

**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:

Martin Stoffman & Associates 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: | 034011700 |
| LOCATION ADDRESS: | 332 – 41 Avenue N.E. |
| HEARING NUMBER: | 61005 |
| ASSESSMENT: | \$884,500 |

This complaint was heard on 27th 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:

- *Martin Stoffman*

Appeared on behalf of the Respondent:

- *Kimberly Cody*

Board's Decision in Respect of 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.

Admission of Rebuttal Evidence by the Complainant

During the hearing, the Complainant stated that he had prepared evidence that he wished to submit in rebuttal, apparently with regard to assessments of comparable properties. The Respondent objected to the new evidence being introduced, as it was not properly disclosed. The Complainant agreed that he had not disclosed this new evidence to the Respondent.

The Board notes that this material was not disclosed in accordance with Section 8(2)(c) of the Matters Relating to Assessment Complaints Regulation. This section requires that the Complainant must disclose any documentary evidence intended to be raised in rebuttal to the Respondent's evident at least seven days before the hearing. Section 9(2) of the Matters Relating to Assessment Complaints Regulation states that new evidence cannot be presented in a hearing without the required disclosure. Therefore, the Board did not hear the new evidence proposed by the Complainant. The hearing continued on the merits of the complaint.

Property Description:

The subject property is located at 332 – 41 Avenue N.E., in the Greenview Industrial Park, west of Edmonton Trail. It is a 0.22 acre parcel with a two story building on a 2400 ft² footprint. The property is leased to a company in which the property owner is a shareholder, with some of the office space on the second floor leased to a second tenant. The main level consists of about half the area (1200± ft²) of warehouse space and the other half finished and used as office space. The upper level is all in an office finish, however the portion over the warehouse area apparently has a 7 ft. high ceiling. The building was constructed in 1973.

Issues:

1. What is the appropriate approach to use in determining market value of the subject property?
2. What is the appropriate market value of the subject property for assessment purposes?
3. Is the assessed value fair and equitable?

Complainant's Requested Value: \$774,000 as indicated on Assessment Review Complaint Form

\$640,000 to \$680,000 as indicated in testimonial evidence

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

1. **What is the appropriate approach to use in determining market value of the subject property?**

The Complainant stated that it was his position that the Income Approach was the appropriate approach to use to determine the value of the property and presented evidence using that approach. The Complainant's Income Approach calculation was based on a rental rate of \$10/ft² for the main level and \$8/ft² for the upper level. A capitalization rate of 7% was then applied to arrive at a value of \$617,413. The rental rates and capitalization rates were apparently "typical rates in the market".

The Complainant then presented a Sales Comparison Approach calculation based on three comparable sales which had sold between February and June 2010 all on 41st Avenue N.E. and within a block of the subject. The Complainant used the assessed value of a vacant parcel in the area as the basis for land value, then extracted the building value and price per square foot (ft²) for the building. He then used this extracted value, and applied a rate of \$100/ft² to the subject, resulting in an assessed value of \$631,500 for the subject property. These three comparables were one-story buildings. During questioning, the Complainant acknowledged that the building sizes used in this calculation, for each of the comparable sales, was wrong. The corrected calculation resulted in a value per ft² that was considerably higher than that presented in the Complainant's evidence.

The Respondent indicated that similar properties in the area were all assessed using a Sales Comparison Approach, and not an Income Approach. The City uses a Sales Comparison Approach if and when it has sufficient sales to use this approach, and an Income Approach only if sales data is not adequate to use the Sales Comparison Approach. The Respondent indicated that there were over one hundred sales in their data base, which allowed them to use a Sales Comparison Approach. The assessed value is based on the Sales Comparison Approach.

Board's Decision:

The Board considered the Income Approach as presented by the Complainant. This approach was based on "typical" rental and capitalization rates. No evidence was presented to support the use of either the rental rates or capitalization rate. There was also a calculation error in the evidence presented. Therefore, the Board places no weight on this evidence.

The only other evidence presented by either the Complainant or the Respondent was a "Sales" Approach. Therefore, the Board will use that approach. The issue of which approach is appropriate therefore becomes moot.

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

As discussed, the Complainant indicated that the market value of the subject was \$617,413 using the Income Approach and \$631,500 using his extracted Sales Comparison Approach. After considering the evidence presented by the Respondent, the Complainant stated that the market value of the subject for assessment purposes was in the order of \$640,000 to \$680,000. This was an amendment to the initial value indicated on the Assessment Complaint Form, which was based on a preliminary estimate.

The Respondent indicated that the assessed value of \$884,500 was based on a Sales Comparison Approach. Based on that approach, the indicated rate applied to the rentable area of the building (4400 ft²) was \$201/ft². The Respondent explained that the assessment model utilizes a number of factors in arriving at a rate per square foot, all based on sales. One of the most important factors in the assessment model is Percent Site Coverage. A table on page 18 of the Respondent's evidence (Exhibit R1) titled "Industrial Sales Comparables" demonstrated the impact that "% Site Coverage" has on the "time adjusted sale price per ft²". On page 17 of the Respondent's evidence, a table was presented showing six equity comparables and the rate per square foot applied in their assessment calculations. These six equity comparables all had "% Site Coverage" ranging from 21-26%, similar to the 25% Site Coverage for the subject. The rate per square foot ranged from \$196 to \$212. The Respondent noted that the rate for the "most comparable" of these six sales (Roll No. 034114405, 3603 Edmonton Trail N.) was also at \$201/ft².

Board's Decision:

The Complainant presented a "Sales" Approach that attempted to extract a rate per square foot for the building value. In addition to the calculation error acknowledged by the Complainant, the Board notes that the value of the land component is based on an assessed value, not a market value, and on only one such value. It is not apparent that this

land value component is reflective of the market. Furthermore, this calculation mixes assessment values and market values, which is not appropriate in attempting to derive market value. For this reason, the Board does not find this calculation reflective of market value.

The Board also notes that in the Complainant's approach to calculating the rate per square foot and the rate compared to the Respondent's evidence only reflected the contributory value of the building to the sale price and did not include the value of the land. The per square foot rate as applied in the assessment calculation includes both the land and the building component, therefore the Complainant's approach is not complete.

The Respondent presented six Industrial Sales Comparables, broken out by various key factors apparently used in the assessment model. One of the issues discussed was "% Site Coverage". The Respondent was not able to explain how this factor impacted the resulting assessed value. It was not obvious to the Board how the assessment model conceptually arrived at the assessed value for the subject, especially given that the subject was a two-storey building. The Board noted the Complainant's frustration in not being able to understand the rationale behind "% Site Coverage" and specifically why it was such a driver in determining the assessed value, and shares this frustration. It is not clear to the Board how "% Site Coverage" reflects market value, as it is not intuitive that either a seller or buyer would rely on this factor in their negotiations or the purchase decision.

The Board then considered the Industrial Sales Comparables. Two of these sales were similar to the subject and are presented in the table below. Note that the sale price for these properties was \$780,000 for the smaller parcel and building size, and \$1,000,000 for the slightly larger parcel and building size. These two sales indicate that an assessed value for the subject in the order of \$884,500 is reflective of the market value of that property.

| Roll Number | Address | Sale Date | Site Size (ac) | AYOC | Net Rentable Area (ft ²) | % Finish | T/A Sale Price |
|----------------|----------------------|-----------|----------------|-------------|--------------------------------------|-----------|----------------|
| 024011900 | 51 Skyline Cr NE | Dec-09 | 0.16 | 1981 | 3650 | 55 | \$780,000 |
| 034188300 | 3927 3A St NE | Dec-09 | 0.24 | 1976 | 4845 | 72 | \$1,000,000 |
| Subject | 332 41 Ave NE | | 0.22 | 1973 | 4400 | 70 | |

The Board notes that Industrial Sales Comparable Roll No. 034013508, located at 323 41 Avenue NE appears to have a sale price that is considerably below the sale price paid for the other comparables, and is not prepared to give this sale much weight, as neither party provided any background information on this sale or the circumstances of this sale.

Based on the two Industrial Sales Comparables presented in the table above, the Board concurs that the market value of the subject for assessment purposes is between \$780,000 and \$1,000,000. This supports the Respondent's assessed value of \$884,500.

3. Is the assessed value fair and equitable?

The Complainant presented evidence showing the property assessment history for this property since 2004. It was his contention that the market had declined since 2008, yet the assessment continued to increase. The Complainant noted that the assessment increased from \$806,500 in the 2010 Assessment Notice to \$884,500 in the 2011 Assessment Notice. The Complainant questioned how the assessed value could increase this amount, given that even the Respondent's data shows that the prices for this type of property were declining over the assessment period. The Complainant had apparently prepared evidence using assessment data to further support his case that the assessment was not equitable. This evidence was not properly disclosed and was not heard (see the section on preliminary and procedural matters above).

The Respondent stated that the assessment was fair and equitable, based on the six equity comparables presented on page 17 of their evidence (Exhibit R1), and discussed above. The Respondent did not offer any reason as to why the subject assessment had increased from the 2010 Assessment Notice. The Respondent stated that the subject property had not been inspected by an Assessor in the past year.

Board's Decision:

With regard to the year over year increase in assessment, the Board shares the Complainant's frustration in trying to understand how a market value assessment using sales data from a declining market can result in a very substantial increase in the subject assessment. The Board understands that the current year assessment is based on the current data, but notes that the subject property has not been inspected in the interim and therefore there was no material change to the characteristics of the property. The Respondent did not indicate that there was any error in the previous year's assessment, nor offer any explanation as to the reason for the increase.

The Board is charged with reviewing the assessment using the evidence that has been presented. The Board notes that the Complainant's methodology in presenting the Sales Approach calculation is not done correctly, as it does not include the land value component. Based on the equitable comparables presented by the Respondent, the Board is satisfied that the \$201/ft² rate used for the assessment is in the same range as rates used in assessing similar properties in the area.

During the hearing, the Board was told that about half the upper level of the subject has a ceiling height of about 7 feet, which is less than the typical ceiling height in an office use. The subject property has not been inspected by an assessor for as long as the taxpayer has owned the property. It may be beneficial to the taxpayer to have the building inspected by an assessor to determine if the entire building is typical for this building class, and if the portion with the reduced head room qualifies for some lower assessment rate. The Board notes that it is outside the scope of this hearing to vary the assessment based on how the space in the subject building is characterized for assessment purposes.

Based on the evidence presented, the Board concludes that the rate per square foot used by the City in calculating its assessed value is in the range applied to other similar properties in the area, based on equity comparables presented by the Respondent. The Board has noted issues with the Complainant's approach to calculating an assessed value. For these reasons, the Board confirms the assessment of \$884,500.

Board's Decision:

The Board confirms the assessed value of \$884,500.

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 | 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.*