



CENTRAL ALBERTA REGIONAL  
**Assessment  
Review Board**

Complaint ID 0262 1873  
Roll No. 30000933055

COMPOSITE ASSESSMENT REVIEW BOARD DECISION  
HEARING DATE: SEPTEMBER 17, 2024

PRESIDING OFFICER: J. DAWSON  
BOARD MEMBER: R. IRWIN  
BOARD MEMBER: J. GRAU

BETWEEN:

PEACOCK INN LTD.  
Represented by NORTHERN PROPERTY TAX ADVISORS INC.

Complainant

-and-

REVENUE & ASSESSMENT SERVICES  
For the City of Red Deer

Respondent

This decision pertains to a complaint submitted to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by an Assessor of The City of Red Deer as follows:

ROLL NUMBER: 30000933055  
MUNICIPAL ADDRESS: 3421 50 AV, RED DEER, AB  
ASSESSMENT AMOUNT: \$1,922,600

The complaint was heard by the Central Alberta Assessment Review Board on the 17th day of September 2024, via videoconference.

Appeared on behalf of the Complainant: A. Izard, Agent, Northern Property Tax Advisors Inc.

Appeared on behalf of the Respondent: C. Green, Senior Property Assessor for City of Red Deer  
S. Gill, Senior Property Assessor for City of Red Deer

**DECISION:** The assessment of the subject property requires a change to account for the actual area used for fast-food restaurant. The new assessment value is \$1,718,800.

**JURISDICTION**

- [1] The Central Alberta Regional Assessment Review Board [“the Board”] has been established in accordance with section 455 of the *Municipal Government Act*, RSA 2000, c M-26 [“MGA”].

**PROPERTY DESCRIPTION AND BACKGROUND**

- [2] The subject property is a free-standing fast-food restaurant with a drive-thru, located along Gaetz Ave, south of 35 Street. The subject property improvements were built in 1978.
- [3] The subject property is assessed using the income approach to value with a stratification of Restaurant – Fast-food Stand Alone and a quality range 4. The assessed area is 3,644 square feet on a 14,813 square foot property resulting in a 24% site coverage. The assessed rental rate is \$36 per square foot resulting in a market income of \$131,184. The assessment has a 2.0% vacancy allowance, a \$14.00 per square foot operating costs adjustment, and a 2.0% non-recoverable allowance. The net operating income calculated is \$124,969. Utilizing a capitalization rate of 6.5% derives a rounded assessment value of \$1,922,600.

**PRELIMINARY MATTERS**

- [4] The Presiding Officer confirmed that no Board Member raised any conflicts of interest with regard to matters before them.
- [5] Neither party raised any objection to the panel hearing the complaint.
- [6] No additional preliminary or procedural matters were raised by any party. Both parties indicated that they were prepared to proceed with the complaints.

**POSITION OF THE PARTIES****Position of the Complainant**

- [7] The Complainant reviewed the summary of testimonial evidence, assessment summary, assessment notice and other site-specific information of the subject property.
- [8] The Complainant explained that the assessed area, both on the total area, and the allocation of area between two separate tenants at the subject property needs adjustment. The Complainant continued by indicating that the first tenant is the landlord, which occupies 512 square feet of space for file storage, while the second tenant is the Fast-food Restaurant space, which occupies the remaining 3,001 square feet, for a total of 3,513 square feet. The Complainant indicated that the entire site was previously operated as a fast-food restaurant by the Complainant; however, a portion of the property was leased to a third party in October 2023, and as such the storage space was delineated from the restaurant.
- [9] The Complainant provided email correspondence with the landlord of the property, outlining the nature of the space, the total area, and how this space is separated from the restaurant by means of access, and does not form part of the restaurant space.

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- [10] The Complainant presented an architectural site plan from 2005, the history of the space, and the nature of the space today as a secure storage area, with separate access, which does not form part of the leased restaurant space.
- [11] The Complainant included examples of similar storage spaces which are assessed at either \$1 per square foot or \$3 per square foot. The Complainant argued that this area should be equitably treated like other storage areas within a retail setting at \$1 per square foot.
- [12] The Complainant suggested that the correction to the area, and corresponding area allocation, pursuant to s. 289 of the Act would revise the assessment value to \$1,589,900, prior to any considerations to rental rate for the Fast-food Restaurant space.
- [13] The Complainant provided information on three fast-food restaurant leases as comparable properties; 1) a stand alone site within a regional power centre, 2) a CRU unit on the adjacent retail property, and 3) a CRU in the northeast community shopping centre. The Complainant argued that these comparable leases show the rental rate applied to the standalone fast-food restaurant space within the subject property should be no higher than \$33 per square foot.
- [14] The Complainant argued that the subject property has locational challenges, with no direct access to Gaetz Avenue, limited available parking stalls at the property, which is not an issue at comparable locations, and the age of the property (1978) relative to the newly constructed locations along Gaetz Avenue.
- [15] The Complainant provided an equity comparison, a stand alone fast-food restaurant that is assessed with neighbouring properties as a power centre with an assessed value of \$1,496,300 (\$485 per square foot); which supports a value of \$1,458,100 being applied to the fast-food restaurant portion of the subject property. The Complainant suggest that a further inequity is being applied to the subject property given that the comparable property contains 0.96 Acres vs. the subject property that contains only at 0.34 Acres.
- [16] The Complainant explained, based on comparable assessments and market leasing evidence, that the rental applied to the subject should be no higher than \$33 per square foot. Furthermore, the older age of the subject property, and the inferior location relative to the other examples, illustrate that an adjustment is required.
- [17] The Complainant provided past decisions to illustrate the requirements of onus of proof and demonstrate that the onus test is based on the balance of probabilities where the taxpayer is not required to prove what the correct assessment should be:
- a. 1544560 Alberta Ltd v. Edmonton (City) [2015] ABQB 520
  - b. Concord Pacific Alberta Properties Inc. v. Calgary (City) [2017] ABQB 138
  - c. Ross v. City of Edmonton (City) [2016] ABQB 730
  - d. Penny Lane Shopping Centre Ltd. v. Calgary (City of) [2017] ABQB Action 1501-09116 Transcript
  - e. Costco Wholesale Canada Ltd. v. City of Medicine Hat [2022] ABQB 129.

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- [18] The Complainant also included information to address fairness and equity as a concern, related to the applied rate for storage space relative to similar and competing properties within the municipality. The Complainant referenced the following decisions on the issue from the Court of Appeal to the CARB outlining that a taxpayer has two distinct rights; Firstly, a right to an assessment which is not in excess of which can be regarded as equitable, and secondly, a right not to be assessed in excess of market value:
- a. Strathcona (County) v. Alberta Assessment Appeal Board [1995] ABCA 165
  - b. Lougheed Tomasson Inc. v. Calgary (City of) [2000] ABCA 81
  - c. Mountain View County v. Alberta (Municipal Government Board) [2000] ABQB 594
  - d. 1544560 Alberta Ltd v. Edmonton (City) [2015] ABQB 520
  - e. Domain Apartments v. The City of Calgary [2024] ABCGYARB 2184491.
- [19] In rebuttal, the Complainant provided images to show the storage space used by the landlord is separate and secured.
- [20] The Complainant showed information that the tenant lease started on October 1, 2023, with 3,250 square feet at a rental rate of \$33.27 per square foot.
- [21] The Complainant argued that its comparable properties are no different from the Respondent where it used regional mall, power centre and strip mall leases in defense of the assessment.
- [22] The Complainant explained that the renovations the Respondent showed were for brand renewal and have not changed the age of the building, which the Respondent compares properties built in 2022 and 2023.
- [23] The Complainant presented that one of the comparable properties provided by the Respondent is actually a land lease and not a building.
- [24] From an equity standpoint, the Complainant dismissed the sale presented by the Respondent with a value of \$775 per square foot and argued that equity comparable properties demonstrate a mean value of \$469 per square foot and a median value of \$485 per square foot versus the assessment at \$527 per square foot.
- [25] The Complainant reviewed the lease examples the Respondent presented and explained many of the leases were assessed at \$32 per square foot or 11% lower than the subject property.
- [26] The Complainant made a final requested assessment with all changes included at \$1,455,900. Or an equitable assessment value of \$1,458,300.

### **Position of the Respondent**

- [27] Respondent explained that the Complainant's evidence raises the issue of whether the total square footage of the Subject property is less than assessed square footage. The Respondent argued that

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the square footage that is assessed comes from building diagrams in possession of the Respondent that were submitted by the Complainant.

- [28] The Respondent argues that the evidence and argument from the Complainant is lacking because they have provided no evidence other than a floor plan which does not match their requested square footage.
- [29] The Respondent included a building diagram it used to arrive at a square footage of 3,644.
- [30] The Respondent provided a demolition diagram submitted by the Complainant that shows there is no separate delineation between the restaurant and the storage. Additionally the Respondent argued that storage space in stand alone fast food restaurant is not assessed separately.
- [31] The Respondent argued that the Complainant raised the issue of the rental rate changed from \$36 to \$33 per square foot. The Respondent indicated that the analysis that included non-similar spaces.
- [32] The Respondent presented market rental rate analysis for stand alone fast-food restaurants that supports the application of \$36 per square foot.
- [33] The Respondent shared a recent sales transaction of stand-alone fast food restaurant that demonstrates the current assessment value of the subject is lower than its market value.
- [34] The Respondent explained that the Complainant requested that the storage space at the subject property should be assessed at \$1 per square foot.
- [35] The Respondent reviewed the subject property in relation to storage space and realized there is basement storage space that is not currently being assessed, explaining that an inspection would be required.
- [36] The Respondent did not request an increase to the assessment value resulting from basement area which has not been assessed.
- [37] The Respondent provided examples of request for information documents and assessment summaries to demonstrate stand alone fast food restaurants containing storage, restrooms, corridors, office etc., pay a single rent for care and control of the entire space.
- [38] The Respondent requested that the Board confirm the assessment as being fair and equitable.


#### **BOARD FINDINGS and DECISION**

- [39] The Board finds the request for information evidence from the Complainant demonstrates the fast food restaurant space is 3,250 square feet and not the 3,001 square feet as requested.
- [40] The Board has not conclusive evidence on the overall size of the subject property and accepted the information from the Respondent as being most compelling at 3,644 square feet.
- [41] The Board subtracted the 3,250 square feet for the fast food restaurant from the overall size of 3,644 square feet to arrive at a storage area of 394 square feet.

- [42] The Board accepted the Complainant's evidence of rental rate for storage space at \$1 per square foot based on the care and control of the space being the landlord and not the tenant.
- [43] The Board finds a new assessment of \$1,718,800 calculates a per square foot value of \$471. The Complainant had argued there was an inequity showing a mean value of \$469 per square foot and a median of \$485 per square foot in support of its equity argument. The Board finds the changed assessment value is in the range of values provided by the Complainant for its equity argument; therefore, the equity argument has been satisfied by the change created above.
- [44] The Board finds the changed assessment value to be fair and equitable.

#### **DECISION SUMMARY**

- [45] The assessment of the subject property requires a change to account for the actual area used for fast-food restaurant. The new assessment value is \$1,718,800.
- [46] Dated at the Central Alberta Regional Assessment Review Board, in the City of Red Deer, in the Province of Alberta this 18<sup>th</sup> day of October 2024 and signed by the Presiding Officer on behalf of all the panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



J. DAWSON  
Presiding Officer

*MGA Section 470(1) Where a decision of an assessment review board is the subject of an application for judicial review, the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision.*

**APPENDIX A**

Documents presented at the Hearing and considered by the Board.

<u>NO.</u>	<u>ITEM</u>	<u>PAGES</u>
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