

**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:

***Morguard Industrial Properties (1) 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:

ROLL NUMBER:	200076636
LOCATION ADDRESS:	1226 – 26 AV SE
HEARING NUMBER:	63634
ASSESSMENT:	\$15,800,000

This complaint was heard on 27th 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. A. Payn - AEC International Inc.*

Appeared on behalf of the Respondent:

- *Mr. R. T. Luchak - Assessor, City of Calgary*

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

None

Property Description:

The subject is a multi-tenant industrial warehouse situated on 6.85 acres of land in Bonnybrook 3 industrial park in SE Calgary. The subject is a 123,740 square foot (SF) 2002 structure with 131,421 SF of assessable space. It has 18% finish and is assessed at \$120 per SF. The property is zoned Industrial General (IG), has a total site coverage of 41.44% and is assessed at \$15,800,000.

Issues:

1. The subject was incorrectly assessed using the Market Approach to Value and should have been assessed using the Income Approach to Value due to a paucity of market sales in the base year.
2. The assessment is inequitable when compared to comparable properties.

Complainant's Requested Value: \$8,976,000 based on Income Approach at \$68.30 per SF.

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

Issue #1: "The subject was incorrectly assessed using the Market Approach to Value and should have been assessed using the Income Approach to Value due to a paucity of market sales in the base year."

The Complainant referenced his Brief (document C-1) wherein he identified the location of the subject in Bonnybrook industrial park using a map, aerial photo, and exterior photos of the subject building. He argued that there are three approaches to property valuation – i.e Cost, Income, and Market, and he briefly explored valuation options for the subject with each methodology.

The Complainant indicated that where there is a dearth of market sales, then the Income Approach is most commonly and appropriately used. He argued that such is the case with the current market circumstances for the subject building in Calgary. In support of this theory, he referenced selected excerpts regarding "Appraisal Theory" said to be from "The Appraisal Institute of Canada" and the "Alberta Assessors' Association".

The Complainant therefore argued that because he considered that there were very few comparable property sales in what he defined as the one-year "base year" – ie July 1, 2009 to June 30, 2010, then it was important to use the Income Approach to Value methodology to calculate the assessable value of the subject. The Complainant's market-based presentation to the Board was based predominantly on this principle. In addition he argued that while the City's assessment model is generally reasonably accurate, it becomes unreliable when properties exceed 100,000 SF in floor area.

In support of his position that there were insufficient market sales, the Complainant opted to select for his "base year", four sales of buildings over 100,000 SF, from one year (July 1, 2009 to June 30, 2010) of sales. He provided a matrix on page 25 of document C-1, of his selected four industrial property sales, which had all transacted between May 2009 and April 2010. He also provided the RealNet information sheet for one of the sales of a 146,135 SF building on 7.06 Acres (Ac.) at 10905 – 48 ST SE which identified it as a "portfolio" sale that included 2 Edmonton properties. The Complainant argued that the sale details as outlined by RealNet indicated separate values for this site from the Edmonton properties and therefore it could validly be considered in his analysis.

A second 9.22 Ac. property at 4949 – 76 AV SE contained a 106,309 SF building. A third 4.44 Ac. property at 2340 – 22 ST NE contained a 116,566 SF building. The fourth, a 15.84 Ac. property at 4100 Westwinds DR NE contained a 301,930 SF building which the Complainant noted was an "A-" Quality building like the subject.

The Complainant also noted that the City's Assessment Summary Reports had identified the "Quality" of the four properties as being either "A-", or "C" or "C+" which he considered a very significant "identifier".

The Complainant clarified that in comparing the properties, no adjustments of any kind had been made to any of the three 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 also provided the City's Assessment Summary Reports and Alberta DataSearch sheets for his comparable property sales and equity comparables.

The Complainant argued that the City's three market sales on page 33 of its Brief R-1 demonstrated that the City had only one useable sale in the Complainant's one-year base year, and it was the same 10905 – 48 ST SE site that he had used and therefore he was confident of its applicability.

The Complainant methodically identified the source of each of the inputs to his Income Approach to Value calculation on his page 23 of C-1. He articulated on page 15 and 16 of Brief C-1 that according to Third Party Market Reports for Calgary from CB Richard Ellis (CBRE) that "Average Asking Lease Rates", as well as DTZ Barnicke "Average Gross Rental Rate (Asking)", as well as an AEC "Industrial Lease Survey", appeared to indicate that an appropriate "average rent" of \$5.29 per SF and an "average net effective rent" (after certain inducements) indicated \$4.86 per SF was appropriate.

The Complainant thereafter on pages 17 to 22 cited Third Party sources – including CBRE and Colliers International, for indicated valuations which he then used as inputs for "Vacancy Rate"; "Vacancy Shortfall"; "Non-recoverables"; and "Capitalization Rate". Thereupon, the Complainant concluded on page 23 that his calculations, based on an Income Approach to Value calculation using such inputs, indicated a market value of \$8,976,000 or \$68.30 per SF for the subject. However, the Complainant volunteered that perhaps a Cap Rate of 6.5% to 7% instead of his utilized 7.25% might be more appropriate for the subject, which would have produced a higher, but undefined alternate value.

The Complainant argued that the City's "Assessment Summary Reports" identify each industrial building as having been assigned a Quality rating ranging from A to C. He argued in document C-1 and in his rebuttal document C-2 that his market comparables retained quality ratings similar to the subject, whereas the City's market comparables did not. Therefore, he argued, the City's market comparables are not comparable based on "Quality" alone.

The Respondent presented his Brief R-1 and argued that the entire basis of the Complainant's market-based argument of a paucity of sales in this complaint, is fundamentally flawed and is simply incorrect. He 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 argued that the Complainant has arbitrarily limited his own access to market data by insisting on using only one year of sales. He noted that the City has used three years of sales – some 154 sales, to assess the subject, all of which were analyzed by the City using a professionally-accepted process under Mass Appraisal. He reiterated that all of the 154 sales were posted on the City's website for use by the public and therefore readily available to the Complainant.

The Respondent argued that the Complainant's argument in this issue is "self-defeating". That is, if he argues that there are "no" market sales and an Income Approach to Valuation methodology should be used, then because there are "no" sales, it is not then possible to calculate a reliable Capitalization Rate. Hence, the Income Approach would not be a valid approach because certain key variables would be unavailable to use in the calculation.

The Respondent argued that two of the Complainant's four market comparables are not comparable to the subject or to each other. He noted for example that 4949 – 76 AV SE was a three-building complex whereas the subject is one building. He noted that one-building and 3-building properties are assessed differently because a 3-building property receives a "multi-building" discount in the City's Model, whereas a single-building property does not.

Moreover, the Respondent noted that while the Complainant has stressed the need for "homogeneity" among comparable properties in his document C-2, this does not mean that each individual site characteristic for each property must be identical in order for comparability to be achieved. He noted that according to accepted industry practice, the City can and does make computerized adjustments to like-properties to effect a reasonable measure of comparability where warranted.

In addition, the Respondent argued that in the Complainant's application of the Income Approach to Value methodology to value the subject, the resulting calculations are invalid, based on the use of faulty data. He argued that the inputs used by the Complainant are based on broadly-based third-party market "typical" data which is non-specific to the subject's location.

The Respondent also questioned the Complainant's use of third-party "Asking Rates" instead of solid "Actual" lease/rent rates from properties either nearby the subject or within the subject itself. He also challenged the reliability of the "actual" rates identified in the Complainant's four leases on page 16 of C-1, since the specific site addresses and other important particulars of the four properties were unavailable and hence could not be compared either to one another, or to the subject. He provided and referenced Calgary Assessment Review Board Decision LARB 0009/2011-B which dealt with a similar issue. Moreover, the Respondent argued that the Complainant is mixing "actual" rates with "typical" rates for his inputs to his Income Approach to Value calculations and this is flawed because it does not meet Appraisal Institute Guidelines. He referenced Calgary Assessment Review Board Decision ARB 1116/2011-P in support of this position.

The Respondent clarified that the Complainant has made much of the "Quality" rating appearing on the City's Assessment Summary Reports. He noted that this rating is used by the City primarily for Business Assessment purposes and played absolutely no part in the Property assessment for the subject. Therefore any arguments raised by the Complainant regarding this factor are not relevant. He also noted that through several years of analysis, the City has determined that "Quality" is a proxy for "year-of-construction" and therefore if the "Quality" characteristic is also used simultaneously in the assessment model, it effectively is double-counting which would "skew" the results in a property assessment calculation.

In support of his position, and in a matrix on page 36 of Brief R-1, the Respondent provided three market sale comparables for the subject. The three time-adjusted sales were intended to demonstrate that sales of comparable sized properties (ranging from 116,724 SF to 301,930 SF) indicated a range of values from \$81 per SF to \$128 per SF with a median value of \$86 per SF which supports the assessment at \$120 per SF. He explained that the three sales were chosen because of the similarity of many of their individual characteristics to the subject, and that all sales were well within the City's 3-year analysis period.

The Respondent outlined in some detail, the similarities and slight differences of all of his 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. 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. He argued that his sales and equity evidence demonstrate reasonable value within a range as is professionally required.

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 reiterated, their comparability to the subject is invalid and the conclusions drawn from them by the Complainant are seriously flawed.

Ultimately the Respondent noted that the Complainant's value conclusions appeared to be based on faulty methodology that is not industry-accepted. The Respondent requested that the Board confirm the assessment at \$15,800,000.

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 therefore use an Income Approach to Value methodology which was not the methodology used to assess the subject.

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 154 sales, were used to analyze the market. Moreover, these 154 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 either 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 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.

Fourthly, the Complainant has made much of the differing "Quality" ratings attributed to each property, a rating used primarily for Business Assessment purposes but which apparently played no part whatsoever in assessment of the subject. The Board accepts the City's clarification that "Year-Of-Construction" is essentially a proxy for "Quality" in the market, and to permit the City's computer model to simultaneously insert a variable for both characteristics, would insert an undesirable anomaly into the calculation and lead to a skewed result. Therefore the Board rejects the Complainant's arguments that the City's market data is flawed because the "Quality" ratings are not similar.

Fifthly, and notwithstanding points #1 and #2 above, the Board concurs with the Respondent that the Complainant's inputs into his Income Approach to Value calculations appear to be fatally-flawed because they inappropriately mix actual and typical values. Moreover, they appear to be largely unsupported, unverifiable, and speculative (i.e. lease values based on "Asking" rates, and/or with no site address, etc). Therefore, the value conclusions extracted by the Complainant from these calculations appear to the Board to be unreliable.

Therefore, on balance, 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 Study" on pages 26 to 29 of 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 identified 23 properties in a matrix on page 27 showing building sizes ranging from 146,780 SF to 767,000 SF, with year-of-construction dates ranging from 1990 to 2009 which he concluded demonstrated an average and median assessed value of \$74 per SF and \$75 per SF respectively. The subject is assessed at \$120 per SF.

The Respondent however argued that the Complainant's data was flawed because the properties selected are not similar to the subject. On pages 37 to 40 of R-1, the Respondent provided a matrix of the Complainant's 23 equity comparables and proceeded to identify various individual site characteristics of each – noting similarities and differences between them and the subject. He noted for example that both 5300 – 61 AV SE and 10 Smed Lane had been assessed using the "Cost Approach to Value" methodology and hence should not be used. He also noted that a property at 4760 – 72 AV SE was some ten years older than the subject and the Complainant had confirmed that he had not made any adjustments for this differential.

On page 32 of R-1 the Respondent provided a matrix of five equity comparables which contained greater individual site details for comparison. The Respondent noted the individual characteristics of the five equity comparables and compared them to the subject. He reiterated that the City's Model makes adjustments for perceived differences according to professionally-accepted practice and the Complainant had not. He argued that properties having similar details should have similar assessments, and he suggested that this data confirmed this point.

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 31 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 "we're entitled to equity, even when there are few sales". Based on his equity evidence, the Complainant suggested on page 26 of C-1 that the assessment should be reduced to between \$9,857,000 and \$11,039,000 based on \$75 to \$85 per SF.

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 provided the complete Court Decisions for each of these Cases – "*Bramalea*" on pages 39 – 47; and "*Bentall*" on pages 49 to 69 of R-1.

The Respondent also supplied and referred briefly to MGB Decision DL 068/08; Calgary Assessment Review Board Decisions CARB 1357-2010-P and CARB 1360-2010-P which referenced decisions relating to Market Value VS Income Approach to Value considerations.

The Respondent again requested that the assessment be confirmed at \$15,800,000.

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 and for the following. The Board is satisfied that not only do the Complainant's equity comparables appear dissimilar to the subject, but the Respondent's equity comparables are more detailed and appear to support the assessed value.

That said, and in the Board's view, the Complainant failed to effectively relate each of his equity comparables to the subject in terms of their comparability and support for the Complainant's desired value of \$68.30 per SF. Instead, they appeared to demonstrate a much higher value of \$74 and \$75 per SF. Moreover, the Complainant was unable to more precisely define an equitable value based on analysis of his data, instead offering a range of values from \$9,857,000 to \$11,039,000 based on the \$75 to \$85 per SF. The Board found this position to be conflicting and unhelpful.

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 noted that AEC concurs with the City regarding Multiple Regression analysis for Mass Appraisal, but disagreed with the City Model's ability to accurately predict the assessed value of buildings over 100,000 SF. He further argued that:

1. Only 3 sales in the base year – limited extent
2. Only four (4) sales were submitted by the City in R-1 – limited extent
3. Sale dates vary from May 2009 to May 2010 – not homogeneous
4. Year of constructions vary from 1981 to 2008 – not homogeneous
5. Property locations vary from NE to SE – not homogeneous
6. Finish levels vary from 0 to 39% - not homogenous
7. Building sizes vary from 14,375 to 301,930 SF – not homogeneous
8. Parcel sizes vary from 4.44 to 15.84 acres – not homogeneous

The Complainant reiterated that his comparables were indeed comparable to the subject and a rate of \$68.30 per SF as determined from his Income Approach to Value calculations was warranted. He again argued that the City's comparables were not comparable when one compares the "Quality" ratings for each of them to the subject. He referenced several properties in his matrix of 23 comparables, noting that they apparently retained "Quality" ratings of "A" and "A++" and this supported his position.

The Respondent argued that he had addressed each of these nine points, and the "Quality" rating argument, in great detail during the hearing and still profoundly and fundamentally disagreed with the Complainant's arguments.

Board's Analysis and Conclusions - Reasons

The Board is satisfied from its own close examination, that the City's market and equity comparables are similar to the subject and each have received appropriate "adjustments" as required pursuant to professionally-accepted practice. They appear to support the assessment.

It was noted that the Complainant's comparables were not adjusted, and, when referencing their individual site characteristics, appeared to be greatly dissimilar. Hence their comparability to each other and the subject was questionable. In addition, the Board accepts the Respondent's position that using "homogeneous" comparables does not mean using "identical" comparables, nor did the "Quality" rating play a significant role – if any, in the market-based assessment of the subject.

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 \$15,800,000

DATED AT THE CITY OF CALGARY THIS 26th 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.*