

**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:

Sunstone (12th Street NE) Holdings Inc. (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: | 048043905 |
| LOCATION ADDRESS: | 2626 – 12 ST NE |
| HEARING NUMBER: | 63676 |
| ASSESSMENT: | \$4,180,000 |

This complaint was heard on the 8th 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

Appeared on behalf of the Respondent:

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

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

None

Property Description:

The subject is a 1980 vintage single-tenant industrial warehouse with a 35,001 square foot (SF) building footprint and 43,426 SF of assessable space. The space is assessed at \$96 per SF. The subject has 36.70% site coverage with 51% office finish on a 2.19 acre (AC) site in South Airways industrial park. The subject is assessed at \$4,180,000.

Issues:

1. The assessment is incorrect based on comparable property sales and is therefore inequitable.

Complainant's Requested Value: \$3,780,000 based on \$87 per SF.

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

Issue # 1 "The assessment is incorrect based on comparable property sales and is therefore inequitable"

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 South Airways industrial park by using maps and exterior photos of the subject.

The Complainant referenced via RealNet documents, three market sales of industrial properties he considered to be comparable in several ways to the subject. The Complainant referenced the following:

| Comparable | Address | Sale Price | Breakdown Per SF | Lot Size | Zoning | Building Area | Sale Date |
|------------|-----------------|-------------|------------------|----------|--------|---------------|-----------|
| # 1 | 3651 – 23 ST NE | \$4,650,000 | \$94 | 1.70 Ac. | I-G | 49,356 SF | 07/22/09 |
| # 2 | 2115 – 27 AV NE | \$4,150,000 | \$83 | 2.14 Ac | I-G | 49,985 SF | 11/04/09 |
| #3 | 4826 – 11 ST NE | \$3,900,000 | \$98 | 2.23 Ac | I-G | 40,000 SF | 02/03/09 |

The Complainant provided the RealNet market sales/information sheets, and the City's Assessment Summary Reports for his three comparables above-noted. He provided a Google map to identify the locations of the three properties relative to the subject.

On page 21 of his Brief C-1 the Complainant referenced his "AAG Valuation Methodology", by very briefly quoting from selected documents from each of the "Alberta Assessors Association" and the Appraisal Institute of Canada". The point of this submission and related argument was that it requires experience and judgement on the part of an Appraiser, to make the appropriate "adjustments" when comparing comparable properties. It is insufficient to merely use mathematical calculations. The Complainant noted the following:

"Alberta Assessors Association
'Market Value and Mass Appraisal for Property Assessment in Alberta'
June 1998
Valuation Guide Introduction Pg. 8 Section – Market Comparison Approach.

The differing attributes of the comparables sales may require significant adjustments in order to form point-of-comparison and the basis of valuation for the subject. If sales data is limited, it also becomes difficult to establish appropriate benchmarks to estimate values for similar properties."

"Appraisal Institute of Canada
'Basics of Real Estate Appraising' 1994
Chapter 11 – The Direct Comparison Approach (VI) Types of Adjustments
Pg. 241

Rigid mathematical calculations should not dictate the amount of the adjustment. It is the appraiser's experience and judgement that is important, as appraisal is an art rather than a decision based on mathematical calculations. Appraisal is often referred to as an art because judgement is used in the final estimate of value. This should not diminish the importance of using mathematics to assist in the value judgement.

Percentage Adjustments

Adjustments are often expressed in percentages for differences between the subject and the comparables. Percentage adjustments are often used to show any changes in market conditions and location"

The Complainant referenced Calgary Composite Assessment Review Board (CARB) Decisions 2077/2010-P; 2093/2010-P; and 2103/2010-P; and 2086/2010-P. He argued that one of the Board members in each of the 4 hearings referenced is an Accredited Appraiser, and

accordingly, because the Complainant was successful in securing a reduction in those 4 complaints, arguably on the basis of his adjustments, he considered his adjustment process was sound.

The Complainant clarified that he is not an accredited Appraiser, nor were the adjustments to his 3 comparables in this appeal, made by an accredited Appraiser. Nevertheless, he argued that as a result of his analysis of his three comparable properties and others, he felt qualified to make appropriate adjustments to the value of his comparables where warranted.

On page 37 of his Brief C-1 the Complainant provided a matrix in which he identified various individual characteristics of his three market sales and compared them to the subject and its several characteristics. He calculated the percentage site coverage for each by dividing the assessed square footage of the respective buildings into the square footage of the land.

The Respondent noted however that this methodology is faulty because a building's footprint is frequently smaller than the assessable area of a building – particularly where there may be a second storey or a useable mezzanine area. Such is the case he argued, with the subject which has a building footprint of 35,001 SF and an assessable building area of 43,426 SF. He noted that the subject has 36.70% site coverage but the Complainant has calculated it at 46%.

The Complainant also provided on his page 37, a table of "Adjustments" for his three comparable market sales. He noted in particular, specific "sold date" adjustments of -10% for each of his 3 properties, as well as targeted +10% and +5% adjustments for building "site coverage" for comparables #1 and #2 respectively. Ultimately, each comparable received adjustments as follows: #1 (0%); #2 (-5%); and #3 (-10%). He regarded these adjustments as essential to properly compare the three properties, based on his review of several City "Assessment Briefs" where it appeared that the City was using +10% for its "time adjustments" based on sale date.

Based on his adjustments, the Complainant argued that he was presenting a range of values, given that his three comparables achieved "adjusted" values of \$94 per SF; \$79 per SF; and \$88 per SF. Thereupon, he calculated that an average "adjusted PPSF" (price per square foot) of \$87 per SF and not the \$96 per SF assessed, was appropriate for the subject. The Complainant confirmed that the comparative property adjustments he made are based on "judgement calls" by his firm, and his analysis has led him to believe that the subject is over-assessed and the assessment is inequitable. He requested a reduction to \$3,780,000 based on \$87 per SF.

The Respondent questioned the Complainant's adjustment methodology, and his rationale for concluding that the City had made adjustments to its comparables "sold dates" at a rate of +10%. He clarified that the City adjusts for "time" monthly – not annually. Furthermore, he clarified that pursuant to the City's detailed analysis of the markets, the City's time adjustment for the period 2007 to 2008 was zero per cent; for 2008 to 2009 was -6%; and from 2009 to 2010 it was zero per cent. Therefore, he argued, the Complainant's adjustments for "time" are seriously flawed and cannot be relied upon. He noted that he had already addressed what he considered to be the flaws in the Complainant's arguments regarding "site coverage".

The Respondent also suggested that the Complainant's calculations of alternate value were based on incorrect statistics. He referenced the RealNet sheets provided by the Complainant and noted that his comparable #1 was not exposed to the market and hence does not appear to

have been a valid arm's length sale. Therefore he indicated that City had not used it in its market analysis. However, while he noted that the City did in fact use the Complainant's sales #2 and #3 as comparables in its nine property matrix, it appears from the City's analysis that the Complainant has incorrect statistics in his page 37 matrices related to site coverage; assessable area; sale price; and value per SF for them. He noted that Complainant's comparable #2 has 33.66% site coverage not 54%; 49,703 assessable SF and not 49,985; while comparable #3 has 39,600 assessable SF and not 40,000 SF and the selling price was \$3,822,583 and not \$3,900,000. Therefore he concluded, the Complainant's resulting analysis of these sales would be flawed.

The Respondent also noted that while the Complainant had made certain – in his view, “questionable” adjustments to his comparable #1, and while it does not appear to be an arms-length sale, nevertheless the \$94 per SF “adjusted value” he attaches to it appears to support the assessment at \$96 per SF.

The Respondent referenced his nine market sales in a matrix on page 14 of his Brief R-1. He argued that his comparable market sales were generally closer in age to the subject which has a 1980 building. The Respondent advised that these 9 sales were a selected sample from the City's database of 156 valid market sales which is available on the City's website. He clarified that they were selected and compared to the subject based on closely matching site characteristics such as age (YOC); site coverage; number of buildings, size; region; and level of office finish, etc. among others. Therefore, he argued, there is no need to make major, or any adjustments to them.

The Respondent argued that according to accepted practice, the only time a qualified Appraiser makes subjective adjustments such as the Complainant has done, is when there is a lack of sales. He argued that this is not the case in Calgary, and certainly not in the NE quadrant of the city where the subject is located. He also argued that the Complainant's adjustments are not supported by market evidence.

The Respondent introduced Calgary Assessment Review Board Decisions ARB 0530/2010-P and ARB 1041/2010-P in which the Complainant is said to have presented evidence based on a methodology similar to that presented today. He noted that the Boards in those Decisions had rejected his methodology and the conclusions drawn from it. In Decision ARB 0530/2010-P the Board found the adjustments to be “arbitrary” while noting that :

“The adjustments applied were substantial and not supported by evidence.”

In Decision ARB 1041/2010-P the Board found :

“...the Complainant's adjustments, particularly the time adjustment unsupported by market evidence. The sales advanced by the Complainant were shown to have some questionable aspects, while the sales and equity evidence of the Respondent supported the value assessed.”

The Respondent referenced and requested that the Board review Calgary Composite Assessment Review Board Decision - CARB 1801/2010-P. While the Respondent did not have copies of this Decision to present to either the Board or Complainant, nevertheless, he suggested that this Decision – on page 4, paragraph 5, speaks to the matter of “presenting a range of market sales comparables”, (such as he had done) rather than one, two, or three of them (such as the Complainant had done).

The Complainant spoke to and did not object to this request by the Respondent. He noted that it appeared to comply with a procedure accepted last year by his, and other similar companies and the Calgary Assessment Review Board, whereby previous published Board Decisions could be introduced into a Hearing and referenced at any time without prior exchange among the Parties. Therefore he was prepared to accept its introduction, and its subsequent review by the Board as requested by the Respondent.

The Respondent requested that the assessment be confirmed at \$4,180,000.

Complainant's Rebuttal

In rebuttal, the Complainant argued that the City had referenced but not introduced its list of 156 sales. Therefore he argued, the conclusions the City had drawn from its analysis of these sales could not be examined by either the Board or Complainant and thus should not be relied upon.

Board's Analysis and Decision With Reasons

The Board accepts the Respondent's argument that the Complainant's adjustments appear to be largely unsupported by market evidence. The Complainant clarified that he is not a qualified Appraiser, nor has a qualified Appraiser produced or examined the adjustments he suggests. He assured the Board that these adjustments were either made by him or his company as the result of personal "judgement" based on apparently incorrect assumptions as to the City's methodology – particularly with regard to "time".

In this regard, the Board accepts the argument of the Respondent that in accepted appraisal practice, where there are sufficient market sales, there would appear to be little need to make adjustments. The City has introduced nine unadjusted sales from a database of 156 sales which are available online on the City's website.

The Board also accepts on the face of the evidence before it that the Complainant's base data appears to be incorrect and it, along with a flawed analysis has produced unreliable and unsupported results. Consequently, when taken as a whole, the Board declines to accept the Complainant's conclusions. The Board therefore appears to share the views regarding this point, as expressed in ARB 0530/2010-P and ARB 1041/2010-P as presented by the Respondent.

The Respondent provided nine comparable property sales selected from an apparent list of 156 city-wide sales. They were selected based on four key characteristics (among others) to minimize or eliminate the need for adjustments – i.e. size; site coverage; year of construction; and geographic region. The Respondent asserted that these sales were not adjusted, and did not need adjusting because of the methodology the City used.

In the Board's view, the nine comparables not only appear to have individual characteristics closely matching those of the subject, but the sales prices range from \$83 per SF to \$149 per SF. Thus, in context and in aggregate, they appear to support the assessment of \$96 per SF for the subject. On the whole therefore, the Board finds the Respondent's methodology to be appropriate and supportable, and the conclusions drawn therefrom to be credible.

As requested by the Respondent and accepted by the Complainant, the Board very briefly reviewed paragraph 5, page 4, of CARB Decision 1801/2010-P. The Board had been requested by the Respondent to note a principle he wished to reinforce – that being the need to present “a range of properties” for comparison to another property, not just one or two. He suggested that this 2010 Board decision supported his argument today regarding this point. The Board noted the following in paragraph 5 of page 4 of CARB 1801/2010-P:

“.....The Board finds that the subject property ‘fits’ well within the range evident in the sample, and is supported by the median time adjusted sale price”

While the Board accepted the position of the Parties in this Hearing and briefly reviewed the referenced paragraph captioned above, very little, if any, weight was accorded this document. The Board was satisfied from examination of the evidence presented at today's hearing alone, that the Respondent had presented a credible range of 9 comparable property sales which appeared to support the assessment.

And finally, the Board seeks to make it clear that during the course of hearings, and contrary to the suggestion of the Complainant, individual Board members do not act in any “professional” capacity whatsoever. Board members must at all times be neutral individuals, gathering and weighing evidence to arrive at informed decisions. To suggest that a Board member may be acting in any other capacity – such as an Appraiser, would appear to signify a lack of understanding of the process.

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 \$4,180,000.

DATED AT THE CITY OF CALGARY THIS 3 DAY OF August 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 |
| 3. Exhibit #1 | Calgary Composite Assessment Review Board Decision CARB 1801-2010-P |

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*