

**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:

Morprop Holdings Alberta Limited, COMPLAINANT (as represented by AEC International Inc.)

and

The City of Calgary, RESPONDENT

before:

***J. Dawson, PRESIDING OFFICER
D. Morice, MEMBER
K. Coolidge, 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:	009023516
LOCATION ADDRESS:	7575 – 8 ST NE
HEARING NUMBER:	63374
ASSESSMENT:	\$17,690,000

This complaint was heard on 2th day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *B. Ryan* Agent, AEC International Inc.
- *J. Wingrowich* Agent, AEC International Inc.

Appeared on behalf of the Respondent:

- A. Jerome Assessor, The City of Calgary

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

Complainant requested to alter the vacancy rate from the 14% in their disclosure document to 12%. As this amount matched the Respondent's requested vacancy rate of 12% the issue of vacancy would thereby be removed. Respondent agreed to the request and the Board accepted the change in evidence.

No further objections on procedure or jurisdiction were raised.

Property Description:

The subject property is located in the northeast industrial neighbourhood of Deerfoot Industrial with; 185,576 square feet of assessable land, one building with an assessable building area of 77,755 square feet built in 2000 of an A+ quality predominantly used for suburban office space, and one enclosed parking structure with 34 assessed parking spaces. The Income Approach was utilized by the Respondent calculating a Net Operating Income (NOI) of \$1,326,808 using \$21.00 for rental rate, 7.5% capitalization rate and 12% vacancy. The result is a current assessment of \$17,690,000.

Issues:

The Complainant identified one issue on the complaint form:

1. The assessment amount is incorrect

A. Issue of Complaint: **Equity**

The assessor is required to take into account the principle of equity in arriving at the assessment. As similar and comparable properties are assessed at lower rates, AEC contends that the subject property assessment is overstated and inequitable when compared to other similar properties.

B. Issue of Complaint: **Market Value – typical lease rate**

The property assessment is in excess of the legislated market value standard as required by the Municipal Government Act and regulations. The City has relied upon an incorrect rental rate of \$21.00 per square foot.

- C. Issue of Complaint: **Market Value – unclear**
The property assessment is in excess of the legislated market value standard as required by the Municipal Government Act and regulations. The City has relied upon an incorrect assessment rate of \$227.00 per square foot.
- D. Issue of Complaint: **Everything and anything**
Such further and other facts or grounds that are identified as disclosure of the manner in which the assessment and similar assessments were prepared and as the equity analysis develops through amended notices or Board decisions.
- E. Issue of Complaint: **Market Value – parking rate**
The property assessment is in excess of the legislated market value standard as required by the Municipal Government Act and regulations. The City has relied upon an incorrect assessed enclosed parking stall rate of \$1080.00 per stall.

Complainant's Requested Value: \$14,000,000 (complaint form)
\$13,860,000 (disclosure document using 14% vacancy,
7.5% capitalization rate and \$18.00 rental rate)
\$14,120,000 (requested at hearing using 12% vacancy,
7.5% capitalization rate and \$18.00 rental rate)

Summary of Complainant's Argument and Evidence:

The Complainant provided two documents broken into three separate exhibits which were accepted into evidence as; Document C1 for the disclosure of evidence for this hearing and another hearing, and Documents C2a and C2b for the rebuttal evidence for this hearing and four additional hearings.

The presentation from the Complainant started with document C1 including an executive summary (page 3), salient facts (page 4), city assessment and valuation summary (page 6), city 2011 valuation analysis (page 7), property details (page 8), subject photos (page 9), map views (pages 10 and 14), valuation analysis (pages 15 and 16), analysis of Calgary market at time of subject leasing activity (pages 17 and 18), leases analysis (pages 19 through 21), market reports (pages 21 and 22), comments on vacant space shortfall, non-recoverables, and capitalization rate (page 23), and an AEC valuation analysis (page 24). The Complainant continued with Document C1 and provided a partial copy of the Assessment Request for Information (ARFI) (page 25), market value conclusion (page 27), equity analysis (page 28), summaries and samples of case law and legislation (pages 29 and 30), and a conclusion (pages 31 and 32). Supporting information was attached to Document C1 (pages 33 through 69).

The Complainant argued that;

It is well known law that a property owner is entitled to the lesser of two propositions; to have a property valued at market value or have the property assessed on an equitable basis (MGB

127/07). Similar and comparable properties located near the subject property have been assigned significantly lower per square foot than the subject.

AEC submits that the rental rate of \$21.00 per square foot is not typical and that the comparable properties have been assessed with lower rental rates.

Sales of property comparable on one or two aspects, even without the limitations present at the subject, suggest values substantially lower than the assessed value in place. The subject has increased about 9.2% year over year; this increase is not consistent with market sales data.

It is well known law that a property owner is entitled to the lesser of two propositions; to have a property valued at market value or have the property assessed on an equitable basis MGB 127/07.

Similar and comparable properties have not been assessed for parking stalls. It is well known law that a property owner is entitled to the lesser of two propositions; to have a property valued at market value or have the property assessed on an equitable basis MGB 127/07.

Following the Respondent's presentation the Complainant provided Documents C2a (pages 1 through 100) and C2b (pages 101 through 174) for their rebuttal evidence. Within the combined rebuttal documents was a summary (pages 3 through 6) and supporting documents (pages 7 through 174).

The Complainant's concluded with a requested reduced assessment of \$14,120,000 using 12% vacancy, 7.5% capitalization rate and \$18.00 rental rate.

Summary of Respondent's Argument and Evidence:

Respondent provided one document which was accepted into evidence as Document R1. The Respondent reviewed information regarding legislative authority for property assessment (pages 3 and 4), property valuation methodology (page 5), mass appraisal and its relation to assessment (pages 6 through 8), the burden of proof or onus of the parties principals (pages 9 and 10), summary of testimonial evidence (pages 11 and 12), and a failure to disclose briefing (page 13). Respondent further reviewed the 2011 Property Assessment Notice (page 15), Income Approach valuation summary (pages 16 and 17), photographs (pages 18 through 20), map and aerial photograph (pages 21 and 22), equity comparables (page 24), lease comparables (page 25), photographs of comparables (pages 26 through 28), market rental rate report (page 30), and a parking rate study (pages 32 through 35). The Respondent then provided a conclusion to support their requested assessment at \$17,690,000. Supporting information was attached (pages 38 through 78).

The Respondent argued that;

The Complainant has raised the issue rental rate. Is the assessed rental rate of \$21.00 correct? Or is the requested rental rate of \$18.00 correct? The Complainant's position is based on a number of post facto leases with only three (3) in valuation time period.

The Respondent argued that the subject property was assessed fairly with respect to the typical office rental rate that was applied in the income approach to value. There were eight (8) leases

that commenced for A+ quality suburban offices' in the northeast between July 2009 and July 2010. The median of these leases was \$20.80 and the weighted mean was \$21.46. The assessed typical suburban office rental rate: \$21.00.

Is the subject property equitably assessed with other similar properties? The complainant gives five (5) properties for comparability but does not acknowledge differences such as underground parking, rental income and storage space which would alter the comparability factor. The Respondent addressed the methodology of using dollars per square foot as a unit of comparison and provided previous Board decisions to enhance their position (CARB 0481/2010-P and MGB DL 011/08).

Are the enclosed parking stalls assessed correctly? The Complainant provided the subjects Assessment Request for Information (ARFI) which showed 2 stalls producing revenue and a total of 36 underground stalls. The Respondent used the subjects ARFI in the parking study. The parking study consists of 41 other properties with an average monthly rental rate of \$94.00 and assessed monthly rental rate of \$90.00.

Is the assessment consistent with the principals set out in the Bramalea decision? The Complainant provided excerpts and written information in regards to Bramalea and its application to this property. The Respondent spoke to the concerns brought forward by the Complainant and also clarified the decision of Bramalea and also spoke to the Bentall decision.

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

1. The assessment amount is incorrect

A. Issue of Complaint: Equity

The Board finds that the assessment is equitable as set out in the Municipal Government Act (MGA) 293. The Board also notes that the Complainant's assertion of equity with 1120 – 68 Ave NE is not valid as they are assessed by way of different sub-classes.

B. Issue of Complaint: Market Value – typical lease rate

The Complainant spent considerable time in demonstrating the five lease comparables provided by the Respondent in Document R1 (page 25) at the address 1925 – 18 Ave NE known as Medallion Centre and also known as Vista Heights were not capable of providing a typical lease rate of \$21.00. The Board is convinced that the lease comparables at 1925 – 18 Ave NE have many factors including; new building with more than 50% vacancy, a receivership with a distressed sale looming, and unique leasing arrangements with no rent paid but instead subsidy paid to tenant, which make these leases troubling to use as typical. The Board in considering typical lease rates removed the 5 leases located at 1925 – 18 Ave NE from the lease comparables chart and did not use any post facto leases. The Board added one lease from the Complainant it found as credible and calculated a lease rate of \$21.00. The Board finds the typical lease rate utilised by the Respondent of \$21.00 acceptable.

C. Issue of Complaint: Market Value – unclear

The Board finds that the Respondent did follow the Standards of

Assessment as outlined in Part 1 of Matters Relating to Assessment and Taxation (MRAT) regulation. (The Board also notes that an increase in assessment in any amount is not grounds in and of itself for an appeal.)

D. Issue of Complaint: **Everything and anything**

The Board offers no useful comments on this issue.

E. Issue of Complaint: **Market Value – parking rate**

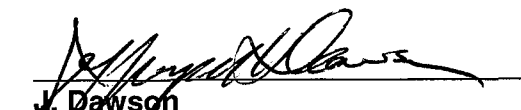
The Board reviewed the parking studies presented by the Respondent and the Complainant and finds;

- i. As is the case of item B above, the information used from the comparable at 1925 – 18 Ave NE known as Medallion Centre and also known as Vista Heights is not reliable and needs to be removed from the analysis of both parties,
- ii. Whereas removing the information from 1925 – 18 Ave NE makes significant material changes to the conclusions asserted by the Complainant then the Board has chosen to disregard in totality the parking study found in Document C2b (pages 156 through 159), and
- iii. The Respondent correctly assessed the parking of the subject property.

Board's Decision:

After considering all the evidence and argument before the Board, the complaint is denied, and the assessment is confirmed at \$17,690,000.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF August 2011.


J. Dawson
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2a	Rebuttal Document part 1 of 2
4. C2b	Rebuttal Document part 2 of 2

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.*