

**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:**

***SAE Holdings Inc.(as represented by AEC International Inc.), COMPLAINANT***

**and**

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

**before:**

***K. D. Kelly, PRESIDING OFFICER***

***A. Blake, MEMBER***

***A. Wong, 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:

<b>ROLL NUMBER:</b>	<b>033043308</b>
<b>LOCATION ADDRESS:</b>	<b>4404 – 14 ST NE</b>
<b>HEARING NUMBER:</b>	<b>63391</b>
<b>ASSESSMENT:</b>	<b>\$10,760,000</b>

This complaint was heard on 25<sup>th</sup> 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. B. Ryan - AEC International Inc.*

Appeared on behalf of the Respondent:

- *Mr. K. Buckry - Assessor, City of Calgary*

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

None

**Property Description:**

The subject is one 89,730 square foot (SF) 2008 multi-tenant industrial warehouse building having 6% office finish, site coverage of 50.49%, and is situated on 4.08 acres of land in McCall industrial park. The subject is zoned Industrial General (IG) and is assessed at \$10,760,000 based on \$120 per SF.

**Issues:**

1. The subject is assessed in excess of market when compared to market sales of similar properties.
2. The assessment is inequitable when compared to comparable properties.

**Complainant's Requested Values:** \$9,152,000 based on market sales at \$102 per SF  
\$9,511,000 based on equity at \$106 per SF

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

**Issue #1:** "The subject is assessed in excess of market when compared to market sales of similar properties."

The Complainant referenced his Brief (document C-1) wherein he identified the location of the subject in McCall industrial park using a map, aerial photo, and exterior photos of the subject building. He also provided a map which located the subject in context with 14 property sales which he deemed comparable to the subject. All were in NE Calgary east of Deerfoot Trail and north of 7<sup>th</sup> AV NE and from eight different industrial parks. The 14 sales were placed in a matrix for analysis, on page 12 of his Brief C-1.

The Complainant also provided the RealNet and Alberta DataSearch information sheets for each of his 14 comparable property sales. He suggested that a 31.86% year-over-year increase in assessment for the subject is unwarranted and not supported by the market data that was analyzed.

The Complainant clarified that five of the comparables were deemed by his firm to be “in time” (base year) sales (i.e. July 1, 2009 to July 1, 2010) whereas five sales were deemed to be “stale dated” – that is, prior to July 1, 2009. He also identified four sales that were deemed to be “post facto” – that is, having occurred after July 1, 2010, one of them in March 2011; two in October 2010; and one in Nov. 2010.

The Complainant argued that while the majority of his sales occurred outside what his firm considered to be the “in time” (base year) period, nevertheless the sales demonstrated a range of values over an important period of economic uncertainty in the Calgary industrial property market. Therefore, he argued, upon close analysis, the matrix of 14 industrial property sales demonstrate that the subject is over-assessed, given that the average value is \$97 per SF and the average base year market value is \$91 per SF.

The Complainant clarified that no adjustments of any kind had been made to any of the 14 market sales in his matrix. That is, there were no adjustments made for differing site coverages between comparable properties; for differing years of construction of improvements; for differing per cent levels of finish; parcel size; and so on.

The Complainant identified specific market sales from each of his three market sale categories as he defined them (i.e. “older sales”; base year sales; and post facto sales) in his matrix of 14 sales, and compared each of them to the subject using five characteristics – i.e. building size; building age; quality; sub-class; and location. He noted that with respect to each comparison, there were certain similarities and certain differences – particularly with respect to building size, age, and quality.

Nevertheless, as a result of this analysis the Complainant concluded that his analysis of two sales from the “older sales” group, indicated that a value of \$106 per SF and \$107 per SF emerged. For the “base year” sales, a value of \$120 per SF emerged from one sale. For the “post facto” sales group, an average of \$98.50 per SF emerged from two sales. The subject is assessed at \$120 per SF.

The Complainant moved to summarize this portion of his presentation with the following:

- “ Average of six sales prior to base year = \$100 PSF
- Average of five sales in base year = \$91.20 PSF
- Average of four sales after base year = \$98.50 PSF
- Average of two sales considered most comparable\* = \$102 PSF  
\*(6875 9 ST NE & 930 64 AV NE)”

The Complainant argued therefore that the subject’s assessment should be reduced to \$9,152,000 based on a perceived market value of \$102 per SF. He also argued that of the Respondent’s seven sales, only one – that being a 2009 sale – was a valid “in time” sale and that the remainder were “dated” 2008 sales. This was based on the fact that the Complainant’s

firm considered "the base year" to be from July 1, 2009 to June 30, 2010. Therefore, he argued, the City was relying on only one market (2009) sale to support the assessment and this was insufficient.

The Complainant concluded his presentation with very brief and cursory references to selected Sections of the Municipal Government Act (MGA) regarding the mechanics of preparing an assessment under Mass Appraisal. He very generally noted individual MGA Sections 289(2) (a), 293 and 467 -- as well as Alberta Regulations 220/2004 and 238/2000 in their entirety. The Complainant asserted that the Assessor had not fully complied with what he considered to be relevant legislation in preparing the assessment of the subject.

Given the Complainant's cursory and non-substantive reference to this Legislation, it has not been repeated here. As a result, the Board did not consider it was compelled to provide a specific ruling on this point alone, since ultimately the Board's Decision regarding this appeal will effectively "speak to" this point in context.

On page 36 of his Brief C-1, the Complainant also made a brief reference to Municipal Government Board (MGB) Decision MGB 037/09 -- quoting one "out of context" line from an undefined location in the Decision. The reference was intended to support the Complainant's proposition that as a building gets larger, its sale price per square foot declines. However, it was noted that the complete Board Order MGB 037/09 was not provided to either the Board or Respondent and therefore it was unclear as to the context of the quote.

The Respondent clarified that unlike the Complainant's one year, the City's "base year" for analyzing sales is three years - from July 1, 2007 to June 30, 2010. Therefore the Complainant's assumptions and arguments about older (out of date) sales from 2007 and 2008 were invalid. Furthermore, for the Complainant to argue that the City only had one valid sale -- a 2009 sale on which it was solely relying in this appeal, was misleading and incorrect. He noted that in preparing the 2011 assessments, the City had used three years of sales in its analysis of the market -- some 153, all of which were posted on the City's website for use by the public.

In support of his position, the Respondent provided seven market sale comparables in a matrix on page 23 of Brief R-1. He explained that the 7 sales were chosen because of the similarity of many of their individual characteristics to the subject. He noted the dates of sale were predominantly from 2008, with one 2009 sale. Moreover, he advised that the City had time-adjusted the sales to June 30, 2010 and the time-adjusted values were shown in the City's matrix. The Respondent argued that the Complainant had confirmed that he had made no adjustments whatsoever to any of his comparable properties, and therefore the Respondent argued that their comparability to the subject is invalid and the conclusions drawn from them are seriously flawed.

The Respondent outlined in some detail, the similarities and slight differences of his 7 property sales to the subject, noting that certain "adjustments" had been made to Year Of Construction (age); site coverage; sale date; finish; and parcel size, among others, by the City's computerized assessment Model to bring them to a professionally-accepted level of comparability. He noted that the median value for the 7 sales was \$119 per SF which supported the assessment of \$120 per SF. The Respondent also clarified that seven of the City's key adjustment categories were also posted on the City's website and have been

available for some time to the public and the Complainant.

The Respondent noted that the Complainant had referenced and opined that an apparent 31.86% year-over-year assessment increase for the subject was unwarranted and likely the reason for this appeal. However, the Respondent clarified that last year, the subject was still under construction and the percentage increase reflected the subject's partial development. The Respondent requested that the Board confirm the assessment at \$10,760,000.

### **Board's Analysis and Conclusions - Reasons**

The Board concludes from the evidence that the Complainant's position on this issue contains a number of fundamental and fatal flaws.

Firstly, the Complainant has incorrectly defined the City's "base year" as a one-year period – that is from July 1, 2009 to June 30, 2010. On this basis, the Complainant has rejected most of the City's market sales which occurred outside this narrowly-defined period. Moreover, the Complainant has effectively restricted its own search for comparable properties, to this one-year period, arguing in so doing, that there is a paucity of sales data to work with and so it must also use post facto sales to demonstrate a "trend".

Secondly, it is clear from the evidence that the City's so-called "base year" is a three-year period wherein all valid sales from July 1, 2007 to June 30, 2010 – some 153 sales, were used to analyze the market. Moreover, these 153 sales, and the City's methodology for analyzing them, have been published on the City's website since the first of this year (2011) and available to the Complainant. The Complainant appears to have somewhat disregarded or not taken advantage of this information. In the Board's view, the Complainant failed to effectively challenge the City's position on this point, preferring, as noted, to limit himself to the noted one-year "base year" period.

Thirdly, the Complainant has failed to make any adjustments whatsoever to his market sale comparables. The Board accepts the Respondent's position that it is necessary to make adjustments for sale date; age; site coverage; parcel size etc. such that an appropriate comparison to the subject can be made. It is clear to the Board that when such adjustments are made – particularly time-adjustments to selling prices, such as the Respondent has done, that the latter's comparable sales evidence appears to support the assessed value and the Complainant's does not.

And finally, the Complainant's argument regarding the alleged inappropriateness of an apparent 31.86% year-over-year assessment increase for the subject, fails on two counts. Firstly, the Board is satisfied that the 31.86% increase results from an assessment for an incomplete building in 2009, and subsequently an assessment for a completed building in 2010. Secondly, a percentage increase/decrease in an assessment year-over-year is not, of itself, a valid argument to effect a change in an assessment.

Therefore, the Board considers that the Complainant's arguments regarding this issue fail, and the Board is thus correspondingly satisfied that the City has complied with relevant assessment Legislation related to Mass Appraisal, contrary to the assertions of the Complainant.

**Issue #2**

"The assessment is inequitable when compared to comparable properties."

The Complainant provided an "Equity Analysis" in his Brief C-1 in an effort to demonstrate that the assessment of the subject is inequitable when it is compared to comparable properties. He provided seven properties in a matrix on page 24 of the brief, arguing that their selected individual characteristics, when compared to the subject, demonstrated an over-assessment of the subject. He provided a detailed analysis, including photo, of each of the seven properties. He concluded that an equitable value of \$106 per SF and an assessment of \$9,511,000 was appropriate for the subject.

The Complainant proceeded to "average" the assessed per-square-foot values of his three comparable properties and concluded that an average \$106 per SF would be appropriate and equitable for the subject. This would result in a reduced assessed value of \$9,511,000 (instead of \$10,760,000) which he considered to be fair and equitable.

The Respondent however argued that the Complainant's data was flawed and incomplete. He noted that in his comparable at 7912 – 10 ST NE the Complainant included only one of three buildings on site. In addition, he noted the Complainant had identified a property at 2611 Hopewell PL NE as having an assessment based on \$102.30 per SF when it is \$126 per SF. Therefore, he argued, the Complainant has relied on incomplete and incorrect data, and hence his conclusions therefrom are unreliable.

The Complainant also referenced the "Bramalea LTD." (BC Court Of Appeal: Bramalea LTD v. British Columbia Assessor for Area 9 (Vancouver) (1990) Legal Decision regarding matters of "Equity" as applied to assessments. He argued on page 22 of his Brief C-1 that based on this Decision:

"The taxpayer is entitled to both an assessment that is not in excess of actual value and an assessment that is equitable."

Furthermore, the Complainant argued that on the basis of this Decision, the taxpayer is entitled to the lower of the two values.

The Respondent however, argued that "Bentall" (BC Supreme Court decision Bentall Retail Services et al v. Assessor of Area #09 – Vancouver (2006)) makes it clear that "Equity" alone is not enough to effect a change to an assessment. He also argued that the Complainant appears to have misunderstood the Bramalea Decision in that the taxpayer is not automatically entitled to the lesser of a market or equity value.

The Respondent requested that the assessment be confirmed at \$10,760,000.

**Board's Analysis and Conclusions - Reasons**

The Board finds that the Complainant's arguments based on equity fail for reasons similar to those noted in issue #1. That is, the Complainant's equity comparables do not appear to be comparable when one compares the individual property characteristics of them to the subject.

Moreover, the Complainant's data appears to be incomplete and incorrect, and therefore the Board is reluctant to accept the value conclusions the Complainant has extracted from it.

And finally, the Board concurs with the Respondent's interpretation of the clarifying role the "Bentall Decision" has had regarding the "Bramalea" Decision. The Board notes the following from that Decision with regard to that point:

*" 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."*

*"[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 Board is therefore of the view that on balance, the Complainant has failed to persuade the Board on the basis of the evidence presented, that the assessment is either incorrect or inequitable.

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

The assessment is confirmed at \$10,760,000

DATED AT THE CITY OF CALGARY THIS 22 DAY OF August 2011.

  
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 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.*