

**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:

***CPA Canadian Public Auction Ltd.
(as represented by Assessment Advisory Group), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
D. Steele, MEMBER
K. Farn, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	118003805
LOCATION ADDRESS:	9320 52 St SE
HEARING NUMBER:	63332
ASSESSMENT:	\$1,840,000

The complaint was heard on August 25, 2011, in Boardroom 2 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- T. Howell

Appeared on behalf of the Respondent:

- I. McDermott

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

During the course of the hearing, the Respondent raised the matter of costs. The Complainant indicated that he did not require a postponement to properly respond to a cost application.

The Respondent argued that this matter before the Board did not have a reasonable chance of success, due to deficiencies in the Complainant's evidence submission. The Respondent made an application for costs in the amount of \$1000, for preparation for the hearing pursuant to Schedule 3 of *Matters Relating to Assessment Complaints Regulation, AR 310,2009*.

Where a composite assessment review board or the Municipal Government Board determines that a hearing was required to determine a matter that did not have a reasonable chance of success, it may award costs, up to the amounts specified in the appropriate column in Part 2 or 3, against the party that unreasonably caused the hearing to proceed.

The Complainant argued that the complaint has merit, as the subject property suffers the same negative influence as similar properties; however, it has not been assessed in a similar manner. The Complainant further argued that information known only by the Respondent is not made available to the Complainant; specifically in this matter, the policy resulting from a "secret" agreement between the Respondent and the South Foothills Owners Association, and to which specific properties that policy will apply.

Board's Decision in Respect of Costs:

As the Complainant was successful in the matter before the Board, the Respondent's application for costs in the amount of \$1,000.00 is denied.

Property Description:

The subject property is a 209,035 sq.ft. (square foot) parcel of land, with a land use designation of "DC" – Direct Control District, and a land use classification of I-O, Industrial Outdoor District. The land has been assessed at a rate of \$350,000 per acre (\$8.03 per sq.ft.); a rate consistent with that applied to I-O and I-H lands, city wide. There is also an improvement assessed on the property by means of the cost approach, at a value of \$162,205. However, the Respondent was unsure of what the improvement was, or if it even existed on the subject property as he had not inspected the property. The Complainant submitted that the property was vacant land.

Issues:

The Complainant raised the following matter in section 4 of the complaint form:

3. an assessment amount

The Complainant set out 2 grounds for the complaint in section 5 of the complaint form with a requested assessment of \$1,570,000. However, at the hearing the Complainant led evidence and argument only in relation to the following issue:

- The subject assessment is inequitable with the assessments of other properties in South Foothills.

Complainant's Requested Value:

At the hearing, the Complainant requested that the subject property be assessed at \$1,572,000.

Board's Decision in Respect of the Issue:

The Complainant argued that the assessment of the subject property was inequitable with other, similar properties in the South Foothills community, which have been granted a -15% allowance to compensate for the cost of constructing local improvements which are not reflected in the market value of the properties. In support of the argument, the Complainant submitted a copy of the November 25, 2010 general meeting minutes of the South Foothills Owner's Association, indicating that the City of Calgary agreed that a 15% deduction would be applied to property assessments in South Foothills [C1, pp.9-10].

The Complainant further argued that the -15% allowance was to be applied to the 2010 (tax year) assessments for the 2011 tax year; however, the evidence indicates that this allowance was not applied to the subject property, nor consistently amongst other properties. In support of that argument, the Complainant submitted the 2011 assessment summary reports and assessment notices for eight South Foothills properties indicating various changes in 2011 assessments from the 2010 year, as set out below: [C1, pp.11-26]

SE Address	2010 Assessment	2011 Assessment	Change
9616 40 St	\$ 3,750,000	\$ 3,430,000	-9%
9717 40 St	\$ 8,070,000	\$ 5,690,000	-30%
4045 96 Ave	\$ 5,790,000	\$ 4,660,000	-20%
8715 40 St	\$ 3,560,000	\$ 2,120,000	-40%
8616 40 St	\$ 6,990,000	\$ 6,130,000	-12%
8715 48 St	\$ 3,560,000	\$ 3,080,000	-14%
8615 48 St	\$ 5,890,000	\$ 4,550,000	-23%
4103 Glenmore Tr.	\$ 1,970,000	\$ 1,870,000	-5%
Subject Property	\$ 1,850,000	\$ 1,840,000	+ 1%

The Complainant argued that the subject property was not awarded the agreed allowance of -15%, and requested that the Board set the assessment as determined below:

2010 Assessment	-15% Allowance	=	Requested 2011 Assessment
\$ 1,850,000	- \$ 277,500	=	\$ 1,572,500 [C1, p.27]

In response to the Complainant's submissions, the Respondent argued that the "agreement" with the South Foothills Owner's Association was never intended to adopt the 2010 (tax year) assessments with an additional -15% allowance, but rather, the -15% allowance was to be applied to the 2011 (tax year) assessments.

The Respondent further argued that the Complainant's examples were all improved properties, and were zoned I-G; therefore they were dissimilar to the subject property, and as a result of an alternate valuation methodology, the changes in their assessments would also reflect considerations other than the -15% allowance.

With respect to the subject property, the Respondent submitted that the -15% allowance was not applied to the subject's assessment, as the subject carries a land use designation of DC, and accordingly is assessed at an I-O / I-H land rate of \$350,000 per acre, in contrast to the Complainant's I-G examples that have been assessed at a \$525,000 per acre land rate. The Respondent further argued that this lower rate reflects the restricted development potential of the subject where services are not required, in contrast to the Complainant's I-G examples, and therefore the -15% allowance is unwarranted.

In support of the \$525,000 per acre I-G land rate, the Respondent provided 18 land sales exhibiting a range of time adjusted sale prices of \$443,460 to \$712,310 per acre, with average and median rates of 543,773 and \$524,938 per acre, respectively.

In response to Board questions, the Respondent indicated that as there were no sales of I-O or I-H parcels, the rate of \$350,000 per acre was concluded by applying a "differential" to the I-G land rate of \$525,000 per acre. However, he was not aware of how that differential was determined, nor included any documentation in evidence to support the \$350,000 per acre rate.

Decision:

The Board finds that the subject assessment is inequitable with the assessments of other properties in South Foothills, with respect to both the land, and the improvement assessments.

With respect to the status of the land as vacant or improved, the Board makes no finding in that regard, as there was not any conclusive evidence before the Board.

The Board accepts the Respondent's argument that the Complainant's comparables are improved properties with an I-G land use designation. However, the Board noted that no value is attributed to significant improvements located on similar, neighbouring improved properties. For example, at page 17 of C1, the total assessment of \$2,120,000 equates to \$446,316 per acre; corresponding to the indicated vacant land rate after the -15% allowance (\$525,000 – 15%). As a result, the Board reduces the subject's improvement assessment to an equitable value of \$0.

The Board notes that there was no market evidence to dispute the \$350,000 per acre land rate from the Complainant, nor any evidence from the Respondent in support of the land rate. Accordingly, the Board accepts this rate as a typical rate applicable to typical I-O and I-H parcels.

The Board however, was not persuaded that the subject is a typical I-O parcel, as it is affected by land servicing issues specific to the South Foothills community, regardless of the restrictions imposed by the I-O land use classification, which would affect all I-O parcels throughout the municipality. As a result, the Board finds that subject is not equitably assessed in relation to other properties in South Foothills that are receiving the 15% allowance; nor is the subject equitably assessed in relation to other I-O parcels outside of South Foothills that are assessed at the same \$350,000 per acre rate, but are not suffering the same negative influence.

The Board also notes that the \$350,000 per acre rate was determined by applying a differential of \$175,000 per acre between I-G, and I-O or I-H land use classifications. Applying a -15% allowance to the I-G lands only, diminishes that differential between the I-G land rate and the

subject's I-O land rate for properties in the same community.

The Board did not find the Complainant's argument regarding an adjustment to the previous year's assessment to be very compelling, as the general meeting evidence (C1, p.10), refers to, "3. Report on Property Taxes for 2011", and states, "The City uses a secret formula to calculate industrial tax assessments, to which they have applied a 15% deduction to properties in South Foothills". The Board notes that it appears to be understood that the 15% allowance will be applied to the 2011 (tax year) assessments, as calculated by the "secret formula"; and further, there is no reference to the 2010 (tax year) assessments of the properties. Notwithstanding, the particulars of any agreement, the Board finds that the legislative authority is clear with respect to the July 01 valuation date, and that requirement cannot be circumvented by agreement.

Board's Decision

- The Land Assessment is revised from: \$1,679,573 to \$1,577,800, calculated as follows:

4.80 Acres @ \$350,000 per acre =	\$1,680,000
Traffic Influence	+ 10% \$ 168,000
Subtotal	\$1,848,000
South Foothills Allowance	- 15% \$ 277,200
Land Assessment	\$1,577,800

- The Improvement Assessment is revised from: \$162,205 to \$0.
- The Total Assessment is revised from \$1,840,000 to **\$1,570,000** (truncated)

DATED AT THE CITY OF CALGARY THIS

19

DAY OF OCTOBER, 2011.



J. Krysa
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission
2. R1	Respondent's Submission

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	Vacant Land	Equity	Land Value