

**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:

***732697 Alberta LTD., Query Resources 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:	200537702
LOCATION ADDRESS:	10550 – 42 ST SE
HEARING NUMBER:	63425
ASSESSMENT:	\$7,370,000

This complaint was heard on 28th 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. J. Lepine - Assessor, City of Calgary*

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

The Complainant offered his Brief C-1 and presented his several arguments to the Board. Upon completion, the Respondent briefly questioned the Complainant regarding certain aspects of his evidence.

Thereupon the Respondent requested the Board to make an immediate determination as to whether or not the Complainant, in having presented his evidence in C-1, had met the "onus" required of him to demonstrate that the assessment as prepared by the City of Calgary is either inequitable and/or incorrect. The Respondent indicated that it was his view that the Complainant had not met the onus, and should the Board also determine that the Complainant had not met onus, then he would not be submitting his evidence package.

The Board adjourned to consider the Respondent's request.

Upon calling the Hearing back to Order, the Board noted that it would not be making any determination at this time as to whether or not the Complainant had met onus. Therefore it rested with the Respondent to decide whether or not he would be submitting his evidence package.

The Respondent advised that he would not be submitting his evidence package.

Property Description:

The subject is a multi-tenant industrial warehouse situated on 2.86 acres of land in Dufferin 1 industrial area in SE Calgary. The subject is a 51,027 square foot (SF) 2006 structure with 54,745 SF of assessable space. It has 17% finish and is assessed at \$134 per SF. The property is zoned Industrial General (IG), has a total site coverage of 40.90% and is assessed at \$7,370,000.

Issues:

1. The year-over-year percentage assessment increase is too high.
2. 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.

Complainant's Requested Value: \$5,770,000 based on Income Approach at \$105 per SF.

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

Issue #1: "The year-over-year percentage assessment increase is too high."

The Complainant referenced his Brief (document C-1) wherein he identified the location of the subject in Dufferin industrial area using aerial photos, and exterior photos of the subject building. He argued that the subject experienced a 16.43% assessment increase year-over-year and he considered this to be excessive. He indicated that pursuant to his analysis, the subject should have experienced a decrease in value, which he suggested should be in a range from \$5,770,000 to \$6,137,000. These values were based on per square foot estimates of between \$105 and \$112.

The Respondent briefly questioned the Complainant regarding this issue, noting that year-over-year percentage increases are not valid forms of appeal.

Board's Analysis and Conclusions - Reasons

This Board accepts, and there are many Board decisions affirming, that year-over-year percentage increases/decreases are not of themselves, valid reasons for a Board to change an assessment. Therefore the Board considers that the Complainant's position fails regarding this issue.

Issue #2: "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 provided his Brief C-1 and argued that there are three approaches to property valuation – i.e Cost, Income, and Market. 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.

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.

The Complainant argued and acknowledged that while there may have been some sales in Calgary during his "base Year", nevertheless, the City had used "the wrong sales" to value the subject. The Complainant did not identify which Respondent sales he was referring to. Nor did the Complainant provide any market sales of his own.

The Complainant then proceeded to methodically identify the source of each of the inputs to his Income Approach to Value calculation on his pages 13 to 19 of C-1. He articulated on page 13 that according to Third Party Market Reports from "www.tradingeconomics.com/canada/stock-market", and, a CB Richard Ellis (CBRE) chart labelled "2010 Year-End Total Investment Forecast" that the "investment climate" for Calgary from 2008 to 2010 as related to property leases, was poor. On page 14 he provided a vertical bar chart prepared by Cushman and Wakefield depicting his assertion that in 2008 the real estate market (location unknown) saw a "sharp decline in real estate investment as a result of the economic downturn".

On page 15 the Complainant offered a matrix identifying four actual leases in the subject which he indicated had been signed between 2006 and 2008. He noted that the subject had been constructed in 2006 and concluded that the actual lease data from the four leases in the subject indicated an average lease value of \$8.06 per SF. He also noted that two leases have "step ups" and the average value of them was \$8.56 per SF. Therefore the Complainant decided that he could rely upon a rent rate of \$8 to \$8.50 per SF for his Income Approach to Value calculations.

On page 16 the Complainant provided a chart prepared by Colliers International identifying "Vacancies" in industrial properties for 18 industrial neighbourhoods in south-east Calgary. He concluded that Shepard Business Park "was experiencing vacancy of 8.48% during second quarter of 2010 while the SE quadrant as a whole, experienced an average vacancy of 5.69%". He concluded that a 5% vacancy rate was appropriate to use in an Income Approach valuation for the subject in its Dufferin industrial area.

On page 17 of C-1 the Complainant clarified that he had obtained an actual "vacant space shortfall" of \$2.85 per SF from the owner of the subject. Therefore he intended to use that value in his Income Approach calculations for the subject. In addition, on pages 17 and 18 of C-1 the Complainant offered a summary of potential typical non-recoverable expenses and then estimated that one percent was appropriate to use in his Income Approach calculation.

On page 18, the Complainant argued that because there were "no sales of comparability in the base year" then AEC would rely upon an excerpt of a report entitled "Canada Cap Rate Report - Q2 2010" published by Colliers International. He concluded that a typical 7% Capitalization Rate was appropriate for the subject.

Ultimately on page 19 of C-1 the Complainant calculated, using an Income Approach to Value calculation using the aforementioned "actual" and "typical" inputs, that the assessment of the subject should range between \$5,770,000 and \$6,137,000 based on two scenarios – one using \$8 per SF rents, and the other using \$8.50 per SF rents. The Complainant concluded that his preference and ultimate request of the Board is for an assessment of \$5,770,000 based on \$105 per SF.

The Respondent questioned the Complainant's presentation, suggesting thereby 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 noted through questioning that the subject had been assessed using the Market Approach to Value using 3 years of sales, and the Complainant had provided no sales data whatsoever, even though the Complainant acknowledged in his evidence package that some sales had occurred and he had reviewed them. Nor had he provided any market equity comparables. In addition, he noted through questioning that the Complainant had provided no "typical" leases, relying instead on "actual" leases from the subject.

Thereupon the Respondent confirmed through questioning that the Complainant had used both "actual" and "typical" values in his Income Approach to Value calculations. The Respondent then offered that this approach of mixing the two types of values is not a professionally-accepted valuation methodology – i.e. pursuant to Appraisal Institute guidelines.

The Respondent then concluded that the Complainant had failed the burden of onus placed upon him to demonstrate, using professionally-accepted methodologies and practices, that the subject has been incorrectly assessed by the City. The Respondent declined therefore to submit his evidence package as noted above.

Therefore, since the Respondent declined to submit his evidence package, it was determined there was nothing for the Complainant to rebut. Therefore he did not submit his "Rebuttal" package.

In summary, the Complainant reiterated his request for a reduction to the assessment of the subject.

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 acknowledged that the subject was assessed by the City using market analysis of sales over a three-year defined period, some of which he acknowledged he had reviewed. However the Complainant supplied absolutely no market data and appears to have either rejected or ignored all of the market sales which he noted may have occurred in his one-year defined assessment period.

Secondly, the Complainant mused on page 12 of his Brief C-1 that he could not find any comparable property sales in his one-year "base year" so evidently decided to reject any and all that he might have perused, in favour of arguing that there were insufficient sales overall and hence he was required to use an alternate approach to valuation – i.e. that being the Income Approach. The Board rejects this argument.

Thirdly, the Board concurs with the Respondent that contrary to professionally-accepted practice, the Complainant's inputs into his Income Approach to Value calculations appear to be fatally-flawed because they inappropriately mix actual and typical values. Therefore, the value conclusions extracted by the Complainant from these calculations appear to the Board to be unreliable.

The Board notes that previous Board decisions have addressed this point with some clarity. The Board notes Calgary Composite Assessment Review Board Decision "CARB 1302/2011-P" page 5 of 7, paragraph #2 which states:

"The Board understands that calculating the value of a property using the income approach must be based on a consistent methodology. In other words, if "actual" rates are to be used to calculate a value using an income approach, then all factors in the calculation must reflect actual values. On the other hand, if typical rates are used to calculate a value using an income approach, then all factors in that calculation must be typical values. It is not appropriate to calculate the value of a property with the income approach using some factors derived from actual data and some factors derived from typical data. That said, for assessment purposes, typical rates are required."

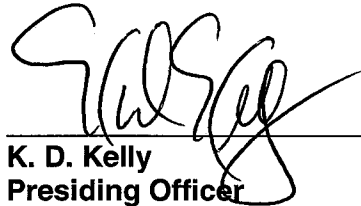
Board's Summary Conclusions

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 \$7,370,000

DATED AT THE CITY OF CALGARY THIS 29th 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

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.*