

**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:

**363991 ALBERTA LTD., COMPLAINANT
(Represented by Assessment Advisory Group)**

and

The City Of Calgary, RESPONDENT

before:

**Board Chair P. COLGATE
Board Member M. PETERS
Board Member A. ZINDLER**

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: 200537587
LOCATION ADDRESS: 10528 46 STREET SE
HEARING NUMBER: 63578
ASSESSMENT: \$2,910,000

This complaint was heard on 8th day of August, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *Troy Howell – Assessment Advisory Group - Representing 363991 Alberta Ltd.*

Appeared on behalf of the Respondent:

- *Carol Lee – Representing the City of Calgary*

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 had no objections to the panel representing the Board as constituted to hear the matter. No jurisdictional or procedural matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

Property Description:

The subject is a single tenant, industrial warehouse located on a 1.09 acre parcel in the East Shepard Industrial Park. The structure has a footprint area of 13,465 square feet for site coverage of 28.37%. The assessable building area is 15,170 square feet constructed in 2006. The Land Use designation is Industrial – General.

Issue:

The assessed value is not reflective of the property's market value
The assessment is incorrect based upon an analysis of adjusted sales.
The Complaint Form had Box 3 – the assessment amount checked off as the matter applying to the complaint.

Complainant's Requested Value: \$2,600,000.

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

Complainant's Evidence:

The Complainant provided the Board with a copy of the 2011 Property Assessment, The City of Calgary Assessment Summary Report, maps and photographs of the subject property.

Additionally the Complainant provided a copy of the RealNet data search conducted by the Complainant to obtain a list of comparables sales from which he selected the two (2) sales used in the analysis.

The two sales selected are located at 12001 44th Street SE (Comparable 1) and 10447 50 Street SE (Comparable 2) – both properties are located in the East Shepard Industrial area.

The analysis (Page 35 of C1) determines a square foot rate for each of the two sales. Comparable 2 is adjusted by a -5% for the difference in site coverage. Based upon the analysis the Complainant is requesting a rate per square foot of \$172.00 for a revised assessment of

\$2,607,560 (15170 square feet X 172.00), rounded to \$2,600,000. The adjustment was based upon a formula of 5% adjustment for every 9% of difference between the subject and the comparable.

Addition evidence submitted by the Complainant included an outline of the AAG Valuation Methodology, which the Complaint referred in questioning, page 38 from the Warehouse Valuation Guide and an additional page from the Warehouse Valuation Guide concerning 'Figure 6. Form Whs3 – Example of Sales Adjustment Processx'.

Also submitted as evidence for the Board's consideration were Composite Assessment Review Board Decisions – CARB 2077/2010-P, CARB 2093/2010-P, CARB 2103/2010-P and CARB 2086/2010-P.

Respondent's Evidence:

The Respondent provided 2 photographs of the subject building.

The Respondent's evidence is limited to two pieces of evidence – a 2011 Assessment Explanation Supplement with respect to the subject property and an Industrial Sales Comparables chart containing 8 sales.

The Supplement provides the details with respect to the subject property – footprint, assessable area, and the percentage of finish, year of construction, site coverage and rate per square foot of \$192.00, the variables used in the determination of the assessment value.

Findings of the Board

Complainant's Submission:

The submission of the Complainant raised a number of concerns for the Board. Of primary concern is the lack of market evidence or analysis in the percentage adjustment being applied to the sales. During questioning by the Board, the Complainant referred the Board to the AAG Valuation Methodology (C1, Page 19) and the Statement from the Appraisal Institute of Canada – 'It is the appraiser's experience and judgement that is important,' and therefore there was no need to submit any evidence as to how the adjustments were derived.

This position concerns the Board as it seems to go against the intent of the Appraisal Institute and their position on determining values. Within the quoted passage (Appraisal Institute of Canada 'Basics of Real Estate Appraising' 1994 Chapter 11 – The Direct Comparison Approach (VI) Types of Adjustment Pg 241) is another sentence which reads – 'This should not diminish the importance of using mathematics to assist in the value judgement.' Additionally, the opening paragraph to the AAG Valuation Methodology states 'our statistical analysis incorporated a measure of variance using coefficients of dispersion' which indicated to this Board analysis is conducted by the Complainant, who chooses not to submit this work.

Further the Board refers to the Complainants Submission on Physical Differences (C1, Page 20), which reads 'Physical Differences such as superior height, a newer building, a better location, etc. must also be accounted for because they have an impact on the sale price. Establishing appropriated adjustments for these differences requires analysis of the sales data and stratifying sales into homogeneous classes'. Another reference from the same page states,

'Adjustments to sales data should be completed on the basis of research and analysis of the data. For example, changes in value over time are best illustrated by analyzing 'paired' sales, i.e., the sale price of one property at time A compared to its sales price at time B.'

It is the opinion of the Board any analysis on the sales should be submitted in support of the adjustments. With no analysis submitted the Board is not prepared to accept the requested adjustments and the requested change to the assessment. The Complainant has failed the onus test and the burden of proof.

With respect to the Composite Review Board decisions of 2010, the 2011 Board is not bound by the decisions of prior year's Boards, as each year is a new assessment with changing market conditions affecting the values. The Board may take guidance from past decisions with respect to physical conditions such as lot size or building areas, but must make its own decision with respect to the current year's assessment and market conditions. The Board finds the decisions provide little guidance as there is insufficient evidence contained in the decisions to show how the decisions were determined. The Board does take some guidance from the decisions CARB 2077/2010-P, CARB 2093/2010-P and CARB 2086/2010-P when addressing the Respondent's submissions – specifically the statement - 'the adjustments applied were not supported by evidence'. Although speaking to the Respondent, the rule is equally applicable to the Complainant. Adjustments without evidence carry less weight with the Board and fail the burden of proof.

Respondent's Submission:

The eight sales presented by the Respondent contained a number of properties which the Board found lacked some comparability. The property at 12001 44 Street SE was a multi tenant warehouse as opposed to the subject which is a single tenant warehouse. The comparables at 6410 90 Avenue SE and 4115 116 Avenue SE, having significantly smaller site coverage at 7.91% and 10.39% than the subject at 28.37%, were given less weight. The 5 remaining comparables did provide a time adjusted sales price per square foot which supported the rate per square foot applied to the subject.

It is the opinion of this Board, the presentation of supporting evidence can only enhance the quality of any presentation and is a critical part of supporting a position by either party. With that said, it is the opinion of the Board, based upon prior decision – *Manyluk v. Calgary (City)*, MGB Board Order 036/03 (Page 8), *Shirley Anne Ruben et al v. City of Calgary* MGB 239/00 (Page 15) and *Imperial Parking Ltd v. Calgary (City)* Board Order MGB 140/02 (Paragraphs 34 and 37), there is a greater onus on the Complainant to provide the evidence to support their case, for failing to do so means the onus is not transferred to the Respondent to defend the assessment value.

Board's Decision:

The Board finds the Complainant has failed to provide sufficient market evidence to substantiate a change to the assessment.

The Board confirms the assessment at **\$2,910,000.**

DATED AT THE CITY OF CALGARY THIS 9th DAY OF SEPTEMBER 2011.



Philip Colgate
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.*