

**CITY OF CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of a complaint filed with the City of Calgary Assessment Review Board pursuant to Part 11 of the *Municipal Government Act*, Chapter M-26, Revised Statutes of Alberta 2000 (the Act).

Between:

OCTAGON PROPERTIES GROUP LTD, Complainant

and

THE CITY OF CALGARY, Respondent

Before:

**J. KRYSA, Presiding Officer
I. ZACHAROPOULOS, Member
M. PETERS, Member**

A hearing was convened on August 19, 2010 in Boardroom 4 at the office of the Assessment Review Board, located at 1212 - 31 Avenue NE, Calgary, Alberta in respect of the property assessment prepared by the assessor of the City of Calgary, and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	098016108
LOCATION ADDRESS:	2840 58th Avenue SE
HEARING NUMBER:	56075
ASSESSMENT:	\$3,490,000

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a 138,627 sq.ft. irregular shaped parcel of land, zoned I-G, and improved with a 20,099 sq.ft. single tenant industrial warehouse with 23% office finish, constructed in 1972. The site coverage is 14.5%.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The Assessment Review Board derives its authority to make decisions under Part 11 of the Act.

At the commencement of the hearing, the Respondent raised the following preliminary matter:

With respect to agency, the subject property had recently sold, and the current owner has not filed an agency authorization form.

The representative of the Complainant submitted letters of authorization from both the Complainant on file, as well as from the current owner [Exhibits C1 and C2]. This evidence was unchallenged by the Respondent.

Decision - Preliminary matter

The Board accepts exhibits C1 and C2 as evidence of agency.

PART C: MATTERS / ISSUES

The Complainant raised the following matter in section 4 of the complaint form:

3. an assessment amount

The Complainant set out several reasons for complaint in Section 5 of the Complaint form, with a requested assessed value of \$1,425,000; however at the hearing the representative of the Complainant stated only the following issues were in dispute:

Issue 1: An appraisal of the subject property with an effective date of September 15, 2009 set a value range from \$1,675,000 to \$1,750,000.

Issue 2: The subject property had recently sold for \$1,425,000.

Issue 3: A sales analysis indicates that 2 adjacent properties had sold for \$70 and \$87 per sq.ft. The sale of the subject, at \$74 per sq.ft., is consistent with these sales.

At the hearing, the Complainant's representative requested an assessment \$1,450,000.

Issue 1: An appraisal of the subject property with an effective date of September 15, 2009 set a value range from \$1,675,000 to \$1,750,000.

The Complainant submitted 32 pages of a 42 page appraisal report of the subject property prepared by Linnell Taylor Lipman & Associates indicating market value of \$1,675,000 as of September 15, 2009 [Exhibit C3 pgs 22 – 56].

The Respondent argued that the effective date of the appraisal is subsequent to the valuation date of July 1, 2009 and therefore is not a valid market indicator for the assessment. Further, as the author of the report was not present as a witness and subject to cross examination, the appraisal report should be afforded little weight.

Decision – Issue 1

The Board finds that the estimate of market value contained in the Complainant's appraisal does not meet the legislated requirements, and is therefore not relevant to the matter before the Board.

Matters Relating to Assessment and Taxation Regulation, Alberta Regulation 220/2004

s.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.

Notwithstanding the effective date of the appraisal being some 2 ½ months subsequent to the July 1, 2009 valuation date, the appraisal states that the interest valued is that of the leased fee estate, and not the fee simple estate as set out in the legislation [C1 pg. 24].

Issue 2: The subject property had recently sold for \$1,425,000.

The Complainant argued that the market value of the subject property was evident in the recent sale. In support of this argument, the Complainant submitted an Offer to Purchase and Agreement for Sale dated December 23, 2009 for \$1,550,000, and a third party market report indicating that the property sold for \$1,425,000 on April 14, 2010 [C1 pg 61].

The Respondent argued that the offer to purchase and the sale of the subject both occurred subsequent to the valuation date of July 1, 2009 and therefore are not valid market indicators for the assessment. Further, the Respondent argued that the subject had previously sold on February 13, 2008, prior to the valuation date for \$2,050,000 [C1 pg 65].

Decision – Issue 2

The Board finds that the April 14, 2010 sale of the subject property is not relevant to the matter before the Board.

Matters Relating to Assessment and Taxation Regulation, Alberta Regulation 220/2004

s.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.

The offer to purchase and agreement for sale in December 2009, and the sale date of April 14, 2010, both occurred well beyond the legislated valuation date of July 1, 2009, and may not reflect typical market conditions at that time.

Issue 3: A sales analysis indicates that 2 adjacent properties had sold for \$70 and \$87 per sq.ft. The sale of the subject, at \$74 per sq.ft., is consistent with these sales.

The Complainant submitted 7 sales of "C" quality industrial properties in the vicinity of the subject property. The average and median adjusted sale prices were \$103.25 and \$113.94 per sq.ft. respectively, in contrast to the subject assessment at \$178.98 per sq.ft. [C1 pg 57]. It was argued that the value of the subject property was best represented by the sales of the two adjacent properties as follows:

1. 2807-57 Avenue at \$70.97 per sq.ft.
2. 2808-58 Avenue at \$87.08 per sq.ft.

During cross examination, the Complainant conceded that the three sales in Burns Industrial were older properties and would be inferior to the subject, and that the remaining sales were subject to vendor leaseback or financing, or non brokered tenant purchases or, in the case of the two adjacent properties set out above, multi-property transactions. Further, the Complainant acknowledged that no adjustments were made to the sale prices of the comparables to reflect the differences between the comparables and the subject property.

The Respondent submitted 6 sales of industrial properties in Foothills Industrial, exhibiting a range of time adjusted sale prices from \$105 to \$155 per sq.ft., and a median of \$133 per sq.ft.; and 6 assessment comparables to demonstrate that the subject was equitably assessed based on a typical 30% site coverage ratio [R1 pgs 32-34].

The Respondent argued that the assessment comparables and comparable sales all reflected values of properties with significantly higher site coverage, and that the subject with a 14.5% site coverage would require an adjustment for 1.69 acres of additional land. "Additional" land is valued as though it is a separate and subdivided parcel, at the standard vacant land rates applied throughout the municipality of \$1,050,000 for the first acre, plus \$300,000 per acre for any area greater than one acre.

The Complainant argued that the valuation of the additional land as a subdivided and separately titled parcel was inappropriate, because the lands were not under separate title and could not be sold as such. Furthermore, the shape and configuration of the parcel would limit its subdivision potential.

The Respondent conceded that in this instance the additional 1.69 acres should be valued as "excess" lands at the \$300,000 per acre incremental rate, and further that in light of the shape and configuration of the parcel, a shape factor allowance of up to 40% could be applied.

Decision – Issue 3

The Board finds that the subject property is incorrectly assessed as a result of the additional land valuation methodology.

The comparable sales submitted by both parties indicate a median assessment ratio of \$116 per sq.ft. for properties with a median site coverage of approximately 37%. The assessment of the subject property, excluding the \$1,359,371 additional land value, is under \$110.00 per sq.ft., and well within the range evident in the sales comparables from both parties.

The Board finds the valuation methodology applied by the Assessor to the “additional” land area of 1.69 acres is not in accordance with the legislation as set out below.

Municipal Government Act, Revised Statutes of Alberta, Chapter M-26

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, and
- (b) the valuation and other standards set out in the regulations for that property.

284(1) In this Part, and Parts 10, 11 and 12,

- (r) “property” means
 - (i) a parcel of land

1(1) (v) “parcel of land” means

- (i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office:

Matters Relating to Assessment and Taxation Regulation, Alberta Regulation 220/2004

4(1) The valuation standard of a parcel of land is

- (a) market value, or...

6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

The Board’s interpretation of the legislation is that an assessment must reflect the characteristics and physical condition of each lot or block as it existed on December 31.

In this instance, the Assessor has assessed the additional area as if it was a parcel of land; however, the subject property was an individually titled, 3.18 acre lot, on December 31, 2009. The value established for the 19,499 sq.ft. building by the direct comparison approach would include the value of 1.49 acres of land (at a 30% typical site coverage ratio), therefore any excess lands should be valued at the incremental rate for land over 1 acre in size.

It is noted that the legislation sets out certain circumstances in which an area of land may be assessed contrary to the Board's interpretation above.

Matters Relating to Assessment and Taxation Regulation, Alberta Regulation 220/2004

4(4) An area referred to in subsection (3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.

The assessor's authority to assess an area of land, as if it is a parcel, is clearly limited to these subsections only.

The value assigned to the improvement and associated land, as determined by the direct comparison approach is confirmed at \$2,139,000.

The value of the additional lands is revised from \$1,359,000 to \$380,250, incorporating a 25% "shape" factor. (1.69 acres x \$300,000 x 75%)

FINAL DECISION

The property assessment is revised from \$3,490,000 to \$2,510,000.

Dated at the City of Calgary in the Province of Alberta, this 28 day of September, 2010.



J. Krysa
Presiding Officer

APPENDIX "A"**DOCUMENTS RECEIVED BY THE ASSESSMENT REVIEW BOARD:**

NO.	ITEM
1.	Exhibit C1 Agency Authorization
2.	Exhibit C2 Agency Authorization
3.	Exhibit C3 Complainant's Brief
4.	Exhibit R1 Respondent's Brief

APPENDIX 'B'**ORAL REPRESENTATIONS**

PERSON APPEARING	CAPACITY
1. D. Porteous (Colliers)	Representative of the Complainant
2. I. Baigent	Representative of the Respondent
3. P. Sembrat	Representative of the Respondent

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.*