

**COMPOSITE
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:

SREIT (West No. 1) Ltd. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

C. J. Griffin, PRESIDING OFFICER

J. Rankin, MEMBER

P. Charuk, 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: 048047005

LOCATION ADDRESS: 1820 – 30th Avenue NE

HEARING NUMBER: 64021

ASSESSMENT: \$8,000,000.

This complaint was heard on 4^h day of August, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- C. Van Staden

Appeared on behalf of the Respondent:

- M. Berzins

Property Description:

The subject property is categorized as being a multi-tenanted warehouse type property that was originally constructed in 1981. The underlying 5.03 acre site is improved with two buildings, one having an assessed area of 43,946 Sq. Ft. and the other having an assessed area of 52,953 Sq. Ft. The buildings feature finished areas of approximately 27% and 32% respectively and the combined site coverage is 41.70%. The fact that the subject property consists of two buildings on one site has been accounted for through an adjustment factor applied in the modelling process employed by the Assessor to derive the assessed value of the subject.

Issues:

There are a number of interrelated issues outlined on the Assessment Review Board Complaint form; however, at the Hearing the Complainant reduced the issue to be considered by the CARB to a single matter:

1. The assessment of the subject property is not equitable to the assessments of similar properties.

Complainant's Requested Value: \$7,360,000.

Procedural or Jurisdictional Matters:

As a matter of Procedure the CARB, at the request of both parties, heard an extensive capitalization rate argument presented by the parties before this same panel of the CARB on August 3, 2011 and it was agreed that all of that evidence and argument would be carried forward and become applicable to this Hearing if appropriate.

Party Positions:**Complainant's Position**

The Complainant introduced (Exhibit C-1 pg. 13) six (6) equity comparables for the CARB to consider. These properties are all located in the northeast industrial area of the city. The total net rentable area of these range from 75,649 Sq. Ft. to 96,804 Sq. Ft. vs. the combined area of the two subject buildings of 96,899 Sq. Ft. The site coverage of these comparable properties ranges from 36.01% to 44.03% and the finished area ranged from 6% (one instance) to 40.71%. The assessments of these properties equate to a range from \$76/Sq. Ft. (3 instances) to \$84/Sq. Ft. (2 instances). Based upon this evidence the Complainant seeks a reduction in the assessed value to \$7,360,000 which equates to \$76/Sq. Ft.

Respondent's Position

The Assessor introduced (Exhibit R-1 pgs. 10 – 11) an overview of the *Bramalea* and *Bentall* Decisions which, the Assessor maintains, supports their contention that equity alone is not a valid grounds for complaint. The Respondent also introduced (Exhibit R-1 pg 24) six (6) equity comparables. These properties all were originally constructed between 1979 and 1987. These properties range in size from 26,239 Sq. Ft. to 46,799 Sq. Ft. which is similar to the two individual building sizes of the subject property. The site coverage ranges from 21% to 38% and indicates a median of 31%. The assessed rate/Sq. Ft. of these properties ranges from a low of \$96/Sq. Ft. to a high of \$116/Sq. Ft. and indicates a median of \$105/Sq. Ft.

Additionally, the Assessor introduced (Exhibit R-1 pg. 25) six (6) property sales which were recorded between September 2008 and February 2010. The size range of these properties is similar to the individual buildings which constitute the subject property and the site coverage indicates a median of 43.44%. The Time Adjusted Selling Price (TASP) of these properties indicates a median of \$119/Sq. Ft. which the Assessor maintains supports the current assessment of the subject property.

Board's Decision:

The assessment is **confirmed** at **\$8,000,000**.

Decision Reasons:

The CARB has one single, but very important, issue to decide in this case and that is the matter of equity. The Assessor has presented the CARB with an interpretation of the *Bramalea* and *Bentall* decisions of the Supreme Court of British Columbia from which they have concluded that equity alone is not a basis upon which to bring forward a complaint and that if market value is available then equitable value is meaningless. This is a somewhat myopic conclusion. *Bramalea* is clear about the taxpayer getting the benefit of a reduction to equity, within an equitable range, where equitable value is shown to be lower than the market value, being a value within a market range, established by the Assessor. It is important that value range is given consideration. This is perhaps best explained in *Bentall 2006, para. 99* which states:

*"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 outside the range of values that is equitable, that an adjustment is required."* (Emphasis added)

In his paper entitled *The Evolution of Equitable Property Assessment in Canada* John Savage states:

"Equity is an important concept in Canadian assessment law. The assessment roll determines the distribution of property taxes. If all properties are at actual value, there is a fair distribution of taxes and equity is achieved. If all properties are not at actual value, there is an inequitable division of property taxes. To guarantee the equal treatment of taxpayers, assessors have always had an administrative duty to ensure that properties are valued on a consistent basis."

*The administrative duty to ensure that assessments are consistent has evolved into a legal obligation to ensure assessments are equitable. The legal obligation to provide equitable assessments is based in part on statute and in part on the common law. The common law foundation in Canada was enunciated in 1881 by Chief Justice Ritchie of the Supreme Court of Canada in *Jonas vs. Gilbert* (1881):*

"Unless the legislative authority otherwise ordains, everybody having property or doing business in the country is entitled to assume that taxation shall be fair and equal and that no one class of individual, or one species of property, shall be unequally or unduly assessed."

The CARB is not aware of any decisions which have resulted in this notion of equity being abandon and we do not agree that *Bentall* suggests same. Equity is an underlying principle in Canadian property assessment law and it rightly remains so.

In the case before us both parties have introduced equity comparables that support their respective positions regarding the assessed value of the subject property. In the case of the Complainant their equity comparables indicate a median of \$79/Sq. Ft. while in the case of the Respondent their comparables indicate a median value of \$105/Sq. Ft. The assessment of the subject property is currently \$83/Sq. Ft. All of the equity comparables from both parties appear reasonable to the CARB and it is impossible, based upon this data alone, for the CARB to determine if one set of comparables should be given preference over the other. The Respondent also included in their submission six (6) sales comparables which indicate a median value of \$119/Sq. Ft. but the Complainant did not include any sales comparables for the CARB to consider. It is the responsibility of the Complainant to bring forth convincing evidence in order to have the CARB alter an assessment and in this case they have failed to do so.

DATED AT THE CITY OF CALGARY THIS 24 DAY OF August 2011.


C.J. Griffin
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure

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.*