

## **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:

***Horts Management ULC. (as represented by Assessment Advisory Group Inc.),***  
**COMPLAINANT**

and

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

before:

***K. D. Kelly, PRESIDING OFFICER***  
***R. Roy, BOARD MEMBER***  
***P. McKenna, BOARD 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 2013 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>200660645</b>
<b>LOCATION ADDRESS:</b>	<b>5375 – 68 AV SE</b>
<b>FILE NUMBER:</b>	<b>70420</b>
<b>ASSESSMENT:</b>	<b>\$5,100,000</b>

This complaint was heard on 22<sup>nd</sup> day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *D. Bowman – Assessment Advisory Group Inc.*

Appeared on behalf of the Respondent:

- *G. Jones – Assessor – City of Calgary*
- *L Wong – Assessor – City of Calgary*

### **Regarding Brevity**

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None

### **Property Description:**

[3] The subject is a 2004 vintage 33,743 square foot (SF) auto repair (KAL Tire) complex on 179,010 SF (4.11 acres) parcel in the Great Plains industrial area. It is situated immediately south of the former SMED building on SMED Lane SE (5375 – 68 AV SE) and just east of 52 ST SE. The subject is composed of 20,072 SF of auto mechanical repair space, assessed at \$14 per SF, and 13,671 SF of office space assessed at \$10 per SF. The quality rating of the subject is C+ and it was assessed using the Income Approach to Value methodology at \$5,100,000.

### **Issue:**

[4] What is the correct dollar value per square foot applicable to the subject when calculating its assessed value using the Income Approach to Value methodology?

### **Complainant's Requested Value:**

[5] The Complainant requests that the assessment be reduced to \$4,609,000 based on a rent rate of \$12 per SF instead of \$14 per SF for the 20,072 SF of auto repair space in the building.

**Board's Decision:**

[6] The Board confirmed the assessment at \$5,100,000.

**Legislative Authority, Requirements, and Considerations:**

[7] Under the *Municipal Government Act* (MGA), the Board cannot alter an assessment which is fair and equitable.

[8] MGA 467 (3) states:

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration the valuation and other standards set out in the regulations, the procedures set out in the regulations; and the assessments of similar property or businesses in the same municipality."

[9] The Board examines the assessment in light of the information used by the assessor and the additional information provided by the Complainant. The Complainant has the obligation to bring sufficient evidence to convince the Board that the assessment is not fair and equitable. The Board reviews the evidence on a balance of probabilities. If the original assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the Board will not alter the assessment. Within each case the Board may examine different legislative and related factors, depending on what the Complainant raises as concerns.

**Positions of the Parties****(a) Complainant's Position:**

[10] The Complainant provided his Brief C-1 and argued that the rent rate of \$14 per SF, applied as a "typical" value to the 20,072 SF of repair shop, is excessive and should be \$12 per SF. He argued that in his opinion, and based on his own research, the value should be \$12 per SF. He concluded there were "economies of scale" applicable to comparable buildings exceeding 5,000 SF in size; he noted the subject at a total of 33,743 SF – office and tire shop, was certainly in excess of 5,000 SF. He advised that he had selected a "break point" of 5,000 SF based on his own research, and not on any methodology used by the Respondent.

[11] The Complainant provided a copy of the City's "Assessment Request For Information" (ARFI) as completed by the building owners. The ARFI demonstrated the subject's actual current ten year lease, based on a 2010 extension of a former lease, is \$11.62 per SF. He noted that the operating ("op") costs were included in the \$11.62 amount.

[12] The Complainant argued that the 2013 assessment is incorrect because it is greater than the 2012 market value of the subject since the rental rates used by the City to calculate the

assessment, exceed "typical" rents for this type of property. He argued that the City's 2012 assessment reports indicate to him that properties over 5,000 SF have a median assessed rate of \$12 per SF. He also argued that another KAL Tire location at 7373 – 11 ST SE is assessed at \$12 per SF because it is over 5,000 SF at a total of 8,891 SF.

[13] The Complainant provided a copy of a City list of forty-one "Auto Mechanical Repair" lease comparables compiled by the City from the its 2012 database (last year) which demonstrated median "typical" rent values of \$14.30 per SF. From this list of forty-one sites, the Complainant extracted fifteen properties having over 5,000 SF of auto repair space, and concluded from analysis of their lease rates that the median rate was \$12.25 per SF. He concluded that last year's 2012 median lease rate of \$12.25 should be rounded down to \$12.00 per SF and applied to the calculation of the current 2013 assessment.

[14] The Complainant requested that the assessment be reduced to \$4,609,000 on the basis of \$12 per SF for the auto repair portion of the building.

**(b) Respondent's Position:**

[15] The Respondent presented his Brief R-1 and argued that the City did not calculate the assessment using a "break point" in building size at 5,000 SF as proposed by the Complainant. He clarified that the current lease rate of \$11.62 paid for the subject reflects a particular business arrangement between the current owner of the building and its former owner, now tenant, KAL Tire. He advised that for assessment purposes, the City does not consider this lease to be an "arms length" lease and would not have used it in its calculations of "typical" lease value for either the subject or comparable space throughout the city.

[16] The Respondent argued that the Complainant is incorrect in suggesting a comparable KAL Tire outlet at 7373 – 11 ST SE is assessed at \$12 per SF because it is over 5,000 SF. He provided a copy of the 2013 "Non-Residential Properties – Income Approach Valuation" calculations for that site on page 27 of R-1 and noted that the rate was \$14 per SF. He also provided the same details of the 2013 assessment calculations for three other KAL Tire sites at 360 Shawville BV SE; 3708 Edmonton TR NE; and 10999 – 40 ST SE, noting that all three were assessed using \$14 per SF.

[17] The Respondent provided the Alberta Datasearch sheet describing the sale of the subject on April 25, 2007. He referenced under "Descriptive Remarks" the notation that "the sale involves a Vendor Lease back". He argued that the current lease value of \$11.62 referenced and relied upon by the Complainant, is not an "arms length" lease, and is invalid for assessment purposes.

[18] The Respondent provided a matrix of the City's current "2013 Auto Repair Rental Rate Analysis" details. It identified thirty-six locations and contained lease values ranging from \$6.57 per SF to \$26.00 per SF and leasable areas ranging in size from 750 SF to 17,450 SF. He

noted that the median lease rate is \$14.40 per SF and the average rate is \$15.31 per SF. He argued that this data supports the assessment.

[19] The Respondent argued that every year is a new assessment year and the City is required to use the most current data available, and unlike the Complainant, it has done so. The rates applied to the subject, and all other similar properties in the city, reflect current market data as gleaned from ARFI documents obtained from property owners. He reiterated that the City does not assess auto repair shops by size, and therefore the subject's assessment is correct, fair, and equitable when compared to all other similar properties in the city. He requested that the Board confirm the assessment at \$5,100,000.

**Board's Reasons for Decision:**

[20] The Board finds that unlike the Complainant's methodology, the Respondent did not assess the subject, or any comparable auto repair properties in the city, by size, but instead assessed the properties based on current typical lease values gleaned from the marketplace using the City's property-owner completed ARFI documents.

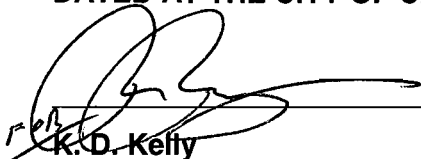
[21] The Board concurs with the Respondent that because the subject's current lease arrangement results from a "leaseback" of the site pursuant to its purchase/sale in 2007, the lease value of \$11.62 per SF relied on by the Complainant, is not considered an "arms length" lease. Therefore it is an invalid lease for assessment purposes, and should not have been relied upon by the Complainant.

[22] The Board finds that while the Complainant provided outdated prior-year 2012 data showing \$12 per SF, the Respondent provided the most current typical 2013 lease data showing \$14 per SF. The latter supports the \$14 per SF used to assess the subject.

[23] The Board finds that even when the single *Post Facto* lease is removed from the Respondent's list of leases, the remaining range of lease values, and the median value taken there from, continues to support the assessment.

[24] The Board finds that the Complainant provided insufficient information to demonstrate that the assessment is either incorrect, inequitable, or unfair.

DATED AT THE CITY OF CALGARY THIS 20<sup>th</sup> DAY OF August 2013.

  
K. D. Kelly

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C-1	Complainant Disclosure
2. R-1	Respondent 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.*

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<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	commercial	Auto repair shop	market value	"typical" lease rate