

**COMPOSITE
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 (MGA).

between:

Telsec Property Corporation
(as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

C. J. Griffin, Presiding Officer
B. Bickford, MEMBER
E. Reuther, MEMBER

This is a complaint to the Composite Assessment Review Board (CARB) 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: 137036208

LOCATION ADDRESS: 11929 – 40th Street SE

HEARING NUMBER: 68289

ASSESSMENT: \$4,400,000.

This complaint was heard on 20th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- D. Mewha
- M. Robinson

Appeared on behalf of the Respondent:

- T. Luchak

Procedural Matters:

[1] This property is adjacent to and is similar in many ways to that of a previous Hearing (CARB 1792-2012-P) and is, in fact owned by the same property owner. The issues and argument are similar and for the sake of expedience the Complainant requested that much of same be carried forward from that Hearing and be applied, where applicable, to this Hearing. The Respondent agreed with this proposal and therefore the CARB will carry forward that evidence and argument considered to be the same by both parties.

Property Description:

[2] The subject consists of, according to the 2012 Industrial Assessment Explanation Supplement (Exhibit C-1A pg. 11), two multi-tenant industrial buildings located on one common site. The buildings are 15,048 Sq. Ft. and 12,890 Sq. Ft. in size and the former was constructed in 2006 while the latter was constructed in 2005. The underlying site is reportedly 2.098 acres in size. The Land Use Designation is I-G (Industrial General). The assessed value of the subject property has been derived through application of the Direct Comparison (Sales) Approach.

Issues:

[3] There are a number of interrelated issues outlined on the Assessment Review Board Complaint form; however, at the Hearing the Complainant reduced the issues to be considered by the CARB to:

1. The assessment of the subject property is not equitable with similar properties in that the buildings have been valued as if independent from each other when that is not the case. As a result, the property assessment is inequitable with similar multi-building properties.

Complainant's Requested Value: \$3,720,000.

Party Positions:**Complainant's Position**

[4] In support of their requested assessed value, the Complainant introduced (Exhibit C-1 pg. 14) nine equity comparables of properties which equate to the aggregate total space of the subject two buildings (27,938 Sq. Ft.). The total assessed areas of these comparable properties ranges from a low of 23,706 Sq. Ft. to a high of 33,916 Sq. Ft. with an indicated median size of 26,766 Sq. Ft. The underlying sites range in size from 1.38 acres to 2.38 acres with a median indication of 1.68 acres. The median site coverage is 31% which is the same as the subject and the median Year of Construction (YOC) is 2002 compared to the subject at 2006. The assessed value per Sq. Ft. for these comparables ranges from \$127 to \$148 with a median of \$133/Sq. Ft. compared to the subject at \$157/Sq. Ft. Supporting documentation in the form of Property Assessment Public Reports and photographs for each of the comparable properties is provided (Exhibit C-1 pgs. 22 – 36). The Complainant notes that if a multi-building discount has been incorporated into the model, it does not appear to be reflected in the assessment of the subject.

Respondent's Position

[5] The Respondent produced (Exhibit R-1 pg. 24) a 2012 Industrial Equity Chart detailing three properties deemed to be comparable, two of which are from the adjacent multi-building property that was the subject of the previous Hearing. These equity comparables compare favourably to the 12,890 Sq. Ft. building from the subject property in way of size, age, and location. (The CARB notes there was no equity comparables presented for the larger of the two buildings on the subject site.) The assessed values for these properties range from \$166.87/Sq. Ft. to \$183.64/Sq. Ft. versus the assessed value of one of the subject buildings at \$161.09/Sq. Ft. The Respondent contends that from an equity point of view, the forgoing provides support for the assessed values of the subject buildings.

[6] The Respondent also contends that, based on the *Bramlea Ltd. v. British Columbia Assessor for Area 9 (Vancouver) (1990)* and the *Bentall Retail Services et al v. Assessor for Area 9 (Vancouver) (2006)*, a complaint cannot be brought forward on an argument of equity alone. To that end the Respondent introduced (Exhibit R-1 pgs. 122 – 123) their *Bramalea and Bentall Decision Overview*. The conclusion to this 'Overview' states:

"*Bramalea* does not suggest that the taxpayer is entitled to the lower of a specific equitable value or a specific actual value. *Bentall* clarifies the common misinterpretation of *Bramalea*".

Complainant Rebuttal

[7] In their Rebuttal brief (Exhibit C2) the Complainant addresses the equity comparables put forth by the Respondent, maintaining that they are not comparable to the subject property as they are not representing the full value of the properties, but rather selected buildings out of multi building properties. The Complainant introduced (Exhibit C-2 pg. 3) the *Property Assessment Public Report* for the property located at 11979 – 40th Street SE which refers to all four of the buildings located on this single parcel, as opposed to only two of same presented by the Respondent (Exhibit R-1 pg. 24). Similarly the Complainant provided (Exhibit C-2 pg.5) a similar report for the property located at 12127 – 44th Street SE noting that there are two properties on site but the Respondent has only referred to one of them (Exhibit R-1 pg. 24).

Board's Decision:

[8] The assessment is **reduced** to: **\$3,720,000**.

Decision Reasons:

[9] The first issue the CARB has to decide in this case is the matter of equity. The Assessor has presented the CARB with an interpretation of the *Bramalea* and *Bentall* decisions of the *Supreme Court of British Columbia* from which they have concluded that equity alone is not a basis upon which to bring forward a complaint and that if market value is available then equitable value is meaningless. This is a somewhat myopic conclusion. *Bramalea* is clear about the taxpayer getting the benefit of a reduction to equity, within an equitable range, where equitable value is shown to be lower than the market value, being a value within a market range, established by the Assessor. It is important that value range is given consideration. This is perhaps best explained in *Bentall 2006, para. 99* which states:

"*Bramalea* does not stand for the proposition that the taxpayer is entitled to the lower of a **specific** equitable value, or a **specific** actual value. There is a **range of values** which might constitute actual value and a range of value which might constitute equitable value. *Bramalea* stands for the proposition that when equity is an issue, it is only if the range of values determined to be actual value lies outside the range of values that is equitable, that an adjustment is required." (Emphasis added)

[10] In his paper entitled *The Evolution of Equitable Property Assessment in Canada* John Savage states:

"Equity is an important concept in Canadian assessment law. The assessment roll determines the distribution of property taxes. If all properties are at actual value, there is a fair distribution of taxes and equity is achieved. If all properties are not at actual value, there is an inequitable division of property taxes. To guarantee the equal treatment of taxpayers, assessors have always had an administrative duty to ensure that properties are valued on a consistent basis."

*The administrative duty to ensure that assessments are consistent has evolved into a legal obligation to ensure assessments are equitable. The legal obligation to provide equitable assessments is based in part on statute and in part on the common law. The common law foundation in Canada was enunciated in 1881 by Chief Justice Ritchie of the Supreme Court of Canada in *Jonas vs. Gilbert* (1881):*

'Unless the legislative authority otherwise ordains, everybody having property or doing business in the country is entitled to assume that taxation shall be fair and equal and that no one class of individual, or one species of property, shall be unequally or unduly assessed.'"

[11] The CARB is not aware of any Court decisions which have resulted in this notion of equity being abandoned and we do not agree that *Bentall* suggests same. Equity is an underlying principle in Canadian property assessment law and it rightly remains so. Accordingly, the Respondent's argument that equity alone is not a basis upon which to bring forward a complaint fails.

[12] The Complainant has presented only three equity comparables for the CARB to give consideration to; however, the assessed value of two of these buildings were under Complaint and those assessed values have been reduced by the CARB (CARB 1792-2012-P) and thus no longer provide support for the current assessed value of the subject. Additionally, the CARB noted that the Respondent only provided equity comparables for one of the two buildings which comprise the subject property. The Respondent treats each of the buildings which comprise the subject property as if they are separate entities; however, this is clearly not the case. Both of the buildings are located on one common site with one common legal description. Given the foregoing it would not be possible to sell either one of these buildings separately and to suggest otherwise is a misinterpretation of the fact scenario. The CARB notes, as was pointed out by the Complainant in their Rebuttal, that the Respondent has been selective in using only a portion of a multi building property for comparison purposes as opposed to the entire assessed property. This can be misleading and while the CARB would not suggest there was any intent on the part of the Respondent to be misleading, the Board would urge the Assessor to discontinue this practice.

DATED AT THE CITY OF CALGARY THIS 23rd DAY OF Oct 2012.


C. J. Griffin, Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
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.*

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<i>Decision No. 1791-2012-P</i>		<i>Roll No. 137036208</i>		
<u><i>Subject</i></u>	<u><i>Type</i></u>	<u><i>Issue</i></u>	<u><i>Detail</i></u>	<u><i>Issue</i></u>
CARB	Industrial	Market Value	Multi Building	Equity