

**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:

***Theatre Poster Exchange Ltd.(as represented by Assessment Advisory Group Inc.),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

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

ROLL NUMBER:	032028409
LOCATION ADDRESS:	2025 – 41 AV NE
HEARING NUMBER:	63712
ASSESSMENT:	\$2,230,000

This complaint was heard on the 6th 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 assessed as a 1976 (year of construction – YOC) single-tenant industrial warehouse with 21,137 square feet (SF) of assessable area. However, it is said to be demised into two sections housing two different tenants. It has 38.88% site coverage with 30% office finish on a 1.25 acre (AC) site in North Airways industrial park. The subject is assessed at \$2,230,000 based on \$105 per SF.

Issues:

1. The subject is incorrectly assessed by using only comparable property sales because the Income Approach to Value should have been used for 58.20% of the property.

Complainant's Requested Value: \$1,870,000

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

Issue # 1

"The subject is incorrectly assessed by using only comparable property sales because the Income Approach to Value should have been used for 58.20% of the property."

The Complainant provided his Brief C-1 and outlined the assessable characteristics of the subject via the City's "Assessment Summary Report". He also located the subject in the city and North Airways industrial park by using maps and exterior/interior photos of the subject. He clarified that the subject had been demised into two parts - 58.20% for one tenant and 41.80% for another. He suggested that while they were largely warehouse operations, there was a certain amount of retail activity associated with each business. However, only the larger 58.20% portion of the building was at issue in this complaint.

The Complainant clarified that the entire structure had been assessed using the Market Approach to Value. However, he provided copies of several letters from the owner of the subject to the tenant of the disputed (58.20%) space. It appeared from the letters that there was an ongoing debate regarding rent payments. Three letters were dated in June 2010; one in December 2010; and another January 2011.

The Complainant argued that this evidence indicated that 58.20% of the subject should have been assessed using Income Approach to Value calculations wherein certain management challenges could be investigated and appropriate adjustments made to the assessment calculations. In particular, the Complainant considered that an 8% Capitalization Rate should have been used in an Income Approach to Value calculation in recognition of the ongoing "challenges related to income" for the property.

The Complainant referenced on page 29 of his Brief C-1, a list of "Retail Capitalization Rates" used by the City in a January 25, 2011 presentation to the Calgary Real Estate Board (CREB). He suggested that a 7.25% Cap Rate the City displayed for retail properties, could also be used for the subject. However, he argued that it should be enhanced to 8% to balance the additional risk associated with the identified rent issues. He also referenced City industrial land rates and retail operating costs, evidently from the same presentation.

The Complainant calculated that by using the Income Approach to value on only 12,291 SF of the subject (58.20% of subject's total 21,137 SF) a partial building value of \$945,602 or \$77 per SF is achieved. When combined with his calculated land value for that portion of the subject, he concluded that the 58.20% portion was worth a total of \$1,297,860. He declared then that when this value is combined with the remaining 41.8% of the subject (having been valued using Market Sales) – i.e. \$932,140, the new assessment for the entire structure should be \$1,877,742 or \$1,870,000 (rounded).

While the Complainant acknowledged that this evaluation method represented somewhat of a "hybrid" approach, he considered that it best represented the value of the subject, given its current management rental challenges. The Complainant provided no other evidence by way of market sales of any kind.

The Respondent however questioned the Complainant's rationale for concluding that the subject – as one building, should be assessed by mixing and using two uniquely different assessment methodologies. He noted that the subject building is perfectly capable of its use, and the matter of rent payment delinquencies is not a building problem, but rather a management problem. He noted that the building is intact and has value as a whole building, which is how it would sell on the Market, and that is how it has been assessed. Therefore he argued, the Complainant's methodology is simplistic and unsupported according to accepted assessment/appraisal practice and the conclusions drawn from it are seriously flawed.

The Respondent also argued that the inputs and calculations used by the Complainant in his Income Approach were unsupported, particularly since the inputs he used, related to a City presentation regarding Commercial Retail properties, and not industrial. He noted that the subject is zoned Industrial General (I-G) and is classified as industrial – not retail, for assessment purposes.

More significantly however, the Respondent provided his Brief R-1 and referenced the following Municipal Government Board Order – NO. DL 068/08 and Calgary Assessment Review Board Decisions ARB 0638/2010-P and CARB 1416/2010-P. The Respondent argued that they were relevant to this appeal because they dealt in some degree or another, in separate hearings, with essentially a somewhat similar methodological approach as attempted by the Complainant in this appeal today. While the Respondent briefly referenced selected sections of the Decisions, the following appeared to be particularly relevant from page 4 of ARB 0638/2010-P (i.e. page 51 of Brief R-1):

"7. The Assessor did not apply the Income Approach to derive the assessed value for the subject property but did bring forward argument as to the appropriateness of the applied Capitalization Rate.....The Board looked to the value indication derived by the Complainant through application of the Income Approach....and found this value was not supported by their equity argument.....Accordingly the Complainant's argument that the value derived through application of the Income Approach is an accurate indication as to the market value of the subject property for assessed purposes, fails to convince the Board.

8. The valuation method applied in this instance was the Direct Comparison Approach, which is sometimes referred to as the Direct Sales Approach or similar names. The use of this approach to value is contextually allowed in the legislation. The Complainant did not advance any persuasive argument or evidence to support the contention that an error had been made in the application of the Direct Comparison Approach in preparing this assessment."

The Respondent noted that the Complainant had provided no Market Sales evidence whatsoever to demonstrate how the City had erred in its application of the Direct Comparison Approach to the subject. Consequently the Respondent argued that the Complainant had failed to meet the onus required of him pursuant to relevant assessment legislation. Therefore he requested that the Board confirm the assessment.

Board's Analysis and Decision With Reasons

The Board accepts the Respondent's argument that the Complainant has failed to demonstrate precisely where the Respondent has failed to properly apply the Market Approach to assessing the subject. The Complainant provided no market evidence or argument to address this point. Therefore, the onus attached to the Complainant to demonstrate through the analysis of market evidence to demonstrate where the Respondent has failed in his duties in this regard, does not appear to have been met. In this regard, the Respondent's reference to ARB 0638/2010-P as noted above, would appear to be relevant and applicable.

The Board accepts that the evidence appears to show that the subject is one building that is internally demised into two rented spaces. The Board also concurs with the Respondent that merely "dividing" the building into two rentable areas and calculating an alternative potential assessment for one of the areas by using a methodology which played no part in the original assessment of the subject, is questionable at best and seriously flawed in the alternative.

Moreover, the Board also considers that the inputs to the Complainant's alternate calculations are suspect and generally unreliable, given that they were taken from a City presentation designed for an entirely different purpose and land use. The inputs appeared to be for retail properties whereas the subject is an industrial property in both zoning and predominant use.

The Board considers therefore that not only are the results of those calculations suspect, but they would appear to be unreliable as indicators of value. Ultimately therefore, by conjoining the two methodologies to create essentially an arbitrary "hybrid" value formed from the merger of two different valuation methodologies, the Complainant has produced a resultant value that, in the Board's view, lacks credibility.

Finally, the Board concurs with the Respondent that the subject appears to have suffered from a number of issues related to delinquent rents. In the Board's view, these are point-in-time management issues that appear to be unrelated to the overall functional performance and market value of the subject. Indeed, there was no market or other similar evidence presented by the Complainant to the contrary, to address this point.

Therefore, in summary and on balance, the Board considers that the Complainant has provided insufficient information to persuade the Board that the assessment is incorrect and inequitable. Thus the Board finds for the Respondent in this appeal.

Board's Decision:

The assessment is Confirmed at \$2,230,000.

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.*