

**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:

1508185 Alberta Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER

J. Mathias, MEMBER

A. Zindler, 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:	200849115	200849107
LOCATION ADDRESS:	133, 3850 32 St. N.E.	129, 3850 32 St. N.E.
HEARING NUMBER:	60977	60978
ASSESSMENT:	\$295,000	\$295,000

This complaint was heard on 29th day of July, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *Sukhmander Matharoo (owner)*
- *Sukhchan Dhillon*

Appeared on behalf of the Respondent:

- *Wanda Wong*

Procedural or Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties did not have any objections to the panel representing the Board and constituted to hear the matter. No jurisdictional or procedural matters were raised at the onset of the hearing, and the Board proceeded to hear the merits of the complaint, as outlined below.

Procedure: Amalgamating Two Files

The Board noted that two of the files before it involved property located adjacent to one another, with the same owner and the same individual representing the Respondent. The Complainant stated that the two properties were virtually identical units located adjacent to one another and one functional space (units not demised into distinct and separate units), therefore their evidence was the same for both properties. The Respondent indicated that her evidence was also essentially the same for both properties, other than the description of each respective property and their respective assessment details. The parties agreed that hearing both files together was an efficient and effective way to proceed. The Board concurred and heard the appeal of Roll No. 200849115 (Hearing 60977) and Roll No. 200849107 (Hearing No. 60978) at the same time and will issue one decision that pertains to both subjects.

Submission of Evidence

The Complainant did not provide any documentary evidence in accordance with Section 8 of the Matters Related to Assessment Complaints Regulation (MRAC). However, the Complainant did provide a copy of his documentary evidence to the Respondent the day prior to the hearing. The Complainant (Mr. Dhillon) asked that he be allowed to present this evidence to the Board. The material was apparently not filed in accordance with MRAC because Mr. Dhillon was not familiar with the process, and because Mr. Matharoo was out of town attending a family funeral. The Respondent did not object to the material being presented at the hearing. The Board therefore agreed to accept the evidence, as Exhibit C1, consisting of a handwritten summary sheet, a set of four MLS data sheets representing sales of similar properties and a set of two MLS data sheets representing active listings.

Property Description:

The subject property is located at 3850 32 Street N.E. in the Horizon Industrial Park community, Units 129 and 133. It is a building with nine light industrial/warehouse condominium bays. Each bay has an overhead and man door at the front of the building and a man door at the rear of the building. The building has a wall height of 22 feet. Apparently the building has four occupants, with one occupying three contiguous bays, and two occupying two contiguous bays each. All the occupants are involved in some type of automotive related businesses. The building was built in 2006.

The subject properties are two adjacent bays that are used as one space by the owner, for his auto mechanics shop. There is no wall or partition between the two units. The only finish in the units is a small office/waiting room and small 2-piece washroom. While the property is used as one space, there is a separate condominium title for each unit, each unit is assigned its own assessment roll number and each unit is assessed individually.

The units are virtually identical, except that the Assessment Explanation Supplement shows that unit 129 is 1,502 ft², while unit 133 is 1,501 ft². The assessment for each unit is \$295,000.

Issues:

1. What is the appropriate market value of the subject properties for assessment purposes?

Complainant's Requested Value:

Roll No. 200849115	\$250,000
Roll No. 200849107	\$250,000

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

The two parties agreed on all facts related to the subject property except for its market value for assessment purposes.

1. What is the appropriate market value of the subject for assessment purposes?

On the Assessment Review Board Complaint form for both subject properties, the Complainant indicated that the reason for the appeal was that the assessment was too high given that the Complainant had purchased the subject properties (both bays as one package) in March 2010 at a total price of \$490,000 (or \$245,000 per subject property). No further evidence was presented by the Complainant regarding his purchase. Through

questioning, the Complainant indicated that the properties had been listed on the market for some time, were listed as one space, were vacant, and that Mr. Matharoo had viewed the property while it was listed. Sometime after the listing was cancelled, Mr. Matharoo had Mr. Dhillon, who is a licensed realtor, approach the owner and make an offer to purchase the property (both units). The two bays were purchased by Mr. Matharoo's company (1508185 Alberta Ltd.) in March 2010 at a price of \$490,000 with Mr. Dhillon acting as his Realtor. Mr. Matharoo had been looking to purchase a space of about 3,000 ft² in the subject area for use as an automobile repair shop. The sale had apparently occurred at arms-length under normal circumstances and at market.

On behalf of the Complainant, Mr. Dhillon presented Exhibit C1. This included information on four sales (MLS data sheets) that occurred between September 2010 and March 2011. One of these sales was for a substantially larger property located in SE Calgary, with the other three sales being slightly larger single bay condominium units in the northeast quadrant of the City. Based on these four sales, Mr. Dhillon indicated that the average sale price was \$167.87/ft². Using this rate, and multiplying it by the total area of the two bays (an area of 3,004 ft² was used) results in a market value of \$504,281 for the two bays, or \$252,141 per subject property. It was the Complainant's position that this calculation supported the requested assessment of \$250,000 per subject property and also reflects the price paid by Mr. Matharoo in March 2010.

The Respondent did not have any questions of the Complainant, but commented that the sales presented were not in the City's data base, as they were all sales that occurred after the valuation date of July 1, 2010. These sales were therefore all post-facto.

The Respondent presented her evidence, which was essentially the same for both subject properties except for the Assessment Explanation Supplement presented as page 11 in both documents. This evidence was marked as Exhibit R1-A for Roll No. 200849115 (Unit 133) and as Exhibit R1-B for Roll No. 200849107 (Unit 129). Both subject properties were assessed at a rate of \$197/ft², or a value of \$295,000.

The Respondent presented five equity comparables (page 12 of Exhibits R1-A and R1-B). All these comparables were from the subject building and ranged from \$197/ft² to \$218/ft². The Respondent also presented three sales comparisons. All three of these sales were slightly larger single bay industrial warehouse condominium units in one project located in the same general area as the subject. The time adjusted sale price per square foot (ft²) ranged from \$215 to \$231. The units were assessed at a rate of either \$207 or \$209 per ft². The Respondent concluded that based on these comparables, that the assessment was equitable and reflected market value.

The Respondent stated that the subject sale was not part of its data base, as the subject sale was considered a "multiple unit" sale, which typically results in a lower sale price per unit due to a volume discount. The City does not have sufficient multiple unit sales to use such data as the basis for its assessments. Furthermore, the Respondent stated that the subject units are individually titled and therefore could be sold as separate units. For this

reason, the data used in the model reflects the sale price of single industrial condominium units.

Board's Decision:

The Board heard some limited evidence regarding the sale of the subject properties. The Board notes that only the purchaser was represented by a Realtor, and that the seller allowed Mr. Dhillon to transact the sale. While Mr. Matharoo did not know the seller, it was not clear what the relationship was between the seller and Mr. Dhillon. Sufficient details regarding the sale were not provided to allow the Board to determine that this sale had occurred at arms-length and represented fair market value. It was not clear if there were some other factors that may have motivated the seller.

Under Section 2(b) of Matters Relating to Assessment and Taxation Regulations (MRAT), the assessment:

“... must be an estimate of the value of the fee simple estate in the property ...”.

While the two titled properties were purchased as one unit and are effectively used as one unit, because each has its own condominium title, each unit could be sold separately. The cost of demising the units is not known, nor is the premium that might be obtained if this was to occur prior to their sale. That said, the fee simple value of the subjects must reflect this potential. The Complainant did not provide any evidence on this matter. The basis of the Respondent's equity and comparable sales evidence was single unit industrial condominium properties.

With regard to equity, the Respondent presented five comparables from the subject building. With the two subject properties, the information accounted for seven of the nine properties in that building. No reason was provided for why the remaining two properties in the project were not included in the equity comparable data. The Respondent had no information regarding which of the five equity comparables represented the same owner, as the Complainant provided information that the building was owned by four parties, with three using more than one contiguous bay. The Board notes that this equity data appears to demonstrate that the assessment is equitable within the subject building (condominium project), but is not sufficient to demonstrate that the assessment is equitable compared to all similar properties in the area, or at least to a good sampling of similar properties in the area.

The sales comparables represented three properties in one project. They were all slightly larger units than each of the two subjects units, but from a building substantially older than the subject. The Respondent had not viewed or inspected either the subject units or the sales comparables so could offer no comments on the comparability, other than they were from the same district. As all three sales were from one project, this did not provide sufficient evidence as to the market value for this type of property in the subject area. The data presented only allows the Board to compare the subject project with the project reflected by the sales comparables.

The Respondent commented that the three sales comparables provided were apparently the "best" sales comparisons in the City's data base for the subject properties. The Board does not have sufficient data to offer an opinion. The Board would appreciate a larger set of sales comparable data so that it could come to its own conclusion both with regard to the comparability of the data to the subject, and how robust the data is with regard to factors material to the subject property.

The Board notes that a key factor in its consideration is the value of the fee simple estate in the property and expects that if the two subject properties were one titled unit, that the assessed value would be lower. Given the lack of relevant evidence presented by the Complainant, the Board has no reason to change the assessment. The Board therefore confirms the assessment.

Board's Decision:

The Board confirms the assessments as follows:

ROLL NUMBER:	200849115	200849107
ASSESSMENT:	\$295,000	\$295,000

DATED AT THE CITY OF CALGARY THIS 18 DAY OF August 2011.



Ivan Weleschuk
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1-A and R1-B	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.*