

**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:**

**AEC INTERNATIONAL INC., Complainant**

**and**

**THE CITY OF CALGARY, Respondent**

**Before:**

**J. KRYSA, Presiding Officer  
J. O'HEARN, Member  
D. POLLARD, Member**

A hearing was convened on August 5, 2010 and August 27, 2010, in Boardroom 12 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:

|                          |                                       |
|--------------------------|---------------------------------------|
| <b>ROLL NUMBER:</b>      | <b>049012602</b>                      |
| <b>LOCATION ADDRESS:</b> | <b>2255 29<sup>th</sup> Street NE</b> |
| <b>HEARING NUMBER:</b>   | <b>59418</b>                          |
| <b>ASSESSMENT:</b>       | <b>\$38,150,000</b>                   |

**PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

The subject property is a 1,048,489 square foot (24.07 acre) parcel of land improved with a 426,791 square foot (sq.ft.) single tenant distribution warehouse, constructed in 1996 with an addition in 2007, comprised of (warehouse) 400,794 sq.ft., (office) 22,559 sq.ft, (upper floor office) 3,333 sq.ft., with an effective building to land ratio of 40.4%.

**PART B: PROCEDURAL or JURISDICTIONAL MATTERS**

At the commencement of the hearing, the Respondent raised an objection to the Complainant's rebuttal submission [Exhibit C3]. The Respondent submitted an article entitled "An Advocacy Primer" [Exhibit R1], and argued that the rebuttal submission is unreasonably onerous as it includes 337 pages, and the Respondent has only 7 days to respond to it, and further, that portions of it are not proper rebuttal, but rather, new evidence that should have been included in the Complainant's disclosure of evidence; specifically:

Pages: 18 to 25; 41 to 44; 47; 49; 50 to 53; and  
Appendices: 3; 4; 5; and page 247 of appendix 7.

The Respondent argued that the sections identified above contain new analyses, and new evidence including Net Annual Rental Value (NARV) evidence and argument, market reports, Marshall & Swift cost manual data, and a copy of correspondence that is not rebuttal, nor proper evidence in any event.

The Complainant argued that there was no notice of an objection to the rebuttal provided, and in any event, the objection is groundless as the materials are proper rebuttal to the Respondent's case. Further, the Complainant cannot guess what the Respondent's defense will be when preparing the evidence materials, and in this instance, the Complainant is properly attacking the Respondent's case regarding methodology.

With respect to the Respondent's objection regarding the volume of the Complainant's rebuttal evidence, the legislation does not restrict the amount of rebuttal evidence a party may present, nor does it authorize the Board to do so. The Board does however have the authority to grant an adjournment to allow a party appropriate time to review and respond to an onerous amount of rebuttal evidence. In this instance, faced with the consideration of procedural fairness and natural justice, the Respondent was asked by the Board, if an adjournment was required; the Respondent indicated an adjournment was not required.

Upon review, the Board found that a proper determination of the materials could not be made until all of the evidence had been heard. As a result the Board proceeded with the hearing of the merits of the complaint, and reserved the decision relating to new evidence until such time as all of the evidence had been heard, at which time the Respondent withdrew the objection to pages 18 to 25, pages 47 and 49; and appendix 5, and page 247 of appendix 7.

**Decision – Preliminary Matter**

The Board finds that the materials in pages 41 to 44 contain proper rebuttal evidence directly related to the Respondent's evidence, as well as previous Board decisions and case law excerpts which are not evidentiary in nature. Also allowed, are Appendices 3 and 4, which the Board finds are general cost approach information, and materials that are included elsewhere in the Complainant's original disclosure of evidence. The Board finds that the evidence in pages 50 to 53 constitutes new evidence and not proper rebuttal evidence, and is therefore disallowed.

**PART C: MATTERS / ISSUES**

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

3. an assessment amount

The Complainant set out five issues for complaint in Section 5 of the Complaint form, and a requested assessed value of \$28,378,000, however at the hearing the Complainant identified the following issues in dispute:

Issue 1: The City has employed an unreliable approach to determine the assessed value.

Issue 2: The subject property assessment is inequitable when compared to similar properties; an equity comparison indicates an assessment of \$28,378,000 (\$67 per sq.ft.)

Issue 3: Alternate approaches to value are more reliable, and indicate a range of market value estimates from \$28,378,000 (\$67 per sq.ft.) to \$31,764,000 (\$74 per sq.ft.)

The Complainant requested an assessment of \$28,378,000.

**Issue 1:** The City has employed an unreliable approach to determine the assessed value.

The Complainant argued that the direct (sales) comparison approach, mass appraisal methodology employed by the Assessor is unreliable for estimating the market value of the subject property, a large warehouse, due to an insufficient number of recent, reliable sales transactions of similar properties.

With respect to the number of sales, the Complainant argued that the Assessor's valuation model does not accurately reflect the principle of economy of scale, as the vast majority of the sales transactions analyzed were of properties under 100,000 square feet in size, and there were no sales of properties in the subject's size range.

With respect to the reliability of the large sales, the Complainant argued and submitted evidence that of the seven sales of industrial warehouse properties greater than 200,000 square feet in size, occurring between July 1, 2008 and the current valuation date of July 1, 2009, three of the properties were subject to vendor leaseback or vendor financing arrangements which may have affected the consideration amount. Of the remaining four properties, two were multi building properties, one was a sale of a 50% interest in a property, and the last one was 25 years older and less than one half the size of the subject [C1 pgs 260-287].

The Complainant further pointed out that the Municipal Government Board had heard and decided the same matter for the 2008 taxation year, and the assessor made a recommendation consistent with that decision for the 2009 taxation year.

As a result of the argued deficiencies in the Assessor's direct comparison approach mass appraisal model, the Complainant submitted an appraisal of the subject property employing the income approach, and the cost approach to establish alternate estimates of market value.

The Respondent advised that the property assessment was prepared by means of the direct (sales) comparison approach, employing multiple regression analysis to an inventory of sales that occurred in the 36 months prior to the valuation date of July 1, 2009.

The Respondent argued that there were sufficient sales of warehouse properties to employ the direct comparison approach, and that notwithstanding the relatively few sales of larger warehouse properties, the mass appraisal model correctly predicts the value of large properties. In support, the Respondent submitted eight sales of warehouses, ranging in size from 108,800 sq.ft to 309,496 sq.ft., exhibiting time adjusted sale prices ranging from \$71 to \$135 per sq.ft. [R1 pg 46].

In rebuttal, the Complainant submitted evidence that some sales were real estate investment trust (REIT) sales, some were multi-building properties, and argued that due to the sizes of the properties, none would reflect a proper value per square foot for a large warehouse property [C3 pgs 26-39].

### **Decision – Issue 1**

The Board finds that, in this instance, the direct comparison approach to value cannot be relied upon without further testing, or reconciliation with other approaches to value.

The Board accepts that there are three accepted approaches to determine value, the direct (sales) comparison approach, the income approach and the cost approach. All three of the approaches are valid methodologies, and all three may result in an accurate estimate of value. Each approach has its own advantages and limitations, and each requires sufficient market data from which to draw conclusions. Ideally more than one approach will be employed, and the resulting estimates of value will be reconciled, to support the final estimate of value conclusion.

In this instance, the Board finds that the Assessor's valuation conclusion was derived from what are unquestionably, relatively few reliable sales of large warehouse properties, without testing or reconciling those conclusions to ascertain if they are correct. It is noted that, excluding the 5664 69<sup>th</sup> Avenue SE sale of a 309,496 sq.ft. warehouse in December 2006, the Respondent's remaining seven sales ranged from 108,800 to 199,772 square feet; less than half the size of the subject. There is no evidence to confirm that the model would predict an accurate value for a property possessing characteristics well outside of the range found in the observations (sales); however the Complainant's sales and rent rate evidence reflecting the principle of economy of scale, was found to be consistent and compelling.

**Issue 2:** The subject property assessment is inequitable when compared to similar properties; an equity comparison indicates an assessment of \$28,378,000 (\$67 per sq.ft.)

The Complainant submitted an analysis of 23 industrial warehouse properties ranging in size from 146,780 to 767,000 sq.ft., and exhibiting assessments ranging from \$45 to \$90 per sq.ft., with average and median assessments of \$75 and \$76 per sq.ft. respectively [C2 pg 6]. The Complainant argued that the subject property with an assessment of \$89 per sq.ft., or 19% higher than the average of the equity comparables, was inequitably assessed in relation to the other properties.

The Respondent submitted a list of 7 industrial warehouse properties ranging in size from 301,930 to 972,272 sq.ft., and exhibiting assessments ranging from \$80 to \$112 per sq.ft. to demonstrate that the subject is equitably assessed [R2 pg 51].

### **Decision – Issue 2**

The Board finds that there are some apparent inconsistencies, but the evidence is inconclusive to ascertain if the assessment of the subject property is inequitable in relation to that of other similar properties.

The Respondent's equity comparables appear to establish that the subject is equitably assessed.

The Complainant's analysis, based on the average and median assessment per square foot, does not demonstrate an inequity. The Board finds that the fact that the subject's unit rate of assessment is higher than the average or median of a sample of properties whose only similarity is a large building area, does not in itself, demonstrate an inequity. The assessments of the comparable properties should reflect the attributes of those properties, and as a result should exhibit a range of values, and the subject assessment at \$89 per sq.ft. falls within that range, albeit near the top. If the subject possesses the attributes that warrant its position at the top of the range, then it is equitably assessed, regardless of the average or median rate of assessment of the comparables.

Notwithstanding, the Board notes that only one of the Complainant's comparable properties, index #6, which is approximately one-half the size of the subject, was assessed at \$90 per sq.ft.; the remainder range between \$45 and \$82 per sq.ft. Further, the Complainant's comparables over 300,000 sq.ft. in size, exhibit assessments ranging from \$69 to \$80 per sq.ft. with index #18, the closest in size to the subject, assessed at \$69 per sq.ft., in contrast to the subject at \$89 per sq.ft.

|          | <b>Building</b> | <b>Acres</b> | <b>Bldg:Land</b> | <b>Year Built</b> | <b>Assessed Rate</b> |
|----------|-----------------|--------------|------------------|-------------------|----------------------|
| Index 18 | 410,483         | 30.13        | 31.3%            | 2009              | \$69                 |
| Subject  | 426,791         | 24.07        | 40.7%            | 1996-2007         | \$89                 |

The Board notes that index #18 is a new building, located on a parcel of land that is 6 acres (25%) larger, however it is assessed at a rate \$20 per square foot less than the subject.

**Issue 3:** Alternate approaches to value are more reliable, and indicate a range of market value estimates from \$28,378,000 (\$67 per sq.ft.) to \$31,764,000 (\$74 per sq.ft.)

The Complainant submitted a property appraisal of the subject property which employed the income approach and the cost approach to establish estimates of value.

The income approach estimate relied upon a market rental comparison of 12 industrial warehouse leases, and 3<sup>rd</sup> party market reports to support a market rent rate of \$5.75 per square foot, which is consistent with the net annual rental value (NARV) rate established by the Assessor for business tax purposes. The vacancy allowance of 5% was derived with minor adjustment to a CB Richard Ellis market report; and a \$4.00 per square foot vacancy shortfall was selected with regard to the subject's historical actual reported operating costs. A 2% allowance for unrecoverable expenses was deemed typical for this class of building, which resulted in an estimated net operating income of \$2,199,361.

The capitalization rate of 7.75% was derived from an analysis of 5 sales of industrial warehouse properties that occurred between February 2008 and July 2009 exhibiting a range of capitalization rates from 6.3% to 8.2%, with average and median rates of 7.16% and 7.0% respectively, as well as Colliers International and CB Richard Ellis market reports that set out a range of capitalization rates from 7.25% to 8.25% [C1 pgs 61-78].

The application of the 7.75% capitalization rate to the net operating income of \$2,199,361 provides an income approach estimate of value of \$28,378,000 (rounded).

The cost approach estimate relied upon 7 sales of vacant industrial land to establish the value of the subject's land component at \$400,000 per acre, or \$9,628,000. A Marshall & Swift Valuation Service cost manual was used to establish the \$22,135,850 depreciated value of the improvements, resulting in a total land and improvement value of \$31,764,000 [C1 pgs 79-85].

The Respondent did not prepare an income approach to value, nor a cost approach to value estimate in response to the Complainant's appraisal of the subject property, however the Respondent provided evidence of lease industrial warehouse rent rates to refute the analysis found in the appraisal [R2 pgs 52-90].

### **Decision – Issue 3**

The Board finds that the Complainant's appraisal provides compelling evidence of the market value of the subject property.

The Board was persuaded that the Complainant's income approach to value is an appropriate methodology to estimate market value in this instance; however the Board does not accept the appraiser's 7.75% capitalization rate conclusion for the following reasons:

1. The market evidence at C1 page 75, exhibits a median rate of 7.0%;
2. Indicator #1, although older, is the most comparable to the subject and exhibits a capitalization rate of 7.0%;
3. Indicator #5 is dissimilar to the subject in every respect, (new, multi building, multi-tenant, higher rents) and should be excluded from the analysis;
4. The average capitalization rate of indicators #1 though #4, is 6.9%.

The indicated market value of the subject property at a 7.0% capitalization rate is \$31,420,000 (\$73.62 per square foot).

This value is consistent with, and supported by the Complainant's cost approach to value at \$31,764,000 (\$74.44 per square foot).

This value further falls within the range of the Complainant's equity comparables, that range in size between 300,000 and 600,000 square feet and exhibit a range of \$69 to \$81 per square foot, and an average assessment per square foot of \$74.28.

#### **PART D: FINAL DECISION**

The property assessment is revised from \$38,150,000 to \$31,420,000.

Dated at the City of Calgary in the Province of Alberta, this 15 day of October, 2010



J. Krysa  
Presiding Officer

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

| <b>NO.</b> | <b>ITEM</b>   |
|------------|---|
| 1.         | Exhibit R1<br>Respondent – An Advocacy Primer         |
| 2.         | Exhibit C1<br>Complainant's Appraisal Evidence        |
| 3.         | Exhibit C2<br>Complainant's Legal and Equity Evidence |
| 4.         | Exhibit R2<br>Respondent's Evidence                   |
| 5.         | Exhibit C3<br>Complainant's Rebuttal Evidence         |

**APPENDIX 'B'****ORAL REPRESENTATIONS**

| <b>PERSON APPEARING</b> | <b>CAPACITY</b>                   |
|-------------------------|-----------------------------------|
| 1. L. Shimek            | Representative of the Complainant |
| 2. G. Ludwig            | Counsel for the Complainant       |
| 3. I. McDermott         | Representative of the Respondent  |
| 4. P. Frank             | Counsel for 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.*