

**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:

Leslie Chow (as represented by Gary Chow), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
J. Rankin, MEMBER
A. Zindler, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	034180505
LOCATION ADDRESS:	3704 Edmonton Trail NE
HEARING NUMBER:	61162
ASSESSMENT:	\$696,500

This complaint was heard on 20th day of June, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- Mr. G. Chow – husband of the owner
- Ms. E. Kim - Tenant

Appeared on behalf of the Respondent:

- S. Powell – Assessor for City of Calgary
- S. Turner – Assessor for City of Calgary

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

Prior to the start of the Hearing, the Respondent Mr. Powell noted that the City had erroneously considered the subject to be on a corner lot and hence had assessed it an additional 5% for its location. To correct this technical error, the Respondent requested that the Board consider correcting and amending the assessment to \$663,500 from \$696,500.

Mr Powell noted that the Complainant was advised of the correction but is still not satisfied with this value, and wished to pursue his appeal before the Board today. The Complainant Mr. Chow confirmed this position.

The Board therefore continued with this appeal.

Property Description:

The subject is known as the Deer Head Cafe, a one-storey structure on 10,209 square feet (SF) of land on Edmonton Trail NE. It is zoned C-COR3 being a commercial corridor multi-use vehicular-oriented zoning, and assessed as if a corner lot and a vacant land parcel, at \$64.99 per SF. It is assessed at \$696,500 which includes a 5% premium for being a corner lot.

Issues:

1. The year-over-year percentage increase in assessment for the subject is excessive.
2. The assessment is inequitable when compared to nearby comparable properties.

Complainant's Requested Value: \$290,000 to \$350,000

Board's Decision in Respect of Each Matter or Issue:**Issue #1**

"The year-over-year percentage increase in assessment for the subject is excessive"

The Complainant Mr. Chow provided an extensive Brief C-1 outlining the reasons why he considered that the apparent 166.86% year-over-year increase in assessment from the 2010 value of \$261,000 is excessive. The Complainant noted that in 2008 the assessment on the subject was \$301,000; in 2009 it was \$334,500; in 2010 it was \$251,000; and in 2011 it was \$696,500.

The Complainant indicated in his Brief C-1 that he had discussed the assessment of his property in depth with the assessor Ms. Turner, but was still unclear as to methodologies and data sources used to assess his property.

On pages 3 and 9 of his Brief C-1 the Complainant provided a matrix analysis of 18 properties he considered comparable to the subject, and compared their individual 2010 assessments with their 2011 assessments. He concluded that the range of assessment change from 2010 to 2011 – on a percentage basis, ranged from Minus 39.25% to Positive 42.86%. More significantly, he noted that two commercial properties – one at 3708 Edmonton Trail (Kal Tire + restaurant), and 3702 Edmonton Trail (Interior Living Design Center), were adjacent to the subject. He further noted that the year-over-year assessment increase/decrease for the 3708 location was Plus 42.86% and the 3702 location was Minus 5.75%. Therefore he further concluded that the data appears to indicate that the 166.86% assessment increase for the subject, is a "huge outlier".

The Respondent generally acknowledged that the Complainant had conducted considerable research to support his position regarding percentage increases/decreases on comparable properties as compared to the subject. However, he noted that as a point of argument, it is generally-accepted that a year-over-year percentage increase or decrease pertaining to an assessment, is not a valid argument regarding an assessment complaint. Market sales are required to determine actual and comparative market value and this data is what is relevant in an assessment appeal. Therefore, he argued, the Complainant's analysis is largely invalid and the conclusions flawed and thus the Board should not accept the Complainant's position regarding this point.

In response to questioning from the Complainant as to what might have caused such a large percentage increase for the subject from 2010 to 2011, the Respondent suggested that possibly the subject had been under-assessed in 2010. However, he had no factual information to confirm or deny that possibility. In addition, in response to the Complainant's questions as to why adjacent properties were assessed at different percentage increase/decrease values than the subject, the Respondent was unable to clarify the situation.

The Board noted that while the Complainant had conducted a considerable amount of independent research regarding percentage assessment increases/decreases year-over-year,

the Respondent is correct. As a point of argument, it is a generally-accepted principle that a year-over-year percentage increase/decrease in a property's assessment, is not, of itself, a valid argument regarding an assessment complaint. The assessment process is "driven" by a multitude of market forces and factors related to market sales, and a percentage increase/decrease in assessment from year to year on any property is not a defining element in that process.

Therefore the Board considers that the Complainant's position on this issue is flawed, and the Board is thus unable to find for the Complainant on this issue.

Issue #2 "The assessment is inequitable when compared to nearby comparable properties".

On pages 4, 5, and 6 of his Brief C-1, the Complainant drew attention to 8 of the 18 properties in his page 3 matrix of comparable properties. He then proceeded in 6 of the comparables to make certain subjective assumptions as to what he considered to be "the conservative value" of improvements on them, and thence to infer a per square foot (per SF) land value for the land. He concluded pursuant to his analysis that the land value should be in the range of \$32.99 to \$43.82 per SF and not the \$64.99 per SF used to assess the subject.

The Complainant then proceeded to analyze the assessments on 3 "land only" industrial land parcels ranging in size from 5,754 SF to 16,411 SF. He divided the assessed value by the site area and developed a per square foot value for each. The values ranged from \$15.90 to \$16.70 per SF. Therefore he concluded that the subject is over-assessed at \$64.99 per SF and this is inequitable, particularly with respect to two nearby properties.

The Respondent however referred to page 19 of his Brief R-1. He introduced on page 19 a matrix analysis and critique of the Complainant's 18 comparable properties. He noted that 10 of the 18 were properties zoned not for commercial uses like the subject, but rather for industrial uses. One was zoned I-E (Industrial Edge) and the rest I-R (Industrial Re-development). He argued therefore that most of the Complainant's comparables are not comparable to the subject which is zoned C-COR3 – a specific commercial corridor zoning used along major vehicular arteries throughout the city. Therefore, he argued, at least 10 of the Complainant's comparables are largely unreliable as indicators of value for the subject.

The Respondent noted that of the remaining 8 properties in the Complainant's matrix, only 4 had been assessed as "Land Value Only" like the subject. He noted that of these 4 comparables, 3 were assessed at values ranging from \$63.59 to \$67.14 per SF – the subject being assessed at \$64.99 per SF. Therefore on the basis of this evidence - supplied by the Complainant, he considered that the subject had been equitably assessed.

The Respondent then proceeded to reference page 37 in his Brief R-1. He identified a matrix of 6 valid (as to time) time-adjusted market sales of comparable commercial properties. All were zoned using the "Commercial Corridor" C-COR land use designations. Two were zoned as C-COR1; one was zoned C-COR2; and 3 were zoned C-COR3 like the subject. The Respondent explored the specific uses related to "Restaurants" in each of the 3 C-COR zoning categories as defined in the City's Land Use Bylaw 1P2007 July 23, 2007. He concluded that this market evidence was very comparable to the subject, unlike the Complainant's comparables, and

therefore supported the assessment.

In its examination of the evidence, the Board noted a number of significant flaws in the Complainant's analytical approach.

Firstly, the Board noted that the Complainant had selected as comparable properties, sites which were not considered comparable because of their zoning. Ten of eighteen properties, (more than half) were Industrial properties whose characteristics and permitted and discretionary uses under the City's Land Use Bylaw 1P2007 are vastly different than the permitted uses for the subject.

The subject, being zoned C-COR3, and due to its location, enjoys a zoning which specifically caters to uses geared to major transportation corridors, whereas the industrial zonings do not. In the Board's view, the purpose and intent of each zone as clarified by the Respondent, is entirely different and this appears to be reflected in the separate and distinct values of each type of property in the marketplace as revealed in the evidence before the Board.

Regarding the remainder of the Complainant's comparables, those sites zoned using the C-COR categories like the subject, appeared to have been assessed similarly to the subject and the values appear to support the assessment.

Secondly, the Board notes that the Complainant arrived at Per Square Foot land values by inferring, from personal knowledge, certain values to improvements on several of his comparable properties and then subtracting the inferred value from the assessed value to arrive at an inferred land value. He then applied this inferred value to the subject and concluded an inequitable over-assessment therefrom.

And finally, based primarily on this flawed analysis, the Complainant has concluded that two properties nearby to the subject, given their apparent year-over-year percentage increases which appear to differ widely with the subject, indicate that the latter is over-assessed, and this is inequitable. The Board is not satisfied from the evidence and argument presented by the Complainant that this is so, particularly when one examines the evidence of the Respondent, which appears to indicate otherwise.

The Board concurs with the Respondent that with respect to this issue, the methodology employed by the Complainant is significantly flawed as it relates to accepted appraisal theory and practice. The Complainant's methodology for valuing the improvement on his comparables is essentially unsupported speculation, as is the Complainant's resultant valuation of the land on which the improvement sits. Therefore the Board cannot find for the Complainant on this issue.

Board's Summary Conclusions

As noted above, the Board is unable to find for the Complainant on either issue #1 or issue #2 which he raised and debated. While the Complainant obviously went to a considerable amount of effort to research, define, and debate his position, nevertheless the Complainant's methodology and conclusions are fatally flawed.

The Respondent however presented current and time-adjusted market evidence that was analyzed using industry-accepted methodologies. The conclusions drawn from this evidence appears credible and supportive of the assessed value.

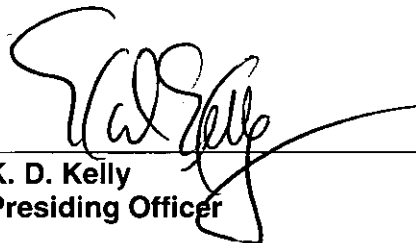
The Board also accepts that the subject is not on a corner lot and therefore should not have been assessed an additional 5% for this feature. This is clearly a factual error that the Board is prepared to correct – as recommended by the Respondent Assessor.

Therefore the Board is prepared to correct and reduce the assessment from \$696,500 to \$663,500.

Board's Decision:

The assessment is corrected and reduced to \$663,500.

DATED AT THE CITY OF CALGARY THIS 7 DAY OF July 2011.


K. D. Kelly
Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C-1	Complainant Disclosure Brief
2. R-1	Respondent Disclosure Brief

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.*