

**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:

***347458 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: 200561728

LOCATION ADDRESS: 11580 40 STREET SE

HEARING NUMBER: 64768

ASSESSMENT: \$7,180,000

This complaint was heard on 9th 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 347458 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 an industrial warehouse located on a 3.04 acre parcel in the Foothills Industrial Park. The structure has a footprint area of 50,649 square feet for site coverage of 35.03%. The assessable building area is 50,649 square feet constructed in 2005. 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: \$5,100,000.

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 two (2) sales used in the analysis.

The two sale comparables selected are located at 5049 74 Avenue SE (Comparable 1) and 3716 64 Avenue SE (Comparable 2) – both comparables are located in the Foothills Industrial

Park.

The analysis (Page 35 of C1) determines a revised square foot rate for each property. Both comparables are adjusted by a total adjustment percentage of +15%, for the difference in building size at +5 % and year of construction at +10%. Based upon the analysis the Complainant is requesting a rate per square foot of \$101.00 for a revised assessment of \$5,107,587 (50,649 square feet X 101.00), rounded to \$5,100,000.

The evidence submitted by the Complainant identifies the subject property having an A2 quality classification, while both comparables are classified as C quality structures.

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 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, which the Complainant stated supported the adjustments made to the sale prices of the submitted comparables.

Respondent's Evidence:

The Respondent provided a location map and 5 photographs of the subject building.

The Respondent's evidence is limited to two pieces of evidence – a 2011 Assessment Explanation Supplement and an Industrial Sales Comparables chart containing 2 sales - 4975 43 Street SE and 3905 32 Street NE.

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 \$142.00, 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.

With respect to the comparable at 3716 64 Avenue SE, the Respondent expresses a concern with respect to the validity of the sale. The property was financed through a vendor take-back.

Lastly, The Respondent submitted three decisions which supported their position for evidence to be submitted to support the requested adjustments – ARB 1041/2010-P and ARB 0530/2010-P. and CARB 1034/2011-P.

ARB 0215/2010-P was submitted also in support of the Respondent's position. Although a residential complaint, the decision speaks to the requirement for analysis to be shown to support adjustments.

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 had stated 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 supporting evidence, carry less weight with the Board.

Respondent's Submission:

The Board would prefer comparables be selected in the same general area as the subject property. In this case one is located in the southeast quadrant and the other from the northeast quadrant of the city. In this case the Respondent testified the selection of properties comparable to the subject was limited when trying to find ones with similar characteristics as the subject. Both comparables do show support for the rate applied at \$142.00 per square foot.

The Board was not convinced the sale at 3716 64 Avenue SE was not a valid sale. The fact a vendor is willing to take back the financing on a property does not automatically mean the negotiations did not result in a market value. With the absence of compelling evidence, the Board accepts the sale.

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

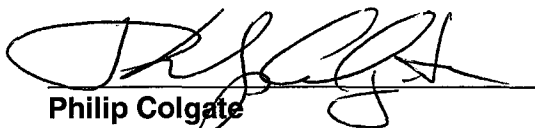
It is the opinion of the Board, the presentation of supporting evidence can only enhance the quality of any presentation and is a critical part of supporting a position by either party. With that said, it is the opinion of the Board, based upon prior decisions – Manyluk v. Calgary (City), MGB Board Oder 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 met.

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 **\$7,180,000.**

DATED AT THE CITY OF CALGARY THIS 12th 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.*