

**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:

Monarch Siding Centre 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:	200537710
LOCATION ADDRESS:	4390 – 106 AV SE
HEARING NUMBER:	63998
ASSESSMENT:	\$7,010,000

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:

None

Property Description:

The subject is a single-tenant industrial warehouse situated on 3.58 acres (Ac.) of land and 0.28 Ac. of "extra land" in Dufferin industrial area in SE Calgary. The subject is a 43,104 square foot (SF) 2006 structure with 46,560 SF of assessable space. It has 16% finish and is assessed at \$150 per SF. The property is zoned Industrial General (IG), has a total site coverage of 27.64% and is assessed at \$7,010,000.

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: \$4,144,000 based on Income Approach at \$89 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 Dufferin industrial area using a map, aerial photo, and exterior photos of the subject building. After briefly noting the principles of "Highest and Best Use" methodology, he argued that there are "three traditional approaches" to property valuation – i.e Cost, Income, and Direct Comparison, and he briefly explored valuation options for the subject with each methodology.

The Complainant indicated that the Income Approach is most commonly and appropriately used for income-producing properties whereas the Direct Sales Comparison approach is based upon the principle of "substitution". That is, values are estimated by directly comparing sales of similar properties. 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".

On page 16 of his Brief C-1 the Complainant provided a matrix of six properties which transacted in the marketplace between July 2009 and April 2010, and which he considered somewhat comparable to the subject. The sizes of the comparables ranged from 30,065 SF to 56,000 SF and sold for prices ranging from \$2,575,000 and \$5,900,000. The ages of the six properties ranged from 1972 to 1982. However, the subject is a 2006 building – some 28 to 38 years younger.

The Complainant clarified that in comparing the properties, no adjustments of any kind had been made to any of the six 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 opined that his comparables were perhaps not as closely comparable as they might have been, but nevertheless, they indicate value.

Based on his analysis of these market sales the Complainant calculated that \$92.85 per SF was an appropriate market-based value for the subject. Therefore on page 33 of C-1 he indicated that the subject should be assessed at \$4,330,000 based on \$93 per SF.

On pages 17 to 25 of C-1 the Complainant methodically identified the source of each of the inputs to his Income Approach to Value calculation. He articulated on page 21 of Brief C-1 that according to excerpts from "Third Party" Market Reports for Calgary from CB Richard Ellis (CBRE) that "Vacancy Rates", for southeast Calgary and specifically Foothills industrial area, are a typical 5.1%. Therefore he concluded that 5.1% was an appropriate vacancy rate to use in his Income Approach to Value calculations for the subject.

On pages 21 and 22 the Complainant identified a vertical bar graph prepared by DTZ Barnicke for 2Q 2010 titled "Average Gross Rental Rate (Asking)" which indicated that for properties of 50,000 plus SF in area, an "Asking Rent" of \$2.24 per SF was appropriate. Therefore the Complainant decided to use this value as an input to his Income Approach calculations for the subject.

On page 19 the Complainant provided an AEC "industrial lease survey" matrix using (initially) five industrial warehouse lease comparables – 3 from SE Calgary and 2 from NE Calgary, which indicated an average rent of \$6.38 per SF and a median rent of \$6.50 per SF. Subsequently the Complainant decided to remove a lease at 3110 – 12 ST NE which, upon reflection, he concluded was not appropriate to the circumstances. It was also noted by the Respondent that one lease somewhere along 61 AV SE could not be specifically identified as to location and the data attributed to it could not be confirmed.

On pages 19 and 20 the Complainant argued that lease rates tend to "track" Canadian Interest rates and he provided a line graph of unknown source to argue that the most appropriate rent rate for the subject is in the range of \$6 per SF ("supported by third party market reports") to \$6.50 per SF ("supported by AEC's industrial rental survey"). The Complainant opted therefore to use these two rates to develop two different valuation scenarios on pages 26 and 27 of C-1.

On page 24 of C-1 the Complainant provided an excerpt from Colliers International "Canada Cap Rate Report" for the second quarter of 2010 noting cap rates of 6.75% and 7.25%. He argued that based on this report and AEC's assessment of "risk" for the subject, the appropriate Cap Rate for the subject to use in his Income Approach calculation is 7.25%.

The Complainant thereafter developed four valuation possibilities (scenarios) based upon his substitution of various rent values, as alternate inputs to an Income Approach to Value methodology. On page 26 of C-1 he used a \$6 per SF rent and calculated a value of \$3,547,000 or \$76.18 per SF. On page 27 he used a \$6.50 rent and calculated a value of \$3,848,000 or \$82.65 per SF. On page 28 he used the Business Assessment rent value of \$7 per SF to calculate a value of \$4,150,000 or \$89.13 per SF. However he noted on page 19 of his document that a rent of \$7.50 per SF had been applied for the 2011 Business Assessment.

Finally on page 29, the Complainant "calculated in reverse" using his perceived City assessment of \$7,016,000, to identify that the City would have had to use a rent of \$11.75 per SF to achieve the assessed value. He concluded that "with a range of rents one gets a range of values – all less than the assessment". Therefore he reasoned, the City has over-assessed the subject based on market factors.

The Respondent presented his Brief R-1 and argued that the Complainant's market-based argument is fundamentally flawed. It was noted that in the Complainant's evidence on page 12 of C-1 under Cost Approach, he has identified the subject as a 1976 building when in fact it is a 2006 building and is almost 30 to 40 years younger than his six market comparables on page 16. The six properties were constructed from 1972 to 1982. In other parts of C-1 (e.g. page 6) the Complainant correctly identifies the subject as a 2006 building. Therefore the Respondent considered that the Complainant's market analysis is based on faulty data.

In addition the Respondent argued that when the specific characteristics of the Complainant's lease comparables are provided and examined, as was presented in his Brief R-1 (page 20) it is clear that the Complainant's comparables are considerably inferior to the subject. As a result, he argued that they should lease for less – and they do, and therefore the lease data is not a valid indicator of comparable value for the subject and should not be used in an Income Approach to Value calculation as the Complainant has done.

The Respondent presented the City's Assessment Request For Information (ARFI) for the subject and noted that it is owner-occupied. Therefore he argued, there are no rents for the subject and the Complainant's suggested rents for it are merely speculation. In addition, the Respondent noted that the Complainant's five leases (reduced by Complainant to 4) on his page 19 (C-1) lacked specificity as to building ages, site coverage; site area, location (lease #1), etc. Therefore he argued, the leases could not undergo proper analysis as is required under Mass Appraisal.

In support of his position, and in a matrix on page 18 of Brief R-1, the Respondent provided four market sale comparables for the subject. The four time-adjusted sales were intended to demonstrate that sales of comparable sized properties (ranging from 46,137 SF to 71,742 SF) indicated a range of values from \$127 per SF to \$170 per SF, which supports the assessment at \$150 per SF. He explained that the four sales were chosen because of the similarity of many of their individual characteristics to the subject (i.e. age, site coverage, finish, parcel size, etc) and that all sales had transacted within the City's 3-year analysis period.

The Respondent clarified that all four comparables were of recent construction from 1996 to 2000 which more closely matched the year 2006 age of the subject. He noted that the City's Model had made industry-accepted adjustments to the four sales where required so their comparability was more reliable, whereas the Complainant had acknowledged that no adjustments of any kind were made to his four comparable sales.

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 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 certain of the inputs used by the Complainant are based on broadly-based third-party "typical" market 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 nearby the subject. 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. In addition the Respondent argued that without a Capitalization Rate study the Complainant has no support for the Cap Rate he chose for the subject in his several Income Approach calculations.

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 \$7,010,000.

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 appears to have incorrectly identified the age of the subject in selecting his six market comparable property sales which are substantially older than the subject by several decades. Therefore the Complainant has incorrectly concluded that the per square foot values of those six sales demonstrate that the subject is over-assessed.

Secondly, none of the Complainant's market sales have been adjusted in any manner as would normally be required under industry standards. The Respondent however has provided four adjusted sales which are more closely aligned with the age and individual characteristics of the subject, and which appear to support the assessment. 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.

Thirdly, it is clear from the evidence that the City's methodology for analyzing the market, including the 7 professionally-accepted adjustments its computerized model makes, has 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.

Fourthly, the Complainant has opted to provide several alternate values for the subject using the Income Approach to Value methodology, which, while it was not the methodology used to assess the subject, appears to have been improperly applied by the Complainant. 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, generalized, and speculative (i.e. lease values based on "Asking" rates, and/or with no site address, etc), as well as an unsupported Cap Rate. 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."

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 30 to 32 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 six properties in a matrix on page 32 showing building sizes ranging from 54,526 SF to 89,408 SF, with assessed values ranging from \$79.62 per SF to \$96.77 per SF which he concluded demonstrated "average" and "median" assessed values of \$87.28 and \$86.23 per SF respectively. The subject is assessed at \$150 per SF.

Based on his equity analysis, the Complainant argued that the subject should be assessed at \$4,051,000 based on \$87 per SF.

The Respondent however argued that the Complainant's data was incomplete because it lacked important site details such as age, finish, site coverage, for example for each property, such that comparisons with each other, and with the subject could not be made. On page 24 of R-1 the Respondent provided a matrix of the Complainant's six equity comparables – all of which contained greater individual site details for comparison. He noted, among other things, that the ages of the equity comparables ranged from 1955 to 1958 to 1966 to 1974 – many decades older than the subject at 2006. On this basis alone, he argued, the Complainant's equity comparables are not comparable at all. Therefore he argued, the Board should not rely on this information.

On page 17 of R-1 the Respondent supplied six assessment equity comparables in a detailed matrix. He outlined the various similarities of them to each other and to the subject, which he noted fell right in the middle of the assessment range. The Respondent argued that the six comparables, close to the subject in age, supported the assessment as being fair and equitable. The Respondent again requested that the assessment be confirmed at \$7,010,000.

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 30 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."

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 on pages 46 to 66 of R-1.

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 are the Complainant's equity comparables considerably older and difficult to compare to the subject, but the Respondent's equity comparables are more detailed, of a similar vintage, and appear to support the assessed value of \$150 per SF.

The Board also 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 the City and the Court's 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 initially exchanged a rebuttal document with the City in accordance with legislated time frames, but declined to present it in the Hearing.

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 in terms of age and site characteristics, and each have received appropriate "adjustments" as required pursuant to professionally-accepted practice.


It was noted that the Complainant's market and equity comparables were substantially older by many decades than the subject, were not adjusted, and their individual characteristics appeared dissimilar to the subject. Hence their comparability to each other and the subject was not accepted.

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 \$7,010,000

DATED AT THE CITY OF CALGARY THIS 7 DAY OF September 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. 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.*