

**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:

***Investors Group Trust CO. LTD. (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:

ROLL NUMBER:	009023607
LOCATION ADDRESS:	7912 – 10 ST NE
HEARING NUMBER:	63440
ASSESSMENT:	\$21,160,000

This complaint was heard on 25th 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 a 3-building multi-bay industrial warehouse complex situated on 13.15 acres of land in Deerfoot business centre in NE Calgary. One building is a 107,200 square foot (SF) 2000 structure with 26% finish assessed at \$110 per SF. The second building is a 33,600 SF 2001 structure with 24% finish assessed at \$128.40 per SF. The third building is a 40,080 SF 2000 structure with 18% finish. The subject is zoned Industrial General (IG), has a total site coverage of 31.59% and is assessed at \$21,160,000 based on a "blended" \$117 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: \$18,450,000 based on market sales at \$102 per SF
\$18,450,000 based on equity at \$102 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 Deerfoot business centre using a map, aerial photo, and exterior photos of the subject buildings. 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 7th AV NE and from eight different industrial parks. The 14 sales were placed in a matrix for analysis, on page 17 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 his “best” comparables were a property at each of 6875 - 9 ST NE and 930 - 64 AV NE because their individual site characteristics most closely matched those of the subject. He noted the former sold in May 2008 for an unadjusted price of \$106 per SF, while the latter sold in March 2011 (post facto) for \$98 per SF. The average value of the two was indicated to be \$102 per SF.

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 matrix 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.

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

- “Average of five 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 \$18,450,000 based on a perceived market value of \$102 per SF. He also argued that while some of his sales data appears to be Post Facto – having occurred after June 30, 2010, nevertheless it appeared to demonstrate a downward trend in the market that the City allegedly had not captured in its analysis of the market.

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 pages 40 and 41 of his Brief C-1, the Complainant also made brief references to Calgary Composite Assessment Review Board (CARB) Decision CARB1833-2010-P; Calgary Assessment Review Board (ARB) ARB 0756-2010-P; and ARB 0758-2010-P and Municipal Government Board (MGB) Decision MGB 037/09. The references were intended to support the Complainant's proposition that multi-building parcels should be valued on the basis of their Gross Leasable Area (GLA), and secondly the proposition that as a building gets larger, its sale price per square foot declines. It was his position that "a lot is a structure". However, it was noted that the complete Board Orders were not provided to either the Board or Respondent and therefore it was unclear as to the context of the quotes he referenced.

The Respondent clarified that unlike the Complainant's one year "base year", the City's "base year" for analyzing sales is three years - from July 1, 2007 to June 30, 2010. 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, and in a matrix on page 19 of Brief R-1, the Respondent provided six market sale comparables for the 107,200 SF large building on the subject. The six time-adjusted sales were intended to demonstrate that sales of comparable sized properties (ranging from 83,107 SF to 167,560 SF) indicated a range of values from \$94 per SF to \$135 per SF whereas the 107,200 SF subject was assessed at \$111 per SF. Therefore the subject, he argued, fell nicely within that range. He explained that the 6 sales were chosen because of the similarity of many of their individual characteristics to the subject. He noted the dates of sales were predominantly from 2008, with one 2010 sale, well within the City's analysis period.

On page 20 of his Brief R-1, the Respondent provided five market sale comparables for the two smaller 33,600 SF and 40,080 SF buildings on the subject. The five time-adjusted sales were intended to demonstrate that sales of comparable sized properties (ranging from 24,880 SF to 37,667 SF) indicated a range of values from \$118 per SF to \$156 per SF whereas the 33,660 SF subject was assessed at \$128 per SF and the 40,080 SF building was assessed at \$124 per SF. He explained that the five sales were chosen because of the similarity of many of their individual characteristics to the subject. He noted the dates of sales were from 2007, 2008, and 2009 - again, well within the analysis period.

The Respondent outlined in some detail, the similarities and slight differences of all of his property sales to the subject(s), 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. The Respondent also clarified that all seven of the City's key adjustment categories for industrial properties were also posted on the City's website and have been available for some time to the public and the Complainant.

The Respondent clarified that a new negative adjustment factor (part of the 7 noted above) for multi-building sites had been identified as a result of analysis for the 2011 assessment cycle. He noted that it had also been prior-published on the City's website. As identified on page 25 of Brief R-1, there were 36 properties – including the subject, which received the negative multi-building reduction, a value in the range of approximately minus 8.5% to minus 9.5%. The Respondent identified CARB Decisions ARB 0540/2010-P and CARB 0855/2011-P in which two separate Boards had accepted the City's multi-building reduction factor.

The Respondent argued that while the Complainant has long had access to the City's adjustment factors information, he had confirmed to the Board that he had made no adjustments whatsoever to any of his comparable properties. Therefore, the Respondent argued, their comparability to the subject is invalid and the conclusions drawn from them by the Complainant are seriously flawed. Moreover, the Respondent noted that at least two of the Complainant's market sales appear to be invalid because they were said to be non-arms-length sales. Using third-party documents on pages 36 and 40 of his Brief R-1, he referenced a July 2009 sale at 3651 – 23 ST NE, and a November 2010 sale at 925A – 28 ST NE, claiming them to be invalid as noted.

Ultimately the Respondent noted that the Complainant's value conclusions appeared to be based on faulty methodology that is not industry-accepted, such as averaging indicated values from evidently two very different buildings; drawing erroneous value conclusions based on invalid sales; and failing to make "industry-standard" adjustments in order to properly compare properties.

The Respondent requested that the Board confirm the assessment at \$21,160,000.

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 appears to have 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 industry-accepted adjustments for sale date; age; site coverage; parcel size etc. such that an appropriate comparisons 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 City has identified and factored into its assessment equation for 36 such properties, including the subject, a negative multi-building adjustment approaching 9.5% which is intended to recognize that such properties sell differently, perhaps for less, in the marketplace. This adjustment, seemingly unknown to the Complainant, appears to address the Complainant's concerns about such properties, and also appears to have been accepted by at least two other Assessment Appeal Boards in Calgary. This Board also accepts this adjustment principle.

Therefore, the Board considers that the Complainant's arguments fail regarding this issue.

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 six properties in a matrix on page 29 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 six properties. He concluded that an equitable value of \$102 per SF and an assessment of \$18,450,000 (identical to the market value) was appropriate for the subject.

The Respondent however argued that the Complainant's data was flawed and incomplete. He referenced specific details in each of the Complainant's comparables and noted that several of the site details for them such as level of finish, were incorrect. He also noted that the Complainant had not made any adjustments to his comparables. 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 27 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, based on the City's analysis of it, 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')) “

Complainant's Rebuttal

The Complainant submitted Brief C-2 being his rebuttal document. He argued that:

1. The time adjustments done by the City are not reliable (page 3)
2. The City has violated Sections 291(1); 289(2)(a); and 284(j)(r) of the Municipal Government Act (MGA), (page 5)
3. The City has submitted evidence that is contradictory, (page 7)
4. The City submitted insufficient evidence that the subject received a negative co-efficient for being a multi-building property. (page 9)

Regarding the first point, the Complainant argued, but failed to provide detailed market evidence or acceptable independent analysis to confirm his point that City's time adjustments are invalid.

Regarding the second point, the Complainant argued that the City's methodology of independently comparing and valuing each building on a multi-building site against sales of comparably-sized buildings elsewhere, then applying a negative multi-building co-efficient, is flawed and contrary to certain Sections of the MGA. He argued that this methodology ignores economies of scale. He suggested that the subject is one legal title and cannot be subdivided – a fact confirmed in a letter from the management company for the subject.

The Complainant argued that the City used contradictory evidence because it used some of the same market sales as the Complainant but argued that the Complainant's were somehow invalid. However, the Respondent noted that the Complainant had acknowledged a decision to not make any adjustments to his comparables which would invalidate the conclusions drawn from analysis of them. The Board has already acknowledged acceptance of the Respondent's position on this point.

Regarding Complainant's rebuttal point #4, the Complainant provided no information other than argument that the City had somehow failed to apply the negative multi-building co-efficient to the subject.

And finally, largely in support of his point #4 above, the Complainant submitted a copy of Municipal Government Board Order MGB018/05. He argued that this Order supports his position that a multi-building site represents a "form of ownership" that the City has ignored in its assessment process. However, the Board noted that the referenced Board Order deals with issues related to condominium property ownership, and the subject is not a condominium property. Therefore the Board found little relevance in this MGB Order to the matter at hand and hence gave the Order little if any weight.

The Complainant summarized and concluded his rebuttal by stating the following:

- “The City’s time adjusted sale prices for sales comparables do not accurately predict nor reflect the 2011 assessments.
- The subject has been assessed in contravention of sections 291(1), 289(2)(a), 284(j)(r), of the municipal government act. (sic) The city has failed to treat the subject property as one legal title and in turn has provided insufficient sales/equity comparables to support the 2011 assessment.
- The City has not provided sufficient evidence to prove that a negative coefficient has been applied to the subject, to account for the multiple buildings on the subject title.”

Board’s Analysis and Conclusions - Reasons

The Board is of the view that the Complainant failed to supply any documented market evidence to support his position that the City’s time-adjustments are incorrect. Therefore, this point fails.

Secondly, the Board disagrees with the Complainant that the City has failed to treat the subject as “one legal title” and has somehow contravened selected Sections of the Municipal Government Act. The overwhelming evidence before the Board on this point is entirely to the contrary – including the Complainant’s point that the City has provided insufficient market comparables to support its position. The City’s record of 153 market sales, and, its identification of 36 multi-building market sales over three years of analysis, speaks clearly to this point.

Moreover, on the basis of the evidence and argument, the Board disagrees with the Complainant’s suggestion that the City has contravened the following Sections of the MGA;

“289(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

291(1) Unless subsection (2) applies, an assessment must be prepared for an improvement whether or not it is complete or capable of being used for its intended purpose.

Part 9

Assessment of Property

Interpretation provisions for Parts 9 to 12

284(j) “improvement” means

- (i) a structure,
- (ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,
- (iii) a designated manufactured home, and
- (iv) machinery and equipment;

- (r) "property" means
- (i) a parcel of land,
 - (ii) an improvement, or
 - (iii) a parcel of land and the improvements to it;

Board's Summary Conclusions

The Board is therefore of the view that considering all of the foregoing, and 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 \$21,160,000

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:

NO.	ITEM
1. C-1	Complainant Disclosure Brief
2. C-2	Complainant Rebuttal Document
3. 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.*