



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:

***The Wedding Wheel Bridal Salon Ltd. (as represented by Altus Group Limited),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***M. Axworthy, PRESIDING OFFICER
H. Ang, BOARD MEMBER
A. Wong, 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: 113003404

LOCATION ADDRESS: 1240 73 AV SE

FILE NUMBER: 75928

ASSESSMENT: \$2,060,000

This complaint was heard on 22 day of July, 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:

- *P. Mc Aleer, Property Owner*
- *M. Cameron, Agent*
- *A. Izard, Agent*

Appeared on behalf of the Respondent:

- *R. Sidikou, Assessor*
- *S. Turner, Assessor*

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

- [1] No procedural or jurisdictional matters were raised.

Property Description:

[2] The subject property is located in the East Fairview Industrial area and developed with a 12,900 square foot (SF) building comprising 7,888 CRU space 6,001- 14,000; 1,624 SF of retail upper, and 3,388 SF of storage. It has a Subproperty use code of CM0201, Retail-Freestanding. The subject was constructed in 1988 and is classified as "B-" quality. It is assessed using the Income Approach to value with a cap rate of 6.50% and 8.0% vacancy and a variety of rental rates.

Issues:

- [3] While a number of issues were identified on the Complaint Form, the following issues were argued at the hearing:
- a) The property is incorrectly assessed based on the area breakdown applied by The City.
 - b) There is 3,388 SF of storage on the main floor that should be assessed at the storage rate of \$2.00 per SF instead of \$17.00 per SF as currently assessed.

Complainant's Requested Value: \$1,350,000

Board's Decision:

- [4] The Board reduced the assessment to \$1,730,000.

Legislative Authority, Requirements and Considerations:

- [5] Under the Act Section 460.1(2) and subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5)

that is shown on an assessment notice for property, other than property described in subsection 460.1 (1)(a).

[6] The Board reviewed the evidence provided and will limit its comments to the relevant facts pertaining to this case and materials which led to the decision.

Issue: Should 3,388 SF of the main floor space be assessed at the storage rate of \$2.00 per SF?

Position of the Parties

Complainant's position

[7] The Complainant outlined that the subject is occupied by the Bridal Centre which sells wedding gowns and sells/rents tuxedos and other wedding accessories. A two storey, 6,776 SF addition was made to the building in 1996, with 3,388 SF on each floor. A condition of the Development Permit (DP #96/1524) for the addition stated as follows:

"3. As a result of recent changes to the Land Use Bylaw, new retail and additions to existing retail stores are no longer an allowable use in an I-2 land use designation. The approval of this permit is based on the information that the main floor will be used for storage and that the second floor will be used for a bridal showroom. At no time shall the addition be used for retail purposes." [C1, p. 31]

[8] The Complainant provided photographs of the main and second floor of the building, showing the retail, showroom and storage areas, including portions of the storage areas that were used for office purposes and the finishing and alteration of wedding gowns and tuxedos [C1, pp 40-45]. The photographs were not labelled to indicate which portion of the building they referenced nor were floor plans provided indicating the use of each area of the building.

[9] The Complainant stated that the current assessment recognizes the 3,388 SF on the second floor as storage at the rate of \$2.00 per SF, but assesses the 3,388 SF of storage area on the main floor as retail (6,001-14,000 SF) at \$17.00 per SF rate. The Complainant argued that both the main and second floor storage areas should be assessed at the storage rate of \$2.00 per SF as the use of these areas is the same e.g., storage of wedding dresses after purchase, storage of merchandise and the finishing and alteration of wedding gowns and tuxedos.

[10] The Complainant argued that the condition that prohibited retail use was a "planning restriction" that should be recognized in the assessment and provided the Board with a number of legal decisions and MGB Board orders that spoke to the market value impact of such restrictions. [C1, pp. 97-225]

[11] The Complainant stated that the land use designation for the property had been changed from I-2 to Industrial-Commercial (I-C) in 2007 when the new Land Use Bylaw took effect and that the limitations on retail uses no longer apply; however, if a future tenant wanted to use this space for anything but storage, a new development permit would be required for that change of use.

[12] The Complainant acknowledged that the Respondent had made a recommendation to adjust the rental rate charged on the main floor storage area of 3,388 SF from \$17.00 per SF to \$10.00 per SF, but argued that this area should be assessed at the \$2.00 rate because of the DP restriction.

Respondent's Position:

[13] The Respondent outlined the history of the assessment for the storage portions of the subject. As a result of Calgary CARB decision CARB 2033/2011-P, the storage rate was applied to the storage areas on the second floor and this practice continued in 2012.

[14] The Respondent stated that it was The City's practice to assess all main floor space, regardless of what it was used for as retail space. In recognition of the DP restrictions placed on a portion of the main floor (3,388 SF), the Respondent had reviewed this practice for the subject and was making a recommendation to reduce the rental rate on this portion of the main floor from \$17.00 per SF to \$10.00 [R1, p. 50].

[15] The Respondent stated that in its opinion, the main floor storage area was not typical storage in that there is machinery located in a portion of this area that is used by employees in the course of business and that the \$2.00 storage rate was not warranted for this area. The Respondent stated that they had visited the site to verify this and provided photographs labelled "Upper and Lower floors" as evidence [R1, pp. 17-29].

[16] In response to questioning, the Respondent stated that the \$10.00 rate was recommended to recognize this unique situation and was based on assessor judgement, similar to the assessment of retail areas that are classified as "retail poor location" and receive a reduced assessed rental rate.

Board's Reasons for Decision:

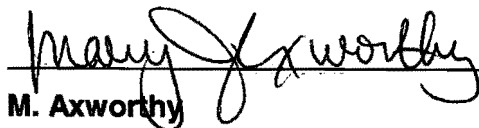
[17] The Board acknowledges that the current DP places a restriction on the use of the 6,776 SF of space in the 1996 addition; however, there is machinery and equipment and business activity (alteration and finishing of garments and tuxedos and office) occurring on both the first and second floor "storage areas" that goes beyond typical storage.

[18] The Board was not presented with any floor plans that identified the different use areas and was not able to determine exactly what portions of the building was used for typical storage.

[19] The Board finds that while the 1996 DP does have a condition restricting the use of the addition to storage, the land use designation for the subject changed in 2007 to I-C which allows for retail uses and other uses listed in the I-C district. Therefore, as with any other property, it is possible to apply for a change of use for the subject.

[20] In recognition of the somewhat unique circumstances applying to this property, the Board finds the recommendation of the Respondent to be reasonable and reduces the assessed value of the subject to \$1,730,000.

DATED AT THE CITY OF CALGARY THIS 14 DAY OF August 2014.


M. Axworthy

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 Administrative Use Only

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB				