

## **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:**

***Lansdowne Equity Ventures Ltd.***  
***(as represented by Assessment Advisory Group Inc.), COMPLAINANT***

**and**

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

**before**

***L. Yakimchuk, PRESIDING OFFICER***  
***A. Zindler, BOARD MEMBER***  
***J. Rankin, 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:

**ROLL NUMBER:** 090041997  
**LOCATION ADDRESS:** 4344 Macleod Tr SW  
**FILE NUMBER:** 70781  
**ASSESSMENT:** \$7,600,000

This complaint was heard on June 12, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- D. Bowman, Assessment Advisory Group Inc. (AAG)
- T. Youn, AAG

Appeared on behalf of the Respondent:

- R. Farkas, Assessor, City of Calgary

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

[1] City of Calgary assessor, R. Farkas, asked the Board not to hear the Complainant's submission because the signatures of the presenters had been received after the disclosure deadline. He argued that it was important for each party to know specifically who might be appearing to present a complaint or to respond to it.

[2] The Complainant had sent the signatures with a covering letter stating that it had come to their attention that the signatures had not been sent with the document owing to a technical problem.

[3] Matters Relating to Assessment Complaints Regulation (MRAC) 8(2)(a)(i) states that

*If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:*

*(a) the complainant must, at least 42 days before the hearing date,*

*(i) disclose to the respondent and the composite assessment review board the documentary evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond or rebut the evidence at the hearing,*

[4] The Board found that there is an MRAC requirement for disclosure of evidence, including signatures of *witnesses* at the hearing, at least 42 days prior to the hearing date. The Board discussed (a) whether an agent was a witness or a presenter, and (b) the purpose of the disclosure deadline which provides ample opportunity for the respondent to prepare a rebuttal to the complaint. Because the disclosure arrived 42 days prior to the hearing, there was substantial compliance with MRAC. As agent authorization was in place and the signatures had arrived prior to the hearing, the Board found that the Agents present were authorized to present the case at the hearing and were allowed to present the Complainant's case.

**Property Description:**

[5] The subject property is assessed as a 36,744 sf freestanding retail property on Macleod Trail SW, consisting of a recreational space which houses a World Health Gym and three restaurants. The property is accessed from the street level and from the rear parking area.

**Issues:**

[6] Is the subject property assessed at the correct rate? Should the recreational portion be assessed at the mid ranges for recreational property of this type because it is below grade level?

**Complainant's Requested Value: \$5,920,000**

**Board's Decision:**

[7] The Board confirms the assessment at \$7,600,000.

**Legislative Authority, Requirements and Considerations:**

The Composite Assessment Review Board (CARB) derives its authority from the Municipal Government Act (MGA) RSA 2000 Section 460.1:

(2) Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

For the purposes of this hearing, the CARB will consider MGA Section 293(1)

In preparing an assessment, the assessor must, in a fair and equitable manner,

- (a) apply the valuation and other standards set out in the regulations, and
- (b) follow the procedures set out in the regulations.

Matters Relating to Assessment and Taxation Regulation (MRAT) is the regulation referred to in MGA Section 293(1)(b). The CARB decision will be guided by MRAT Section 2, which states that

An assessment of property based on market value

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

and MRAT Section 4(1), which states that

The valuation standard for a parcel of land is

- (a) market value, or
- (b) if the parcel is used for farming operations, agricultural use value.

**Position of the Parties****Complainant's Position:**

[8] Mr. D. Bowman, AAG, presented photographs showing that the health club portion of the property was accessed from the back parking lot through a door that was lower than the street

level. He also presented photographs of the street entries of the three restaurants also in the strip.

[9] Mr. Bowman stated that the health club portion of the property is currently assessed at \$14/sf, which is the top end of the recreational assessment for "A-" properties. He argued that the rate should be \$10/sf because the gym is below grade level.

**Respondent's Position:**

[10] Mr. R. Farkas, City of Calgary assessor, presented an Assessment Request for Information which reported that the World Health Club located in the gym was achieving rents of \$19/sf, based on a 2009/04/01 renewal for a 10 year term. It is assessed at \$14/sf.

[11] Mr. Farkas argued that "below grade" means that a facility is mainly below the level of the ground, with minimal window space and little access to natural light or view. He argued that this property is at ground level, has good window space and access to natural light and view, and has good access from the parking lot. He stated that street level is not necessarily "grade level".

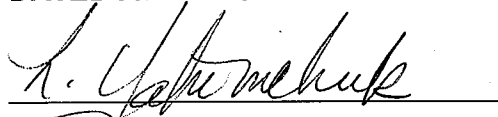
**Board's Reasons for Decision:**

[12] The Board examined the photographs presented by both parties and found that the subject property is built with accesses at both street level on the street, and ground level from the parking lot.

[13] The Board found that there were no lease comparables presented by the Complainant to support the request for reduction.

[14] The Board found that the recreational facility was equitably assessed within the parameters for this sort of property, and that "below grade" was not a consideration in this case.

DATED AT THE CITY OF CALGARY THIS 16<sup>th</sup> DAY OF July 2013.



L. Yakimchuk

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. R1	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.*

<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	Retail	Free standing	Income Approach	Lease rate