

**THE CITY OF CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of a complaint filed with the Calgary Assessment Review Board, pursuant to Part 11 of the *Municipal Government Act*, Chapter M-26, Revised Statutes of Alberta 2000.

between:

Wernick Omura Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Krysa, PRESIDING OFFICER

R. Dechaine, MEMBER

P. Pask, MEMBER

A hearing was held on the 21st day of June, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant: **Bruno Boccaccio**

Appeared on behalf of the Respondent: **Barbara Duban**

In respect of the Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: 101017408

LOCATION ADDRESS: 5226 Macleod Trail SW

ASSESSMENT: \$1,960,000

HEARING NUMBER: 56680

Property Description:

The subject property is a 6,460 square foot freestanding restaurant, known as the Home Food Inn, situated on a site, leased from the City of Calgary.

Issues:

The issues identified on the complaint form were as follows:

- The City did not recognize the storage space and the entire property was assessed as retail space (2009 MGB decision)
- The City failed to recognize the expense relating to the land lease and applicable capitalization rate which will result in a lower assessment
- The City failed to recognize the limitations imposed by the City (50th avenue road widening and lease expiry of 2013 and refusal to approve development permit.

Complainant's Requested Value: \$800,000 (complaint form); \$1,770,000 in exhibit A.

Board's Decision in Respect of Each Matter or Issue:

- The City did not recognize the storage space and the entire property was assessed as retail space (2009 MGB decision)

No documentary evidence or interior photographs were presented to enable the Board to determine if the area in question should be assessed as retail or storage space; as a result the Board makes no finding in this regard.

- The City failed to recognize the expense relating to the land lease and applicable capitalization rate which will result in a lower assessment
- The City failed to recognize the limitations imposed by the City (50th avenue road widening and lease expiry of 2013 and refusal to approve development permit.

No evidence or submissions were made in respect of these issues; as a result the Board makes no finding in this regard.

Decision:

The assessment is confirmed at \$1,960,000.

DATED AT THE CITY OF CALGARY THIS 23rd DAY OF JULY, 2010.



Presiding Officer

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.*