

**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:**

***Midsun Holdings Ltd., COMPLAINANT (as represented by Brenda MacFarland)***

**and**

***The City of Calgary, RESPONDENT***

**before:**

***J. Dawson, PRESIDING OFFICER***

***R. Roy, MEMBER***

***R. Deschaine, 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:

<b>ROLL NUMBER:</b>	<b>200514008</b>
<b>LOCATION ADDRESS:</b>	<b>11888 MacLeod Trail SE</b>
<b>HEARING NUMBER:</b>	<b>63023</b>
<b>ASSESSMENT:</b>	<b>\$7,030,000</b>

This complaint was heard on 31<sup>st</sup> day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- B. MacFarland Agent

Appeared on behalf of the Respondent:

- D. Desjardins Assessor, City of Calgary

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

1. Institutional Bias; as a routine procedure of the Board, both parties were asked; ***"Are there any objections to the makeup of this panel or any party appearing before the panel?"***

The Respondent, D. Desjardins offered no objection.

The Complainant, B. MacFarland offered an objection based on institutional bias. The Complainant spoke about this issue with three key phrases quoted below which caused concern for the Presiding Officer;

*"I have a problem with the institutional structure of the Board system, I don't believe I or my client has any reasonable expectation of an unbiased hearing from this Board.*

*I have no confidence that by virtue of the way this board is appointed and structured that that (a fair hearing) can occur anymore in Calgary. I believe this board is subject to pressure to have their decisions happen in a particular way."*

*I have no confidence that any Board out of Calgary can deliver an unbiased opinion."*

**The Presiding Officer received this information as an opinion and the Complainant was asked if there was any resolution being sought by this board. The reply was there is no resolution or decision for this Board to consider, therefore the Complainant agreed to proceed with the hearing stressing there is no individual Board member that is bias in her opinion.**

2. Respondent Disclosure Filed Late:

The Complainant requested confirmation that there will be no submission or presentation from the Respondent as the Respondent failed to file their submission prior to the deadline imposed by legislation and regulation.

A review of the file was conducted wherein a "Respondent Disclosure Filed Late" notice was enclosed as well as a record of the filing deadline and date of receipt. The disclosure from the Respondent was due on August 15, 2011 and the actual date received by the Calgary Assessment Review Board was August 17, 2011. The Respondent also verbally confirmed they have no submission or presentation to offer the Board.

As regulatory guidance we find in Matters Relating to Assessment Complaints (MRAC) the following;

9(2) A composite assessment review board must not hear any evidence that has

*not been disclosed in accordance with section 8.*

**Whereas evidence can be both written and verbal and whereas the regulation provides no distinction, the Presiding Officer confirmed that, as requested by the Complainant, no presentation will be accepted verbally or in writing from the Respondent.**

3. Tampering of Evidence:

The Complainant requested a review of their evidence before the Board to confirm it is the same evidence submitted because the Calgary Assessment Review Board does not permit the parties to bring original copies on the date of the hearing.

The Board took a short recess to permit the Complainant, in the presence of the Respondent, to inspect all three copies of their submission to ascertain the correctness of the evidence. Upon reconvening the Board heard the evidence is exactly as submitted.

**Whereas the Complainant confirmed the evidence before the Board is that which was submitted on July 17, 2011 the Presiding Officer proceeded with the hearing.**

4. Fair Hearing; as a routine procedure by the Board, prior to closing the hearing, both parties were asked these questions;

**"Do you feel you had a fair hearing?"**

Respondent responded in the affirmative.

Complainant offered this response;

*"Subject to my comments at the beginning (of this hearing), I do."*

To provide clarity of the Complainant on their response, the following question was asked only of the Complainant;

**"Has anything that this panel done led you to believe that you didn't get a fair hearing?"**

Complainant offered this response;

*"No. Nothing that this panel has done personally conducted themselves to do that. I have said repeatedly that I have no doubt as to the personal integrity of the panel members"*

5. No additional objections on procedure or jurisdiction were raised.

**Property Description:**

The subject property is located on MacLeod Trail which is in the south portion of the city. There is 125,942 square feet of assessable land with an improvement consisting of a modern 22,714 square foot, A2 quality automotive dealership. The Cost Approach was utilized by the Respondent calculating a land value of \$4,266,376 and a depreciated replacement cost value of \$2,777,762 for the improvement resulting in a total current truncated assessment of \$7,030,000.

**Issues:**

The Complainant identified seven issues on the complaint form:

1. the description of the property or business,
2. the name or mailing address of an assessed person or taxpayer,
3. an assessment amount,
4. an assessment class,
5. an assessment sub-class,
6. the type of property, and
7. the type of improvement.

After reviewing the complaint form the Complainant confirmed there was the single matter of an assessment amount to be dealt with during this hearing. These are the relevant reasons for appeal found in section 5 of the complaint form;

1. The market value of the improvements is too high in consideration of other similar properties.
2. The market value of the land is too high.

**Complainant's Requested Value:** \$5,670,679

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

Is the market value of the improvements too high in consideration of other similar properties?  
And is the market value of the land is too high?

**The Board determined the market value as assessed is correct, fair and equitable.**

The Complainant reviewed the contents of their Document C1 and argued that due to the shape, access and floor area ratio (FAR) of the subject property that the land value is in excess of market value. The Complainant requested a 15% reduction on the land assessment based on personal opinion of what these factors equate. Using personal knowledge, on-site inspection and personal opinion the Complainant believes the subject's improvements are of a B quality versus the assessed A2 quality. The Complainant has asked for a 26% reduction on the improvement assessment for condition and quality.

Two comparables were provided by the Complainant, both being car dealerships and both having been personally inspected by the Complainant. Comparable 1 is located in the east end of the city near the meeting point of the northeast and southeast quadrants. The land area is more than twice as large as the subject property at 274,487 square feet with an improvement nearly three times the size of the subject at 60,157 square feet. The improvement is one year newer than the subject and was deemed to be a B quality by the Respondent. Comparable 2 is four years newer located in the far northwest quadrant of the city consisting of a similar sized property at 121,636 square feet and an improvement similar in size at 23,225 square feet of a good quality.

There was no evidence provided to ascertain the differences one would expect between an A2, B and good quality. Through questioning it was determined that the Respondent uses different

quality terms for properties with different zoning. The evidence presented showed a Commercial zoning of the subject site while the zoning for comparable 1 is Industrial – Commercial and Direct Control District for comparable 2. Without any evidence to show how these three distinctive zones relate to each other and how the individual quality ratings compare, the Board has no way to draw a conclusion of comparability for quality purposes. Furthermore the Complainant verbally indicated that the buildings were built by the same builder and the Complainant had personally inspected them, drawing a conclusion that they were all of the same quality however there were no specifics presented and no physical evidence for the Board to make a judgement of similarity on quality. During questioning, the Board heard from the Complainant that the construction company Barjac Construction had built all three dealerships and pretty well all automotive dealerships are built by the same company, yet with additional questioning the Complainant indicated that comparable 1 she knew for certain was built by Barjac, that comparable 2 was thought to have been built by Barjac and that the Complainant had no idea which company had built the subject. Furthermore the Complainant agreed that Barjac or any other construction company can and does build to different quality specifications as per the requirements of the owner.

The Complainant provided a depreciated cost summary for the comparable's improvements from a previous years' assessment however there seemed to be no way for the Board to evaluate how a depreciated cost summary from 2008 compared to 2010 depreciated cost summary of the subject. Nor was there a way to evaluate the quality assigned because there was different construction materials used in the three buildings according to the depreciated cost summaries. Furthermore there were no photographs to illustrate the interior and exterior differences of the subject with the comparables. The photographs provided by the Complainant showed a general outside view of the improvements showing that they were all retail automotive dealerships, each having glass display areas, and each having solid construction service areas. The Board was unable to draw any conclusions to value from the evidence provided by the Complainant.

For a land value comparison the Complainant provided the assessment breakdown of each comparable which showed the value of land as assessed. The Complainant was able to demonstrate how the subject land was valued but unable to provide similar information for the comparables. In addition the Board noted that none of the properties were in the same economic zone with comparable 1 being 17 km from the subject, comparable 2 being 33 km from the subject and the two comparables being 24 km from each other. All three properties were in the same municipality but certainly not in the same economic zone and no evidence to show they are of the same land value and no evidence to demonstrate that they are similar.

The Complainant did provide evidence to try and illustrate the land values of the comparables with adjacent land values however there did not seem to be conclusive evidence to show how the calculations, assumptions and opinions of the Complainant are in fact correct.

The Complainant attempted to demonstrate that an adjustment should be made for access, shape, and floor area ratios, including an email which could be interpreted to indicate that the Respondent in the past accepted these adjustments, however there was no conclusive evidence to support a previous agreement on these items nor is there evidence to support a change today. Furthermore, if the Board accepts the verbal evidence presented by the Complainant that a \$310,000 reduction was granted for the 2008 assessment year, this reduction resulted in a 4% adjustment that year, yet the request from the Complainant is 15% this year with verbal evidence stating this is their opinion and no physical evidence to support

that opinion.

The Board respects the long and distinguished career of the Complainant but has determined that it requires actual physical evidence to meet onus. The Board does not find that onus has been met and therefore must accept the assessment of the Respondent as per the Act;

467(3) *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*


- (a) *the valuation and other standards set out in the regulations,*
- (b) *the procedures set out in the regulations, and*
- (c) *the assessments of similar property or businesses in the same municipality.*

The Board in making its determination was mindful that the Respondent had no evidence for the Board to consider and on the surface it seemed the Complainant would win their case by default, however, the Board found no compelling evidence to support the opinion of the Complainant and therefore has no choice but to confirm the assessment.

**Board's Decision:**

After considering all the evidence and argument before the board, the complaint is denied, and the assessment is confirmed at \$7,030,000.

DATED AT THE CITY OF CALGARY THIS 27<sup>th</sup> DAY OF SEPTEMBER 2011.

  
J. Dawson  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant 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.*

<b>Municipal Government Board use only: Decision Identifier Codes</b>				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Cost/Sales Approach	Improvement Calculation
				Equity Comparables