

**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: | 009020900 |
| LOCATION ADDRESS: | 7315 – 8 ST NE |
| HEARING NUMBER: | 63365 |
| ASSESSMENT: | \$4,360,000 |

This complaint was heard on 3rd 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:

- C. Neal Assessor, The City of Calgary

Procedural or Jurisdictional Matters:

The Respondent identified a procedural matter relating to the exclusion of **chronic vacancy** on the complaint form;

- The Respondent argued that The Municipal Government Act (MGA) states;
 460(7) *A Complainant must:*
 - (a) *indicate what information shown on an assessment notice or tax notice is incorrect,*
 - (b) *explain in what respect that information is **correct**,*
 - (c) *indicate what the correct information is, and*
 - (d) *identify the requested assessed value, if the complaint relates to an assessment.*
- The Respondent further argued that The Matters Related to Assessment and Taxation (MRAT) regulation states;
 9(1) *The Municipal Government Board must not hear any matter in support of an issue that is not identified on the complaint form.*
- The Respondent when asked, indicated that the correct box to select on the form in Section 4 (Complaint Information) was number 5 being **an assessment sub-class**. When questioned, the Respondent was unable to confirm a sub-class for chronically vacant properties.
- The Complainant identified the single issue of **an assessment amount** in section 4 on the complaint form.
- In section 5 (Reason(s) for Complaint), the Complainant went into some detail to identify the reasons the complaint was lodged under section 4;
 - i. *Equity,*
 - ii. *Market Value – rental rate,*
 - iii. *Market Value – rate per square foot, and*
 - iv. *Anything and everything else one can think of.*
- The Complainant indicated that the only facts that can be complained on are facts shown on the assessment notice and cited an unnumbered Composite Assessment Review Board (CARB) decision dated June 3rd, 2011 regarding 71 roll numbers from Edmonton between *Colliers International and The City of Edmonton* where the board found that the minimum threshold had been met, and cited an Alberta Court of Appeal decision between *Boardwalk Reit LLP and The City of Edmonton and the Municipal Government Board* where the court found; a) *the taxpayer need only act reasonably, not correctly,* (b) *the taxpayer's information need only be substantially complete, not entirely complete,* (c) *the taxpayer need only do a reasonable amount of work,* (d) *the taxpayer*

need only give information which he or she has, not create or go out and find more information, and (e) the taxpayer's decision about what to do could be made in the light of all the circumstances, including past practice and information already available to the assessor.

- In the disclosure document (C1) the Complainant brought forth the issue of **chronic vacancy** on pages 27 and 28 however was not properly identified on the initial complaint form or the summary of testimonial evidence.

The Complainant spoke at length on why the complaint form permitted the simple checking of box number 3 in Section 4 of the complaint form.

No further objections on procedure or jurisdiction were raised.

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

The Board carefully reviewed the request of the Respondent and found a typing error on page 13 of R3 which materially changed the request of the Respondent however whereas the proper reference in the MGA was provided the Board was able to properly assess the request. Below is the correct quotation from the MGA;

460(7) A Complainant must:

- (e) indicate what information shown on an assessment notice or tax notice is incorrect,*
- (f) explain in what respect that information is **incorrect**,*
- (g) indicate what the correct information is, and*
- (h) identify the requested assessed value, if the complaint relates to an assessment.*

The Board found that the Complainant did properly identify the requested assessed value and indicated correctly that the **assessed amount** is in complaint.

The Board continued to carefully review the request of the Respondent and found that MRAT actually stated;

9(1) The valuation standard for machinery and equipment is that calculated in accordance with the procedures referred to in subsection (2).

The Board determined that the Respondent intended to quote The Matters Related to Assessment Complaints (MRAC) regulation where it states;

9(1) The Municipal Government Board must not hear any matter in support of an issue that is not identified on the complaint form.

The Board found the incorrect reference on page 13 of R3 again materially changed the request of the Respondent however whereas the proper wording was provided the Board was able to properly assess the request.

The Board found that the Complainant did go into substantial detail in section 5 of the complaint form to show that the Complainant understood what reasons are expected on the form and not merely the assessment amount is incorrect.

The Board found that the Respondent incorrectly identified in Section 4 box number 5 being **an assessment sub-class**, and in fact box number 3 being **an assessment amount** is the correct area the Complainant was to check pertaining to **chronic vacancy**.

The Board agreed with the Complainant when it was indicated that the only facts that can be

complained on are facts shown on the assessment notice however finds the intent of section 5 is to provide reasons and **chronic vacancy** is certainly a reason which should have been cited.

The Board reviewed with interest the cited unnumbered CARB decision dated June 3rd, 2011 regarding 71 roll numbers from Edmonton between *Colliers International and The City of Edmonton* where the board found that the minimum threshold had been met, however the issue in this case is somewhat different as the Complainant clearly went into some detail in their complaint and have somehow omitted a key issue or reason in the matter of **an assessment amount**.

The Board also reviewed the cited Alberta Court of Appeal decision between *Boardwalk Reit LLP and The City of Edmonton and the Municipal Government Board* where the court found; *a) the taxpayer need only act reasonably, not correctly, (b) the taxpayer's information need only be substantially complete, not entirely complete, (c) the taxpayer need only do a reasonable amount of work, (d) the taxpayer need only give information which he or she has, not create or go out and find more information, and (e) the taxpayer's decision about what to do could be made in the light of all the circumstances, including past practice and information already available to the assessor.* The Board found that the Respondent did have the information but did not act reasonably when omitting a key issue or reason in their matter of **an assessment amount**.

The Board finds that the Complainant in their disclosure document (C1) did not properly identify on the initial complaint form or in the summary of testimonial evidence the issue of **chronic vacancy**, however albeit improperly, the issue of vacancy was disclosed and therefore the Board decided to permit the evidence and allow it to be relied upon at the merit hearing. The Board in permitting the evidence awarded costs of \$500 to the Respondent as provided in MRAC where it states;

52(3) A composite assessment review board or the Municipal Government Board may on its own initiative and at any time award costs.

In the awarding of costs the Board found in Schedule 3 of MRAC, Part 1, second table item;

A party attempts to present new issues not identified on the complaint form or evidence in support of those issues. Assessed Value up to and including \$5 million, up to \$500.00.

Property Description:

The subject property is located in the northeast neighbourhood of Deerfoot Industrial with; 84,499 square feet of assessable land, and one multi-tenanted building with an assessable building area of 24,590 square feet comprised of 19,390 square feet of office space and 5,200 square feet of storage space. The subject was built in 1999 of an A+ quality predominantly used for suburban office space. The Income Approach was utilized by the Respondent calculating a Net Operating Income (NOI) of \$327,729 using \$21.00 for office rental rate, \$3.00 for storage rental rate, 7.5% capitalization rate and 12% vacancy. The result is a current assessment of \$4,360,000.

Issues:

The Complainant identified one matter 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: Rental 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: Rate per square foot

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 \$177.00 per square foot.

D. Issue of Complaint: Anything and everything else one can think of

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: Chronic Vacancy

The subject property located at 7315 8 Street NE has been 100% vacant since July 1, 2009, and remains vacant at present. The property has been actively marketed for almost 2 years and remains on the market. Given these facts, we submit the subject suffers from chronic vacancy, and that a higher rate of vacancy should be applied to the subject.

Complainant's Requested Value: \$3,500,000 (complaint form)
\$2,336,000 (disclosure document using 30% 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 two additional hearings, 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 with 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;

AEC International has undertaken a valuation study of the subject properties located at 7315 - 8 Street NE, 7661 - 10 Street NE, and 7326 - 10 Street NE, Calgary AB. The subjects are assessed utilizing the Income Approach. AEC International determined that the subject's property assessments are unfair and inequitable based on the following:

- The assessed rental rates of \$21 are deemed excessive, when compared to market data and leasing activity. The City has assessed rental rates of \$21.00 in comparison to leasing activity in the subject properties in the range of \$18.00 which correlates to market activity in the range of \$16.00 psf.
- AEC submits that the increases of 7.92%, 24.38%, and 8.55%, are not consistent with the market, and is inequitable when compared to 1120 - 68 Avenue NE, which has experienced a 7.74% decrease and is located within the same community as the subjects.
- The vacancy rate for 7315 8 Street NE, should be 30% given the subject was 100% vacant in the base year, and remains vacant.

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 requested reduced assessment is \$2,336,000 using 30% 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 R3. 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), map and aerial photograph (pages 18 and 19), photographs (pages 20 through 22), equity comparables (page 24), lease comparables (page 25), photographs of comparables (pages 26 through 28), and a market rental rate report (page 30). The Respondent then provided a conclusion to support their requested assessment at \$4,360,000. Supporting information was attached (pages 34 through 73).

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 vacancy allowance correct? The Complainant has brought forth the issue of vacancy in their evidence package. The Respondent provided a failure to disclose form citing the Municipal Government Act as well as the Respondent's position on this issue.

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).

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: Rental 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: **Rate per square foot**

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: **Anything and everything else one can think of**

The Board offers no useful comments on this issue.

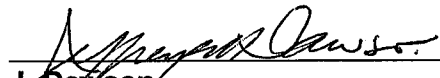
E. Issue of Complaint: **Chronic Vacancy**

The Board finds that as of the condition date of December 31, 2010 that the subject has been vacant for 18 months as agreed upon by both parties, however no evidence was provided to show that 18 months was in fact chronic and furthermore no evidence was provided to indicate that a 30% vacancy rate is appropriate for chronically vacant properties.

Board's Decision:

After considering all the evidence and argument before the board, the complaint is denied, and the assessment is confirmed at \$4,360,000 with costs awarded to Respondent of \$500.00.

DATED AT THE CITY OF CALGARY THIS 7th DAY OF September 2011.



J. Dawson
Presiding Officer

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

| NO. | ITEM |
|------------|-------------------------------|
| 1. C1 | Complainant Disclosure |
| 2. R3 | 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.*