

**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:

***MEL BUMSTEAD PROPERTIES LTD., COMPLAINANT
(Represented by Assessment Advisory Group Inc.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member B. JERCHEL
Board Member E. REUTHER***

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: 119006807

LOCATION ADDRESS: 8612 48 STREET SE

HEARING NUMBER: 63525

ASSESSMENT: \$2,200,000.00

This complaint was heard on 7 day of September, 2011 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:

- *Troy Howell, Assessment Advisory Group Inc. – Representing Mel Bumstead Properties Ltd*

Appeared on behalf of the Respondent:

- *Ian McDermott – 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 property is a 4.75 acre site in the South Foothills Industrial area, located at 8612 4 Street SE. Located on the site are a 1980 warehouse of 2,400 square feet, a 1930 warehouse of 2,644 square feet and a 1980 warehouse of 3,200 square feet. The site has a Land Use designation of Industrial – General.

The property has been assessed as vacant land plus a nominal value for the structures.

Issue:

1. Should a 15% allowance be applied to the subject for the location in South Foothills Industrial area?
2. Should the assessment be based upon the 2010 assessed value for the subject property?
3. Is the subject property equitably assessed in comparison to other properties in the South Foothills Industrial area?

Complainant's Requested Value: \$1,910,000.00

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

Complainant's Evidence:

The Complainant submitted copies of the 2011 Property Assessment Notice and the 2011 Assessment Summary Report for the subject. (C1, Pg. 2-3) Also presented were location maps,

aerial photographs indicating the subject's buildings and ground level photographs of the subject. (C1, Pg. 4-6)

Three sale comparables were provided to the Board in support of the Complainant's requested assessment change. The properties were located at 4840 90 Avenue SE (Comparable 1), 4750 30 Street SE (Comparable 2) and 3296 & 3304 44 Avenue SE (Comparable 3). Comparable 1 is located in the South Foothills Industrial area and Comparable 2 and 3 are located in the Golden Triangle Industrial area. (C1, Pg. 7-13)

The analysis (C1, Pg. 30)) determines a revised square foot rate for each property. Comparable 1 is adjusted by a total percentage adjustment of -10%, for year of construction. Comparable 2 is adjusted by a total percentage adjustment of -5%, individual adjustments of +5% for site coverage and -10% for year of construction were noted. Comparable 3 was adjusted by a total percentage adjustment of -5%, individual adjustments of +10% for site coverage and -15% for year of construction were noted. Based upon the analysis the Complainant is requesting a rate per square foot of \$194.00 for a revised assessment of \$1,602,943 (8,244 square feet X \$194.00)

The evidence submitted by the Complainant identifies the subject property having a C quality classification, while sale Comparable 1 is classified C quality structure, Comparable 2 is classified a B quality structure and Comparable 3 structures are classified as B+ and A2 quality.

A map indicating the location of the subject and the sale comparables was submitted in evidence. (C1, Pg. 31)

Additional evidence submitted by the Complainant included an outline of the AAG Valuation Methodology, only referred in questioning, and excerpts from the "Warehouse Valuation Guide" Page 38 and an additional page concerning 'Figure 6. Form Whs3 – Example of Sales Adjustment Processx'. (C1, Pg. 14-15, 29)

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 Complainant stated supported the adjustments made to the sale prices of the submitted comparables.

The Complainant presented the Board with a document outlining the issues in the South Foothills area – The rezoning from heavy industrial use to general industrial, the lack of services to the sites in the South Foothills area, local improvement levies for the installation of services and the lack of sales for the Complainant to present a comparison with properties in Foothills Industrial area. (C1, Pg. 32)

The Complainant submitted a copy of the South Foothills Owners Association General Meeting minutes as evidence. (C1, Pg. 33-34) Outlined for the Board's attention was item 3 of the minutes, copied below –

"Report on Property Taxes for 2011 – Greg and Bud have been negotiating property tax assessment decreases. The City now recognizes that there should be compensation for the cost of local improvements in South Foothills. The City uses a secret formula to calculate industrial tax assessments to which they have applied a 15% deduction to properties in South Foothills. To determine your 2011 assessment please phone 403-

268-2888 and provide your address and tax roll number. If you are not satisfied with the assessment contact Ian McDermott for an explanation. If not resolved you can file an appeal when the assessments are sent out in the first week of January 2011."

The Complainant submitted eight comparable properties from the South Foothills area, providing copies of the 2011 Assessment Summary Report and 2010 Property Assessment Notice for each property. (C1, Pg. 35-50) The Complainant shows, in a box on each Assessment Summary report, the year-over-year percentage change in the assessment from 2010 to 2011. All eight properties show varying percentages of decrease in assessment from 2010 to 2011.

The final submission was a 'Valuation for 8612 48 Street SE' which shows the assessed values and rate per square foot for 2010 and 2011 and the 2011 requested value. (C1, Pg. 51) The Requested Value has an asterisk to link it to the following statement –

"Based on agreement with the City of Calgary that property assessment for the south Foothills area was to be decreased by 15% from the 2010 Assessment"

The Complainant entered no evidence to challenge the land value as determined by the City of Calgary.

Respondent's Evidence:

The Respondent testified the assessment for the subject property was based upon land value only. The current assessment is based upon a land rate of \$525,000 per acre, plus a nominal value for the structures at a rate of \$10.00 per square foot and having a negative allowance for the lack of services in the South Foothills Industrial area. A 2011 Industrial Property Approach Summary page was presented to detail the calculation of the assessed value. (R1, Pg. 12) A chart of the Industrial – General Land Sales (R1, Pg. 13) was submitted into evidence, indicating a median time adjusted sale price per acre of \$524.938 and an assessed rate of \$525,000 per acre.

The Respondent submitted the 'South Foothills Adjustment' report (R1, Pg. 15-24), which shows how the City of Calgary, based upon 19 Decisions from 2010 Composite Assessment Review Board (CARB) have been carried forward to allow a negative adjustment to the properties of the area.

The Respondent submitted a number of Decisions – ARB 053/2010-P and ARB 1041/2010-P – which spoke to the presentation of evidence without the support of market evidence. A more recent Decision – CARB 1401/2011-P- with respect to a complaint presentation by the Assessment Advisory Group

Findings of the Board

Complainant's Submission:

The Board found the Complainant's evidence on the sales comparables was not the basis for the final requested value of \$1,910,000.00. When questioned by the Board with respect to this

lack of relationship to the requested value, the Respondent's stated position was the analysis was for the Board to consider and place what weight they deemed on the presentation.

The Board finds the Complainant's evidence of sales comparables was not relevant to the requested value and therefore the Board places no weight on its presentation. However, the Board does present its opinion of the sale comparable analysis.

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 19) 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 an analysis is conducted by the Complainant, who chooses not to submit this work.

Further the Board refers to the Complainant's Submission on Physical Differences (C1, Pg.15.), 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 of 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 Board also notes there is no recognition or adjustment for the differences in quality between the subject and each of the comparables, which would occur in standard appraisal technique. The Complainant 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 Complainant had stated the calculation for site 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 7,000 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 makes 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 by the Boards or the evidence submitted at the hearings. 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.

Although an opinion has been rendered on the sale comparison analysis by the Complainant, the Board again states this evidence was not considered in the final decision as the Complainant failed to show a relationship with the final requested value.

In addressing the evidence submitted in support of the requested assessment, the Board finds the Complainant's evidence to lack support or validation for the requested adjustment. The request for a 15% allowance for the lack of services appears to the Board to stem from the minutes of the Owner's Association. The Board, when reading the minutes, finds the representatives for the owners stating the City for 2011 recognizes the difficulties in South Foothills area and is applying an allowance. The Board quoted – “The City now recognizes that there should be compensation for the cost of local improvements in South Foothills” and “The City ... have applied a 15% deduction to properties in South Foothills”. It appears to the Board the Complainant has misinterpreted the minutes or is attempting to obtain a further -15% allowance which is not supported through any evidence. The Board finds the subject properties have been given a -15% allowance for 2011 and the request for -15% by the Complainant is denied.

The Board finds the eight comparable properties provided by the Complainant, while showing a percentage change year-to-year, do not support a change to the assessment. The Board finds the comparable properties, while located in South Foothills Area, differ by quality, age, size and sub-property use. The Complainant has failed to show a relationship between the subject and the comparable properties, other than the assessments have changed between 2010 and 2011. The Board finds no support for an equity argument on the assessment of the subject property.

The Board finds the request to use the 2010 assessment as the basis for the 2011 assessed values is without merit. The claim there is an agreement with the City of Calgary has not been supported by any documentation between the parties. The minutes of the South Foothills Owners Association does reference the City of Calgary applying a 15% deduction for 2011, but there is no mention as to the use of 2010 assessments to calculate the 2011 assessments.

The Board finds the suggested proposal questionable as it clearly fails to comply with the Municipal Government Act (MGA), which stipulated the preparation of an annual assessment for all properties as of July 1 of the year prior to the assessment year. While an assessment value may, in a stable market, be unchanged from one year to the next the City of Calgary does not have the authority to use a prior year's assessment for the current year.

In order for the Board to reduce the assessment, the Complainant must provide market evidence to support a reduction. As no evidence has been produced by the Complainant, the Board denies the request to use the 2010 assessment values for the determination of the 2011 assessment values as requested by the Complainant.

Respondent's Submission:

The Respondent, through testimony and submitted evidence, has satisfied the Board that a -15% allowance for the lack of services has been applied to the subject property and to like properties located in the South Foothills Industrial area.

Based upon the sales provided and the testimony of the Respondent, the Board accepts the process to determine the vacant land value for the subject property in the South Foothills Industrial area.

The Board however finds the addition of the structures at a nominal value of \$10.00 per square foot is not consistent with previous testimony by City of Calgary representatives. Prior statements before Board members gave the understanding when land only assessments were applied then the buildings were excluded from the assessment calculation. To maintain consistency the Board does not accept the total value determined for the subject, but removes the component assigned to the structures.

The revised calculation is –

Land Value	\$2,496,092.00
Building Cost	\$ 0.00
Total	\$2,496,092.00

Adjustment Factor for South Foothills Local Improvement – lack of services (-15%)

Assessed Value	\$2,121,678.20
Rounded Value	\$2,120,000.00

Board's Decision:

The Board finds the Complainant has presented either not relevant or insufficient evidence to support the requested assessment changes. The Respondent's evidence supported the land value assigned to the subject and showed the application of the 15% reduction to the current assessment was applied. The Board amends the assessment to reflect the removal of the assessment for the structures.

The Board amends the assessment to \$2,120,000.00

DATED AT THE CITY OF CALGARY THIS 24 DAY OF October 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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Warehouse	Warehouse – Single Tenant	Cost/Sales Approach	-Land Value -Equity Comparables -Land and Improvement Comparables - Depreciation

LEGISLATIVE REQUIREMENTS

MUNICIPAL GOVERNMENT ACT

Chapter M-26

1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Division 1

Preparation of Assessments

Preparing annual assessments

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

289(2) Each assessment must reflect (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

ALBERTA REGULATION 220/2004

Municipal Government Act

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION

1(f) “assessment year” means the year prior to the taxation year;

Part 1

Standards of Assessment

Mass appraisal

2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.