

**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(4), Revised Statutes of Alberta 2000 (the Act).

between:

***Glenmore Inn Holdings Ltd., COMPLAINANT,
as represented by Colliers International Valuation & Advisory Services***

and

The City Of Calgary, RESPONDENT

before:

***T. Helgeson, PRESIDING OFFICER
D. Steele, MEMBER
E. Reuther, 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: 115066953

LOCATION ADDRESS: 2720 Glenmore Trail S.E.

HEARING NUMBER: 63632

ASSESSMENT: \$9,900,000

This complaint was heard on Wednesday, the 3rd of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *M. Uhryn, C. Hartley*

Appeared on behalf of the Respondent:

- *K. Hess, E. D'Altorio*

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

No procedural or jurisdictional matters were raised.

Property Description:

The subject property is a 169 room hotel on Glenmore Trail SE.

Issues:

1. Is the subject property contaminated with petroleum hydrocarbons?
2. Does the contamination affect the value of the subject property?
3. Is it possible to quantify the affect of the contamination on the value of the subject property?
4. If the affect of contamination on the value of the subject property cannot be quantified, has the subject property been fairly and equitably assessed?

Complainant's Requested Value: \$6,690,000

Summary of the Complainant's Submission

There is agreement that the subject property is contaminated. Phase II environmental reports confirm the contamination. Gasoline leaking from underground storage tanks at a Mohawk filling station was carried by groundwater cross Glenmore Trail and onto the subject property. Cleaning up the site of the Mohawk station will not cure the problem because most of the contamination is under Glenmore Trail. That means no matter how much contamination is removed from the subject property, more could flow in. On March 22nd, 2010, the Municipal Government Board rendered an oral decision on a complaint filed with respect to the 2009 property assessment of the subject property. The decision reduced the assessment by 30% based on contamination.

The Municipal Government Board found that the contamination affected the market value of the

subject property notwithstanding the ongoing operation of the hotel. The Municipal Government Board also found that the best comparables for the subject property were other contaminated properties that were granted a 30 percent adjustment by the assessor for contamination even though businesses on the properties continued to operate successfully. The Complainant and the Respondent reached agreement on a 30 percent reduction to the 2010 assessment based on the contamination. Although the 2011 assessment summary indicates environmental concerns in the "influence" category, there is no recognition of the negative influence of contamination in the assessment itself. Efforts have been made to sell the subject property without success. Unfortunately, you cannot obtain arms-length financing on contaminated property. Our request is for re-instatement of the 30 percent reduction, as reflected in an assessed value of \$6,930,000.

Summary of the Respondent's Submission

The hotel on the subject property is a going concern. There is some contamination on the site, but it is slight. It has not affected the operation of the hotel whatsoever. The subject property is doing well. Generally, assessed value is reduced where there is contamination, but only where the entire site is contaminated. The subject property is not comparable to other contaminated properties. The subject property was not given an influence reduction because it is not 100% contaminated. Ideally, the effect on assessed value is based on cost to cure, because there are no sales comparisons.

No steps have been taken to remediate the subject property. Recently, a swimming pool and a three-storey tower were added to the hotel. Furthermore, there is no fresh evidence to show the contamination is still present. The Respondent's own evidence, an air quality report, indicates that as recently as April, 2008 airborne concentrations of hydrocarbons in the basement of the hotel were not considered be of concern to occupants of the building. The Board must consider the magnitude of the contamination. The subject has not been impacted to the extent of the Canada Metals site. In summary, the contamination, if it still exists, has had no effect on the operation of the hotel, therefore has not affected its value. The assessment should be confirmed.

Summary of the Complainant's Rebuttal

No adjustment to value was given simply because the subject is a going concern. The Respondent's position is that because the hotel is functioning, there is no effect on market value. Brokers shy away from contaminated property to avoid possible liability on their part. The effect of contamination on the subject property is not fully known, nor is it known on other contaminated properties. The decision of the Municipal Government Board delivered March 22nd 2010 recognized that there was contamination on the subject property, and that the contamination had an affect on value. The contamination was there then, and it is there now. The assessments of other contaminated properties have been reduced by 30 percent or more. The assessment of the subject property is neither fair nor equitable when compared to the assessments of other contaminated properties. The Complainant wishes only to be treated reasonably, and will accept a 30 percent reduction in assessed value.

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

The subject is contaminated to some extent with petroleum hydrocarbons. The evidence in the Phase II Environmental Assessment as well as other reports is conclusive. Although the contamination does not appear to affect the operation of the hotel, it is there nonetheless, and might well have a deleterious effect on selling price. This possibility was noted by the Municipal Government Board in its decision delivered in March of 2010:

The MGB agrees with the Appellant that the presence of contamination on the Glenmore Inn site and the adjacent site could affect the subject's marketability and selling price. The MGB also agrees that a potential purchaser would consider not only the potential income but also potential liability associated with contamination. [transcript of decision, p.16, lines 10 to 17]]

As to the effect on the subject property's market value, there was mention of a sale that fell through, but no documentary evidence of that sale, and there has been no attempt to remediate the subject property. The Respondent did, however, provide a letter dated August 27th, 2009, from Mr. David Shum, an appraiser for Colliers International Realty Advisors Inc., who referred to remediation costs in the range of \$3,653,000 to \$7,306,000, based on "recent contamination cost estimates and remediation plans (as of August, 2009)." The Board had no option but to discount Mr. Shum's letter in the absence of the actual "recent contamination cost estimates and remediation plans" which he cited. There being no reliable means of estimating the subject's market value or the cost of remediating the environmental impairment of the subject property, the Board found, as did the Municipal Government Board, that there is virtually nothing to support an adjustment in the assessment based on value in the marketplace. That left the Board with the issue of whether the subject property is fairly and equitably assessed in comparison with other properties that have environmental concerns.

The Complainant's evidence included seven properties on Macleod Trail SW, all of which had been granted an influence reduction of 30 percent based on contamination. Information with respect to the extent of contamination on these properties was not forthcoming, nor was there information as to whether a demonstrable effect on market value was required before these properties, or other properties, such as 10501 Barlow Trail SE, 3819 Macleod Trail SW and 3805 Macleod Trail, were given a 30 percent reduction based on contamination. These same unknowns were before the Municipal Government Board:

*In this case, it seems that the assessor has, in an effort to address the effects of contamination, under similar circumstances to those faced by the subject, allowed a 30 percent reduction, although the precise effects of market value are unknown. **This course of action does not seem unreasonable, provided it is followed fairly and consistently**.* [transcript of decision, p.19, lines 5 to 11]*

*Composite Assessment Review Board's emphasis.

In its decision, the Municipal Government Board found that the subject property, 2720 Glenmore Trail SE, had not been treated in the same manner as properties at 10501 Barlow Trail SE, 3819 Macleod Trail SW, and 3805 Macleod Trail SW, each of which accommodated fully operational businesses, and each of which were given 30 percent adjustments, for, in the words of the Municipal Government Board ". . . petroleum hydrocarbon contamination without the requirement to quantify the loss in value or establish the level of contamination." [transcript, p.19, lines 21 to 23]

If the Respondent's policies or practice with respect to assessments of contaminated properties other than the subject has changed from what it was in March of 2010, when the Municipal Government Board delivered its decision, the Respondent failed to say so. With no evidence to the contrary, the Board concluded that the three properties mentioned in the Municipal Government Board's decision, i.e., 10501 Barlow Trail SE, 3819 Macleod Trail SW and 3805 Macleod Trail SW, continue to receive a 30 percent adjustment in their assessments without the requirement to quantify the loss in value or establish the level of contamination.

The 2011 Assessment Summary Reports for the aforementioned properties show "Environmental Concerns" as an influence factor. Interestingly, so does the 2011 Assessment Summary Report for the subject property, but despite this explicit recognition of environmental concerns, the subject property receives no adjustment. On the balance of probabilities, the Board finds that the Complainant has satisfied its burden of proof. The subject property has not been assessed in a fair and equitable manner, and that the requested adjustment should be granted.

Board's Decision: The assessment of the subject property is reduced to \$6,930,000.

DATED AT THE CITY OF CALGARY THIS 12 DAY OF SEPTEMBER 2011.



T. Helgeson
Presiding Officer

Composite Assessment Review Board Member E. Reuther, in dissent:

I find that I must disagree with the Majority to allow a 30% reduction to the subject for environmental contamination on the following grounds:

[1] The purpose of assessment is to determine market value. This can be approached through the Direct Sales, Cost Approach or Income Approach. The subject is assessed on the Income Approach as the income value exceeds the land value, accordingly this would be the highest and best use of the subject.

[2] There was no direct evidence submitted by the Complainants to show that the subject is suffering by the imputed contamination. Because of the cyclical nature of the hotel industry, three years of stabilized income are used in valuation. There was no proof of lowered room rates or higher vacancy because of the contamination issue. In fact, when examining the Market Value Summary for the subject in the Respondent's evidence (R-1 at Pg. 49), the occupancy rate of the subject was stated as 72.5% versus 60.8% as industry norm.

[3] The City makes a determination every year based on market evidence as to the assessment method used to allow for assessment variables, in this instance contamination. The Respondent stated that the parameters used for the current assessment year are to allow a

30% reduction for a fully or significantly contaminated site, and 0% for others. They stated the reduction would be applied on an individual case basis as specific relevant evidence of the current level of contamination and the degree of which it exists on the site is provided by the owner. The degree of existence at this time is not known, as no current Phase 2 environmental report has been done, or was before the Board. The Complainants are asking for a reduction based on past Decisions, and on information and reports which may or may not bear relevance at this time. I find that the application of the City's methodology follows common logic and appropriate assessment practice.

[4] Applying a reduction to every property regardless of the degree of contamination would distort the assessment of all properties as the degree of contamination can range from negligible to complete, and this would create an inequitable and unbalanced valuation methodology. The onus must fall upon the Complainant to prove, using accepted scientific methodology and reporting, and beyond a reasonable doubt, that the contamination exists to a significant degree as of valuation day (or reasonably close thereto), and as would be acknowledged by an accredited professional in the field of Environmental Consulting. This then would allow the Respondents (City) to examine the evidence and make an appropriate determination as to reducing the assessment.

[5] The Complaints in their Rebuttal (C-12) which was a transcript of an Oral Decision from the MGB (Municipal Government Board) on March 22, 2010, regarding the subject and market value as of July 1, 2007, stated that the market value had been affected. Mr. T. O'Grady (manager of real estate for the owner) stated that a REIT (Real Estate Investment Trust) had been interested in purchasing the subject, but backed off when, in performing their Due Diligence, they found out about the contamination and lost interest. Also, as to the expansion allowed by the City for the addition of the tower in 1999 and swimming pool in 2006 it was said the contamination would not likely have been encountered because it was at significant depth. Further, Mr. D. Shum, (C-12 large Pg. No. 5) an appraiser appearing on behalf of the Complainants, stated he was not qualified to comment on the scope of the contamination affecting the subject, and said a detailed plan should be obtained from an environmental consultant. He did offer an estimate to remediate the subject of between \$3.6 million and \$7.3 million. He also opined that the subject could not be sold until any contamination issues were addressed, and that typical financing would not be available.

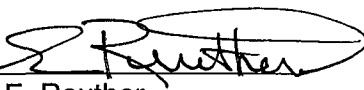
[6] In regard to the above, I find there is difficulty with the issue of the collapsed sale as brought forth by Mr. O'Grady. In an instance such as this (the sale of a major hotel to a REIT), it would seem logical that there would be a paper trail associated with such a significant transaction, as would be standard commercial real estate practice. To fully understand and accept that the environmental concern was the reason for the non-completion it would be prudent to present the related documentary evidence. Without this, I find it problematic to accept this assertion as stated without further evidence as support.

[7] Secondly, as to the assertions of the appraiser, Mr. Shum, he stated his limitations in regard to the contamination issues. Again, when being presented with such a wide range of values from \$3.6 million to \$7.3 million, one must question the validity of such a range. A detailed documentary summary as to what would be required to remediate would be meaningful. The argument might expected to be, "how can you estimate something you don't know the extent of?", which then goes back to the first statement about the current state of contamination. Also, is it a known fact that all lenders will not lend in the current situation? What proof is there? Also, the Respondents stated (and as evidenced in C-1, Pgs. 19-22) that the subject has

received reductions over time to the assessed values of \$8,675,000 (or possibly more), with the resultant tax savings; is this to be ignored?

[8] Next, a question flows. As the contamination which may still exist on the site in an unknown quantity is the responsibility in Alberta (as set forth by the Albert Environmental Protection and Enhancement Act), of the polluter (Husky Energy), to remediate (as is evidenced in the documents of the Complainants (in C-2 and others) how does this then harm the current market value of the subject?

[9] Finally, the Respondents have applied a methodology which applies to all contaminated sites and attributed a reduction in value accordingly, therefore there appears to be equitable treatment of the subject. The complainant's comparables were not the same as they were noted to be 100% contaminated.

Signed: 
E. Reuther

Exhibits

C-1, Complainant's Submission

C-2, Jacques Whitford AXYS report of May 13, 2008, to Husky Energy

C-3, Letters from Husky Energy to Macleod Dixon

C-4, Jacques Whitford AXYS report of June 3rd, 2008

C-5, Covering letter dated December 8, 1997 from Alberta Environmental Protection to Mohawk Company Ltd. with Phase II Environmental Assessment prepared by O'Connor Associates Environmental Inc.

C-6, Soil bore hole results, undated

C-7, Letter dated February 20, 1998 from Office for the Environment #8013 to O'Connor Associates Environmental Inc. with report of O'Connor Associates Environmental Inc. of January 19, 1998, addressed to Alberta Environmental Protection.

C-8, E-mail of December 8, 1997, from Don Wyrostock to jcsharp@gov.ab.ca with letters and Risk Management Plan attached.

C-9, Letter dated May 10, 2005 from Alberta Environment to Husky Oil with appendices attached.

C-10, E-mail dated February 10, 2000 from Paul Leong to Kathy Strong-Duffin with letter and information attached.

C-11, Assorted documents dealing with contamination on Glenmore Trail SE.

C-12, Complainant's Rebuttal.

R-1, Assessor's Brief.

R-2, 2011 Assessment Explanation Supplement for 10501 Barlow.

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.*