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:

The Golden Age Club (as represented by J. Anderson), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
A. Wong, BOARD MEMBER
R. Kodak, 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 NUMBERS:	**068532928** **068532829**
LOCATION ADDRESS:	**200 – 610 – 8 AV SE** **100 – 610 – 8 AV SE**
FILE NUMBERS:	**71519** **71521**
ASSESSMENTS:	**$463,000** **$403,500**

This complaint was heard on 23rd day of September, 2013 at the office of the Assessment Review Board located at Floor No. 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *J. Anderson – Director – Golden Age Club*

Appeared on behalf of the Respondent:

- *B. Tang – 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 subjects are 1,948 square foot (SF) (unit 200) and 1,691 SF (unit 100) areas used for commercial purposes as integral (non-subdivided) parts of two condominium units situated in a multi-use high rise building. The two subject areas are held by the Golden Age Club (GAC) under a long-term lease from the City of Calgary. The lease commenced in 1979 and continues to January 2039. The upper portions of the building - floors 3 to 15, are residential condominium units and are said to operate in conjuction with the City's long range "social programs and planning" for East Village. The subjects are located at the intersection of 6th Street at 8th AV SE in the East Village area of Downtown (DT3) Calgary.

[4] Unit #200 (file 71519) has a total of 12,282 square feet (SF) of which 1,948 SF is identified by the City as a taxable sub-account, and occupied by the "East Calgary General Store". The remaining 10,334 SF is exempt space assessed as "residential" (actual use uncertain) pursuant to certain of the City's long range "social programs and planning" for East Village. The programs are reported by the Complainant to be jointly operated and monitored by the City's Social Services Department and the City's Parks Department. The commercial portion of Unit #200 is assessed at $463,000.

[5] Unit #100 (file 71521) has a total of 19,000 square feet (SF) of which 1,696 SF is identified by the City as a taxable sub-account, and occupied by the "Corner Drug Store". The remaining 17,304 SF is exempt space assessed as "residential" (actual use uncertain) pursuant to certain of the City's long range "social programs and planning" for East Village as described above in paragraph [4]. The commercial portion of Unit #100 is assessed at $403,500.

Issues:

[6] With regard to the subject condominium units #200 and #100 the Complainant argued the following issues:

1) Should the subjects be exempt from taxation?

2) Should the subjects be assessed by comparing them to freehold, separately-titled downtown commercial properties or to residential properties such as they were for 27 years prior to 2011?

3) What is the correct square foot floor area of the subjects for assessment purposes?

4) Should the subjects be assessed using $100 per SF based on their economic rents, and if not, what is the correct value per SF and the resulting correct assessed value?

Complainant's Requested Value:

[7] The Complainant suggests that the subjects should be assessed based on $100 per SF instead of the assessed $238 per SF.

Board's Decisions:

[8] The Board decided as follows;

[9] Issue #1

While the Board considers the Complainant's argument that the two subjects should be tax-exempt properties has merit, the Board finds it received insufficient information to make any determination regarding this issue.

[10] Issue #2

While the Board considers the Complainant's argument that the two subjects should continue to be assessed as residential properties as they were for 27 years has merit, the Board finds it received insufficient information to make any determination regarding this issue.

[11] Issue #3

The Board finds that based on the evidence provided by the Complainant who measured the "as built" drawings for the two subjects, and which evidence the Board accepts, the correct assessable floor area for the two subjects are – File 717519 – Unit #200 – 1,734 SF; and, File 717521 – Unit #100 – 1,509 SF.

[12] Issue #4

The Board finds that the proposal by the Complainant to assess the two subjects using a calculated "Market Rent" at $100 per SF is unsupported by the evidence. The Complainant provided no market evidence to support his proposed 7% Capitalization Rate, nor did he provided any Op Costs,

Vacancy rates, or other essential values necessary to support a reliable Income Approach to Value calculation.

[13] The Board accepts however the Complainant's evidence regarding his calculated and corrected areas under lease (from the "As-Built" drawings), as well as the current contracted triple net rents. This evidence demonstrates to the Board that a more accurate value for the two subjects is $16.46 per SF. This value is also supported by the City's 2013 "Business Assessment" for the subject Unit #100 which was assessed at $14 per SF. Using the value of $16.46 per SF, and the Complainant's corrected assessable areas for each of the two subjects, the Board therefore **reduced** the assessments (rounded values) for the two subjects as follows:

(a) For file #71519 (200 – 610 – 8 AV SE) the assessment is reduced to $28,000.

(b) For file #71521 (100 – 610 – 8 AV SE) the assessment is reduced to $24,000.

Legislative Authority, Requirements, and Considerations:

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

[15] 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."

[16] 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

Issue #1 - "Should the subjects be exempt from assessment and taxation?"

Complainant's Position:

[17] The Complainant clarified that the two subjects are small but defined areas which are integral and unsubdivided parts of two larger separate, but contiguous, main floor condominium units. A part of unit #200 contains the "East Calgary General Store" whereas a part of unit #100 contains the "Corner Drug Store". He clarified that these two "commercial" operations were installed at the request of the City of Calgary some 27 years ago as a condition of the City of Calgary leasing GAC this space.

[18] The Complainant noted that about 27 to 30 years ago, the GAC had been forced to relinquish its former site along Bow Trail so it could be widened by the City. He noted that through certain significant financial inducements from the City at that time, the GAC re-located to its current site, with the proviso that these two commercial operations be permitted to operate there in units #200 and #100 (the subjects).

[19] The Complainant clarified that pursuant to agreement with the City of Calgary the subjects are "held under the terms of a long term lease from the City of Calgary that began in 1979 and continues to January, 2039". He clarified that the operations of the GAC and its facility (the subjects) are;

> "....regularly monitored by the City Social Services Department and the Parks Department. Provisions of the 1979 lease prevent GAC from changing tenants of the floor area" (subject of this appeal) "without the consent of the City. The GAC has for many years received support funding from the City in recognition of social programs offered. And, from 1985 to 2011 inclusive the assessment classification for the floor area in roll numbers 068532828 and 068532829" (the subjects) "was residential resulting in a residential mill rate for property tax purposes."

[20] The Complainant further clarified and argued that;

> "GAC does not dispute the fact that the drug store and grocery store are commercial in nature. But in 1980 or 1985 there were no such facilities in East Village and absolutely no prospect of a market place initiative. GAC believes that the City insistence that East Village be the site for the GAC and the inclusion of the present tenants were part of a social plan to bring better conditions and services to the mainly disadvantaged residents of the area. The municipal intervention was such that it might have justified exempt status (emphasis the Board) and indeed that may be what in fact exists based on one Calgary Assessment document. But the residential designation might have been agreed to at the beginning or perhaps applied by (the) Assessment (Department) maybe without a specific understanding by the active parties. In any case, the residential mill rate was applied and reported to two City departments for 27 years. As well, the property has been all this time under review by the Assessment Department who now declare the residential designation was a mistake."

[21] The Complainant further argued that;

> "The GAC (commercial) space (the subjects) is a leasehold interest with about 25 years to run and no defined commercial property that it could offer for sale. The lease enables the City to approve any change of tenants. Because of the existing social plan, GAC does not have the ability to pursue highest and best uses as do other property owners. Even with the City approval GAC would attract enormous criticism if it undertook to force out the existing uses (the subjects) simply to attract higher rent."

[22] The Complainant clarified that in 2012, after several years of budgeting for it, the GAC was finally in a financial position to spend $210,000 to upgrade the air conditioning system for the two subjects. The previous system became overburdened over the years due to the commercial activities of the subjects, relative to the remaining non-commercial areas of Unit #100 and Unit #200. The Complainant argued that the current method of assessing and taxing the two subjects makes it almost impossible to justify the expenditure, and to attempt to recoup a portion of the increased taxation costs from the tenants of each of the two subjects.

[23] The Complainant argued and requested therefore that the Board declare the subjects to be properties exempt from taxation.

Respondent's Position:

[24] The Respondent clarified that she was unaware of the history of the GAC, its 27 year "social services" relationship with two other City Departments, nor the reasons for GAC occupying its current location. She explained that after receiving the Complainant's information package C-1, which carefully detailed this lengthy relationship, she did not contact either of the City Departments identified by the Complainant for input or clarification in this matter.

[25] In addition the Respondent noted that in 2011, the Assessment Department determined – for reasons which she could not clarify, that the "residential" assessment category applying to the subjects was erroneous, and in its view, had been erroneous for 27 years. She noted under questioning that to her knowledge, the Assessment Department did not contact, and has not contacted, either of the other two City Departments regarding these two properties before or after deciding that the residential assessment categorization for the subjects was wrong and the subjects must now be assessed as commercial properties. It was also not clear from the testimony of the Respondent as to whether or not the GAC had been contacted regarding the proposed change in assessment.

[26] The Respondent argued that the uses in the two subjects are clearly of a commercial nature, and therefore they should be compared to other commercial enterprises it considered similar, and assessed and taxed accordingly. The Respondent also argued that this should occur notwithstanding any City of Calgary working relationship or possibly related "social benefits", either contracted or resulting therefrom, as raised by the Complainant. She argued that the two subjects should not be exempt from taxation.

Board's Reasons for Decision – Issue #1:

[27] The Board finds that in advance of this hearing the Respondent did not research and was unable to provide any relevant information regarding this issue to either the Complainant or the Board. The Board finds this apparent lack of preparation/knowledge to be disconcerting.

[28] The Board finds that the Respondent was unable to clarify for the Board and the Complainant the precise reasons for its 2011 decision that the 27 year assessment process applied to the two subjects was abruptly deemed to be incorrect. The Board also finds this to be disconcerting.

[29] The Board considers the Complainant's reasoned and detailed argument that the two subjects should be exempt properties, has merit. However, the Board finds it received insufficient information from both parties to make any determination regarding this issue.

Issue #2 - Should the subjects be assessed by comparing them to freehold, separately-titled downtown commercial properties or to residential properties such as they were for 27 years prior to 2011?

Complainant's Position:

[30] The Complainant argued that the two subjects have been compared to five separately-titled downtown commercial properties which attract competitive market rents and can be freely sold as a complete commercial entity in the marketplace. He argued that this is a fundamental and critical error. None of the City's comparable properties shown in the Respondent's Brief R-1 are controlled or monitored by the City of Calgary as part of its social programs, as are the subjects.

[31] Moreover the Complainant argued that unlike the City's five comparables, the subjects are not legally and separately-titled land parcels which can be bought and sold in the marketplace, but instead are merely defined spaces in an existing larger legally-titled condominium unit. The spaces that the two subjects occupy cannot be sold in the marketplace like the properties the City is comparing them to. Therefore, he argued, the Respondent's five property comparables are not comparable, and the typical rents gleaned from them are not applicable to either of the subjects.

[32] The Complainant advised that;

> "In 2012 the Assessment Department determined that the residential designation was improper, without any apparent consultation with the City departments that have been involved with GAC over the years. GAC requested that just such a consultation take place. There has been no response to the basic question from any department. Perhaps it is understandable that with the passage of time both administrative and for that matter political interest in the original concern might wane and be forgotten. (The) Assessment (department) has unilaterally declared the practice of 27 years to be an error."

[33] The Complainant argued that by unilaterally changing the long-standing process for determining assessed values for the subjects, the Assessment Department has improperly altered an essential City program aimed at assisting the disadvantaged. The Complainant argued therefore that in view of the City's active and long-standing (27 year) involvement in fulfilling the City's "social responsibilities" and the role of the two subjects in that process, the latter should continue to be assessed as residential properties in order to reduce the resultant impact of an increased tax burden on the programs.

Respondent's Position:

[34] The Respondent argued that in order to assess the two subjects, it was necessary to compare them to an entity she considered similar and hence comparable to the subject. She argued that it was irrelevant that the subjects are part of a larger condominium unit since it was predominantly the similar business activity which made them comparable to the five market sales of downtown retail establishments she used as property comparables. She argued that the typical per square foot values she gleaned from examination of her five property sale comparables, provided a base value which could be used to assess the subjects.

[35] The Respondent argued as in paragraph [26] above, that the uses in the two subjects are clearly commercial and not residential in nature, and therefore they should be compared to other commercial enterprises considered to be similar, and assessed and taxed accordingly. The Respondent also argued that this should occur notwithstanding any City of Calgary working relationship or possibly related "social benefits", either contracted or resulting therefrom, as raised by the Complainant.

[36] The Respondent clarified as in paragraph [24] above, that she was unaware of the history of the GAC, its 27 year "social services" relationship with two other City Departments, nor the reasons for GAC occupying its current location. She explained that after receiving the Complainant's information package C-1, which carefully detailed this lengthy relationship, she did not contact either of the City Departments identified by the Complainant for input or clarification in this matter.

[37] The Respondent noted as in paragraph [25] above, that in 2011, the Assessment Department determined – for reasons which she could not clarify, that the "residential" assessment category applying to the subjects was erroneous, and in its view, had been erroneous for 27 years. She noted under questioning that to her knowledge, the Assessment Department did not contact, and has not contacted, either of the other two City Departments regarding these two properties before or after deciding that the residential assessment categorization for the subjects was wrong and the subjects must now be assessed as commercial properties. It was also not clear from the testimony of the Respondent as to whether or not the GAC had been contacted regarding the proposed change in assessment.

Board's Reasons for Decision – Issue #2:

[38] The Board finds that the Respondent's five property comparables are not comparable to the subject at all, for the reasons as argued by the Complainant in paragraphs [30] and [31] above. The Board finds that the Complainant's arguments and reasoning concerning this matter are articulate and valid.

[39] The Board finds as a result of paragraph [38] above, that the valuations used by the Respondent to assess the subjects at $238 per SF, are inappropriate values that significantly over-assess the subjects.

[40] The Board finds that in reference to the Complainant's request to change the designation of the subjects back to a "residential" category for assessment purposes, the Respondent did not appear to have researched, and was unable to provide any relevant information regarding this issue to either the Complainant or the Board. The Board finds the Respondent's approach to this matter to be disconcerting.

[41] The Board finds as in paragraph [28] above, that the Respondent was unable to clarify for the Board and the Complainant the precise reasons for its 2011 decision that the 27 year assessment process applied to the two subjects using a residential classification was abruptly deemed to be incorrect. The Board also finds this to be disconcerting.

[42] The Board considers, as in [29] above that the Complainant's reasoned and detailed argument that the two subjects should be assessed using a residential designation, as they had been for 27 years, has merit. However, the Board finds it received insufficient information from either party to make any determination regarding this issue.

Issue #3: "What is the correct square foot floor area of the subjects for assessment purposes?"

Complainant's Position:

[43] The Complainant advised on pages 4 and 5 of C-1 that he had consulted the "As Built" drawings of Units # 100 and #200 to precisely measure to scale, the separate areas of the two subjects. He noted however that the City had used an area of 1,948 for Unit #200 and 1,696 SF for Unit #100 – a total area of 3,644 SF. He argued that this is incorrect. His measurements, taken directly from the plans, indicate a total area of 3,243 SF – or 11% less than the City he noted. Therefore, he argued, while he raised this as an important issue with the Respondent, the latter has not addressed it at all. He argued that he was perplexed by the lack of response to what he considered to be an important issue that was straightforward to correct.

[44] The Complainant advised that it appeared from the "As Built" drawings in his possession that some of the common areas in the building have erroneously been added into the City's calculations of assessable area for each of the two subjects. He suggested that it is encumbent on the City to accurately measure the correct assessable areas and change their records accordingly.

Respondent's Position:

[45] The Respondent argued that in her prior review of the Complainant's document C-1 in preparation for the hearing, the Complainant had not raised this matter anywhere in his Brief. Consequently she had not researched the matter at all, and had simply relied on the City's historical data base to calculate the assessment.

[46] The Respondent confirmed that in preparing the assessments for the two subjects, she had only driven by but had not entered either of the subjects to take any measurements of the assessed and disputed areas. Consequently she was unable to confirm that her records regarding the assessable areas of the two subjects were correct. The Respondent however did not dispute any of the personal calculations of assessable area prepared by the Complainant from his review of the "As Built" drawings for the two subjects.

Board's Reasons for Decision – Issue #3:

[47[The Board finds that contrary to the repeated assertions of the Respondent during the hearing, the Complainant did in fact argue in his Brief C-1 and directly to the Board, that the assessable area used by the Respondent to assess the subjects is incorrect.

[48] The Board finds that the Respondent did not challenge the Complainant's calculations of assessable area for either of the two subjects which were personally measured and calculated by the Complainant from the "As Built" drawings of the subjects.

[49] The Board finds that in response to the Complainant's alternate personal calculations of assessable area using the "As Built" drawings of the two subjects, all as articulated in C-1, the Respondent did not personally attend either of the subjects and conduct, or cause to have conducted, any City measurements to confirm her assessment valuation parameters on this point. The Respondent confirmed that she only conducted a "drive-by" survey of the two properties. Therefore the Board accepts the Complainant's calculations of assessable area as being correct.

[50] The Board finds and accepts that by using the Complainant's calculations from the "As Built" drawings of the subjects, that the subjects are eleven per cent smaller in square foot area than as assessed. The Board therefore concludes that mathematically the correct assessable ares of the two subjects is as follows:

a) Unit #200 (File 71519) – assessed as 1,948 SF – minus 11% - equals a corrected assessable area of 1,734 SF.

b) Unit #100 (File 71521) - assessed as 1,696 SF - minus 11% - equals a corrected assessable area of 1,509 SF.

[51] The Board finds that the parties should convene at the subjects and properly measure the affected and contested areas prior to the next assessment cycle.

Issue #4: "Should the subjects be assessed using $100 per SF based on their economic rents, and if not, what is the correct value per SF and the resulting correct assessed value?

Complainant's Position:

[52] The Complainant argued that the current triple net rent charged to the tenants of the two assessable commercial spaces is $53,387 per annum – a value which was not disputed by the Respondent. The Complainant argued that by using a variation of the Income Approach to Value methodology, including an unsupported Capitalization Rate of 7%; a corrected assessable area of 3,243 (for both subjects); and a suggested deduction of about $30,000 to compensate for improvements to the HVAC system, this resulted in implied calculated per square foot values ranging from $93 to $104 per SF. He argued that it would be reasonable therefore to use a value of $100 per SF to value the corrected assessable areas of the subjects instead of the $238 per SF used by the Respondent.

[53] In response to questioning, the Complainant confirmed that when the undisputed triple net rent of $53,387 for the subjects is divided by a corrected assessable area of 3,243 SF, the resulting value is $16.46 per SF. He also confirmed that City Business Assessment documents in C-1 relating to the subject Unit #100, reveal a 2013 Business Assessment of $23,744 or $14 per SF, a value similar to and supportive of the $16.46 per SF noted above.

Respondent's Position:

[54] The Respondent argued that the Complainant's calculations of $100 per SF value using the Income Approach to Value methodology is flawed since there has been no market evidence provided by the Complainant to support several of the inputs he used to calculate that value. The Respondent argued

that the best indication of assessable value is in the five downtown market sale properties she provided, which value was calculated from properties she considered comparable to the subject.

[55] The Respondent argued that the subjects receive an important 25% discount to the City's assessed value, but under questioning, she was unable to clarify why this was so and what it was based on. She noted that this was an historical reduction, and while its source and relevance was not known to her, nevertheless she had applied it to the two subjects' 2013 assessment.

[56] The Respondent requested that the Board confirm the respective assessments of the two subjects.

Board's Reasons for Decision – Issue #4:

[57] The Board finds that the proposal by the Complainant to assess the two subjects using a calculated "Market Rent" at $100 per SF is unsupported by the evidence. The Complainant provided no market evidence to support his proposed 7% Capitalization Rate, nor did he provide any Op Costs, Vacancy rates, or other essential values necessary to support a reliable Income Approach to Value calculation.

[58] The Board accepts however the Complainant's evidence regarding his calculated and corrected areas under lease (from the "As-Built" drawings), as well as the current contracted triple net rent of $53,387. This evidence was largely uncontested by the Respondent. This evidence demonstrates to the Board that a more accurate value for the two subjects is $16.46 per SF. This value is also supported by the City's 2013 "Business Assessment" for the subject Unit #100 which was assessed at $14 per SF.

[59] The Board finds that by using the value of $16.46 per SF, and the Complainant's corrected assessable areas for each of the two subjects as detailed in paragraph [48] above, the **reduced** assessments (rounded values) for the two subjects are as follows:

(a) For file #71519 (unit #200 – 610 – 8 AV SE) the assessment is reduced to $28,000.

(b) For file #71521 (unit #100 – 610 – 8 AV SE) the assessment is reduced to $24,000.

DATED AT THE CITY OF CALGARY THIS 17th DAY OF October 2013.

K. D. Kelly
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
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.*

For Administrative Use Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issues
CARB	commercial	Defined sub-area in a Condominium unit	market value, property comparables, assessment category.	Exemption, and Assessable area