



**ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

**CARB - 0203-0003/2013**

**IN THE MATTER OF A COMPLAINT** filed with the City of Lethbridge Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

**BETWEEN:**

JO-EM Investments Ltd - Complainant

- a n d -

City of Lethbridge - Respondent

**BEFORE:**

Members:

M. Vercillo, Presiding Officer  
B. Ellis-Toddington, Member  
S. Schmidt, Member

A hearing was held on Thursday, July 11, 2013 in the City of Lethbridge in the Province of Alberta to consider complaints about the assessment of the following property:

Roll No./ Property Identifier	Assessed Value	Owner
1-0-400-1020-0001 1020 Mayor Magrath Drive S	\$936,000	JO-EM Investments Ltd

Appeared on behalf of the Complainant:

- J. Farrington, Krushel Farrington Barristers & Solicitors

Appeared on behalf of the Respondent:

- L. Wehlage
- D. Geseron

## ASSESSMENT REVIEW BOARD DECISION WITH REASONS

**CARB - 0203-0003/2013**

### **PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

The subject property is a restaurant facility known as El Comal. According to the information provided, the property contains one building, constructed in 1977. The building has an assessed total size of 2,481 square feet (sf) and is situated on an assessable land area of 34,412 sf with a resulting site coverage ratio of 7%.

The subject is assessed using the Income Approach to value by applying an assessed lease rate of \$18.00 per sf to the building space to calculate a potential gross income (PGI) of \$44,658. The income calculation includes allowances for a 3.00% vacancy rate, operating costs of \$4.00 and an 8.00% non-recoverable rate. The resulting \$39,555 in net operating income (NOI) is capitalized for assessment purposes using an 8.00% capitalization rate (cap rate). The assessment also includes an "excess land" component that assesses 22,007 sf of the land at an assessed rate of \$20.00 per sf.

### **PART B: PROCEDURAL or JURISDICTIONAL MATTERS**

The CARB derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below.

### **PART C: ISSUES**

The CARB considered the complaint form together with the representations and materials presented by the parties. However, as of the date of this hearing, only the following issue remained in dispute:

**ISSUE 1: The assessment of \$936,000 is incorrect and should be adjusted to \$494,000.**

**The Complainant** provided a disclosure document that was entered as "Exhibit C1" during the hearing. The Complainant along with Exhibit C1 provided the following evidence and argument with respect to this issue:

- That the subject property's current assessment has almost doubled from the previous year. This doubling is likely due to the excess land assessment that was never assessed in prior assessment years. The Complainant argued through questioning that this excess land assessment is arbitrary and subjective, and therefore unfair and inequitable to the property owner.
- A copy of the land title certificate of the subject property identifying a restrictive covenant registered on title.
- A copy of the restrictive covenant indicating that the most southerly 15 feet in perpendicular width of the property shall be restricted from the erection or use of any buildings or structures. The Complainant suggested this restrictive covenant compromises the subject's development potential.



**ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

**CARB - 0203-0003/2013**

**The Respondent** provided a 24 page document that was entered as "Exhibit R1" during the hearing. The Respondent along with Exhibit R1 provided the following evidence and argument with respect to this issue:

- That the subject was assessed a value of \$494,000 in the 2012 tax year because the excess land assessment was omitted in error.
- A site coverage analysis chart of eleven comparable properties including the subject. The summary concluded a site coverage range of 7% to 27% with average site coverage for comparable properties of 20%. Properties with site coverage's of less than 20% like the subject incur excess land assessments.
- A chart of four comparable land sales of much larger properties with a range of \$14 to \$18 per sf.
- A chart of two post-facto multiple parcel land sales with a range of \$27 to \$28 per sf.
- A chart of six equity comparable properties including the subject. All the comparable properties were similar to the subject in terms of zoning and use (restaurant, pub or grill). Site coverage's ranged from 7% to 19% and all incurred excess land assessments like the subject. The assessed values ranged from \$190 to \$377 per sf, with the subject assessed at \$377.
- An Avison Young sale listing of the subject property's subdivided southerly 0.40 acres (17,424 sf). The list price shown was \$525,000.
- A Brown Okamura & Associates (BOA) surveyor's sketch plan of the subject's subdivided southerly 0.40 acres. The sketch showed a proposed building plan with a setback of 3 metres from the southern border of the subdivided portion of the subject site.

**Findings: Issue 1**

In view of the above considerations, the CARB finds as follows with respect to Issue 1:

- In reviewing the BOA sketch plan the restrictive covenant of 15 feet does not compromise the subject's development potential.
- Assessments of excess land are equitably applied among comparable properties.

**PART D: FINAL DISPOSITION OF COMPLAINT**

The complaint is denied and the assessment is confirmed as follows.

Roll No./Property Identifier	Value as set by the CARB	Owner
1-0-400-1020-0001 1020 Mayor Magrath Drive S	\$936,000	JO-EM Investments Ltd

The CARB provides the following reasons for the decision:

- There was insufficient evidence provided by the Complainant to support his request that the assessment should remain at the 2012 assessed value of \$494,000. The onus or burden of proof first lies with the Complainant to demonstrate that either the assessment



**ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

**CARB - 0203-0003/2013**

is incorrect, or provide enough information supported by market evidence that may cast doubt on the assessment, or that the Complainant's alternative value more accurately approximates fair market value. The Complainant only provided evidence and argument that the subject property contains a restrictive covenant on title but failed to demonstrate how the restrictive covenant would affect its assessment value.

- Although it is unfortunate that the subject's assessment nearly doubles in value from the prior year, the assessor has a duty and an obligation to correct what he perceives was an error in the omission of subject's excess land assessments from the previous year(s) assessment. The Respondent demonstrated that excess land assessment is a component of assessing fair market value in this case and is seen to be equitably applied to the subject.
- The CARB is satisfied that the Avison Young sales listing of \$525,000 for the southerly 17,424 sf of the subject property supports the Respondent's excess land value of \$442,000 for 22,007 sf.

It is so ordered.

Dated at the City of Lethbridge in the Province of Alberta, this 29<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_  
Presiding Officer

**ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS****CARB - 0203-0003/2013****APPENDIX "A"**

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

**NO. ITEM**

1. Exhibit C1                      Complainant's Disclosure
2. Exhibit R1                      Respondent's Disclosure

**CARB - 0203-0003/2013 Roll # 1-0-400-1020-0001 (For MGB Office Only)**

<b>Subject</b>	<b>Type</b>	<b>Sub-type</b>	<b>Issue</b>	<b>Sub-issue</b>
CARB	Retail	Stand Alone	Income Approach	