

**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:

***844562 Alberta Ltd. (as represented by Assessment Advisory Group Inc.),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
P. Pask, MEMBER
D. Julien, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	031510423
LOCATION ADDRESS:	200 – 3515 – 32 ST NE
HEARING NUMBER:	63348
ASSESSMENT:	\$873,000

This complaint was heard on 4th day of July, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- Mr. T. Howell - Assessment Advisory Group Inc.

Appeared on behalf of the Respondent:

- Mr. M. Berzins - Assessor, City of Calgary

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

None

Property Description:

The subject is a self-contained 1982 vintage 4,979 square foot (SF) upper-floor, "C" quality, fully-finished condominium office in Horizon 2 industrial park in northeast Calgary. It is located in a 2-storey building and has a completely separate entrance and no first floor warehouse or other space type associated with it. The subject is assessed at \$175 per SF for a total assessment of \$873,000.

Issue:

1. The assessment for the subject is inequitable when compared to other similar properties.

Complainant's Requested Value: \$543,000 based on \$109 per SF

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

The Complainant presented his Brief C-1 and identified the specific site characteristics of the subject. He clarified that he had not been inside the subject and therefore had no internal photos, but was familiar with its location.

The Complainant referenced the City's "Assessment Summary Report" and noted the subject is a 1982 "C" quality building of 4,979 SF on 131,320 SF (3.01 acres (AC)) of land. The Complainant provided a map locating the subject in the industrial community of Horizon 2, as well as a front and a rear view photo of the subject.

The Complainant provided the City's "Assessment Summary Reports" for three properties he considered comparable to the subject. He noted that all were "C" Class quality buildings, and all were similar in size and age to the subject at approximately plus or minus 5,000 SF.

The first was 4,996 SF (1980 YOC); the second 5,017 SF (1980 YOC); and the third was 5,006 SF (1979 YOC). He noted that the first two were located in the Horizon industrial park, whereas the last one was located in Skyline East industrial park – which he considered comparable. All were said to be industrial condominium units like the subject.

The Complainant clarified that the subject was assessed at \$175 per SF whereas his first comparable was assessed at \$97 per SF. The Complainant's second comparable was assessed at \$131 per SF, while the third comparable was assessed at \$98 per SF. The Complainant provided both front and rear photos of his three comparables to demonstrate their relative similarity.

The Complainant proceeded to "average" the assessed per-square-foot values of his three comparable properties and concluded that an average \$109 per SF would be appropriate and equitable for the subject. This would result in a reduced assessed value of \$543,000 (instead of \$873,000) which he considered to be fair and equitable.

The Respondent presented his Brief R-1 and clarified that the subject is not an industrial warehouse as has been suggested, but is in fact a completely finished, self-contained, second-floor office space with its own separate and distinct entrance. The entire assessed space he suggested has a high degree of office finish which accounts to some degree for its desirability and value. He noted that the City has assessed only the upper office space of this portion of the building, and that no other first or second floor area or space was included in this assessment.

While the Complainant did not, the Respondent however made reference to the "Bramalea LTD." (BC Court Of Appeal: Bramalea LTD v. British Columbia Assessor for Area 9 (Vancouver) (1990) and "Bentall" (BC Supreme Court decision Bentall Retail Services et al v. Assessor of Area #09 – Vancouver (2006) Legal Decisions regarding matters of "Equity" as applied to assessments.

The Respondent argued that "Bentall" makes it clear that "Equity" alone is not enough to effect a change to an assessment. He stated on page 11 of his Brief C-1 that :

" Bentall explicitly states that "Bramalea does not stand for the proposition that the taxpayer is entitled to the lower of a specific equitable value or a specific actual value" [99]. Bentall also contradicts the misinterpretation of Bramalea that has been applied in Alberta; equity trumps actual value, every time. Bentall implies the opposite. It suggests that when market evidence is available then equity alone is virtually meaningless. Market data is required to put the assessment in context before any argument of equity might be entertained. If both market data and equity information are present, then the respective ranges should be examined relative to each other."

The Respondent also referenced the following points identified by the Court in the BC Supreme Court Decision (Bentall) :

"[99] Bramalea does not stand for the proposition that the taxpayer is entitled to the lower of a specific equitable value, or a specific actual value. There is a range of values which might constitute actual value and a range of value which might constitute equitable value. Bramalea stands for the proposition that when equity is an issue, it is only if the range of values determined to be actual value lies entirely outside the range of values that is equitable, that an adjustment is required."

"[103]The legislation before me is unambiguous and the concept of "range of values" does not lead to any reasonable doubt to be resolved in favour of the taxpayer."

"[137] I reject the submission of the Appellants that 'equity trumps actual value every time.' The fallacy in this assertion is that it ignores the reality that Bramalea refers to a range of values, rather than to a precise value."

"[138] I also reject the Appellants' assertion that 'an assessment can be built on equity alone'. This assertion stems exclusively from **GDP***, where the evidence presented a unique set of circumstances; there was no evidence at all from which actual value could be determined. Consequently, there was no alternative but to employ an equity method of assessment. That case is significantly different from the case at bar, where there is ample evidence of market data which enabled the Board to reject the Appellants' novel equity approach as an unsound appraisal methodology.

(footnote – Assessor of Area 05 – Port Alberni v. GDP Investments Ltd. (2001), B.C. Stated Case 450, 2001 BCSC 1540 ('GDP')) "

The Respondent concluded from the foregoing Court Decisions and argued therefore, that equity alone is not enough to effect a change in assessment. Therefore, he suggested, the Complainant's position should fail.

The Respondent referenced on page 17 of his Brief R-1, a matrix containing the Complainant's three equity comparables as compared to the subject. He clarified that the Complainant had perhaps misinterpreted the nature of the subject which is self-contained fully-finished office space, whereas the Complainant's three comparables are largely first-floor unfinished industrial storage or warehouse space. He argued that they are not comparable at all.

The Complainant referenced page 15 of his Brief R-1 where he provided five equity comparables which he noted were all in Horizon Industrial Park and all across the road from the subject. He confirmed that all five comparables were self-contained, completely-finished office space like the subject, and were assessed at values ranging from \$183 per SF to \$241 per SF – the subject being assessed at \$175 per SF.

Therefore, based on the foregoing, the Respondent argued that the Complainant's position in this complaint is without merit, and therefore the Board should confirm the assessment at \$873,000.

Board's Analysis and Conclusions

The Board notes that the aforementioned "Bramalea" and "Bentall" B.C. Court Decisions notwithstanding, the Complainant provided and relied upon three comparable properties which, when compared to the subject, do not appear to be comparable to it at all.

The subject is described by the Respondent Assessor as self-contained, fully-finished, second-storey office space, whereas the Complainant's comparables are largely first-floor unfinished storage and warehouse space. The Complainant acknowledged that he had not been inside the subject and was therefore unable to provide any photographs of the interior of the subject to refute the position of the Respondent Assessor in this regard.

Therefore, on the whole, the Complainant's assertion that a per square foot value of \$109 – based on an average assessed value of his comparables - should be applied to the subject on an equity basis, appears to be without merit.

Consequently, the Board must conclude on the basis of the evidence provided, and on balance, that the Complainant has provided insufficient information and argument to convince the Board that the assessment is either incorrect or inequitable. Indeed, on the basis of the evidence and argument supplied by the Respondent, the Board has concluded that the assessment is correct and equitable.

Board's Decision:

The Board Confirms the assessment at \$873,000.

DATED AT THE CITY OF CALGARY THIS 21st 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 Disclosure Brief |
| 2. R-1 | Respondent Disclosure 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.*