

**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:

Ed's& Embarcadero Restaurants Ltd. (as represented by H. Kim), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Mowbrey, PRESIDING OFFICER

A. Blake, MEMBER

R.Roy, 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 2012 Assessment Roll as follows:

ROLL NUMBER: 201731098

LOCATION ADDRESS: 202 17 Avenue SE

FILE NUMBER: 65391

ASSESSMENT: \$1,760,000

This complaint was heard on the 4th day of September, 2012 at the office of the Assessment Review Board located at Floor Number four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom five.

Appeared on behalf of the Complainant:

- H. Kim

Appeared on behalf of the Respondent:

- R. Farkas

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

[1] Upon questioning by the Presiding Officer, the parties indicated no objection to composition of the Board. In addition, the Board members indicated no bias on this file. No jurisdictional issues were raised at the onset of the hearing, and the Board proceeded to hear the merits of the complaint.

Property Description:

[2] The subject property is a commercial property located in the Beltline district and located at 202 17 Avenue, SE. Originally, this was a house built in 1911 that has since been renovated and converted into a restaurant.

Issues:

[3] What is the market value of the subject property?

Complainant's Requested Value: \$1,210,000.

Complainant's Position:

[4] The Complainant filed this complaint on the basis that the subject property assessment of \$1,760,000 was inequitable and in excess of market value. In support of this position, the Complainant presented the Board with a 144 page evidence package marked as Exhibit C-1. In addition, the Complainant presented the Board with a 4 page rebuttal package marked as Exhibit C-2 plus a number of color photographs.

[5] The Complainant stated the City's evidence shows that there should be differences in the typical rental rates along 17th Avenue. The Complainant spoke about other properties located near the subject property.

a) 229 17th Av SE rental rate \$14.29 per square foot (psf) property sat vacant for a long time(Exhibit C-1 pages 40-42).

b) 121 17th Av SE rental rate \$18.50 psf (Exhibit C-1 page 43).

c) 1801 1st St SE rental rate \$15.75 psf (Exhibit C-1 page 44-45).

d) 129 17TH Av SE rental rate \$13.33 psf (Exhibit C-1 pages 46-47-97).

[6] The Complainant advised the Board that the assessment of \$30.00 psf is far in excess of market rent for restaurant space in this area.

[7] The Complainant referred to a previous LARB decision, citing excerpts:

a) The Complainant did her own market investigation, using what sources were available to her. Documentation consisted of emails and letters from commercial leasing agents and property owners. Recent leasing activity in the prime "Uptown 17th" area ranged between \$40.00 and \$63.00 psf. The Respondent did not dispute this, but stated that this was superior quality space.

b) The \$29.00 psf NARV under-assesses superior business premises in BL6, over-assesses zone BL7 and appears to do the same for BL8 where the subject is located.

c) The LARB Board took the average of these three leases as being the best indicator of value for the subject main floor space. The resulting average was \$18.30 psf. (Exhibit C-1 pages 98-102).

[8] The Complainant advised the Board that the above was the argument with the respect to the LARB complaint, the same holds true for the present CARB complaint. The LARB request was for \$14.00 psf, whereas the the LARB found that \$18.30 was more justified.

[9] The Complainant referred the Board to the assessment detailed sheets, which showed the City was using \$30.00 psf assessment for the restaurant and \$3.00 psf for the storage area to arrive at an assessment of \$1,760,000 for the subject property. The Complainant did not dispute the storage area rental rate, the vacancy allowance nor the capitalization rate. (Exhibit C-1 pages 3-4).

[10] The Complainant referred the Board to the Complainant's assessment on the subject property, based on an average of \$18.30 psf. The \$18.30 psf is based on the LARB #0844-2012-B decision, pursuant to the appeal of the 2012 business assessment, heard June 21, 2012. (Exhibit C-1 page 104).

[11] The Complainant advised the Board that commercial properties contained in the Beltline were assessed on value based on the income approach or value as vacant land, whichever is greater. The base land rate in the Beltline is \$155.00 psf. A 5% premium is applied for corner lots. The Complainant noted that in a previous ARB appeal on the subject property, a 10% reduction in the land rate was granted for setbacks and a negative influence due to the proximity of the detox centre and shelter. The Complainant calculated the requested assessment using \$155.00 psf for the base land, 5% premium for the corner lot and a 10% negative adjustment for landlocked and/ or setbacks. The requested assessment is calculated to be \$1,214,224 based on the land value. (Exhibit C-1 pages 3,4 and 104).

[12] During rebuttal, the Complainant disagreed with the Respondent on the value of the traffic count. In addition, the proximity to the Casino and Saddledome means it is either feast or famine. The Casino has stolen business from the subject due to subsidized meals being offered by the Casino. Parking has an impact on the subject especially when there is an event at the Saddledome. The Complainant stated there was little parking for the subject property's business. The Complainant stated the City is completely wrong on assessing restaurants uniformly on 17th Avenue and in addition, there is a huge problem with parking.

[13] During questioning by the Board, the Complainant stated that the subject property was

surrounded by new development to the extent, it is shut in on two sides.

[14] During cross examination, the Complainant questioned the Respondent regarding the traffic exposure as being as important as pedestrian traffic and how can you compare the two? The Respondent stated that with the high traffic count, it is the exposure and exposure is important.

[15] During cross examination, the Complainant questioned the Respondent regarding the parking available. The Respondent stated the subject property had 26 stalls and the Complainant stated the subject property had 4 stalls. The Respondent answered that the City considered the subject had adequate parking.

[16] During cross examination, the Complainant questioned the range of rental rates used in constructing the typical rental rates. The Complainant asked that if the range was from \$20.00 psf to \$54.00 psf, on what basis does the City justify the \$30.00 psf typical assessment rental rate? The Respondent answered that while he did not prepare this chart, it is the judgement of the City that this is what restaurant leases go for.

[17] During argument and summation, the Complainant reiterated that all the restaurants along 17th Avenue should not be assessed in the same manner. The fact that the Respondent's evidence of a range from \$20.00 psf to over \$54.00 psf certainly makes the point of the wide variance in lease rates on 17th Avenue.

[18] The Complainant requests the Board to reduce the 2012 assessment to \$1,214,224, based on land value.

Respondent's Position:

[19] The Respondent presented a 72 page assessment brief to the Board marked as Exhibit R-1.

[20] The Respondent explained to the Board that the subject property assessment and other similar assessments were prepared using the income approach assessment and methodology for value. The City of Calgary assessment business unit collects income information via the annual Request For Assessment Information (ARFI) sent to property owners and managers. This form includes all summary points that pertain to a lease agreement. The form includes typical lease rates, vacancy allowances, and operating cost allowances are all derived from the analyses of these documents. Most income producing properties are valued based on their income potential using a regressed typical lease rate by observing market triple net leases from 2009 to 2011.

[21] Direct capitalization is the method employed to value all the properties in the commercial retail inventory valued using the income approach. This involves capitalizing the typical net operating income by a typical overall capitalization rate determined from comparable sales of similar properties. (Exhibit R-1 page 4).

[22] The Respondent pointed out pictures and maps, both showing the subject property and its proximity to the Saddledome, the LRT track and the subway station. (Exhibit R-1 pages 6-10, 13-19).

[23] The Respondent advised the Board regarding the subject property assessment details outlining the typical rental rate of \$30.00 psf for the restaurant, \$3.00 psf for storage, a 10% vacancy allowance and a 7.75% capitalization rate. The direct capitalization of net operating income suggests an assessed value of \$1,760,000 for the subject property. The Respondent stated that \$30.00 psf does reflect rental rate in the area. (Exhibit R-1 pages 11-12).

[24] Since the Complainant stated that parking was an issue, the Respondent showed a chart to the Board regarding the amount of parking in proximity to the subject property. The Respondent advised the Board that the subject property's parking issue was not considered inadequate. (Exhibit R-1 page 35).

[25] The Respondent showed the Board the subject property's website, stating the proximity to the Saddledome, Stampede Grounds and LRT. (Exhibit R-1 page 36).

[26] The Respondent produced equity comparables to the subject property, showing restaurants were all assessed using the typical restaurant rental rate of \$30.00 psf. (Exhibit R-1 pages 38-40).

[27] The Respondent presented 5 restaurant lease comparables that determined the typical rental rates for restaurants on 17th Avenue. The average rental rate was \$35.18 psf and the mean rental rate was \$35.09 psf. The City determined the typical restaurant rental rate should be \$30.00 psf. (Exhibit R-1 page 41-46).

[28] The Respondent showed the Board photographs of the Complainant's comparables. (Exhibit R-1 pages 47-49).

[29] The Respondent advised the Board about "fairness and equity in mass appraisal." The assessment business unit (ABU) is bound by the *Municipal Government Act (MGA)* and the associated regulations to prepare assessments as set out in the legislation. (Exhibit R-1 page 58).

MRAT 2(a) states;

"An assessment of property based on market value

- a) must be prepared using mass appraisal,
- b) must be an estimate of the fee simple estate in the property,
- c) must reflect typical market conditions for properties similar to that property.

[30] During argument and summation, the Respondent indicated that \$30.00 rental rate for the subject property is equitable.

[31] The Respondent stated that some of the Complainant's evidence was anecdotal such as emails and there was no leasing documents for the Complainant's comparables.

[32] The Respondent stated that the two properties of the Complainant are now consolidated as one and there is no evidence from the Complainant to show "landlocked" is a problem. The subject property has good access and good exposure.

[33] The Respondent stated the previous decisions the Complainant used would not be the same for this appeal.

[34] In summary, the Respondent asked the Board to confirm the 2012 assessment of \$1,760,000.

Board's Decision:

[35] The decision of the Board is to reduce the 2012 assessment of \$1,760,000 to \$1,340,000.

Reasons for the Board's Decision:

[36] The Board reviewed both the Complainant's and the Respondent's evidence and found the Complainant's evidence to be more compelling.

[37] The Board did not agree with the Respondent that all restaurants on 17th Avenue should be assessed in the same manner. The Board agrees with the Complainant that the Beltline district is not necessarily homogeneous and that all portions of the Beltline are not uniformly the same. The City chose all the lease rental rates from the SW district of the Beltline, whereas the subject property and other comparables are in the SE district.

[38] The Board was not persuaded by the Complainant's income approach based on market rents in the SE district. There was insufficient leasing details surrounding the Complainant's comparables to make the income approach credible.

[39] The Board was persuaded that commercial property in the Beltline district should be assessed on value income or value as vacant land, whichever is greater. Vacant land value is applied when the land value is greater than the value using the income approach.

[40] With the Board not accepting the Respondent's or the Complainant's assessment based on income, the Board accepts the land rate of \$155 per square foot for commercial land in the Beltline.

[41] The Board accepts the land area as 8,246 square feet and multiplies the area with \$155.00 psf to arrive at a figure of \$1,278,130. The Board accepts the 5% corner adjustment for an additional \$63,907. The Board does not accept a 10% adjustment for landlocked, setbacks or negative influences. The final figure for the subject property based on land value is \$1,342,037 truncated to \$1,340,000.

DATED AT THE CITY OF CALGARY THIS 3 DAY OF October 2012.



Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C-1 114 pages	Complainant's Disclosure
2. C-2 4 pages	Complainant's Rebuttal
3. R-1 72 pages	Respondent's Disclosure

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.*