



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 Ranchmen's Club (Represented by AEC Property Tax Solutions), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER

I. Fraser, BOARD MEMBER

P. Pask, 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 2014 Assessment Roll as follows:

ROLL NUMBER:	067236703
LOCATION ADDRESS:	710 – 13 Avenue SW, Calgary AB
FILE NUMBER:	75302
ASSESSMENT:	\$6,790,000

This complaint was heard by a Composite Assessment Review Board (CARB) on the 5th day of August, 2014 in Boardroom 9 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- G. Ludwig *Solicitor, Wilson Laycraft*
- A. Louie *Solicitor, Wilson Laycraft*
- S. Rickard *Agent, AEC Property Tax Solutions*
- N. Laird *Agent, AEC Property Tax Solutions*
- D. Houghton *Manager, The Ranchmen's Club*

Appeared on behalf of the Respondent:

- H. Chan *Solicitor, The City of Calgary*
- L. Wong *Assessor, The City of Calgary*

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

- [1] There were no procedural or jurisdictional matters to be decided by the CARB.

Property Description:

[2] The property that is the subject of this assessment complaint is The Ranchmen's Club, a private social club located on the northwest corner of the intersection of 13 Avenue and 6 Street SW in the Beltline district of Calgary. The club was completed in 1914 and the interior was substantially reconstructed in the early 1980's. It is attached to The Estate, a highrise apartment style condominium that was built during the 1980's. The club comprises a three storey club building of 32,378 square feet over a basement of 11,849 square feet. Within the club are meeting and function rooms of varying sizes as well as full dining and bar facilities. The portions of the 24,415 square foot lot that are not covered by buildings and driveways are landscaped. There is no on-site parking but there is access to 66 stalls in the underground parkade beneath the apartment building. The Ranchmen's Club building has some historical significance however it is not officially designated as a heritage resource by any level of government.

[3] For 2014, the club is assessed as a recreational-retail property. Rent rates of \$12.00 and \$5.00 per square foot are assigned to the club and basement storage spaces. An 8.0 percent vacancy allowance is deducted as are operating expenses calculated at \$12.00 and \$9.00 per square foot of vacant space. After deducting an allowance of 1.0 percent for non-recoverable operating expenses, the net operating income is \$373,621. A 5.50 percent capitalization rate is applied to yield the \$6,790,000 rounded assessment.

Issues:

[4] The Assessment Review Board Complaint form was filed on February 28, 2014 by AEC Property Tax Solutions on behalf of The Ranchmen's Club, the "assessed person." Section 4 – Complaint Information had check marks in the boxes for #3 "Assessment amount" and #6 "the type of property."

[5] In Section 5 – Reason(s) for Complaint, the Complainant stated numerous grounds for the complaint.

[6] At the hearing, the Complainant pursued the following issues:

- 1) The property is assessed as a retail property but it is not a retail property. No other properties are assessed this way with a \$12.00 per square foot rent rate and a 5.5 percent capitalization rate. For 2013, the club had been assessed as an office property. While that is still not a perfect fit, the rent rate could be supported. Using assessment data from other "C" class offices and adjusting the capitalization rate upwards by 3.0 percent (as was done by the 2013 CARB) would provide a better indication of market value.
- 2) The Masonic Lodge on 12 Avenue SW is assessed on the basis of land value only and the club could be assessed on the same basis. The restrictions on use and the transfer of air rights could then be taken into account.

Complainant's Requested Value: \$4,210,000 – amended to \$4,490,000 during the hearing

Board's Decision:

[7] The assessment is reduced to \$5,560,000.

Legislative Authority, Requirements and Considerations:

[8] The CARB is established pursuant to Part 11 (Assessment Review Boards), Division 1 (Establishment and Function of Assessment Review Boards) of the Act. CARB decisions are rendered pursuant to Division 2 (Decisions of Assessment Review Boards) of the Act.

[9] Actions of the CARB involve reference to the Interpretation Act and the Act as well as the regulations established under the Act. When legislative interpretation is made by the CARB, references and explanations will be provided in the relevant areas of the board order.

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

[10] The Complainant's evidence disclosure (marked Exhibit C1 by the CARB) was filed with the CARB administration and the Respondent on June 23, 2014 as was a five part legal brief (Exhibits C2A, C2B, C2C, C2D and C2E). Complainant's rebuttal (Exhibit C3) was filed on July 28, 2014 after receipt of the Respondent's evidence.

[11] The Ranchmen's Club has had to complain against its assessment in six of the past 10

years. Previously, either assessment review boards or the Municipal Government Board made reductions as follows:

Year:	2007	2008	2009	2010	2013
Orig Ass't	\$4,290,000	\$9,390,000	\$6,880,000	\$6,900,000	\$5,900,000
Final Ass't	\$3,045,000	\$4,310,000	\$5,280,000	\$4,490,000	\$4,590,000

[12] For 2011 and 2012, the assessments were reasonable so complaints were not made.

[13] The Complainant did not make it an issue but made presentations to the CARB on the topic of "Issue Estoppel/Abuse of Process." The issue before this 2014 CARB is the exact same issue that was put before the 2013 CARB. The assessment has been prepared on the same basis and assumptions as were rejected by the CARB in 2013. Last year, the CARB ordered that the assessment be reduced from \$5,900,000 to \$4,590,000. The common law doctrines of issue estoppel and abuse of process are intended to prevent the re-litigation of facts and issues in a subsequent hearing where there has been no change in circumstances.

[14] This year, the club is assessed as a retail property. While there has been no physical or other changes to the property, the assessment has increased due to the reclassification of the property from that of a "C" class office (which it is not and never has been) to that of a "B" class recreational retail property (which it is not and never has been).

[15] The club was not designed as a recreational club similar to the Glencoe Club or the Calgary Winter Club, both of which are assessed as retail properties with recreational uses. It is a social club with no similarities to retail properties. It does not contain leasable office space but its most obvious comparables are other social clubs such as the Petroleum Club and the Calgary Chamber of Commerce, both of which are assessed as office properties.

[16] While the "C" class office designation is not a perfect fit for the club property, it at least included rates that are clearly derived from actual market activity. If the 2014 "C" class office inputs (\$14.00 office rent; \$5.50 storage space rent; 17.0 percent office vacancy; 8.0 percent storage space vacancy; \$10.00 operating cost and 1.0 percent non-recoverable cost allowance) are applied to the club property then its net operating income would be \$367,306. While the base office capitalization rate is 6.25 percent, the addition of 3.0 percent to recognize the unique characteristics of the real estate (as was done by the 2013 CARB) would bring the capitalization rate to 9.25 percent which would yield an assessment valuation of \$3,970,000 (truncated).

[17] It is recognized that this amount is less than the land value of the club. The Masonic Lodge at 302 – 12 Avenue SW is now assessed at land value only. The land rate applied is \$285 per square foot which is the rate for Centre City Mixed Use District (CC-X) land. The subject land is designated Direct Control that uses Centre City Multi-Residential High Rise District (CC-MH) guidelines as its basis. A survey of CC-MH redevelopment sites produced six sales that occurred between July 2010 and December 2013. For various reasons, four of the sales were discounted, leaving two valid sales that indicated a land value rate of \$230 per square foot. When applied to the subject 24,415 square foot site, the indicated value is \$5,615,450.

[18] A key aspect of the subject land, however, is a restrictive covenant on the property title that restricts development. In 1981, the allowed development density (sometimes referred to as air rights) was transferred to the adjoining property in order to increase the density of the apartment style condominium that was ultimately developed. With no recognized precedential procedure in place to recognize the restriction, the Complainant turns to the Respondent's table

of influence adjustments for valuing land. One of the adjustments is -25 percent for "Land Use Restrictions." That description fits the subject property. If the calculated land value is reduced by 25 percent, the indicated amount of a fair assessment is \$4,211,588. NOTE: At the hearing, the Complainant acknowledged that the same land influence adjustment chart contains a +5 percent adjustment for a corner location. Since the subject is a corner site, its final requested assessment would be \$4,490,000 (truncated).

[19] There is a distinction between properties with an historical designation and those where the development density has been sold. A property designated as an historical resource can still have density added as long as the integrity of the historical component is maintained. There are examples of this in downtown Calgary.

Respondent's Position:

[20] The Respondent's disclosure of evidence was filed with the CARB administration and the Complainant on July 21, 2014. The CARB marked the document as Exhibit R1.

[21] The doctrine of issue estoppel means the same issue arises each year. This situation is different. The Ranchmen's Club property is unique and the Respondent is attempting to find the best method of placing a fair assessment on the property. The current recreational retail classification is the best fit the Respondent could find. The property was inspected in the Fall of 2013 and based on photographic and descriptive material, the Respondent determined that it was not proper to place it in the office classification. It was placed in the retail category of properties and the assessment was prepared on the basis of a retail status with all above grade space occupied for recreational uses. The \$12.00 per square foot rent rate was extracted from data on leases for a yoga studio, a restaurant and a nightclub. The 5.50 percent capitalization rate was found from analysis of four Beltline retail property sales that occurred in 2011, 2012 and 2013. The subject building plans describe meeting rooms that can be used for private dining. A comparison of the Ranchmen's Club food and beverage menus to those of a high end Beltline restaurant show that the services at the club compare favourably to those of a restaurant. Restaurants are a form of retail use.

[22] Beltline land in several economic zones, including BL3 where the subject is located, is assessed at a rate of \$285 per square foot. Nine sales of land in BL3 and BL4 support the \$285 rate. That rate is applied to CC-MH land as well as to other commercial land. Notwithstanding, the subject building contributes to property value so use of a land valuation is inappropriate.

[23] Further, there is no market evidence to support the Complainant's position that the removal of development density or air rights impairs the land value. Documentation on the sale and resale of a provincial historical resource designated property at 803 – 15 Avenue SW confirmed this response. The property, known as the Nellie McClung House (converted and occupied as offices), sold for \$1,100,000 in 2004. In March 2013, the air rights were sold and then the residual property sold for \$1,600,000.

Board's Reasons for Decision:

[24] The CARB will not address the matter of issue estoppel/abuse of process because it was not an issue in this complaint.

[25] The subject property has on it a building with a specific use – as a private social club. It is 100 years old but the interior was fully upgraded about 30 years ago. The CARB finds that with the use restriction as a social club, the waning public interest in social clubs and the age

and condition of the building, it does not add significantly to the property value. Alberta legislation requires that assessments of properties within the municipality be the market values of those properties. The Act defines market value: the amount that a property might be expected to realize if it is sold on the open market by a willing seller to a willing buyer. With regard to the subject club property, the question is who, if armed with full knowledge of the physical and legal characteristics, would be interested in purchasing the property.

[26] If valued as an office, with recognition of its restricted redevelopment potential due to the transfer of its air rights, the value estimate is less than land value. If the current assessment which is based on a recreational retail use is adjusted for the density restrictions by increasing the capitalization rate by the formerly acceptable +3.0 percent, that value is less than land value.

[27] The CARB finds that the unique characteristics of the property have influenced its assessments in past years and that should continue. It does not fit into any of the office or retail classifications due to restrictions that exclude both of those uses. Mass appraisal models do not lead to a realistic assessment regardless of the property classification. The club building is not the type that attracts rental income like an office or retail building.

[28] The Respondent's Influence Adjustment chart for the valuation of vacant land includes a category entitled "*Land Use Restrictions*" wherein a -25 percent adjustment is "*applied to properties, which as a result of a caveat, covenant or Direct Control (DC) Bylaw, have restricted development potential that similar properties are not affected by.*" DC Bylaw 4D2012 deals specifically with the subject property. Under the heading "Permitted Uses," it states: "*(1) The **permitted uses** of the Centre City Multi-Residential High Rise District (CC-MH) of Bylaw 1P2007 are the **permitted uses** in this Direct Control District. (2) The following **uses** are additional **permitted uses** in the **building** existing onsite on the date of the passage of this bylaw: (a) **Social Organization.***" In June 1981, a Restrictive Covenant was registered on title to the subject property. That covenant read, in part:

B. RESTRICTIONS ON EASTERLY LANDS

AND WHEREAS:

- (1) *The City of Calgary Planning Commission has issued a development permit permitting the development of a condominium project on the Westerly Lands (hereinafter called the "Westerly Development") and the development of an addition and expansion of the existing facilities of The Club on the Easterly Lands (hereinafter called the "Easterly Development");*
- (2) *The conditions of the City of Calgary Planning Commission in issuing the said development permit are (i) that The Club effectively transfers to the Westerly Lands the density calculation available and attributable to the Easterly Lands to permit the development and construction of the Westerly Development, and, (ii) that the exterior structure and facade of the existing facilities of The Club on the Easterly Lands not be altered other than by the Easterly Development; and*
- (3) *The Club has agreed to execute such deeds, documents and assurances, including this Restrictive Covenant, as required to comply with the conditions set forth in recital B(2) above;*

[29] The Complainant testified that the transfer of the density rights involved a partial cash payment plus a commitment from the transferee to contribute funds to refurbishment of portions

of the club. In all, the cash value was approximately \$450,000. This was in 1981.

[30] The CARB notes that descriptive materials pertaining to the aforementioned Nellie McClung House property indicate that the transferor and transferee agreed that the density transfer from that property had a minimum value of \$2,168,000 (this was as at March 2013).

[31] The CARB finds that density or air rights do have value and once those rights have been transferred away from a property, the underlying land value is decreased. There was no market evidence put forward by either party that would assist in the quantification of the value of density rights. The Respondent's land influence chart is the only support in the evidence for a land adjustment. The CARB acknowledges that while the property has no official heritage designation from any level of government, there are conditions in the restrictive covenant that limit changes to the subject building.

[32] The CARB considers the assessment based on the underlying land value to be superior to attempting to place value on the existing improvement on the assumption of some use other than that of a club. Evidence and testimony of the Complainant and Respondent lead to the conclusion that the existing building has little if anything to contribute to overall property value.

[33] The CARB does not accept the Complainant's land value analysis. It is essentially based on two land sales, one being a smaller site that sold in 2011 and the other being a larger site that sold in 2013. The Respondent's \$285 per square foot land rate is supported by nine BL3/BL4 sales.

[34] The CARB notes that the Respondent's land value influence chart also contains a line item that requires an upward adjustment in the valuation of corner sites. The Complainant conceded that this adjustment would be appropriate in the subject instance.

[35] The CARB sets the 2014 assessment of the subject property at:

24,415 square feet of land at \$285 per square foot; minus 25.0 percent for land use restrictions plus 5.0 percent for corner lot location. The net land value which becomes the total property assessment is truncated to \$5,560,000.

DATED AT THE CITY OF CALGARY THIS 28 DAY OF August 2014.

W. Kipp

W. Kipp

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2 (A-B-C-D-E)	Complainant Legal Brief
3. R1	Respondent Disclosure
4. C3	Complainant 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 USE

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	OTHER	SOCIAL CLUB		