

**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:

***Canadian Property Holdings (Alberta) Inc. / CREIT East Lake GP Inc.
(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: 200563484

LOCATION ADDRESS: 11133 – 40th Street SE

HEARING NUMBER: 68015

ASSESSMENT: \$41,240,000.

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 similar in many ways to that of a previous Hearing (CARB 1792-2012-P) that was argued before this same panel of the CARB earlier this week. 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, as deemed appropriate by the CARB, 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. 7), two industrial buildings located on one common site. Both of the buildings are reportedly multi-tenanted. The buildings are 419,466 Sq. Ft. and 79,696 Sq. Ft. in size. Both buildings were constructed in 2007. The underlying site is reportedly 23.39 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: \$32,940,000. (Exhibit C-1 pg. 12)

Party Positions:**Complainant's Position**

[4] The Complainant began their presentation by introducing (Exhibit C-1 pg. 6) the 2012 *Property Assessment Notice* and pointed out the significant increase between the 2011 assessed value of \$36,078,000 and the 2012 assessed value of \$41,420,000 noting that the 2011 assessed value had been reduced from \$42,600,000 by CARB Decision 1728/2011-P. A copy of the referenced CARB Decision is presented (Exhibit C-1 pgs. 38 – 50). In support of their requested assessed value, the Complainant introduced (Exhibit C-1 pg. 12) six equity comparables of properties which equate to the aggregate total space of the subject buildings (499,162 Sq. Ft.). Five of the six comparables presented are from multi-building properties. The total aggregate assessed areas of these comparable properties ranges from a low of 353,424 Sq. Ft. to a high of 848,951 Sq. Ft. with an indicated median size of 503,212 Sq. Ft. The underlying sites range in size from 12.97 acres to 31.3 acres with a median indication of 19.46 acres. The median site coverage is 59% compared to that of the subject at 49% and the median Year of Construction (YOC) is 2001 compared to the subject at 2007. The aggregate assessed value per Sq. Ft. for these comparables ranges from \$60 to \$73 with a median of

\$66/Sq. Ft. compared to the subject at \$83/Sq. Ft. Supporting documentation in the form of *2012 Industrial Assessment Explanation Supplements* and photographs for each of the comparable properties is provided (Exhibit C-1 pgs. 14 – 37). 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. The foregoing forms the basis for the Complainant's request for an assessed value of \$32,940,000 (truncated) which equates to approximately \$66/Sq. Ft.

Respondent's Position

[5] The Respondent produced (Exhibit R-1, pg. 13) a 2012 Equity Chart detailing two properties deemed to be comparable to the larger of the two subject buildings. These equity comparables indicate sizes of (total assessed area) 267,835 Sq. Ft. and 411,560 Sq. Ft. compared to the subject at 419,466 Sq. Ft. The Respondent noted that latter of the two comparables is a single building property. The assessed values for these properties are \$83.52/Sq. Ft. and \$90.81/Sq. Ft. respectively versus the assessed value of the larger of the subject buildings at \$78.90/Sq. Ft. The Respondent contends that from an equity point of view, the foregoing provide support for the assessed value of the larger of the subject buildings.

[6] Similarly the Respondent produced (Exhibit R-1 pg. 14) six equity comparables for the smaller of the two subject buildings. Four of the six comparables presented are from multi-building properties. The six comparable buildings range in size from 69,906 Sq. Ft. to 91,876 Sq. Ft. and the assessed values range from approximately \$104/Sq. Ft. to approximately \$108/Sq. Ft. The Respondent contends that these equity comparables provide strong support for the assessed value of the smaller of the subject buildings at \$102/Sq. Ft.

[7] 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. 63 – 64) 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

[8] In their Rebuttal brief (Exhibit C2) the Complainant presents a number of what they determine to be 'Relevant Decisions' relating to Fairness and Equity as well as several interpretations of what is commonly referred to as the *Bramalea Decision* [277 (B.C.C.A.)] all of which, in one way or another, can be interpreted to support the case of the Complainant regarding the right to bring forth a Complaint based on equity.

[9] Additionally the Rebuttal of the Complainant provides recent CARB Decisions dealing with multi-building properties for the Board to consider.

Board's Decision:

[10] The assessment is **reduced** to: **\$32,940,000.**

Decision Reasons:

[11] The CARB finds that there are really two issues, albeit interconnected, that must be given consideration. 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)

[12] 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."

[13] 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.

[14] 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. All three of the buildings are located on one common site with one common legal description. Given the foregoing it would

not be possible to sell any one of these buildings separately and to suggest otherwise is a misinterpretation of the fact scenario and does not, in the judgment of the CARB, result in either an accurate or equitable valuation.

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. 1796-2012-P</i>		<i>Roll No. 200563484</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