



**Calgary Assessment Review Board**  
**DECISION WITH REASONS**

In the matter of the complaint against the amended property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***LION'S DEN LIMITED, COMPLAINANT***

and

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

before:

***PRESIDING OFFICER: P. COLGATE***  
***BOARD MEMBER: D. STEELE***  
***BOARD MEMBER: A. ZINDLER***

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: 068198001**  
**LOCATION ADDRESS: 234 17 AVENUE SW**  
**FILE NUMBER: 71476**  
**ASSESSMENT: \$1,180,000**

This complaint was heard on the 16th day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4th, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- Enrico M. Festa, Owner

Appeared on behalf of the Respondent:

- *David Zhao, City of Calgary*
- *Kimmi Nguyem, City of Calgary – observing*
- *Rony Tharakan, City of Calgary - observing*

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

**Property Description:**

[2] The subject property is a 2,959 square foot piece of land located in the Beltline community. It is improved with a 5,446 square feet retail building, operating as a restaurant.

[3] No evidence was submitted as to the methodology used to determine the assessment value.

**Issues:**

1. The Respondent requested equity with neighbouring properties when market factors are taken into consideration when establishing the assessment value.

**Complainant's Requested Value: \$800,000 to \$850,000 (presented at hearing)**

**Board's Decision:**

[4] Based upon the lack of compelling evidence and the reasons provided, the Board confirmed the assessment at \$1,180,000.

**Legislative Authority, Requirements and Considerations:**

[5] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

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

[6] At the outset of the Complainant's presentation the Board was advised that all documents and evidence relating to the complaint had been destroyed in the Calgary Flood of June 2013. The Complainant was therefore unable to file the required disclosure to the City of Calgary or the Assessment Review Board.

[7] The Board accepted the Complainant's explanation and allowed reference to the original complaint form and verbal testimony by the Complainant.

[8] The Complainant, referencing the complaint form, explained there were a number of factor which have adversely affect the operation of its business –

- A loading zone had been relocated from its business to another business, Ed's and the Embarcadero, just down the street which had off street parking and loading/unloading area;
- Graffiti on the surrounding walls, photographs supplied;
- A cost of \$50,000 to repair roof;
- Alpha House, an alcohol and drug shelter. People using the services of Alpha House leave drug paraphernalia, feces and urine around the property;
- 40 years of paying taxes and no catch basins or sidewalks in vicinity if property;
- Parking stalls in front of business are being monopolized by Car 2 Go for hours or days so there is no parking for customers.

[9] The Complainant provided copies of its 2010, 2011 and 2012 tax bills to show the upward trend in the taxes paid for the property. Especially noted were the high levies for Community Revitalization, which the Complainant stated had provided no benefit for its business.

**Respondent's Position:**

[10] The Respondent advised the Board that the Complainant had not submitted a disclosure document within the specified timelines established under Matters Relating to Assessment Complainants Regulation AR 310/2009. The date set for disclosure was September 3, 2013.

[11] The Respondent requested confirmation of the assessment.

**Board's Reasons for Decision:**

[12] The Board noted, with appreciation, the actions of Mr. David Zhao in providing the Complainant with a copy of the complaint form filed on the subject property.

[13] The Board found that due to circumstances beyond the control of the Complainant, the Calgary Flood of 2013, it was unable to submit the required disclosure documents and evidence to support its claim against the assessment.

[14] The Board is restricted by MRAC and the Municipal Government Act as to the actions it is allowed to take during the hearing process, specifically Sections 8 and 9 of MRAC –

**Disclosure of evidence**

8(2) 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, a summary of the testimonial 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 to or rebut the evidence at the hearing,

and

**Failure to disclose**

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

[15] While the Board appreciated the circumstances surrounding the non-disclosure, the Board must base any decision on the evidence submitted for its review.

[16] With respect to taxes the Board has no authority to make decisions on the amount of taxes paid by a property owner.

[17] The Board found the Respondent had not met the burden of proof to support its requested assessment. Lacking any market evidence to show the impact of the problems submitted by the Complainant, such as financial statements over time or expense accounts, the Board is unable to adjust the assessment.

[18] Decision of the Board was to confirm the assessed value at \$1,180,000.

DATED AT THE CITY OF CALGARY THIS 21<sup>st</sup> DAY OF November 2013.



PHILIP COLGATE

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Complaint Form
2. 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.*

**LEGISLATIVE REQUIREMENTS****MUNICIPAL GOVERNMENT ACT**

## Chapter M-26

1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

**Division 1****Preparation of Assessments****Preparing annual assessments**

**285** Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

**289(2)** Each assessment must reflect (a)the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

**ALBERTA REGULATION 220/2004****Municipal Government Act****MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION**

1(f) "assessment year" means the year prior to the taxation year;

**Part 1****Standards of Assessment****Mass appraisal**

**2** 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.

**Valuation date**

**3** Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

**FOR ADMINISTRATIVE USE**

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Income Approach	Equity Comparables Expenses