show what the costs would be or to offer an alternative process by which the Respondent can evaluate the site.

[16] Lastly, the Board finds no market evidence to suggest the site is valued for anything but as assessed. Market evidence of similar properties with similar contamination in the downtown core could establish a value that the Board could have considered as an alternative to the assessed value.

DATED AT THE CITY OF CALGARY THIS 30th DAY OF June 2014.


J. Dawson
Presiding Officer

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

NO.	ITEM
1. C1 – 118 pages	Complainant Disclosure
2. R1 – 81 pages	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.*

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Types	Vacant Land	Contamination	Petro chemical Contamination