

**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 LIMITED, 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: 093148286
LOCATION ADDRESS: 3236 50 AVENUE SE
HEARING NUMBER: 63577
ASSESSMENT: \$4,620,000

This complaint was heard on 12th 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 Limited*

Appeared on behalf of the Respondent:

- *Kelly Gardiner – 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 2.70 acre parcel in the Golden Triangle Industrial community. The structure has a footprint area of 34,500 square feet for site coverage of 29.34%. The assessable building area is 34,500 square feet constructed in 1995. The Land Use designation is IG (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: \$3,810,000.

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.

Three sale comparables were provided to the Board in support of the Complainant's requested assessment change. The properties were located at 5920 35 Street SE (Comparable 1), 4315 72 Avenue SE (Comparable 2) and 6215 86 Avenue SE (Comparable 3). Comparables 1 and 2 are located in the Foothills Industrial Park and Comparable 3 is situated in the South Foothills Industrial Park.

The analysis (Page 36 of C1) determines a revised sale price per square foot rate for each comparable property. Comparable 1 is adjusted by a total adjustment percentage of +10%, year of construction at +10%, building size at -5% and site coverage at +5%. Comparable 2 is adjusted by a total adjustment percentage of +10% for year of construction. Comparable 3 was adjusted by a total adjustment percentage of +5%, year of construction at +10% and site coverage at -5%. Based upon the analysis the Complainant is requesting a rate per square foot of \$111.00 for a revised assessment of \$3,813,400 (34,500 square feet X 111.00), rounded to \$3,810,000.

The evidence submitted by the Complainant identifies the subject property having a B quality classification, while all three comparable were 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 Respondent stated supported the adjustments made to the sale prices of the submitted comparables.

Respondent's Evidence:

The Respondent provided location maps and six photographs of the subject building.

The Respondent's evidence consists of three primary pieces of evidence in support of the assessment value – a 2011 Assessment Explanation Supplement, an Industrial Equity Comparables chart containing 5 comparable properties and an Industrial Sales Comparables chart with 5 sales to substantiate the rate per square foot being applied to the subject.

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 \$134.00, the variables used in the determination of the assessment value.

The Respondent provided a list of the Industrial Warehouse Transactions (July 12, 2007 – June 30 2010) which the City of Calgary used in the analysis of warehouses to establish the 2011 assessments. (R1, Pages 31-33)

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

The Respondent presented a page from an appraisal report prepared by Altus Group, dated September 11, 2009, for the property at 6215 86th Avenue SE (R1, Page 21), which indicated a value of \$3,400,000.00. Also presented was a copy of the City of Calgary Assessment Request for Information – Non-Residential Property Sale (R1, Page 23) on which the owner noted the sale affected by "Boundary costs and acreage assessments .. one still outstanding, as are improvement costs for 68 Ave SE". The Respondent contended the sale price was not indicative of the market value of the property and the sale should not be used.

The Respondent presented a page (R1, Page 27) to illustrate concern with the age difference between the subject constructed in 1995 and the comparables at 5920 35 Street SE, built in 1979, and 4315 72 Avenue SE, built in 1979. The Respondent believes the Complainant has not sufficiently adjusted the sale prices to reflect the difference in ages. Additionally, using the same chart the Respondent expressed concern with the lack of recognition by the Respondent for the differences in the percentage of finish in the subject and comparable structures.

The Respondent submitted three decisions which supported their position for evidence to be submitted to support the requested adjustments – ARB 0530/2010-P, ARB 1041/2010-P and ARB 0215/2010-P. The Respondent pointed out two of the decisions were for complaints filed by Assessment Advisory Group and spoke to the lack of market evidence. ARB 0215/2010-P, while a residential complaint, also spoke to the need to provide analysis to show market 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 18) 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 19.), 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.

Upon review the Board is concerned with respect to the wide range of adjusted price per square foot. If adjustments are to be made then the resulting adjusted values should not exhibit a large

range, but should fall very close together. A range of \$82.00 to \$129.00 or \$49.00 per square foot indicated an analysis which requires additional adjustments.

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. Building size adjustment is based upon an adjustment of 5% for every 7000 square feet 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 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 onus test.

Respondent's Submission:

The Board reviewed the Respondent's equity comparables which indicated the subject property was assessed in the same manner as the subject. The subject property, assessed at a rate of \$134.00 per square foot, falls on median of the range of rates per square foot provided by the Respondent – \$122.00 to \$151.00. The board recognizes the variances in the rates are a result of differences in the level of each variable, i.e. parcel size, rentable area, the percentage of finish.

Upon review, the Board finds the sales, located in different quadrants of the City of Calgary, provided support the rate per square foot applied to the subject property. The refining of the presentation to only those properties in the same quadrant and adjacent communities, adds further support to the rate applied to the property under complaint.

The Board found there was insufficient evidence to invalidate the sale of 6215 86 Avenue SE. While the appraisal and the original asking price for the property would indicate a higher value, the Respondent failed to persuade the Board the sale price was not the negotiated price in an open market. The RealNet document submitted by the Complainant indicated the sale type as a market sale.

The Board reviewed the concerns with respect to the lack of similarity between the subject property and the comparables presented by the Complainant. In the opinion of the Board a Complainant may use any comparables they choose and any adjustments to the sale prices. The Board will place weight on the presentations as they find fitting for the evidence. If the

Respondent wishes to dispute the presentation of the Complainant's evidence then evidence should be presented to show support for their position.

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

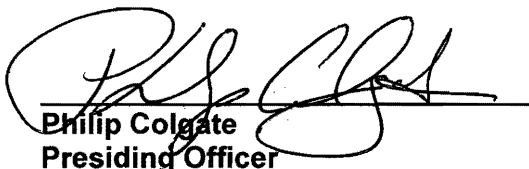
It is the opinion of this Board, the presentation of supporting evidence can only enhance the quality of any presentation and is a critical part of supporting a position by either party. With that said, it is the opinion of the Board, based upon prior decision – Manyluk v. Calgary (City), MGB Board Oder 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 Complainant has failed to provide sufficient market evidence to substantiate a change to the assessment.

The Board confirms the assessment at **\$4,620,000.**

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.*