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:

KS 103 17TH AVENUE SE INC. and JAT 103 17TH AVENUE SE INC.

Complainant

and

THE CITY OF CALGARY

Respondent

before:

T. Shandro, PRESIDING OFFICER
J. Rankin, BOARD MEMBER
P. Grace, 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:	**200112076**
LOCATION ADDRESS:	**103 – 17 Avenue SE, Calgary, Alberta**
FILE NUMBER:	**72997**
ASSESSMENT:	**$4,240,000**

This complaint was heard on August 13 and 14, 2013, at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- D. Mewha, Agent, Altus Group Ltd.
- M. Cameron, Agent, Altus Group Ltd.

Appeared on behalf of the Respondent:

- C. Fox, Assessor, The City of Calgary

Procedural or Jurisdictional Matters

[1] The hearing both began and ended with preliminary matters.

[2] There were two issues raised at the beginning of the hearing by the Respondent: (1) concerns with the Assessment Complaints Agent Authorization Form in this matter (the "Authorization Form"); and (2) concerns with the Complainant's rebuttal submission.

1. The Authorization Form

[3] The Respondent advised the Board that there were two concerns with the Authorization Form.

(a) Was the Authorization Form executed by someone who had the proper authority?

[4] The Authorization Form was executed by John Torode, and the Respondent took the position that this person did not have the authority to execute the Authorization Form.

[5] The Respondent advised the Board that Mr. Torode is a principal of one of the owners of the subject property, JAT 103 17th Avenue SE Inc. ("JAT"), and that the Land Title Certificate for the subject property indicates that JAT owns only 25% of an undivided interest in the subject property. Therefore, the Respondent claimed that Mr. Torode does not have the authority to execute the Authorization Form to commence a complaint before the Board.

[6] The Complainant replied that Mr. Torode is the managing principal or managing partner for the development of the subject property and that he has the corporate authority from both owners to execute the Authorization Form.

[7] The Board determined the Respondent's argument did not reflect the requirements of the Act.. The Act does not require an authorization form to be executed by majority shareholders only, or that the person executing the form must be a shareholder at all. The Respondent's claim is also illogical, as often there may not even be a majority shareholder, and the Board often accepts authorization forms executed by employees of a property owner in which the employee may have no share ownership at all.

[8] The Board accepted from the information before it that Mr. Torode had the corporate authority from both owners of the subject property. The Board therefore determined the

Authorization Form to be properly executed.

(b) The Authorization Form on file in this matter is dated July 31, 2013, while the Assessment Review Board Complaint (the "Complaint Form") was received by the Board on March 4, 2013.

[9] Regarding the former concern, about the date of the execution of the Authorization Form, the Respondent brought to the Board's attention s. 51 of *Matters Relating to Assessment Complaints Regulation*, AR 310/2009 ("MRAC"), which states:

> **51** An agent may not file a complaint or act for an assessed person or taxpayer at a hearing unless the assessed person or taxpayer has prepared and filed with the clerk or administrator an assessment complaints agent authorization form set out in Schedule 4.

[10] All evidence packages were submitted on time, including an evidence package submitted by the Respondent on July 29, 2013. The Board asked the Respondent if they were prejudiced by the alleged deficiency in the Authorization Form, and the Respondent advised they were not.

[11] The Board then asked the Respondent several times what remedy the Respondent was seeking regarding this issue. Was the Respondent, for example, asking the Board to refuse to hear the Complainant, to dismiss the complaint, or to postpone the hearing and schedule a jurisdictional hearing? The Respondent did not answer the question, even though it was asked multiple times. The Board had to assume the remedy being sought by the Respondent was to dismiss or confirm the complaint or to have the agent for the Complainant barred from presenting.

[12] The Complainant's position was that it had been surprised by this issue and disadvantaged by not being able to respond. The Complainant claimed there are decisions of this Board which would confirm the Complainant's position that the hearing should proceed despite the alleged deficiency claimed by the Respondent.

[13] The Board asked the parties if they had provided the Board with everything the Board required to make a decision. The parties at that time agreed they had. The Board then recessed and returned with a decision to allow the hearing to proceed. Before the reasons for that decision are provided, it is important to note that this was not the end of this issue. The story continues.

[14] After the Board's decision regarding the Authorization Form, the Respondent raised the second preliminary matter, regarding the Complainant's rebuttal information which is described below. Then after that issue was heard and determined, the Board provided the parties with a final opportunity to address any further outstanding preliminary matters. The Respondent indicated that there were no further issues to address, and the hearing commenced.

[15] At the conclusion of the hearing on August 14, 2013, the Board asked the parties if they had the opportunity to fully present their evidence and argument. The Respondent advised it could not agree it had the full opportunity to present its argument and evidence. The Board asked what information or argument the Respondent would like to present to the Board, and at that time the Respondent advised the Board that there was information relating to the issue of the Authorization Form which it did not have the opportunity to present.

[16] While the Respondent had the opportunity, multiple opportunities, to provide this information at the beginning of the hearing when preliminary matters were heard, the Board proceeded on August 14, 2103, to hear the Respondent's further information at that time,

namely a series of decisions:

1) *Macleod Trail Centre Inc. v. The City of Calgary*, CARB 1184-2012-P ("*MTC*");
2) *1205336 Alberta Ltd. v. The City of Calgary*, CARB 72887P-2013 ("*1205336*");
3) *Altus Group Ltd. v. The City of Calgary*, CARB 0972/2010-P ("Altus");
4) *Mountain Development Corp. v. The City of Calgary*, CARB 2080-2012-P ("*Mountain Development*");
5) *Gold Bar Developments v. The City of Calgary*, CARB 1181-2012-P ("*Gold Bar*");
6) *CVG Canadian Valuation Group Ltd. v. The City of Calgary*, LARB 0505/2012-B ("*CVG*").

[17] The Respondent again did not advise what remedy it was seeking. The Board assumed that the Respondent was either asking for the complaint to be dismissed or to refuse to hear from the agents of the Complainant and confirm the assessment.

[18] The Complainant took the position that this issue was raised by the Respondent at an inappropriate time and that the Respondent should have sought an adjournment and asked to schedule a jurisdictional hearing so that the Complainant could provide its argument in this matter.

[19] Having heard the parties' submissions, including those presented by the Respondent at the conclusion of the hearing, the Board determined that (a) the Authorization Form was absent at the time the Complaint Form was filed, (b) that this noncompliance with s. 51 of MRAC was remedied before the hearing without prejudicing the Respondent, and (c) the agent for the Complainant had the properly executed authority to attend the hearing.

[20] First, there were no submissions from the parties regarding whether the Authorization Form is the only authorization form executed and filed in this matter. We determine from the information before us that it is the only form executed and submitted.

[21] Second, the Respondent advised that it had not been prejudiced. The Respondent advised that only during the weekend before the hearing while preparing for the hearing did the Respondent become aware that the Authorization Form was received after the Complaint Form was filed.

[22] Third, the decisions provided by the Respondent are very distinguishable from this matter.

1) *MTC* involves a situation where there is a complete absence of an authorization form;
2) *1205336* not only involved an absence of an authorization form but the agent for the Complainant admitted to not having the authority to appear;
3) *Altus* involves different issues and noncompliance with s. 8 of MRAC;
4) *Mountain Development* involves late filing and noncompliance with ss. 299 and 300 of the Act ; and
5) *Gold Bar* and *CVG* involve agents delegating authority to another agent without any authorization form.

[23] The Respondent appeared to be arguing that the remedy for late filing of other materials under other sections of legislation, such as ss. 299 and 300 of the Act and 8 of MRAC, should have the same remedy. The Respondent submitted that it was not fair that the remedy for noncompliance with ss. 299 and 300 of the Act or s. 8 of MRAC should be different than the remedy for noncompliance with s. 51 of MRAC. The Respondent further argued that these decisions illustrate that no prejudice needs to be shown if there is non-compliance with s. 51 of MRAC. Prejudice to the Respondent, it claimed, was irrelevant.

[24] The Board disagrees that the remedy in the legislation requires that the complaint be dismissed or that an agent cannot be heard if the authorization form was executed after the filing of the complaint but before the hearing. When there is non-compliance with s. 51 of MRAC, such a remedy is possible but not prescribed. Should a Complainant fail to execute an authorization form completely, as in *MTC*, *1205336*, *Gold Bar* and *CVG*, then such a remedy would be appropriate.

[25] The Board further distinguishes non-compliance with s. 51 of MRAC with non-compliance with other sections of the Act and its regulations. Non-compliance with different sections of legislation will not all have the same remedy.

2. Issues regarding the Complainant's rebuttal submission

Background

[26] As above, the Board first heard the Respondent's submission regarding its concerns with the Authorization Form on August 13, 2013. After hearing what the Board was then advised was the exhaustive submissions of the parties, the Board deliberated and returned with its decision on that matter. The Board then asked the parties if there were any other preliminary matters to discuss. Both parties at that time agreed there were no other preliminary matters.

[27] When hearing commenced and the Board began marking the Complainant's evidence, the Respondent then stated that it had another preliminary matter to address with the Board, namely that the rebuttal evidence submitted by the Complainant, or at least pp. 3 to 20 of same, was new evidence and should be excluded.

[28] The Complainant's position was that the information in C-2 is in direct rebuttal to the Respondent's submissions, and this would be obvious once the Board heard the evidence of the Respondent.

[29] After deliberating on this issue, the Board returned and determined that the parties would proceed with their argument. After the Respondent's evidence was provided to the Board, the Respondent would then have the opportunity to argue whether C-2 was new evidence and should be excluded from these proceedings.

[30] The hearing proceed and, on August 14, 2013, the Board had the opportunity to hear from the parties regarding the rebuttal evidence. At that time, the Respondent still took the position that C-2 was new evidence and should be excluded. Then Board then heard further submissions regarding this issue.

Legislation

[31] No legislation was referred to by the parties.

[32] Section 8 of MRAC provides for timelines for the disclosure of evidence for hearings before Composite Assessment Review Boards. It provides for the Complainant to first provide its evidence to the Respondent, then for the Respondent to submit its evidence to the

Complainant. There is then the opportunity in s. 8(2)(c) for the Complainant to submit evidence "in rebuttal to the disclosure" of the Respondent.

[33] The Board further notes s. 464 of the Act, which states:

> **464(1)** Assessment review boards are not bound by the rules of evidence or any other law applicable to court proceedings and have power to determine the admissibility, relevance and weight of any evidence.

Respondent's Position

[34] The Board has in the past interpreted s. 8 of MRAC to provide for evidence which is in rebuttal of the Respondent's evidence only. This is to distinguish from evidence not in rebuttal, which this Board has characterized as "new evidence".

[35] The Respondent has taken the term "new evidence" and made the semantic argument that the evidence submitted by the Complainant in what is now Exhibit C-2, is not in the first Exhibit C-1. Therefore the Respondent submits:

(a) it is "new" evidence; and

(b) it is unfair for the Respondent, because the Respondent has been denied the opportunity to respond to the rebuttal evidence.

Complainant's Position

[36] The Complainant did not address the Respondent's semantic argument about what would or would not be "new" evidence. The Complainant submitted that:

(a) the Respondent provided documentary evidence and argument that stated a development permit is not a substantial enough step in the development process to show intent; and

(b) the rebuttal evidence provided examples of situations where the Complainant argued other employees in other departments of the Respondent have not applied the Respondent's reasoning.

Board's Decision

[37] The Respondent is asking the Board to determine:

1. what is "new evidence" and what is not; and
2. whether it is unfair for the Respondent to be unable to respond to this evidence.

[38] For the following reasons, the Board determines that evidence in C-2 is not new evidence and that the process is fair to both parties.

[39] First, any proceeding which requires one or more parties to submit evidence will require procedures to determine when the parties may no longer submit evidence and who is permitted to submit last. The legislation is clear about which party in these proceedings has the last opportunity to rebut evidence: the Complainant.

[40] Second, while s. 8 of MRAC provides for the Complainant to be the last party to submit documentary evidence, it is incorrect to say that the Respondent has no opportunity to address this evidence. The Respondent received C-2 within the deadlines prescribed by the legislation, the Respondent had the opportunity to ask the Complainant questions about this evidence during the hearing, and the Respondent had the opportunity to provide argument about this evidence during the hearing, including argument about weight and relevance.

[41] Third, to argue that the phrase "new evidence" includes all evidence which is not in the first evidence package of the Complainant is illogical. By that definition, no evidence would be permitted in rebuttal, as any evidence would then by definition be "new" evidence. This is clearly not the intention of the legislation.

[42] Finally teh Board finds the evidence in C-2 to be a direct rebuttal of the Respondent's evidence on the issue of whether a development permit is sufficient to indicate intent

[43] The Board therefore determined the Complainant was permitted to present the documentary evidence of C-2, including pp. 3 to 20.

Property Description

[44] The subject property is assessed as a parcel size of 25,240 square feet ("SF"), located in the Community of Mission and located at 103 – 17 Avenue SE. It is assessed as 100% Non-residential with a property use described as Institutional and subproperty use as "Religious – Divine Worship". It currently is improved upon with a spiritual centre.

[45] The previous owner of the subject property was the Calgary Centre for Spiritual Living, which executed a Transfer of Land to the current owners on May 29, 2012. The transfer occurred on June 5, 2012.

Issues

[46] In Section 4 of the Complaint Form, the following were marked as matters for complaint:

1) 3, "an assessment amount";
2) 4, "an assessment class", and
3) 10, "property or business is exempt from taxation".

[47] At the hearing the Complainant advised that it withdrew any matter related to 3 and 10.

[48] After hearing the arguments from both the Complainant and the Respondent, the following are determined to be the issue in this matter:

1. Is the assessment class of Class 2, Non-residential, properly assigned to the subject property?

Complainant's Requested Value

[49] The Complainant advised it has no issue with the assessed value. The Complainant requests that the assessment class of the subject property should be determined to be 76.8% Residential and 23.2% Non-residential.

Board's Decision

[50] The Board determines that the assessment class of the subject property shall be amended to 76.8% Residential and 23.2% Non-residential.

Legislation

[51] Subsection 297(1) of the Act requires an assessor to assign to a property one or more of the following classes:

(a) class 1 – residential;

(b) class 2 – non-residential;

(c) class 3 – farm land;

(d) class 4 – machinery and equipment.

[52] Subclauses 297(4)(b) and (c) of the Act then define "non-residential" and "residential" as follows:

(b) "non-residential"...does not include farm land or land that is used or intended to be used for permanent living accommodation;

(c) "residential", in respect of a property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential.

[53] Section 460(5)(d) provides that a complaint may be made about an assessment class.

Complainant's Position

[54] The Complainant submitted that the subject property was incorrectly assessed as 100% Non-residential. It requested that the class be amended to 76.8% Residential and 23.2 non-residential.

[55] The Complainant provided documentation which indicated that there was a development permit for the subject property, Permit Number 2012-2474 (the "DP"):

(a) was applied for on June 13, 2012, by NORR Architect Planners ("NORR") on behalf of the Complainant;

(b) was approved on September 11, 2012;

(c) was released on September 24, 2012, under cover of correspondence dated September 27, 2012, from the Respondent; and

(d) would expire September 11, 2015.

[56] On a document titled "Development Permit Status", there is a field named "Permit Status" which indicates "Pending Release".

[57] The Complainant also provided documentation from NORR, including model images, drawings in support of the DP dated June 8, 2013, and a number of architectural drawings for the various floors of the proposed project. The Complainant advised at the hearing that the subject property is intended to become one floor of retail with multiple floors above being apartment dwellings.

[58] There was another development permit for the subject property applied for on March 13, 2013, Permit Number 2013-1004, which the Complainant advised at the hearing was to increase the number of housing units for the subject property. The Permit Status indicates "Hold" and there is no decision in this matter. The Complainant stated at the hearing that it plans to no longer pursue this increased number of units and to just continue with the plans related to the DP.

[59] The Complainant provided a redacted copy of correspondence from an employee of the Respondent named Wilhelm Malan to a property owner, dated some time in January 2012 (the "Malan Correspondence"). The Malan Correspondence is regarding changes in property assessment class from Residential to Non-residential. The Complainant highlighted the following excerpt:

> Under Part 9 of the Municipal Government Act, a residential property must be used, or intended to be used, for permanent living accommodation. An intention to use a bare land parcel for permanent living accommodation is typically evidenced by a development or building permit, or actual construction.

[60] The Complainant further provided a copy of the Land Title Certificate which indicated there are four mortgages on the subject property. It claimed this showed there was financing in place to proceed with the project.

Respondent's Position

[61] The Respondent made numerous arguments to support its position, which can be categorized as follows:

(a) A slippery slope argument;

(b) Several arguments regarding what the test should be, or what threshold should be met for a property to be classified as Residential;

(c) A development permit is not a substantial enough of a step to indicate intent;

(d) The definition of "residential" versus the meaning of "commercial".

The slippery slope

[62] The Respondent submitted that if all property owners had to do to escape from being assessed as "non-residential" was merely submitting a development permit, it is a dangerous precedent to set and will result in abuse by property owners in the municipality.

The threshold for Residential

[63] The Respondent appeared to be arguing the threshold for determining whether a property is Residential is different than what is prescribed by the legislation. The Respondent said there is "no guarantee" and "no certainty" whether the subject property will proceed with the DP. The Respondent stated that the subject property "is not physically a residential property" yet and that it should only be determined to be Residential once there is "no doubt it is a residential property" and when there is "no turning back".

Whether the DP a substantial enough step to indicate intent

[64] The Respondent submitted that there is not yet a demolition permit, there are no pre-sales, and questioned whether there is financing in place.

[65] At p. 39 of R-1, the Respondent noted that there is a deficiency in the DP which will need amending, namely that a minimum of 20% of the gross floor area of the subject property must contain commercial uses. This indicates that the DP is not set in stone and may change.

[66] The Complainant referred to the Malan Correspondence and seemed to argue that this decision of an employee is not binding on the Respondent.

[67] The Respondent however also argued that the line "...is typically evidenced by a

development *or* building permit, *or* actual construction" indicates that the word "or" requires that all three (the development permit, the building permit and construction) would have to be in place to indicate intent.

[68] The Respondent further submitted that the evidence of more than one development permit for the subject property indicates that the intention of the owner may change.

[69] The Respondent provided documentary evidence which it claimed indicates there is a possibility the Complainant's plans to build as planned may not proceed. One argument was not clear, but the Respondent appeared to state that where the DP is indicated as "Pending Release" means that the Complainant has not yet received approval for the DP, even though there is a decision date and a decision release date. Further information was then provided to the Board which indicated strongly that "Pending Release" does not mean that the DP has not yet been approved, and it instead is an administrative or procedural matter which indicates something different. There was information at the hearing which indicated that the status of "Pending Release" shall remain at least until construction begins.

[70] The Respondent took issue with the Malan Correspondence. The Respondent argued that it does not indicate a policy of the Respondent and is not binding on the Respondent regarding assessment classification.

"Residential" versus "commercial"

[71] The Respondent had several arguments regarding the definition of the word "residential".

[72] First, the Respondent argued that the developer is engaging in a commercial enterprise: it is developing a site for profit; it is engaging in this venture for a profit. The Complainant may just flip the property or sell to make a profit. The Board assumes the Respondent is arguing that only permanent living accommodations which are developed for no profit would qualify as Residential class.

[73] Second, the Respondent argued that apartments are not permanent living accommodations.

[74] Third, the Respondent provided the Board with the definition of the Canada Revenue Agency, at p. 166 of R-1, of principal residence to distinguish it from an income-producing property. The Respondent submitted the Board should distinguish Residential from Non-residential using the same criteria.

Complainant's Rebuttal

[75] The Complainant provided two properties which it argues are similar circumstances as the subject property: development permits were applied for and approved, and the Respondent amended the assessment classifications for these properties based on the development permit applied for and approved.

Decisions referenced by the parties

[76] In support of its argument, the Respondent provided a selection of decisions. Some of these decisions were regarding assessment classification and some were not. We will review first the latter, the four decisions referenced by the Respondent which were not regarding classification, but which the Respondent argued were applicable in different ways.

(a) *Cidex Developments Ltd. v. The City of Calgary*, CARB 73273P/2013 ("*Cidex*")

The Respondent highlighted in this decision three paragraphs to make the following arguments: that past decisions of this Board have limited value; that in determining "Highest and Best Use" for a property, the future is mere conjecture; and that where the market viewed a property as having different potential the assessment should reflect that potential. But the issue in this hearing is not about assessment amount, it is about assessment classification. Regardless, para. 16 of *Cidex* stated that the assessment should reflect how the market views the potential for a property, which cannot help the Respondent in this matter if all of the evidence before the Board is regarding the potential for the subject property to be over 75% residential.

(b) *697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512 ("*697604*")

This decision of J. Acton involved a 2001 tax year in which the Board confirmed the assessment. The complainant appealed to the Municipal Government Board ("MGB"), which reduced the assessment, as the MGB determined that a certain sale of the subject property did not represent market value. Justice Acton's decision was regarding an application for judicial review. Para. 27 of J. Acton's decision was highlighted by the Respondent, in which she held that capital improvements are an assessable part of real estate and 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.

The Board finds this distinguishable from the case at hand as the issue is not valuation of improvements, but classification of property.

(c) *Airstate Ltd. v. The City of Calgary*, [2010] MGB 103/10

This case involved a supplementary assessment where the Board considered when the subject building was completed. Justice Acton's decision in *697604* was quoted. Another paragraph of this decision was highlighted by the Respondent, in which the MGB determined that the Respondent could not assess properties on an anticipatory basis.

(d) The fourth of these decisions was regarding an exemption for a church, which the Respondent provided in case the Complainant raised this issue. As the Complainant withdrew this issue, the matter was not spoken to by the Respondent.

[77] The Respondent also provided the following six decisions which were regarding assessment classification.

(a) *Heritage Station Inc. v. The City of Calgary*, CARB 2809/2011-P and CARB 2762-2011-P ("*Heritage Station*")

This case involved two parcels of land which were going to be developed as condominium complexes. A development permit was issued. The Board amended the assessment classification to Residential.

The Respondent relied upon the dissenting opinion at the end of the decision by Member Reuther. Member Reuther reviewed the evidence and determined that in his view the steps taken by that complainant did not show "full intent". He referenced J. Acton in *697604* and determined in his dissent that the Residential class should not be applied on an anticipatory basis, similar to the capital improvements in *697604*.

(b) *1442797 Alberta Ltd. v. The City of Calgary*, CARB 2621/2011, and the

proceedings excerpt from the Court of Queen's Bench decision in which leave to appeal was dismissed ("*1442797*")

This was a situation in which the complainant had a lapsed development permit. There was therefore no permit in place and the complainant was only planning to apply for a new one.

(c) *Homburg LP Management Incorporated v. The City of Calgary*, CARB 1398/2012 ("*Homburg*")

This was a situation in which there was no development permit in place at all.

(d) *La Caille 16th Avenue Inc. v. The City of Calgary*, CARB 72504P-2013 ("*La Caille 16th*")

This involved a situation where a long-term lease prevented the complainant from commencing with construction until April 2015.

The complainant in this decision appeared to have taken less substantial steps than the Complainant, and yet the Board amended the assessment classification as requested by the complainant.

(e) *Anthem Level Erlton Ltd. v. The City of Calgary*, CARB 72594P-2013 ("*Anthem*")

In which a development permit had not yet been applied for. The Respondent argued in that situation that intention must be tethered to something concrete, and quoted an uncited decision of Justice Hunt McDonald stating same. In this situation there had been no concrete action.

Counsel for the Respondent in *Anthem* however noted that an example of a concrete action would be approval of a development permit.

It is also worth noting that the Board decision was to amend the assessment classification as requested by the complainant.

(f) *La Caille Fourth Avenue Inc. v. The City of Calgary*, CARB 72863P-2013 ("*La Caille 4th*")

This situation involved a property where there was a development permit. The Board allowed the complaint and amended the assessment classification as requested by the complainant.

[78] The trio of the last three decisions, *La Caille 16th*, *Anthem* and *La Caille 4th*, all support the Complainant's position. They are situations where the Board amended the assessment classification when a complainant had taken less than or equally substantial steps as the Complainant. The other decisions are distinguishable enough from the subject matter to have little guidance for us in this matter.

[79] The Complainant also referenced *La Caille 16th*, as well as *Oxford Properties v. The City of Calgary*, [2006] MGB 088/06 ("*Oxford*"), and *Canada Lands Co. CLC Ltd. v. The City of Calgary*, [2008] MGB 106/08. All three decisions were regarding assessment classification and the test for determining whether or not a property is intended to be used for permanent living accommodation.

[80] *Oxford* quoted a decision of Lord Asquith from *Cunliffe v. Goodman* [1950] 1 All ER 720, in which the definition of "intention" involves a state of affairs a party decides to bring about, and which the party has a reasonable prospect of being able to bring about by his or her own volition. The Board in *Oxford* further referenced *Green Meadows Estates Ltd. v. Nova Scotia*

(Director of Assessment), 10 DLR (4th) 454, in which the Court defined "intention to be used" as "present intent supported by some substantial act to carry out the intent."

Board's Reasons for Decision

[81] In determining the test for whether a property is "intended to be used for permanent living accommodation", the Board gave deference to the definitions in *Oxford* and the decisions quoted. The question then is what is substantial enough to support such present intent. I.e., is the application for and approval of a development permit a substantial enough step to indicate the intent of the Complainant?

[82] Regarding the Respondent's slippery slope argument, the Board finds that applying for and having approved a development permit is not a whimsical step for a property owner to take.

[83] The Respondent used the following example to illustrate its concern for such potential abuse: what if the owners of Bankers Hall filed a development permit to have the building classified as Residential? This example, the Respondent argued, could illustrate the potential for the legislation to be abused. This example however is easily distinguishable from the subject property. The subject property is vacant, the owners engaged and likely incurred cost for NORR to develop drawings, and the DP is not only applied for but approved. There appears to be mechanisms in place to allow parties and this Board to distinguish cases in which there could be abuse and to prevent a slippery slope from occurring.

[84] The threshhold arguments of the Respondent are concerning because the legislation does not require a "guarantee", nor does it require a stage when there is no turning back. The Act does not require certainty. The Act instead looks at intention to be used for permanent living accommodation. The Respondent appears to be attempting to change the test for the definition of "residential" from what the Act prescribes.

[85] Regarding the Respondent's arguments about the definition of "residential" versus "commercial" or "income-producing", the Board rejects these arguments. First, a definition used by the Canada Revenue Agency is distinguishable from the case at hand and not informative regarding the Act's definition of "residential". The Respondent cannot suggest that the subject property may only be assessed as Residential if Mr. Torode himself moves into the subject property. Second, apartments clearly are included in the definition of a "permanent living accommodation". Whether a tenant or property owner is transient or intends to live in a property short term appears to be irrelevant. The words "permanent living accommodation" appear on their face to mean whether the property will permanently be a living accommodation, not whether the occupant is permanent. It is incorrect that an occupant must be permanent to fit the definition of "residential" in s. 297(4) of the Act. Third, whether a property owner obtains a profit during the venture is not relevant to determining whether the property is "residential". This is not the test in the legislation; the Act does not define "residential" in such a way.

[86] Regarding whether a development permit is a substantial enough step to indicate intent, the Board determines in this situation it clearly is. From the information before the Board, the DP appears to be more than enough to indicate the intent of the Complainant.

[87] The decisions referenced by the parties regarding assessment classification support the Complainant's position. *La Caille 16th*, *La Caille 4th*, *Anthem, Heritage Station*, *Oxford* and the other two decisions provided by the Complainant strongly support the Complainant's position, and *Homburg* and *1442797* are easily distinguishable from the subject property.

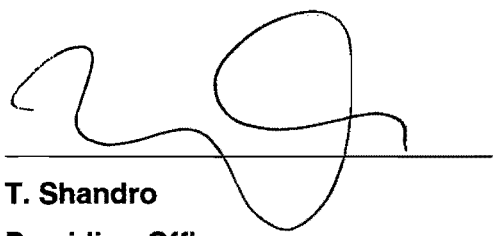
[88] Only the dissenting opinion in *Heritage Station* supports the position of the Respondent.

With respect the Board disagrees with Member Reuther's determination that "full intent" is required. The legislation does not qualify the intent as needing to be "full". The Board gives deference instead to *Oxford* which held that a substantial step to show intent is instead required.

[89] Justice Acton's decision in *697604*, and the MGB decision in *Airstate* which quoted J. Acton, were both about assessment values and not assessment classification. The Board finds little guidance in J. Acton's decision in this matter. The assumption the Respondent is making with this argument is (a) that determining assessment classes should likewise not be made on an anticipatory basis, and (b) that the subject property is similarly speculative and anticipatory. However we are not considering anticipated capital improvements in this matter; we are instead looking at whether there is intent to develop a permanent living accommodation. The legislation looks at intention to be used as a permanent living accommodation when determining assessment classification. Whether the Respondent believes any part of the plans of the Complainant are anticipatory is beside the point.

[90] For these reasons, the Board therefore determines that the assessment class of the subject property shall be amended to 76.8% Residential and 23.2% Non-residential.

DATED AT THE CITY OF CALGARY THIS 26th **DAY OF** September **2013.**



T. Shandro
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant's Rebuttal

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 Purposes Only

Property Type	Property Sub-Type	Issue	Sub-Issue
Other	Vacant land	Classification	None