



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:

Richard 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: 045245305

LOCATION ADDRESS: 1102 - 16 Avenue NW

FILE NUMBER: 75426

ASSESSMENT: \$130,000

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) At the request of both parties, all evidence and argument pertaining to file number 75375 was carried forward for purposes of this complaint.

Property Description:

- (2) The subject property is an undeveloped corner lot, having an area of 1,000 square feet (s.f.), located in the Capital Hill district of NW Calgary. A portion of the site provides five parking stalls for the nearby Earl's restaurant. The Land Use Classification is Commercial Corridor-1. The site has limited use and is set aside by the City for future road expansion.
- (3) The subject site is assessed using the sales comparison approach to value, using typical land rates for the Commercial Corridor-1 district. No adjustments have been 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 a lease between the City and one of the owners of the Earls Restaurant. The Complainant argues that the assessment of the subject is already captured in the income based assessment of the restaurant. The Complainant further contends that the parking provided is important to the restaurant's viability

(13) The Complainant presented an assessment history of the subject that demonstrated that the subject's assessment was \$750 from 2009 to 2011, and \$1,000 in 2012 and 2013. In the current year, the assessment increased to \$130,000.

(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 improved parcels with adequate parking to meet the requirements of the Land Use Bylaw. 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. These parcels range in size from 4,873 to 75,183 s.f. 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 Earls restaurant is protected by lease. Removing this parcel from the package, resulting in a reduction in the available parking, would have an adverse affect on the restaurant business.

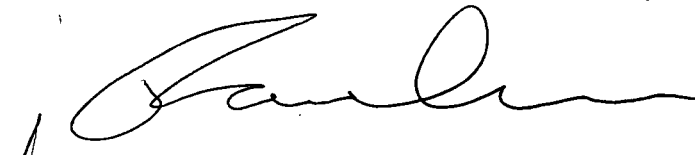
(21) The Respondent argues that the test for assessment is "Market Value", as specified in MRAT. However, the Act requires the assessor to apply the valuation standard in a fair and equitable manner. Based on the evidence presented, it is this Board's conclusion that the standard has not been applied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

(22) The site area was provided to the Board by both parties as 1,000 s.f. Universally, the concept of "market value" revolves around the concept of utility. The market value of undeveloped land hinges on its highest and best use. The subject's land area is too small to accommodate any type of meaningful development on its own merits. As such, assembly with adjoining land appears as the only avenue to viable development. The site is bounded on three sides by 10 Street, 16 Avenue, and a laneway. Even if the City's interest in the site is disregarded, the only potential for assembly is with the Earl's Restaurant to the west, as additional parking.

(23) Furthermore, the fact that the subject has been set aside by the City for future roadway expansion is an equally important consideration. Typically, there is no open, competitive market for public use lands, simply because any form of development is precluded by the planning authorities. No doubt, this site has some value to nearby or adjacent business owners for additional parking. However, neither the terms and conditions of the existing lease, or other similar land leases was disclosed in evidence. Intuitively, however, no one is likely to pay \$130,000 for a 1,000 s.f. site that is destined for roadway expansion some time in the future.

(24) For reasons of fairness, as well as the subject site's very limited utility on account of planning and physical reasons, the assessment is reduced to the \$1,000 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.	R1 Respondent Disclosure
3.	C2 Complainant Rebuttal

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 75426P/2014			Roll No. 045245305	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Land	Required parking for adjacent restaurant, public use land	N/A	Valuation Methodology Nominal value