

**CALGARY
COMPOSITE ASSESSMENT REVIEW BOARD (CARB)
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(4).

between:

***Tirion Group of Companies and
Tirion Properties Ltd., COMPLAINANTS***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, W. GARTEN
Board Member 1, K. KELLY
Board Member 2, J. KERRISON***

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

| | | |
|--------------------------|-------------------|-------------------|
| ROLL NUMBER: | 200351427 | 200355386 |
| LOCATION ADDRESS: | 11113 37 St. N.W. | 10826 37 St. N..W |
| HEARING NUMBER: | 57815 | 57815 |
| ASSESSMENT: | \$93,000 | \$20,000 |

| | | |
|--------------------------|-------------------|----------------------|
| ROLL NUMBER: | 200666782 | 442074324 |
| LOCATION ADDRESS: | 10499 53 St. N.W. | 61 Hamptons Dr. N.W. |
| HEARING NUMBER: | 57815 | 57815 |
| ASSESSMENT: | \$32,500 | \$20,000 |

This complaint was heard on 13th day of October, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom #9.

Appeared on behalf of the Complainant:

- *Brian k. Dell – Representing Wilson Laycraft*

Appeared on behalf of the Respondent:

- *Tyler Johnson – Representing the City of Calgary*

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

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

Property Description:

Subject #1 – 11113-37 Street N.W.

The subject property is a vacant parcel of land containing 531,862 square feet or 12.21 acres. The subject lands are described as narrow strip of land running generally in an east to west direction along the southern boundary and forms part of a larger subject of land being the Transportation and Utility Corridor, which was acquired for the development of roadway known as Stoney Trail - the north Calgary bypass. The Subject lands are leased by Tirion Properties Ltd. from the Province of Alberta for a 5 year term. There is no physical access available to Stoney Trail from the subject lands.

Subject #2 – 10826-37 Street N.W.

The subject property is a vacant parcel of land containing 44,456 square feet or 1.02 acres. The subject lands are described as narrow strip of land running generally in an east to west direction along the north/east boundary and forms part of a larger subject of land being the Transportation and utility Corridor, which was acquired for the development of roadway known as Stoney Trail – the north Calgary bypass. The subject lands are leased by Tirion Properties

Ltd. from the Province of Alberta for a 5 year term. There is no physical access available to Stoney Trail from the subject lands.

Subject #3 – 10499-53 Steet N.W.

The subject property is a vacant parcel of land containing 45,425 square feet or 1.04 acres. The subject lands are described as triangular in shape with a severe sloping topography associated with the land that would be undevelopable. The sloping lands terminate at a fenced-in catch basin that is one of the commencement points of an overland drainage system that forms the storm water management system for the area. There is no physical access to the roadway known as Sarcee Trail. A review of the Certificate of Title for the subject property indicates 2 Caveats registered against the subject property in respect to Deferred Reserve under Section 102 of the Planning Act. In Addition there is also a Utility Right of Way ("URW") Agreement registered against the subject lands.

The URW agreement severely impacts a portion of the subject property. The "Granting Clause" permits the City of Calgary to install and maintain a utility line or lines through the subject lands. It is known that at least one utility line exists on the property and that is the underground drainage system to move water between two large bodies of water. This clause restricts Tirion from building or erecting any building or structure on this subject of land. The clause further prohibits Tirion to make any changes to the existing landscape of the property.

Subject #4 – 61 Hamptons Drive N.W.

The Subject property is 4 separate and distinct vacant parcels of land containing a total of 43,783 square feet or 1.01 acres. Three of the parcels are triangular in shape and have no form of public access. Essentially these 3 subjects are land-locked and are the remnants resulting from the earlier subdivision of the parent parcel for these lands. The largest parcel of the subject property is irregular in shape and fronts onto the roadway known as Hamptons Drive N.W. All of these lands have a land use designation of residential (R-C1). A review of the Certificate of Title for the subject property indicates 2 Caveats registered against the subject lands.

Upon further review of the URW Agreement, it was found to severely impact the future utility of the larger parcel of the subject properties. The granting clause permits the City of Calgary to install and maintain a utility line or lines through the subject lands and encompasses the entirety of the large subject. It is known that at least one utility line exists on the property and that is the underground drainage system to move water between two large bodies of water. The restrictive clause prevents Tirion from building or erecting any building or structure on the large parcel of the subject lands. The clause further prohibits Tirion ro make any changes to the existing landscape of the property.

Issues:

The Complainant raised the matter that the subject properties were subject to a decision made by the MGB in 2008 and 2009.

The Complainant raised the issue of Market Value based on the Income approach and direct comparison approach.

Complainant's Requested Value:

| | | |
|---------------------------------|-------------------|----------------------|
| <u>Subject #1 and #3</u> | \$25,000 | \$2,000 |
| ROLL NUMBER: | 200351427 | 200355386 |
| LOCATION ADDRESS: | 11113 37 St. N.W. | 10826 37 St. N..W |
| : | | |
| <u>Subject #2 and #4</u> | \$0 | \$2,000 |
| ROLL NUMBER: | 200666782 | 442074324 |
| LOCATION ADDRESS: | 10499 53 St. N.W. | 61 Hamptons Dr. N.W. |

Legislation

The *Municipal Government Act*, R.S.A. 2000, c. M-26;

S 1(1) (n) 'market value' means the amount that a property, as defined in section 284 (1) (r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.

S.467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

S.467 (3) an assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- a) the valuation and other standards set out in the regulations,
- b) the procedures set out in the regulations, and
- c) the assessments of similar property or businesses in the same municipality.

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

The complainant submitted in addition to the original submission one additional evidence package marked as Exhibit C-1 overhead photo of the subject properties. This submission was not objected by the Respondent.

The Complainant brought to the Board's attention an MGB decision no. DL DL016/10

dated March 2, 2010 pertaining to the 2008 assessment where the MGB had reduced the assessment of the subject properties to the requested amounts.

The Complainant further brought to the Boards attention a requested decision by both the City of Calgary and the Complainant to reduce the 2009 assessment to the same amounts as the 2008 MGB decision.

The Complainant provided evidence of a lease agreement (for subjects #1 and #3) between Tirion Properties Ltd. and the Province of Alberta dated Aug. 25, 2004 which has since expired. The Complainant provided a letter from the legal firm Wilson Laycraft confirming that a deal to renew the lease (at the existing rate of \$2,400/annum) had been reached with the Province of Alberta and were simply waiting for the paperwork to arrive.

The Complainant argued that all 4 subjects were of little or no value:

1. Subject #1 and #3 – These subjects are owned by the Province of Alberta and leased to Tirion Properties for a nominal sum of \$2,400/annum. Currently there is a small portion of a maintenance shed encroaching on subject #1 and a portion of the subject is utilized for a golf cart path. Subject #3 is not utilized in any way by Tirion Properties Ltd. Both subjects are adjacent to a major transportation and utility corridor.

Complainant agrees with the previous 2008 MGB decision and subsequent 2009 agreement by both Tirion and the City of Calgary to reduce the assessment for subject #1 to \$25,000 and subject #3 to \$2,000 using a cap rate of 7.25%.

2. Subject #2 – This subject is broken up into 3 pieces, 2 adjacent to the golf course and 1 which is part of the intricate storm water management system developed by Tirion for long term water management. The complainant argued that the 2 small strips adjacent to the golf course has no value and is not being utilized by the golf course. The complainant pointed out that the far east piece (adjacent to Hamptons Drive) of the subject is utilized as a cart path and is not accessible to the public. However below the surface is an important route for the storm water management system. This has made this piece of subject #2 impossible to develop and as such has little or no value. The Complainant agrees with the previous 2008 MGB decision and subsequent 2009 agreement by both Tirion and the City of Calgary to reduce the assessment to \$2,000.
3. Subject #4 – The Complainant argued that the subject is an important part of the storm water management system and as such has little or no real estate value. The storm water is collected from run off of Sarcee Trail and allows the water to continue east into the next pond and the next and so on. This water is utilized by the Hamptons Golf Course for irrigation. The Complainant argued that the topography and lack of road access has made it impossible to develop the subject.

Respondent's Position:

The City of Calgary argued that the MGB decision was not current and that conditions have changed since then.

1. Subject #1 and #3 – The Respondent argued that the lease with the Province of Alberta

had expired and there was no executed lease agreement in place. There was also no official interim agreement in place stating the amount of rent that had been negotiated. It was argued that a portion of subject #1 was being partially utilized as part of the golf course. The result is that these subjects should be re-assessed based on current market values using typical golf course assess values.

The Respondent agreed that if a lease had been in place, the City of Calgary could concede to a 7.25% capitalization rate to be used for the calculation of the 2010 assessment.

2. Subject #2 – The Respondent argued that the pieces of subject #2 adjacent to the golf course could be sold to the adjacent land owners or incorporated into the golf course. As such these small pieces of land do have true value. The Respondent further argued that the cart path has value to the golf course as a method of ingress/egress and since it's location is adjacent to Hampton Drive should be assessed at market value.
3. Subject #4 – The Respondent argued that this parcel could be developed as it is well located in the sub-division. It also provides an amenity to the neighbouring homeowners as a feeder to the lakes in the district. As such this property does have value in the marketplace.

Board's Decision:

The Board found the following:

1. Subject #1 and #3 – The Board found that both the Complainant and the Respondent were in agreement with regards to the 7.25% capitalization used in the MGB order for 2008 and 2009.

The Board found that both sites (owned by the Province of Alberta) were adjacent to a Major Transportation and Utility Corridor with no physical access available from Stoney Trail.

The Board realizes that there was no executed lease in place and as such the Complainant would not be required to pay tax on the subject lands until a lease had been in place however, the Board found that the subject lands were being utilized as though there was an existing lease in effect and could only conclude that a renewal was underway. Without any evidence to the contrary the Board found that the Complainant was overholding on the original lease and still responsible for the assessment for the 2010 taxation year.

It is the Board's Decision that the assessment be reduced for subject #1 at 11113 37 St. N.W. to \$25,000 and that the assessment be reduced for subject #3 at 10826 37 St. N.W. to \$2,000. The Board further reconfirms the findings of the MGB pertaining to the order for 2008 and 2009.

2. Subject #2 – The Board found that in order to create value on the 2 smaller strips adjacent to the golf course, the strips would have to be sub-divided in such a way that the developer could sell the parcels to the adjacent homeowners backing onto the sub-

divided pieces. It was felt that the costs associated with this process could not justify any immediate benefit.

The Board found that the larger strip of land used as a golf path adjacent to Hampton Drive was not simply a golf path however was an integral part of the Storm Water Management system in the area. It was found that this parcel could not be developed due to the restrictive utility right of way placed on the title. The above ground use as a cart path was simply a method of hiding the real purpose of the site which was an avenue for storm water below the surface.

It is the Board's Decision that the assessment be reduced for subject #2 at 10499 53 St. N.W. to \$0. The Board further reconfirms the findings of the MGB pertaining to the order for 2008 and 2009.

3. Subject #4 - The Board found that the subject was an important piece of the Storm Water Management System in the area. There was no physical access to any road in the area and it was apparent that the topography made it almost impossible to develop. This coupled with the restrictive covenants pertaining to the URW results in the subject having little market value. The notion presented by the City of Calgary that the subject site was a feeder to a lake in the area which provides benefit to the area residents is completely wrong and without foundation.

It is the Board's Decision that the assessment be reduced for subject #4 at 61 Hamptons Dr. N.W. to \$2,000. The Board further reconfirms the findings of the MGB pertaining to the order for 2008 and 2009.

Dissenting Opinion on Award of Costs:

It was strongly felt by the Presiding Officer that in this case, costs should be awarded against the City of Calgary as per MRAC Schedule 3 Part 2 totalling \$2,500 for Preparation of Hearing, First ½ day of hearing and Second ½ day of hearing.

It was felt by the Presiding Officer that there was an attempt by the City of Calgary to wear down the Complainant for the 3rd straight year on precisely the same issues with no change in the condition of the property in question. The following sums up the events that led the Presiding Officer to this dissenting decision:

1. **After three consecutive years embroiled in a dispute over assessment value, the City of Calgary sent an Intern Assessor (in training) to argue the City's position. The City had exceptionally poor arguments and/or the same arguments used in previous years.**
2. **Arguing that the City could assess Provincial property without evidence of a lease agreement in place is a misuse of the authority given to the assessment department by the City of Calgary.**
3. **Arguing that on one hand Tirion did not have a lease agreement however on the other hand determining a land value for a property not own by Tirion was incomprehensible. Further requiring Tirion to be responsible for this assessment**

did not make sense.

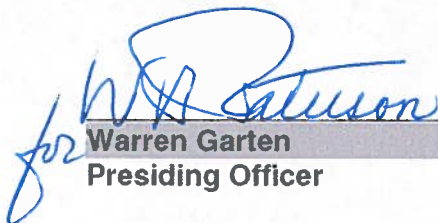
4. The City further argued that the storm water management system was considered to be a lake and is of benefit to the local residents was completely unfounded and simply a method of providing any excuse before the Board.

5. The Intern Assessor did not attempt to view the subject properties.

6. The City of Calgary did not provide comparables as it relates to their assessments.

7. The Board collectively felt that this hearing was a waste of the Boards time and an injustice to the taxpayer.

DATED AT THE CITY OF CALGARY THIS 18 DAY OF October 2010.


for Warren Garten
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.*