

**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(4), Revised Statutes of Alberta 2000 (the *Act*).

between:

***Heritage Station Inc., COMPLAINANT,
as represented by Altus Group***

and

The City Of Calgary, RESPONDENT

before:

***T. Helgeson, PRESIDING OFFICER
Y. Nesry, MEMBER
E. Reuther, 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: 201125234 and 201125242

LOCATION ADDRESS: 8740 Horton Road SW, and 8850 Horton Road SE

HEARING NUMBERS: 63035 and 63036

ASSESSMENT: \$1,560,000, and \$1,640,000, respectively.

These complaints were heard on Thursday, the 10th of November, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *D. Genereaux*

Appeared on behalf of the Respondent:

- *E. D'Altorio*
-

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

At the commencement of the hearing with respect to 8740 Horton Road, the parties informed the Board that the evidence and the arguments were the same for both 8740 Horton Road SW and 8850 Horton Road SW.

Property Description:

The subject properties are two adjacent parcels of vacant land. The first, at 8740 Horton Road SW, is 33,724 sq. ft. in area. The second property, at 8850 Horton Road SW, is 37,439 sq. ft. in area. The subject properties have been designated Direct Control C-4 pursuant to Land Use Bylaw 2P80, and both have been classified for assessment purposes as "non-residential," with the land use shown as "commercial."

Regarding Brevity:

In the interests of brevity, the Board will restrict its comments to those items the Board finds relevant to the matters at hand. Furthermore, the Board's findings and decision reflect the evidence presented and examined by the parties before the Board at the time of the hearings.

Issue: Have the subject properties been improperly classified as "non-residential?"

Complainant's Request: That the classification of the subject properties be changed from "non-residential" to "residential."

Summary of the Complainant's Submission:

The subject properties are part of a condominium complex known as Heritage Station. Horton Road lies on the west side of Heritage Station, with Macleod Trail on the east. The complex was designed in accordance with the Respondent's long-range plan to locate high-density residential development near LRT lines. The south LRT line is just across Horton Road from the complex. A pedestrian bridge crossing Horton Road and the LRT tracks for access to the LRT station was a condition of the development permit for the complex, and funds have been allocated for the bridge by the developer. Recently, the Respondent has expressed interest in building the bridge.

Two high-rise condominiums have already been built at the north and south ends of the complex. Condominium towers are planned for both the subject properties, to be known as "London at Heritage Station," to reflect the convenience of boarding a train mere footsteps from home. Development permits are in place, but things are static now, and further development is waiting for the economy to turn around. To sum up, the subject properties were planned to be residential from the beginning, and there is a plethora of documents to show the intended use

for the complex, and the subject properties. It is difficult to understand why the subject properties have been classified "non-residential."

Summary of the Respondent's Submission:

No building plans have been submitted for the subject properties, and no building permits have been issued. The subject properties are designated Direct Control-C4 pursuant to the Land Use Bylaw. The C-4 General Commercial District provides for commercial uses. Until the condominiums are built, the subject properties are not residential. Until residential development takes place, the subject properties can be used for other purposes.

Summary of the Complainant's Rebuttal

The plans are in place. A development permit has been issued. The planning and design of the project, and the process to gain approval of the plans and the development permit took years. Community associations became involved, and their concerns had to be addressed. Any changes to the plans would require going through the whole process again. The subject properties were planned as residential from the beginning. The only commercial use in the entire complex is the Royal Bank. Simply put, the question is whether, in all probability, the subject properties will be used for residential purposes, and therefore should be classified "residential."

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

The Board finds the Complainant's evidence persuasive. When properties are vacant, it is needful to examine what use, if any, has been planned for them. In this respect, the Board finds the Complainant's evidence persuasive. The plans provided clearly show that the intended use of the subject properties at this time, and for the foreseeable future, is residential. Although Direct Control Bylaw #111Z2003 includes the permitted and discretionary uses of the C-4 General Commercial Land Use District, it also includes "the additional Discretionary Uses of apartment buildings, stacked townhouses and townhouses." In a similar vein, the rest of the Bylaw is shot through with provisions intended for residential development. It is only reasonable that the land uses of the C-4 Land Use District were included in the Direct Control Bylaw, because in a large residential complex, some commercial uses, such as convenience stores, barber shops, etc., are desirable. The inclusion of C-4 land uses in Bylaw #111Z2003 does not, by any stretch of the imagination, mean that the subject properties will be used for commercial purposes. Finally, were the Complainant to seek to develop the subject properties for some other use, the multiplicity of hurdles in the Respondent's approval process would have to be traversed all over again.

Board's Decision: The assessment classification of the subject properties is hereby changed from "non-residential" to "residential."

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



T. Helgeson
Presiding Officer

Dissenting Opinion of Member E. Reuther Regarding Hearings No. 63035/036 on November 10, 2011: London Condominiums at Heritage Station at 8740 & 8850 Horton Rd. S.W., Calgary

I find that I must disagree with the Majority to change the class from Non-Residential to Residential.

[1] The purpose of assessment is to determine market value. This can be approached through the Direct Sales, Cost Approach or Income Approach. The subject is assessed as Non-Residential vacant land on the Direct Sales Approach to value.

[2] The Complainant argues that because of the surrounding towers at 8880 and 8710 Horton Rd. S.W. have been completed, and there are plans in place to complete the subject properties, they also should be classed as Residential. This in anticipatory only and is not sufficient, in my estimation, to allow a change to Residential.

[3] The LUD (Land Use Designation) of the subjects are DC (Direct Control) C-4 (Commercial 4) Non-Residential. This class allows for many uses which can include a wide variety of commercial applications as well as Discretionary Uses, such as "Apartment buildings, townhouses and stacked townhouses."

[4] The Respondent argued that no building plans have been submitted to the City for approval, which the Complainant acknowledged was so, and that this would be required to show full intent to pursue the residential towers that had been originally sought for the site.

[5] The Respondent noted that a Calgary Herald article dated August 29, 2011, for the development (C-1, Pgs. 14, 15) show that the future of the proposed residential site is tentative. Page 14 states, "...with only two high-rises complete and about 75% occupied, according to Westcorp, and timing of the rest uncertain, the city decided to build the (pedestrian) bridge itself, using Westcorp's security payment..." This is a clear indicator that the developer is not rushing to complete the project, may change its plans, and the City took it upon itself to provide the residents of the current development with the needed pedestrian bridge access using the developer's funds to do so.

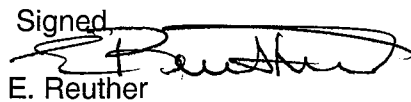
[6] Also, on Page 15, the article states, "The first two towers were completed amid the economic downturn. As things recover, Westcorp is now *mulling* (emphasis added) when to proceed with the third and fourth towers..." This also points to the uncertainty of the final outcome of the project. As has happened with other developments, the developer may change some, or all, of the final product to be built. A large office /commercial tower, with or without residential, for one or more of the two sites may be preferable. Until plans are registered, sales begin, and construction starts, there is no certainty.

[7] The Respondent provided two examples (R-1, Pgs. 25 -27) of other developments (Stanley Square and Opus Campus) that had been proposed and were subsequently cancelled because of a change by the developer and / or economic conditions. CARB Decision 1356/2010-P on Pages 29-31 of R-1 also reflects changing economic realities of this type of major project.

[8] Finally, I agree with the findings of *Justice Acton in Court of Queen's Bench* action dated July 2005 between *697604 Alberta Ltd. as Applicant, and The City of Calgary and the Municipal Government Board as Respondents*, where he says at Para. "[27] For example, the second

factual conclusion reached by the MGB reads: "Capital improvements are an assessable part of real estate." I accept the Applicant's submission that this is only so once the improvements have been done and cannot operate on an anticipatory basis. Circumstances could easily have arisen in which the improvements might never have been done. In my view, it was unreasonable for the MGB to speculate about what might happen in the future...". It is my opinion that this is the same situation in this instance; therefore the Residential class is not appropriate.

Signed



E. Reuther

Exhibits, two identical sets, one for each hearing:

C-1, Complainant's submission

R-1, Respondent's Assessment Brief

C-2, Complainant's Rebuttal

<u>Appeal type</u>	<u>Property type</u>	<u>Property sub-type</u>	<u>Issue</u>	<u>Sub-issue</u>
CARB	Residential	Vacant Land	Development Land	Classification

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.*