

**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:

***Atco Investments Ltd.(as represented by AltusGroup), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***Board Chair, J. Zezulka  
Board Member, J. Massey  
Board Member, K. Farn***

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 2012 Assessment Roll as follows:

**ROLL NUMBER: 067102400**

**LOCATION ADDRESS: 927 - 11 Avenue SW**

**HEARING NUMBER: 68336**

**ASSESSMENT: 954,000.00**

This complaint was heard on the 19 day of June, 2012, at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Two.

Appeared on behalf of the Complainant:

- *D. Genereux*

Appeared on behalf of the Respondent:

- *M. Ryan*

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

(1) At the outset of the hearing, the Complainant objected to the inclusion of certain documents contained in the Respondent's submission, specifically pages 11 to 13, and page 72 of Exhibit R-1, being the Respondent's Assessment Brief, on the grounds that the information had not been disclosed in accordance with sections 299 and 300 of the Municipal Government Act.

(2) The section 299 request was submitted to the municipality on February 22, 2012. The section 300 request was submitted on March 13, 2012.

(3) Sections 299 and 300 are reproduced as follows;

**Access to assessment record**

**299(1)** An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

**(1.1)** For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

- (a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,
- (b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and
- (c) any other information prescribed or otherwise described in the regulations.

**(2)** The municipality must, in accordance with the regulations, comply with a request under subsection (1).

RSA 2000 cM-26 s299;2009 c29 s5

**Access to summary of assessment**

**300(1)** An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

**(1.1)** For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:

- (a) a description of the parcel of land and any improvements, to identify the type and use of the property;

- (b) the size of the parcel of land;
  - (c) the age and size or measurement of any improvements;
  - (d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;
  - (e) any other information prescribed or otherwise described in the regulations.
- (2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

RSA 2000 cM-26 s300;2009 c29 s6

- (4) Section 9(4) of The Matters Relating To Assessment Complaints Regulation (MRAC) does not leave room for discretion.

*A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.*

- (5) The Complainant did not request additional information to that which was originally provided, nor did it request a compliance review under section 27.6 of MRAT, which provides a remedy when a taxpayer considers a response to an information request to be lacking or inadequate. However, this proposition has to assume that the Complainant is aware that an inadequacy exists in the first place.

- (6) In the opinion of this Board, the wording in sections 299 and 300 is clear, and leaves no room for discretion by the Assessor. The Assessor must include all documents, records, and other information relating to the subject property, as well as key factors of the valuation model in responding to a request under these sections. That applies whether or not a piece of information was specifically requested. To do otherwise is a violation of the Municipal Government Act. The Assessor could not provide any reason why the information in question was not provided when it was requested.

- (7) Section 9(4) of MRAC is equally clear. The CARB is precluded from considering any evidence that was not provided in accordance with the regulations. Accordingly, pages 11 to 13, and page 72 of R-1 are excluded from these proceedings.

**Property Description:**

- (8) The subject is an undeveloped 6,156 s.f. parcel, located in the Beltline district of south west Calgary. The lot is being used to provide parking for the Atco office buildings next door.

**Issues / Appeal Objectives**

(9) The issues of appeal is reproduced from page 8 of the Complainant's written argument, as follows;

*"There is unreasonableness on the origin of the assessed value set out as follows;*

*1. The subject site is used to provide parking for the two Atco office towers next door and should not be assessed additional value over and above the assessment of those buildings.*

*2. Reducing the assessment on the subject site to \$750 or \$1,000 will help recognize its link to the two office towers and create equity with other sites with similar linkages."*

**Complainant's Requested Value:** \$750 to \$1,000

**Evidence / Argument**

(10) The Complainant's position is that the subject property is used exclusively for parking by the tenants of the adjacent Atco office towers. The site is 'linked' to the office buildings by virtue of common ownership. The site is fenced and has a security, key activated gate that prevents public access. The Complainant further argues that the highest and best use of the site for the foreseeable future is for parking for the Atco buildings, and that the assessment is already included in the assessment of the adjoining office buildings. Finally, the Complainant asks the CARB to consider the owner's ability to pay the real estate taxes, based on the assessment. (This aspect is presumably based on the site's ability to generate income on its own merits.)

(11) In support of the requested assessment, the Complainant presented a sample of 11 'linked' parking parcels with assessments of either \$750 or \$1,000. These sites are near, but not necessarily adjoining, the development with which they are linked. Sizes of these sites ranged from 5,684 s.f. to 90,097 s.f.

(12) In response, the Respondent stated that a key issue that must be addressed is whether or not the parking provided by the linked parcel is actually required by the development, or is it simply an added amenity. Furthermore, common ownership does not, in itself, demonstrate the necessary link to qualify the site for a reduced assessment. Rather, a caveat registered against the Certificate of Title, or some similar protection tying the site to the development is required. In support of this position, the Respondent presented documentation showing a caveat protecting an agreement or parking easement registered against each of the comparable sites submitted by the Complainant.

**Board's Decision**

(13) Firstly, the CARB will dispense with the Complainant's suggestion relative to "the ability to pay the taxes." In section 460(6) of the Municipal Government Act, it states;

(6) There is no right to make a complaint about any tax rate.

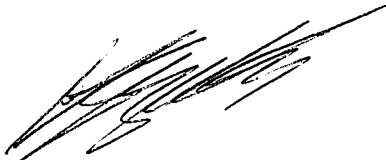
(14) A CARB has no jurisdiction to adjudicate a tax rate, or the amount of taxes.

(15) Although the Complainant presented a seemingly convincing argument for a nominal assessment, the argument fails on two grounds. Firstly, other than speculation, there is no evidence to show that the assessment of the subject is included in the assessment of the adjoining property. If it was, it would not simply be implied. Rather, it would be acknowledged by inclusion of a legal description on the assessment notice of that property. No such acknowledgement was entered into evidence by either party.

(16) Secondly, the nominal assessment being sought is a question of equity as a result of municipal policy, and not one of market value. It is clear from the evidence presented that a caveat or restrictive covenant is required to demonstrate the need for parking from an adjacent or nearby parcel. Only then does a parcel qualify for a reduced assessment such as the one being sought by the Complainant. There is no evidence to suggest that any caveat or restrictive covenant exists. Rather, the Certificate of Title submitted by the Respondent shows that no such registration exists.

(17) For the reasons outlined, this Board has no alternative but to confirm the assessment.

DATED AT THE CITY OF CALGARY THIS 4 DAY OF July, 2012.



**Jerry Zezulka**  
**Presiding Officer**

## APPENDIX “A”

**DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1.	C1 Evidence Submission of the Complainant
2.	Rebuttal Submission of the Complainant
2.	R1 Evidence Submission of the Respondent

*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. 0675/2012 - P			Roll No. 067102400	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Land only	Parking connected to a larger development	N/A.	Municipal policy