



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:

Yiu Cheung Lee, Yiu Leung Lee, Yiu Wing Lee, and Yiu Bing Lee (*as represented by Altus Group Ltd.*), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair; J. Zezulka
Board Member; R. Deschaine
Board Member; D. Julien***

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: 045098407

LOCATION ADDRESS: 1106 - 16 Avenue NW

FILE NUMBER: 75375

ASSESSMENT: \$504,000

This complaint was heard on 25 day of August, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- K. Fong; Agent, Altus Group

Appeared on behalf of the Respondent:

- E. Deltorio; Assessor, City of Calgary

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

- (1) There were no procedural or jurisdictional matters raised by either party.

Property Description:

(2) The subject property is an undeveloped corner lot, having an area of 6,430 square feet (s.f.), located in the Capital Hill district of NW Calgary. The site is used for parking and provides 47 stalls for the adjacent Earl's restaurant. The Land Use Classification is Commercial Corridor-1.

(3) The subject site is assessed using the sales comparison approach to value, using typical land rates for the Commercial Corridor-1 district, with adjustments applied for the corner location, and limited access.

Issues / Appeal Objectives

(4) The basis of this complaint is the notion of "nominal" value, in keeping with historic City policy of assigning nominal values to parcels that provide parking space for adjacent or nearby buildings in accordance with the requirements of the current Land Use Bylaw.

(5) The Earl's Restaurant parcel was not the subject of a complaint, nor was it included with the complaint filed on the subject.

Complainant's Requested Value:

- (6) \$1,000

Board's Decision:

- (7) The assessment is reduced to \$1,000.

Legislative Authority, Requirements and Considerations:

- (8) This Board derives its authority from section 460.1(2) of the Act.

(9) Section 2 of Alberta Regulation 220/2004, being the Matters Relating to Assessment and Taxation Regulation (MRAT), states as follows;

"An assessment of property based on market value"

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property"

(10) Section 467(3) of the Act states;

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(c) the assessments of similar property or businesses in the same municipality."

(11) For purposes of this Complaint, there are no extraneous requirements or factors that require consideration.

Position/Evidence of the Parties

Complainant's Position:

(12) The Complainant's position is that the subject property is used exclusively for parking by the occupants of the adjacent restaurant. The site is 'linked' to the parent parcel by virtue of common ownership. The evidence presented did not point to or refer to any formal ties between the two properties in the form of a caveat, lease or other agreement. The Complainant argues that the assessment of the subject is already included in the assessment of the adjoining restaurant. The Complainant further contends that the restaurant could not continue to operate without the parking provided on the subject.

(13) The Complainant presented an assessment history of the subject that demonstrated that the subject's assessment was \$750 from 2007 to 2012, and \$1,000 in 2011 and 2012. In the current year, the assessment increased to \$504,000.

(14) The Complainant also submitted two examples of other properties wherein the value of the parking parcels was deducted from the assessment of the income based assessment of the parent parcel as a parking deficiency.

(15) The Complainant also submitted three equity examples of large parcels with adequate parking area to accommodate the building. These three are on single titled parcels, and in that respect, are different than the subject's two separately titled parcels. However, the Complainant correctly argues that, from a practical perspective, the situation is the same as the subject in that a portion of the holding accommodates the building, and the balance of the holding provides required parking. In the examples provided by the Complainant, there is no overlap in assessments as there is in the subject situation.

Respondent's Position:

(16) The Respondent explained that there is no longer a nominal value policy in the City because MRAT states that the valuation standard for land is market value.

(17) The Respondent submitted 17 examples of similar parcels throughout the City that have been assessed at market levels for the 2014 tax year. However, there is no evidence to suggest that the value of the examples provided were not deducted from the income based assessment of the dominant parcel.

(18) The Respondent also submitted numerous examples of properties that have relaxations of parking required by development permit.

(19) Five examples of income calculations on properties with deficient parking were also provided. These were considered by the Board, but were not very helpful.

Board's Reasons for Decision:

(20) The parking on the subject property in favour of the adjacent building is not protected by caveat. However, the common ownership of the two properties indicates that the subject's primary function is to provide parking for the adjacent restaurant. Removing this parcel from the package, resulting in a significant reduction in the available parking, would almost certainly have an adverse, if not disastrous, affect on the restaurant business. That would result in a decrease in the achievable rent for the restaurant building because of the parking deficiency, which in turn, would result in a lower assessment of the dominant parcel.

(21) The Respondent argues that the test for assessment is "Market Value", as specified in MRAT. However, the Act requires the assessor to apply the valuation standard in a fair and equitable manner. Based on the evidence presented, it is this Board's conclusion that the standard has not been applied in the manner specified.

(22) In regard to fairness, the following from Stade V. Assessor #23 - Kamloops, provided some guidance;

"Questioning the relationship between assessment and the properties market value is a market value argument, with accuracy the measure of success. Equity instead relates to consistency and fairness of assessment. Consistency requires that similar properties be assessed similarly and that differences be accounted for consistently. Fairness means similar treatment under the law, which typically means that if one group of taxpayers is afforded a privilege, such as underpaying taxes, then everyone should be afforded a similar privilege."

(23) In Dutchad Bill Investments Ltd. Et al v. Area 19 (2008 PAABBC 20081270) it states;

"The Board must first be satisfied with the accuracy of the market valuation, which involves correct appraisal techniques and appropriate use of market data. Second, the Board must then be satisfied that the level of assessment is equitable, fair, and consistent, in terms of how the subject's assessment relates to other similar properties. The courts have regularly interpreted "consistency" as the portion of market value being assessed (Bramalea, Lount, supra). In other words, if an appellant can show that similar properties are typically assessed below actual value, then the subject should receive this benefit too. The need for consistency is particularly apparent for commercial properties, where an unfairly distributed tax burden can give one investor a significant competitive advantage."

(24) To reduce the assessment of the subject appears to be contrary to Section 4(1)(a) of MRAT. At the same time, to maintain the assessment results in an inequity that can only be remedied by applying a corresponding reduction to the assessment of the dominant restaurant assessment. However, this Board had no jurisdiction to adjudicate the assessment of the dominant restaurant parcel. As such, the Board chooses the only avenue of fairness that is available.

(25) The assessment of the subject parcel is reduced to a nominal amount.

DATED AT THE CITY OF CALGARY THIS 23rd DAY OF September 2014.


for Jerry Zezulka

Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:****NO. ITEM**

1. C1 Complainant Disclosure
2. C2 Complainant Rebuttal
3. 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

Decision No. CARB 75375P/2014			Roll No. 045098407	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Land	Required parking for adjacent restaurant	N/A	Valuation Methodology Nominal value