

**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:

Renfrew Chrysler Inc. (as represented by AEC International), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***B. Horrocks, PRESIDING OFFICER
S. Rourke, MEMBER
J. Kerrison, MEMBER***

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 2012 Assessment Roll as follows:

ROLL NUMBER:	066185307
LOCATION ADDRESS:	1920 BOW TR SW
HEARING NUMBER:	68457
ASSESSMENT:	\$8,490,000

This complaint was heard on the 25th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1

Appeared on behalf of the Complainant:

- Mr. J. Luong (AEC International)
- Mr. B. Ryan (AEC International)
- Mr. S. MacDonald (Renfrew Chrysler) as witness

Appeared on behalf of the Respondent:

- Mr. L. Wong

Board's Decision in Respect of Procedural or Jurisdictional Matters:

[1] There were no concerns with the Board as constituted.

[2] It was noted that the file contained a submission from the Complainant titled 2012 Complainant's Rebuttal dated September 18, 2012. The submission contained the Will say statement of Steve MacDonald. The submission was marked Late. The Respondent cited Matters Relating to Assessment Complaints Regulation (MRAC) Section 8 (2) (c) *"the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing."* and requested that Mr. MacDonald be barred from presenting any evidence.

[3] The Complainant acknowledged the Rebuttal was submitted one day late. He advised that Mr. MacDonald only intends to speak to those matters that have already been disclosed. He advised that the City of Calgary is the owner of the subject property, Renfrew Chrysler leases the subject property from the City and Mr. MacDonald is the controller for Renfrew Chrysler. Mr. MacDonald has knowledge of the Lease and the Environmental Report which have been properly disclosed to the Respondent. The Will say statement will be withdrawn however Mr. MacDonald will still be requested to provide testimony.

[4] The Respondent cited the Municipal Government Act (MGA) Section 460 (3) *"A Complaint may be made only by an assessed person or a taxpayer."* The Respondent objected to Mr. MacDonald being allowed to appear as a witness as AEC International is identified as being the Complainant.

[5] The Complainant's agent submitted Renfrew Chrysler is the Complainant, Mr. MacDonald in his capacity as controller for Renfrew Chrysler has authorized AEC International to act on its behalf.

[6] The Complainant's agent argued that Mr. MacDonald could provide testimony as an assessed person (complainant) or as a taxpayer (intervenor), and prohibiting him from doing so would offend the laws of natural justice and procedural fairness.

[7] The Board found that:

(1) The City of Calgary is the property owner.

(2) Renfrew Chrysler is lessee and therefore the assessed person. MGA Section 304(1) column 2 describes assessed person as *"(c) the holder of the lease, licence or permit or, in the case of a parcel of land or a parcel of land and the improvements to it, the person who occupies the land with the consent of that holder or, if the land that was the subject of the lease, licence or permit has been sold under an agreement for sale, the purchaser under that agreement."*

(3) Mr. MacDonald is the controller for the assessed person. MRAC Section 8 (1) *"In this section "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing."*

[8] The Board allowed Mr. MacDonald to appear as a witness. The Board can't imagine how Mr. MacDonald's representations on matters previously disclosed to the Respondent would prejudice the Respondent's position. The merit hearing proceeded.

Property Description:

[9] The subject property is a 7.97 acre parcel located in the Sunalta community in SW Calgary. The site is occupied by an automotive dealership commonly known as Renfrew Chrysler. The site is improved with 3 buildings, 2 of which were constructed in 1972 and 1 that was constructed in 1994. The parcel is zoned Direct Control (DC). The subject is assessed utilizing the cost approach to value adjusted by +5% for "Corner Lot" influence and -30% for "Environmental Concerns".

Issues:

[10] The Assessment Review Board Complainant Form contained 8 Grounds for the complaint. At the outset of the hearing, the Complainant advised the only outstanding issue was "The current assessment exceeds the subject property's best estimate of its market value as of July 1, 2011."

Complainant's Requested Value: \$5,500,000 (Complaint Form)
\$5,100,000 (Hearing)

Board's Decision in Respect of Each Matter or Issue:

Issue: What is the market value for assessment purposes?

[11] The Complainant's Disclosure is labelled C-1.

[12] The Complainant submitted the subject property is owned by the City of Calgary. Both parties have acknowledged the site is contaminated. The car dealership (Renfrew Chrysler) is operating on a land lease signed in 2003. Since the property is owned by the Crown the assessed person in this case is the lessee. As such, the assessed person (Renfrew Chrysler), being a lessee, has created a lesser interest in the property. The interest the assessed person (Renfrew Chrysler) has is a leasehold interest. This is significantly less than the assessment on the subject property.

[13] The Complainant, at page 17, provided a report titled Appraisal of Real Property, Car Dealership, Renfrew Chrysler/Fiat, 1920 Bow Trail SW, in a Full Narrative Appraisal Report as of August 3, 2011. The purpose of the appraisal is to "estimate the current market value of the leasehold estate in the subject property."

[14] The Appraisal, at page 25, states "It is our opinion, the existing building adds significant value to the site as if vacant, therefore dictating a continuation of its existing use. It is our opinion, then, that the Highest and Best Use of the subject property is as a continuation of its existing use."

[15] The Appraisal, at page 28, contains a Cost Approach Summary which describes the Total Depreciated Value of Building and Improvements as \$4,982,605. In response to a question, the Complainant advised the value of the land is \$0 because of the cost to remedy the contamination.

[16] The Appraisal, at page 33, identifies the Net operating Income as \$632,340 which when capitalized at 12.00% utilizing the Direct Capitalization Approach yields a tenant's leasehold value of \$5,269,500.

[17] The Appraisal, at page 40, identifies the market value of the subject as \$5,070,000 utilizing the Discounted Cash Flow method.

[18] The Appraisal, at page 45, identifies the market value of the subject property as \$5,060,000 utilizing the Direct Comparison Approach.

[19] The Appraisal, at page 54, states "As a result of our analysis, the market value of the leasehold interest in the subject property As Assumed To Now Be Fully Complete, subject to the assumptions, limiting conditions, certifications and definitions contained herein at and subject to the Extraordinary Assumptions and Hypothetical Conditions on page 1, at August 3, 2011, is estimated as follows: Five Million One Hundred Thousand Dollars (\$5,100,000)."

[20] The Respondent's Disclosure is labelled R-1. (Pages 9 and 10 are to be disregarded with the consent of both parties).

[21] The Respondent submitted that the appraisal does not take into account the value of the land and only considers the leasehold interest.

[22] The Respondent, at page 4, provided the 2012 Assessment Explanation Supplement noting the Land and Building Value is \$8,978,515 comprised of a land value of \$8,288,093 and the improvement value of \$690,422. In response to a question it was determined that page 4 of R-1 is in error and the correct Property Assessment Details are on page 5 of C-1 which shows the land and building value is \$8,495,030 comprised of an adjusted land value of \$7,770,087 and the improvement value of \$724,943.

[23] The Respondent, at page 11, provided a RealNet Transaction Summary for the subject property, noting a sale on May 5, 1998, for \$5,500,000, with a pre-existing lease with the same principals in place, and the same improvements, as an indication the land has value.

[24] The Complainant's Rebuttal is labelled C-2.

[25] The Complainant, in rebuttal, submitted the assessment does not properly reflect the market value of the subject land as the adjustment for contamination is insufficient. This contamination would affect the fee simple interest of the land as there are limitations to its highest and best use. The highest and best use for the land is its current use as a car dealership and the value of this use is reflected in the lease currently in place. The capitalized lease value of \$5,100,000, as found in the appraisal report, has captured the negative impact of the environmental contamination.

[26] The Complainant, at page 6, provided a copy of the lease noting the City of Calgary is the registered owner of the lands and Renfrew Chrysler is the tenant. The more salient terms of the lease are:

- (1) Annual rent is \$525,000 plus G.S.T.
- (2) The subject property is a portion of a larger site known as the Former Canada Creosote Site.
- (3) The lands presently contain the Province's contamination below the surface.
- (4) The Province has constructed Containment Works.
- (5) The tenant is not responsible for the operation or maintenance of the Containment Works.
- (6) The Tenant is required to perform an Annual Environmental Assessment at its sole cost and expense.
- (7) The Tenant is required to perform the Exit Environmental Site Assessment and the Remediation Work at its sole cost and expense.

[27] The Complainant submitted the tenant (Renfrew) is not liable for any contamination that was on the site at the start of the lease. However, it is responsible to remediate any contamination they may cause through their use of the subject property. The intent is for the City and the Province to remediate the underlying contamination at some future date. The estimated cost of the remediation is only known to the Province and the City, and is being withheld.

[28] The Complainant argued the subject property is atypical and the market value is lower than the fee simple interest. Further, the leasehold interest is the best indicator of market value in support of its request for a reduced assessment of \$5,100,000.

[29] The Complainant, at page 54, provided a report titled Environmental Site assessment, 1920 Bow Trail SW, dated April, 2011 prepared by EBA, A Tetra Tech Company. The Report was prepared to "characterize the soil and assess the groundwater quality at the location of a proposed building addition" on the subject property. Among other things the report identified:

- (1) "Concentrations of several polycyclic aromatic hydrocarbons (PAH) from groundwater samples collected from 11MW01 and 11MW02 were greater than the applicable Alberta Environment (AENV) Tier 1 Guidelines.
- (2) Groundwater samples collected from 11MW01 and 11MW02 contained concentrations of manganese greater than the applicable AENV Tier 1 Guidelines."

The Report recommended that "any soil excavated during the construction is chemically analyzed by a professional environmental consultant to determine potential for re-use or to determine an appropriate disposal method." The Complainant submitted the site is heavily contaminated and that its value is only as a "going concern".

[30] Mr. Steven MacDonald through testimony provided a history and overview of the lease. He advised the lease had been renewed earlier than the July 2013 renewal date and that Renfrew was negotiating financing for a proposed building addition that was at the Building Permit Stage of the process. He advised they were aware of the contamination underlying the site, but they were not aware of the estimated cost to remediate, which is the responsibility of the City and the Province. In response to a question he advised the annual cost to prepare the Annual Environmental Assessment is \$9,000.

[31] The Matters Relating To Assessment and Taxation Regulation (MRAT) PART 1 requires Section 4(1) *"The valuation standard for a parcel of land is (a) market value"*. Section 5(1) *"The valuation standard for improvements is (b) for other improvements, market value."*

Section 2 *"An assessment of property based on market value*

(a) must be prepared using mass appraisal

(b) must be an estimate of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property."

[32] The Board finds the market value must be an estimate of the fee simple estate in the property. It must therefore include the value of all interests in the land and buildings, not just the owner's interest, but also the tenant's interest. There are two income streams associated with the subject property. One stream is the \$525,000 annual rent paid by the tenant to the owner while the other is the Net Operating Income of the tenant.

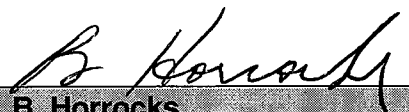
[33] The Appraisal, prepared for the Complainant, concluded the market value of the leasehold interest is \$5,100,000. The value of the owner's interest can be calculated by capitalizing the annual rental payments. Utilizing a capitalization rate of 12%, the same rate used in the Appraisal, the owner's interest is calculated to be \$4,375,000. The estimate of the fee simple estate is then calculated to be \$9,475,000.

[34] The Board finds the Complainant is well served by the current assessment of \$8,490,000 in comparison to the calculated fee simple estate of \$9,475,000.

Board's Decision:

[35] The 2012 assessment is confirmed at \$8,490,000.

DATED AT THE CITY OF CALGARY THIS 10 DAY OF OCTOBER 2012.


B. Horrocks
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

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.*

For Administrative Use

Subject	Property type	Property Sub-type	Issue	Sub-issue
CARB	Other	Specialty property	Cost Approach	Market value