

**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:**

***Mancal Industrial Developments Inc. (as represented by Ducharme, McMillen & Associates Canada Ltd.), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***K. D. Kelly, PRESIDING OFFICER  
K. Coolidge, MEMBER  
P. Pask, 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 2012 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>070026992</b>
<b>LOCATION ADDRESS:</b>	<b>1939 Centre AV SE</b>
<b>HEARING NUMBER:</b>	<b>65625</b>
<b>ASSESSMENT:</b>	<b>\$8,280,000</b>

This complaint was heard on 29th day of June, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *Mr. M. Pierson – Ducharme, McMillen & Associates Canada Inc.*

Appeared on behalf of the Respondent:

- *Mr. R. Luchak - Assessor – City of Calgary*

**REGARDING BREVITY:**

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None.

**Property Description:**

[3] The subject is a single-tenant industrial property, the former Beatrice Dairies plant which is now leased by Parmalat Dairies and used entirely for the production of dairy products. The site is 8.69 acres and the improvements are assessed using the Cost Approach to Value pursuant to Marshall and Swift Valuation Services. The main plant is assessed at an "effective age" of 20 years, and the outbuildings (vehicle storage and maintenance) at 25 years. The subject was assessed in 2011 for \$8,390,000 and in 2012 for \$8,280,000.

[4] **Issues:**

1. The City's assessment inputs are incorrect regarding the vehicle storage and maintenance outbuilding which is not 100% office.
2. The sale of the subject in April 2011 is the best evidence of value for the subject.

[5] **Complainant's Requested Value:** \$5,700,000.

**Board's Decision in Respect of Each Matter or Issue:**

**Issue #1:**

[6] The Complainant referenced the City's "Property Assessment Details" summary report and argued that the seven-bay maintenance and vehicle storage outbuilding is not a 100% office building as assessed. He argued that the outbuilding only has a mezzanine office space of 900 square feet (SF). He indicated that he had personally toured the site and took several photos of the building to confirm this point. He shared the photos with the Respondent and the Board and suggested that the City should arrange a joint site visit to correct the record.

[7] The Complainant provided an alternate calculation of value for the maintenance and storage building, arguing that the correct value using Marshall and Swift, and 900 SF of office space, is \$254,563 and not the assessed \$450,175. The revised overall calculation of value for the entire dairy plant therefore would be \$8,053,840 and not the assessed \$8,280,000. The Complainant supported his position by providing excerpts of relevant valuation parameters from the Marshall and Smith valuation manual.

[8] In his rebuttal document C-2 the Complainant clarified that the City had visited the subject in 2011, but it appears that the outbuilding is still improperly coded in the City's database.

[9] The Respondent clarified that while he has not inspected the site, the subject, as an integrated dairy plant, is considered to be a "very specialized" building and the Cost Approach to Value technique is the preferred methodology to value the subject. He acknowledged that the outbuilding may not be 100% office as the City's record shows, and he concurred with the Complainant that a joint site inspection of the subject would resolve the matter.

[10] The Respondent noted that the Marshall and Swift calculations provided by the Complainant to re-value the outbuilding seem "reasonable", and, as a result of the photos he provided, the City should check its records. In addition, his recent check of City data appears to indicate that some records indicate 100% finish and others show 0% finish. He suggested that this must be clarified for future assessment cycles.

#### **Board Findings for Issue #1**

[11] The Board finds that the input values used by the City for the outbuilding on the subject – in particular the per cent office finish, appear from the evidence to be incorrect.

[12] The Board finds that the parties concur that the Complainant's calculations of alternate value for the outbuilding are reasonable, given that the outbuilding does not appear to have 100% office finish.

[13] The Board finds that a joint site inspection of the property would be of value in resolving the apparent data issues associated with calculating assessments for the site.

[14] The Board finds that the Complainant's calculation of alternate value for the entire subject property – given corrections to the outbuilding, at \$8,053,840 is reasonable.

#### **Issue #2**

[15] The Complainant clarified that the subject dairy plant sold on April 7, 2011 for \$5,700,000 in an "arms length" market transaction. He provided the Land Transfer documents and relevant Affidavits of Value. He provided various documents to support his argument that the sale need not be time-adjusted to June 30, 2011, given the market forces in the Calgary industrial real estate market at that time. He provided documentary evidence from various respected industry publications to support this point.

[16] The Complainant provided several references to Legal and Board decisions which supported his argument that the sale of the subject, in a completely arm's length transaction, is the best indication of value for the site. He acknowledged that the sold price is below the City's assessment Model valuation, but nevertheless, it is an indisputable fact.

[17] The Respondent argued that while he did not consider the April 7, 2011 sale of the subject to be invalid, it was "atypical" because it sold for less than the land value the City ascribed to the 8.69 acres of land the site is built on. However, he indicated that after review, he was unable to substantiate or challenge the sale for this very specialized building. He concurred that the Complainant "may have a point" with respect to the over-assessment of the outbuilding, and that his alternate calculations of value for the overall site "seem reasonable".

### **Board Findings for Issue #2**

[18] The Board finds that the best indication of value for the site is the sale of the subject on April 7, 2011 for \$5,700,000.

[19] The Board finds on the face of the largely unchallenged evidence submitted by the Complainant, that the subject's sale transaction on April 7, 2011 occurred in reasonable proximity to June 30, 2011 such that a time adjustment is not warranted in this instance.

[20] The Board finds that Court of Queen's Bench Decision in "**Citation 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512**" is applicable. It states in part at [24] :

"In my view, the MGB's failure to rely on the evidence of value provided by the recent sale of the Property fails to meet the test of reasonableness. I agree with the following comments from **Re Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd. et al.** (1984), 47 O.R. (2d) 766 (Ont. H. C. J. Div. Ct.) at p. 767:

"It seems to me to be worth remembering that where the Assessment Act R.S.O. 1980, c. 31 requires the determination of what a property might be expected to realize if sold on the open market by a willing seller to a willing buyer (s. 18(2)), the price paid in a recent free sale of the subject property.....must be very powerful evidence indeed as to what the market value of the property is.....I think that generally speaking the recent sales price, if available as it was in this case, is in law and, in common sense, the most realistic and most reliable method of establishing market value."

[21] The Board finds that "**Mountain View County v. Alberta (Municipal Government Board), 2000 ABQB 594**" is also applicable, in particular at [21], [22], and [29] as it references "Fairness and Equity" in property assessment practices.

[22] The Board finds for the Complainant in this issue.

### **Board's Decision:**

[23] The assessment is reduced to \$5,700,000.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF August 2012.

  
K. D. Kelly  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure – Rebuttal
3. R-1	Respondent Disclosure

*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 Only**

<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	industrial	Single tenant	Market value	Current Sale of the subject