

**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:

***Springborough Plaza Joint Venture Ltd. as represented by Linnell Taylor & Associates,
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
A. Wong, MEMBER
A. Zindler, 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 2010 Assessment Roll as follows:

ROLL NUMBER:	201458338
LOCATION ADDRESS:	30 Springborough BV. SW
HEARING NUMBER:	60568
ASSESSMENT (Supplementary):	\$5,020,000 (pro-rated for 4 months)

This complaint was heard on 24th day of May, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *Mr. J. Mayer - Linnell Taylor & Associates*

Appeared on behalf of the Respondent:

- *Ms. A. Jerome – Assessor, City of Calgary*

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

Prior to the commencement of the Hearing, the Complainant advised that he had not received the City's Disclosure Document by the prescribed disclosure date, which he did not identify. He hastened to note however that ultimately he had received a copy last week from the Assessor, and was therefore prepared to allow the City's Disclosure document into evidence at this Hearing.

The Respondent indicated that she accepted the Complainant's position as described above. Therefore the Board opted to allow the Respondent's Disclosure Document (R-1) into evidence.

Property Description:

The subject is an 80,831 SF three-storey (in part) Suburban Office building on 2.78 Acres (AC. of land located just west of 69 ST. SW and south of 17 AV. SW. in the community of Springbank Hill. It was constructed over an approximate 2 year period in 2009 and 2010 – ultimately being deemed, for assessment purposes, to be 100% complete/occupied as of Dec. 31, 2010.

The subject was estimated by the City to be 40% complete as of Dec 31, 2009 and assessed accordingly in Jan. 2010, at \$5,970,000 using the Cost Approach to Value.

The subject was deemed to be 100% complete/occupied as of Sept. 2010 and a Supplementary four-month Assessment of \$5,020,000 calculated using the Income Approach to Value, was issued Nov. 25, 2010. The \$5,020,000 value is before the Board today.

Issues:

1. The Municipal Government Act (MGA) and the City's Supplementary Assessment Bylaw No. 20M2010 are unclear as to the methodology to be applied when Supplementary Assessments are calculated by Assessors, and consequently the City's decision to use the Income Approach rather than the Cost Approach to value for the completed subject contravenes Sections #314 (4) and #289 of the MGA.
2. The City erred in assessing the completed/occupied subject (as of Dec. 31, 2010) using the Income approach to Value – the Cost Approach should have been used because the building was incomplete as of Dec. 31, 2009.
3. If one accepts that the Income Approach to Value is to be used, the Capitalization Rate should be 11% - to reflect the higher risk of an incomplete building, and not the 7.5%

used by the City.

Complainant's Requested Value: \$ 2,600,000

Board's Review in Respect of Each Matter or Issue:

Background

The Complainant provided a brief identified as C-1. He noted that construction of the subject began in late 2008 and was completed in the summer of 2010. It was originally issued an Assessment Notice in January 2010 based on the Cost Approach to Value, with the valuation date being July 1, 2009. The resultant \$5,970,000 value (rounded) was based on the value of the land (\$3,538,360) and 40% of the building permit value of the partially-completed building – i.e. \$2,440,000.

He noted that a Supplementary Assessment for \$5,020,000 was issued in November 2010 upon completion of the building. That value is the subject of this appeal. To calculate this Supplemental Assessment, two effective dates were applied by the City.

The first effective date – Sept. 15, 2010, was used to determine the "Supplementary Months" (four) applicable to calculate the Supplementary Assessment. The Complainant did not dispute the four month calculation.

The second effective date – July 1, 2009 was the base date to which all City valuations (partial or otherwise) for the subject under construction, would be tied until it was finally completed.

The Complainant took issue with the fact that when the building was finally completed, the City used the Income Approach to Value, instead of the previous Cost Approach, to identify an overall value for the completed building, and hence the \$5,020,000 portion of the building. He also considered it improper to then relate the \$5,020,000 value back to July 1, 2009.

The Complainant provided a one-page copy of the "City Of Calgary Assessment Explanation Report" outlining the inputs the City used in calculating the Supplemental value of \$5,020,000 via the Income Approach to Value. He also provided coloured copies of 3 location maps and 5 exterior photos of the subject. These were accepted by the parties and entered as exhibit C-2.

Argument and Analysis

Issue # 1

"The Municipal Government Act (MGA) and the City's Supplementary Assessment Bylaw No. 20M2010 are unclear as to the methodology to be applied when Supplementary Assessments are calculated by Assessors, and consequently the City's decision to use the Income Approach rather than the Cost Approach to Value for the completed subject contravenes Sections #314 (4) and #289 of the MGA."

The Complainant argued that "the Supplementary Assessment does not meet the standards of the Municipal Government Act (MGA)". Furthermore he argued that neither the MGA nor the

City's Supplementary Assessment Bylaw No. 20M2010 provide any reference or guidance as to the relevant effective dates; valuation parameters; or methodology to be used by the Assessor to calculate Supplementary Assessments. He noted that he had relied on analysis of information from the City's website in arriving at his conclusions.

In support of this position, the Complainant provided and referenced the following excerpts from the MGA:

"MGA 314 (4): Supplementary assessments must be prepared in the same manner as assessments are prepared under Division 1, but must be prorated to reflect the number of months during which the improvement is complete...."

MGA 289 (2): The Assessment must reflect;

(a) The character and physical condition of the property on Dec 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and....."

In the Appendix of his brief C-1, the Complainant provided:

a 2-page copy of the City's Bylaw Number 20M2010 – "Being a Bylaw of the City of Calgary to Authorize the Preparation of Supplementary Assessments in the City of Calgary During 2010".

Having presented his material and arguments to the Board on this issue, the Complainant confirmed that to calculate the Supplementary Assessment of \$5,020,000, the City should have continued to use the Cost Approach in November 2010 to value the completed subject as of July 1, 2009, as it had done in January 2010.

It was his view that the Assessor – lacking legislative direction - had improperly used the Income Approach in Nov. 2010 on the completed building because the building was empty and incomplete on Dec 31, 2009 – the date he considered was relevant pursuant to his reading of Section 289 (2) of the MGA.

In short, the Complainant considered that by using two different assessment methodologies on one building at different stages of its construction cycle, the City was ultimately mixing up Dec. 31, 2010 values with Dec. 31, 2009 values – all to the detriment of his client.

The Complainant therefore provided the following remedy based on the Cost Approach:

	Construction Cost	Percent Complete – Dec. 31, 2009	Values
Building	\$18,000,000	57%	\$10,260,000
Land			\$3,530,000
Estimate of value as of July 1, 2009 ; reflecting the state of the subject on Dec 31, 2009			\$13,790,000
Less – Original 2010 Assessment			\$5,970,000
Unadjusted 2010 Supplementary Value			\$7,820,000
Supplementary Months			4
Requested 2010 prorated Supplementary Assessment			\$2,606,666
Requested 2010 prorated Supplementary Assessment - Rounded			\$2,600,000

The Respondent provided a written Brief (R-1) and asserted that contrary to the Complainant's argument, the Municipal Government Act (MGA) and the City's Bylaw 20M2010 both provide clear direction regarding the calculation of Supplementary Assessments. The Respondent referenced the following Sections of the MGA:

"Division 4 – Preparation of Supplementary Assessments"

"Supplementary assessment

314 (2) The assessor must prepare supplementary assessments for other improvements if

- (a) they are completed in the year in which they are to be taxed under Part 10,**
- (b) they are occupied during all or part of the year in which they are to be taxed under Part 10, or**
- (c) they are moved into the municipality during the year in which they are to be taxed under Part 10 and they will not be taxed in that year by another municipality**

(3) A supplementary assessment must reflect

- (a) the value of an improvement that has not been previously assessed, or**
- (b) the increase in the value of an improvement since it was last assessed**

(4) Supplementary assessments must be prepared in the same manner as assessments are prepared under Division 1, but must be prorated to reflect only the number of months during which the improvement is complete, occupied, located in the municipality or in operation, including the whole of the first month in which the improvement was completed, was occupied, was moved into the municipality or began to operate."

The Respondent referenced Section 314 (2) above and clarified that the MGA makes it clear that since the subject was completed in 2010, then the assessor must prepare a supplementary assessment as prescribed. She noted that Section 314 (3) requires that the supplementary assessment must reflect the difference between the partial Dec. 2009 value and the fall 2010 completed value. She also clarified that Section 289 (2) of the MGA as referenced by the Complainant provides clear direction with respect to both Assessments and Supplementary Assessments, contrary to the Complainant's assertions.

The Respondent clarified that under Section 314(4) the City has over the years, consistently assessed completed/occupied suburban office buildings using the Income Approach to Value – which is the methodology she employed on the subject, once it was completed/occupied in the Fall of 2010. She confirmed that neither the City, nor herself as an Assessor, have deviated from this procedure. It was noted that the Complainant confirmed via copies of letters in Appendix F of his Brief C-1 that 3 leases in the subject had commenced – two in Nov. 2009 and one in Dec. 2009.

In addition, the Respondent provided a one-page excerpt from a document prepared by Alberta Municipal Affairs entitled "Principles of Assessment 1 for Assessment Review Board Members and the Municipal Government Board Members". She referenced page 52 from the document which provides guidance in the preparation supplementary assessments (with examples). She suggested that this document further supports the requirements of the MGA, and neither it nor the City's Bylaw 20M2010 are ambiguous regarding this matter as alleged.

Issue #2

"The City erred in assessing the completed/occupied subject (as of Dec. 31, 2010) using the Income Approach to Value – the Cost Approach should have been used because the building was incomplete as of Dec. 31, 2009"

In support of his argument that the City had erred, the Complainant provided in Appendix "C" of his brief C-1, twenty-one photographs of the unfinished interior and exterior of the subject. They were taken August 4, 2009 by "Cuthbert Smith Consulting Partnership Inc." – a consulting firm hired to direct the construction of the subject. These were followed by another 21 pictures by the same firm, taken on January 14, 2010 showing selected areas of the building to be incomplete. Coloured pictures (exhibit C-3) were provided by the Complainant to all parties.

The Complainant also supplied in Appendix "E" of document C-1 a one-page "Capital Cost Summary" from "Cuthbert Smith Consulting Partnership Inc." identifying that the subject – as of January 2010, was only 57% constructed. He noted that the City had calculated the January 2010 Assessed Value (for July 1, 2009) on the assumption that the subject was only 40% complete as of Dec. 31, 2010.

The Respondent noted that while the "interim value" of the subject as of July 1, 2009 while it was being constructed, was determined at the end of 2009 using the Cost Approach, the final "corrected" value (so to speak) of the subject (as of July 1, 2009) could only be determined once it was complete/occupied and assessed and compared to other similar completed/occupied office buildings. A proper comparison therefore required the use of the Income Approach – which is what the assessor had done in this case in accordance with accepted assessment practice.

Therefore, she argued, the Complainant is misinformed and incorrect regarding his interpretation of the relevant Legislation applicable to this issue. In her view, and on the contrary, a proper and considered reading of the Legislation clarifies that it provides effective and appropriate guidance in these matters.

Issue #3

"If one accepts that the Income Approach to Value is to be used, the Capitalization Rate should be 11% - to reflect the higher risk of an incomplete building, and not the 7.5% used by the City."

The Complainant posed hypothetically, that even should one accept that the Income Approach to Value methodology is a valid valuation approach to use in the subject's Supplementary Assessment now before the Board – which he did not, then the City had failed to consider the

“risk” associated with an incomplete building as of July 1, 2009.

He argued that an astute purchaser as at July 1, 2009 would need to consider the following risk elements:

“

1. No building exists
2. No net operating income exists and there is no certainty as to when income might start to be earned
3. There is no way to predict the state of the overall market in terms of supply and demand when the Subject becomes available to lease and occupy
4. The possibility of increased construction costs
5. Insurance/contractual and other liabilities resulting from taking over a project in its early stages
6. Possible delays in the completion of the construction related to mis-management, the availability of skilled labour, weather or other unforeseen circumstances “

Therefore, based on these considerations, he argued that the City erred in using a 7.5% Capitalization Rate in its Income Approach to Value calculations in November 2010, and should have used 11%. Based on this factor alone, the Complainant calculated that the pro-rated assessment should have been \$2,790,394.33 and not the assessed \$5,020,000.

On page 37 of her Brief R-1 the Respondent explained for the Board and the Complainant, the derivation of each of the inputs to her Income Approach calculations for the subject. She clarified specifically, in response to the Complainant's suggestion of an 11% Capitalization Rate, that for 2009 the City used a 7.5% Capitalization rate city-wide on all similar suburban office buildings.

The Respondent supported the City's 7.5% Cap rate with selected 2009 excerpts from independent Third-Party market analysts – i.e. Colliers International; CBRE Richard Ellis; and Altus InSite. On page 41 of her Brief R-1 the Respondent provided a matrix displaying the referenced third-party “Suburban Office Industry Cap Rate Reports”.

Moreover, it was noted that while the Complainant provided argument for an 11% Cap Rate, he failed to support it with any market evidence.

Board Decision with Reasons

The Board is satisfied from analysis of the evidence that:

1. The Municipal Government Act and the City's Bylaw 20M2010 provide the required direction and guidance in the preparation of Supplementary Assessments, contrary to the assertions of the Complainant. The Respondent was effectively able to clarify for the Board and the Complainant how the legislation is interpreted by the City in these matters. The Board is convinced therefore that the City's interpretation of the relevant Legislation is correct
2. The Respondent, having correctly interpreted the Legislation and Bylaw 20M2010, has correctly applied the relevant legislation and employed the correct/proper procedures by using the Cost Approach to Value and the Income Approach to Value in sequence and in the manner described to the Board, contrary to the assertions of the Complainant. The

Complainant's interpretation of the Legislation as gleaned from the City's website appears to the Board to be flawed.

3. The City and the Respondent have consistently employed the sequenced valuation methodology used to value the subject for several years, as a common practice, and pursuant to relevant legislation. There was no evidence from either Party that Alberta Municipal Affairs who monitors such activity, consider this to be inappropriate.
4. The Respondent has adequately supported, by the use of independent market data, the 2009 Capitalization Rate of 7.5% used as one of the inputs to the City's Income Approach to Value calculations for the subject, therefore the Respondent's estimates of assessed value appear to be supported.
5. The Complainant failed to support his requested 11% Capitalization Rate in his hypothetical calculations with any Market Data, and therefore the Complainant's derived estimates of value using the 11% Cap Rate, appear to be unreliable.
6. The subject was only partially constructed, but also partially occupied as of December 31, 2009, therefore the use of the Cost Approach to Value by the City at that time was appropriate.
7. The subject was complete and partially occupied as of September 2010 and therefore the use of the Income Approach to Value by the City to calculate its market value is appropriate, and consistent with the City's valuation methodology for similar completed/occupied suburban office buildings.

Board's Decision:

The Supplementary assessment is Confirmed at \$5,020,000

DATED AT THE CITY OF CALGARY THIS 13 DAY OF July 2011.



K. D. Kelly
Presiding Officer

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

NO.	ITEM
1. C-1	Complainant Brief
2. C-2	Complainant coloured photos and maps
3. C-3	Complainant coloured photos
2. R-1	Respondent Brief

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.*