

**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:

**1007221 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: 137041109

LOCATION ADDRESS: 12126 44 STREET SE

HEARING NUMBER: 64569

ASSESSMENT: \$5,420,000

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 1007221 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 matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

A procedural matter was raised at the outset of the hearing by the Board with respect to the filing of a disclosure document by the Complainant. Documents in the Board's files indicated a disclosure document was not received by the Assessment Review Board. The Complainant was able to provide evidence the submission had been sent to both the city of Calgary and the ARB. The Respondent was able to confirm the receipt of disclosure within the required timelines. The Board ruled the disclosure was acceptable and after obtaining copies the hearing proceeded.

Property Description:

The subject is a single tenant, industrial warehouse located on a 3.78 acre parcel in the East Shepard Industrial area. The structure has a footprint area of 27,500 square feet for site coverage of 28.37%. The assessable building area is 32,203 square feet constructed in 2003. The Land Use designation is Industrial – General.

Issue:

The assessed value is not reflective of the property's market value
The assessment is incorrect assessed based upon an analysis of adjusted sales.

Complainant's Requested Value: \$3,870,000.

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 the Complainant selected the three (3) sales used in the analysis.

The three sales selected are located at 4315 72 Avenue SE (Comparable 1) and 9415 48 Street SE (Comparable 2) and 6215 86 Avenue SE (Comparable 3). Comparable 1 and 2 are located in the Foothills Industrial Park and comparable 3 is located in the South Foothills Industrial Park.

The analysis (Page 39 of C1) determines a revised square foot rate for each property. Comparable 1 is adjusted by a total adjustment percentage of +20%, the difference in site coverage at +5 % and year of construction at +15%. Comparable 2 is not adjusted, although adjustments of -5% for building size and +5% for year of construction were indicated. Comparable 3 was adjusted by a total adjustment percentage of +10% for year of construction. Based upon the analysis the Complainant is requesting a rate per square foot of \$120.00 for a revised assessment of \$3,874,462 (32,203 square feet X 120.00), rounded to \$3,870,000.

The evidence submitted by the Complainant identifies the subject property having an A2 quality classification, 4315 72 Avenue SE is classified as a C quality, 9415 48 Street SE, with two buildings are classified as A2 and C+ and 6215 86 Avenue SE is classified as a C quality.

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

Also submitted for the Board's considerations were Composite Assessment Review Board Decisions – CARB 2077/2010-P, CARB 2093/2010-P, CARB 2103/2010-P and CARB 2086/2010-P, which the Respondent stated supported the adjustments made to the sale prices of the submitted comparables.

Respondent's Evidence:

The Respondent provided locational map and 2 photographs of the subject building.

The Respondent's submission is limited to two primary documents in support of the assessment value – a 2011 Assessment Explanation Supplement and an Industrial Sales Comparables chart containing 3 sales to substantiate the rate per square foot being applied to the subject – 4060 78 Avenue SE (Comparable 1), 7025 44 Street SE (Comparable 2) and 3710 Westwinds Drive NE (Comparable 3).

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 \$168.00, the variables used in the determination of the assessment value.

In rebuttal of the Complainant's comparable properties, the Respondent raised a number of concerns.

For the comparable at 4315 72 Avenue SE, the Respondent notes the year of construction was 1979, versus 2003 for the subject property.

The comparable at 9415 48 Street SE is a multiple building property which has a negative

adjustment in the determination of the assessment value. The Respondent notes the Complainant has made no adjustment for this variable. Supporting documentation is found in the Respondent's submission (R1, Page 16-28) in the form of decisions – CARB 0855/2011-P and ARB 0540/2010-P, and a percentage reduction analysis of 2010 decisions.

The Respondent raised for the Board, the issue of properties located in the South Foothills Industrial area with the Respondent providing evidence in support of a negative adjustment for the lack of servicing. Through analysis of nineteen 2010 CARB decision on properties located in the South Foothills Industrial area the Respondent has shown the rational for the adjustment to properties in South Foothills for 2011. The Respondent included one decision from 2010 – ARB 0573/2010-P, which names Assessment Advisory Group as the Complainant. The Respondent points out the Complainant should have been aware of the adjustment and applied it to their calculations of a revised rate per square foot in their presentation.

With respect to the comparable at 6215 86 Avenue SE, the Respondent expresses a concern with respect to the validity of the sale. The property was appraised by Altus Group for \$3,400,000 effective September 11, 2009 but sold for \$2,575,000 on October 20, 2009. It is noted the entire appraisal, together with its parameters, was not included in the submission.

Lastly, The Respondent submitted three decisions which supported their position for evidence to be submitted to support the requested adjustments – ARB 0530/2010-P, ARB 0215/2010-P and CARB 1034/2011-P. The Respondent made note two of the decisions were for complaints filed by Assessment Advisory Group and spoke to the lack of market evidence.

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 23) 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 of Canada 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 24.), 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.'

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 burden of proof therefore fails for the Complainant.

The Board also notes there is not recognition for the differences in quality between the subject and each of the comparables, which would occur in standard appraisal technique. The Respondent stated this was recognized in other adjustments, but the explanation received as to how the adjustments were determined did not appear to recognize this variable in the calculation. The Respondent stated previously the calculation for coverage was a change of 5% for every 9% of difference between the subject and the comparable. Year of construction is adjusted at a rate of 5% for every 10 years of difference between the subject and the comparable.

With respect to the Composite Review Board decision 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. The Board finds the decision 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 onus test and burden of proof.

Respondent's Submission:

In the opinion of the Board, the Respondent's evidence is lacking with respect to the comparables provided. Comparable 2 has a larger Site Coverage than the subject – 46.89% versus 16.7%. Comparable 3 is located in another quadrant of the City of Calgary – NE versus SE and is a multi tenant warehouse. Comparable 1, though older than the subject, is similar in site coverage and rentable area. The time adjusted sales price per square foot tends to support the assessment rate. However, the Board notes 'one sale does not a market make' and would look for better sales to substantiate a rate.

The Respondent does raise interesting arguments with respect to the multiple building and the South Foothills Adjustments. Based upon the decisions of 2010, the City of Calgary has included an adjustment for properties with multiple buildings in the determination of the 2011 assessments. As the Assessment Advisory Group has a party to the creation of the adjustments, based upon the 2010 decisions, they should accordingly have made adjustments in their calculations for 2011 revised rates requested.

Lastly, the Board looks to the presentation of Assessment Review Board and Composite Assessment Review Board decisions. Both parties have presented decision in support of their positions with respect to the disclosure of supporting evidence.

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 Oder 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 Oder 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 burden of proof is not transferred to the Respondent to defend the assessment value.

Board's Decision:

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

The Board confirms the assessment at **\$5,420,000**.

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.*