

**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:

Her Majesty the Queen In Right of Canada As Represented By Transport Canada (as represented by Colliers International Realty Advisors Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

*K. D. Kelly, PRESIDING OFFICER
P. Grace, MEMBER
R. Deschaine, 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 2012 Assessment Roll as follows:

ROLL NUMBER:	902009604
LOCATION ADDRESS:	10710 – 25 ST NE
HEARING NUMBER:	68727
ASSESSMENT:	\$9,480,000 (prorated by supplementary for eleven months to \$8,690,000)

This complaint was heard on 6th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Board 10.

Appeared on behalf of the Complainant:

- *Mr. – J. Havrilchak - Colliers International Realty Advisors Inc.*

Appeared on behalf of the Respondent:

- *Mr – K. Buckry - Assessor – City of Calgary*

REGARDING BREVITY:

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None.

Property Description:

[3] The subject is a new 132,572 square foot (SF) multi-bay industrial warehouse building at Calgary International Airport. The subject was constructed in 2011 and partial tenancy of the structure occurred in early Spring of 2012. The subject was assessed initially in 2012 at \$4,170,000 but as finalization of construction proceeded, a Supplementary assessment for \$9,480,000 was issued for an eleven month period, resulting in a pro-rated value of \$8,690,000.

Issue:

[4] What was the state of completion (for occupancy) of the subject as of February 2012 when the supplementary assessment was prepared?

[5] **Complainant's Requested Value:** \$6,320,000 (based on 8 months occupancy)

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

Complainant's Position

[6] The Complainant argued that the subject was not ready for full occupancy as of February 2012 when the supplementary assessment of \$9,480,000 was issued because the subject was still under construction and unable - by definition, to be occupied. He argued that only one unit of the multi-bay structure was "rentable" as of February 2012 and two other units were not ready to be rented until May of 2012. He argued that a third unit was not ready until July of 2012, and indeed, the subject is still not fully-rented.

[7] He argued that as late as April 2009 the owner was still seeking permission from the City to complete the structure. He provided a copy of the "Building Permits Status" report for the subject as copied from the "CITYonline" website, which outlined the complete Building Permits history of the subject. He noted that various units of the multi-bay interior of the subject were being altered from time to time with "racking" materials; washrooms; and related interior office finishing, as tenants were secured and their specific interior finishing requirements identified.

[8] The Complainant provided the rent roll for the subject and noted the dates of lease commencement for four tenants who occupied four bays of the structure between January 2012 and June 2012. He argued that this data, including the Building Permits data, indicates that the subject was not able to be occupied in February 2012 when the supplementary assessment was issued.

[9] The Complainant referenced section 314(2) of the Municipal Government Act as follows:

"The assessor must prepare supplementary assessments for other improvements if

(a) They are completed in the year in which they are to be taxed under Part 10,

(b) They are occupied during all or part of the year in which they are to be taxed under Part 10."

[10] The Complainant referenced two Municipal Government Board Orders - MGB 049/11 and MGB 088/10. In particular he noted that in MGB 049/11 the Board held that:

".....when an area is unoccupiable, it is not complete for the purposes of section 314"

[11] The Complainant argued that the subject should not have been provided with a supplementary assessment because it was, by statute and definition, incomplete at the time it was assessed. He also confirmed that he accepted the land value portion of the assessment at \$4,170,000.

[12] The Complainant requested that the assessment be reduced from the current eleven months proration to eight months, and the value decreased accordingly to \$6,320,000.

[13] The Respondent clarified that the Complainant confirmed the latter has no issue with the valuation of the subject, only the number of months used to prorate and calculate the supplementary assessment.

[14] The Respondent argued that supplementary assessments are governed by section 314 of the MGA, but the Act does not define "complete" or "occupy". The Respondent argued that the Complainant has incorrectly interpreted the two Board Orders MGB 049/11 and MGB 088/10 which applied to two office buildings and do not apply to the subject which is an industrial warehouse – two distinctly different building types. He argued that property type is very important in determining if space is available to be occupied or not. He argued that :

"Office tenants are incapable of operating in raw interior office space that is completely without any tenant improvements. This is not the case for warehouses. Some distribution warehouse tenants do not require any office space and can immediately occupy any 'as is' raw space. One example of this is Supply Chain Management at 21 Aero Drive who occupy 180,000 s.f. Another example is Whirlpool Canada at 1802 – 118 AV NE who occupy 439,275 s.f."

[15] The Respondent argued that the Complainant's own "Master Rent Roll" evidence confirms that the subject's condition in February 2012 demonstrates that for assessment purposes it was complete and ready for occupancy. He noted that the building's largest tenant Texcan (Sonepar Canada Inc.) moved into 41,353 SF on February 1, 2012.

[16] The Respondent argued that three other tenants – Worldwide Custom Brokers (29,312 SF); Plus 11 Sanitation Supplies (29,158 SF); and CEVA Freight Canada (32,749 SF) "had commenced their tenant fit-outs with various stages of completion – all as demonstrated by the Complainant's "Building Permits Status" report for the subject as copied from the "CITYonline" website and entered into evidence in his brief C-1.

[17] The Respondent requested that the supplementary assessment be confirmed.

Board Findings

[18] The Board finds that the subject is a multi-tenant warehouse and not an office building, and therefore Board Orders MGB 049/11 and MGB 088/10 cited by the Complainant do not apply.

[19] The Board finds that the subject was complete and ready to accept tenants as of February 2012, and the Master Rent Roll for the subject produced into evidence by the Complainant confirms the same.

[20] The Board finds that as of February 2012 the subject was ready to accept tenants and the building's largest tenant had moved in and several others were about to move in, as the Master Rent Roll provided by the Complainant demonstrates.

[21] The Board finds that the Complainant provided no pictorial or similar evidence that the subject was not ready for tenants as of February 2012 as argued.

[22] The Board finds that the Respondent has prepared this supplementary assessment in accordance with applicable legislation, contrary to the assertions of the Complainant.

[23] The Board finds that the Complainant provided insufficient information to demonstrate that the assessment is incorrect or inequitable.

Board's Decision:

[24] The assessment is confirmed at \$9,480,000 as prorated for eleven months to \$8,690,000.

DATED AT THE CITY OF CALGARY THIS 3 DAY OF OCTOBER 2012.


K. D. Kelly
Presiding Officer

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

NO.	ITEM
1. C-1	Complainant Disclosure
2. R-1	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.*

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	industrial	Multi-tenant industrial	Market value	Supplementary assessment