

**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:

Portland Street Depot LTD., C/O Morguard Investments Limited (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:	078076304
LOCATION ADDRESS:	2204 Portland ST SE
HEARING NUMBER:	63636
ASSESSMENT:	\$44,540,000

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. Luchak - 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 20.35 acres of land in Bonnybrook industrial park in SE Calgary. One building is a 105,976 square foot (SF) 2000 structure with 20% finish assessed at \$101 per SF – based on 117,459 SF of assessable space. The second building is a 139,456 SF 2000 structure with 15% finish assessed at \$96.45 per SF – based on 150,111 SF of assessable space. The third building is a 203,995 SF 2000 structure with 7% finish assessed at \$88.70 per SF. The subject is zoned Industrial General (IG), has a total site coverage of 50.70% and is assessed at \$44,540,000 based on a “blended” \$94 per SF.

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 Values: \$32,209,000 based on Income Approach at \$68.30 per SF
\$29,228,000 based on equity at \$61.98 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 buildings. He argued that there are three approaches to property valuation – i.e Cost, Income, and Market. He 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 3-building complex 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 support of his position that there were insufficient market sales, the Complainant provided a matrix on pages 40 – 42 containing 154 industrial property sales which he had copied from the city's website. The sales had all transacted between July 1, 2007 and June 30, 2010 – a period of three years. However, as noted, the Complainant opted to select only from one year (July 1, 2009 to June 30, 2010) of sales for his "base year".

The Complainant noted that in examining the matrix, he had identified only four property sales over 100,000 SF which he considered similar to the subject. These were shown on page 26 of Brief C-1. One property at 4949 – 76 AV SE – a portfolio sale, contained 3 buildings (like the subject) with a total 106,309 SF; a second at 10905 – 48 ST SE had one 106,309 SF building; a third at 2340 – 22 ST NE had one 116,566 SF building; while a fourth had one 301,930 SF building. All had sold in 2009 or 2010. He also noted that the City's website data had identified the "Quality" of the properties as being either "C", or "C+" or "A-" 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 4 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 for each of his 4 comparable property sales.

The Complainant argued that the City's market sales on page 37 of its Brief R-1 demonstrated that the City had only 3 useable sales in the Complainant's one-year base year, and their individual characteristics were not "homogeneous" – an important consideration when comparing properties he suggested.

The Complainant methodically identified the source of each of the inputs to his Income Approach to Value calculation. He articulated on pages 16 and 17 of Brief C-1 that according to Third Party Market Reports for Calgary from CB Richard Ellis and DTZ Barnicke, that "Average Asking Lease Rates", and "Average Gross Rental Rates (Asking)", as well as AEC "lease research", 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 cited third party sources – including 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 that his calculations, based on an Income Approach to Value calculation using such inputs, indicated a market value of \$32,209,000 for the subject. However, the Complainant volunteered that perhaps a Cap Rate of 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 in this complaint is fundamentally flawed. He noted that the Complainant's own evidence in document C-1 identifies 154 market sales, and therefore to argue that there is a paucity of sales, is simply incorrect. Moreover, he noted that the Complainant has arbitrarily limited his own access to market data by insisting on using only one year of sales, whereas the City has used three years of sales to assess the subject – all of which are displayed in the Complainant's evidence, and all of which were analyzed by the City using a process professionally accepted under Mass Appraisal.

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 reiterated that in preparing the 2011 assessments, the City had used three years of sales in its analysis of the market – some 154, all of which were posted on the City's website for use by the public.

The Respondent argued using a matrix on his page 45 of R-1 that the Complainant's market comparables are not comparable to the subject or to each other. He noted only one is a multi-building property like the subject, and one is a portfolio sale which is invalid. Moreover, he noted that while the Complainant has stressed the need for "homogeneity" among comparable properties, this does not mean that each individual site characteristics 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 Complainant's 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 data which is non-specific to the subject's location. In addition, the Respondent 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 rates identified in the Complainant's four leases on page 17 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.

The Respondent clarified that unlike the Complainant, the City does not "bulk assess" properties where there are multiple buildings on a site. He noted that the City analyzes the several individual characteristics of each building on a site and establishes a value for each of them. To do otherwise, he argued, would effectively penalize certain buildings which were younger, had less finish, or had other dissimilar characteristics for example. He noted that previous appeal Boards have endorsed this methodology. He referenced page 18 of R-1 - and - ARB 0540/2010-P. The Complainant on the other hand, he noted, had taken the gross area of all three buildings and multiplied the result by a \$5.25 per SF value as part of the Income Approach to Value calculation, to arrive at an indicated assessment value. This is simplistic and entirely without professional support or merit he argued, and clearly does not represent how the City assessed the property.

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 only for Business Assessment purposes and plays absolutely no part in Property assessments. 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 37 of Brief R-1, the Respondent provided six market sale comparables for the subject. The six time-adjusted sales were intended to demonstrate that sales of comparable sized properties (ranging from 119,551 SF to 301,930 SF) indicated a range of values from \$86 per SF to \$135 per SF with a median value of \$114 per SF which supports the assessment at a "blended" \$94 per SF. He explained that the 6 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(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 pages 23 and 68 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 further identified CARB Decisions ARB 0540/2010-P and CARB 0855/2011-P wherein 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 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 \$44,540,000.

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 only for Business Assessment purposes but which plays no part whatsoever in Property Assessments. 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 and somewhat unsupported (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.

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

Issue #2

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

The Complainant provided an "Equity Analysis" on pages 28 and 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 provided a matrix of 23 properties which appeared to illustrate an average value of \$74 per SF and a median value of \$75 per SF, noting the subject is assessed at \$94 per SF (blended).

The Complainant also provided the 23 individual and separate City Assessment Summary Reports taken from the City's website, arguing that the individual "Quality" characteristics of each property, as identified on the Summary Reports, when compared to the subject, demonstrated an over-assessment. Of particular note to the Complainant was a property at 7505 – 48 ST SE, a 3-building site like the subject, which he considered more clearly demonstrated an inequity based on "Quality" comparisons between it and the subject.

The Respondent however argued that the Complainant's data was flawed and incomplete. On pages 52 to 55 of document R-1 he provided several matrices containing the Complainant's 23 comparables. He referenced specific individual characteristics related to each one of them, noting their several similarities and differences. He argued that the Complainant's comparables are not comparable to each other or the subject.

The Respondent again clarified that the "Quality" rating of each building as focused on by the Complainant, is irrelevant in "Property" assessment comparisons and therefore the Complainant has relied on inappropriate, incompatible, and incorrect data. As a result, he argued, the Board should not rely on his equity value conclusion which is based on this misinformation

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. Based on his equity evidence, the Complainant requested that the assessment be reduced to \$29,228,000 pursuant to \$61.98 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 again requested that the assessment be confirmed at \$44,540,000.

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, not only do the Complainant's equity comparables not appear to be comparable when one compares the individual property characteristics of them to each other and the subject, but the fundamental basis of the Complainant's argument (i.e. building Quality) appears to be invalid as it pertains to property assessments.

Hence, the Board accepts the City's position that the "Quality" ratings of allegedly similar properties as advanced by the Complainant, play little or no role in their property assessment evaluations. Therefore the Board is reluctant to accept the value conclusion the Complainant has extracted based on this flawed analysis.

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 use of third-party reports is an acceptable practice also used by the City (page 2)
2. The Capitalization Rate used by the Complainant is adequately supported (page 2)
3. The rental rates used are from confidential sources but nevertheless valid (page 2)
4. The City declines to explain why it did not use the Income Approach instead of the Market Approach (page 2)
5. The City uses "Quality" rankings which are on its website (page 4)
6. The City's market sales have varying characteristics and are not "homogenous" and have only 3 valid sales from the "base year" – i.e. 2009 – 2010 (page 5)

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

Board's Analysis and Conclusions - Reasons

Regarding the first point, and as noted above, the Complainant argued, but failed to convince the Board that his use of third-party data in his Income Approach to Value calculation was sufficiently focused on the subject's location such that a reliable conclusion was attained. Moreover, the Board accepts the position of the Respondent that the use of third-party "Asking" lease and rental rates in an Income Approach to Value calculation is inappropriate and unreliable since valid actual leases should be used so as to impart a level of certainty as to market value.

Regarding the second point, the Complainant essentially argued against his own position in that he argued for a 7.25% Cap Rate which was used to calculate a desired value. Then the Complainant confided that a 7% cap rate was likely more appropriate, although he failed to both support this assertion, or re-calculate a value using this rate. Therefore, as noted above, the Board found this information and Complainant position to be infirm, fluid, and hence unreliable. Regarding the third point, the Board has already noted that it concurs with the Respondent that the Complainant's rental rates – while perhaps from "privileged" and undisclosed sources, cannot be verified nor compared with rent rates from other similar properties. Hence, as

previously noted, their reliability is questionable and the property valuations attributed to them are questionable.

Regarding the Complainant's rebuttal point #4, the Board is satisfied that the City has explained why it did not use the "Income Approach" to value the subject. The Board is satisfied that there was a large number of market sales (some 154) from which property comparisons and value conclusions could be derived. While the Complainant arbitrarily restricted his analysis to a one-year "base year", the City did not – opting instead to analyze three years of sales. The Board is quite comfortable with the City's process and resulting value conclusions.

Regarding the Complainant's rebuttal point #5, the Board is satisfied that the "Quality" ratings for properties identified on each City "Assessment Summary Report" as posted on its website, are intended for Business Assessment purposes only and play no role in Property Assessments. Therefore the Complainant's persistence in arguing to the contrary has not persuaded the Board regarding this point.

And finally, the Board is satisfied that the City's market and equity comparables are similar to the subject and each has received appropriate "adjustments" as required pursuant to professionally-accepted practice. It was noted that the Complainant's comparables were not adjusted and 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. The Board has already addressed the matter of "base year" as noted in #4 above.

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 \$44,540,000

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.*