

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of a 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:

**1272128 Alberta Ltd.
(as represented by Brenda MacFarland Tax Consulting), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**J. Krysa, PRESIDING OFFICER
D. Pollard, MEMBER
D. Julien, 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:	201185725
LOCATION ADDRESS:	7705 110 Ave NW
HEARING NUMBER:	63022
ASSESSMENT:	\$5,140,000

The complaint was heard on September 7, 2011, in Boardroom 6 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- B. MacFarland, B. Dell (Counsel)

Appeared on behalf of the Respondent:

- B. Thompson, T. Johnson, C. Dao (Counsel)

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

At the commencement of the hearing, Counsel for the Complainant raised a matter with respect to the independence of the Board. The Complainant argued that the Board is established pursuant to a municipal bylaw, which in its current form creates the perception of institutional bias as a result of issues related, but not limited to the Board appointment process, Board Member remuneration, and Board Member security of tenure.

The Respondent argued that no specific allegations, or evidence of institutional bias were disclosed pursuant to the disclosure requirements set out in *Matters Relating to Assessment Complaints Regulation, AR 310/2009*. The Respondent further argued that the Board must hear and decide the matter of the allegation before the hearing of the merits can proceed.

Board's Decision:

The Board finds that an allegation regarding institutional bias relating to the independence of the Board is a very serious matter; however, the Board also recognizes that it is not the proper body to make a determination of this matter. The Board accepts the position of both parties that the matter would proceed to the Court for a determination, regardless of any decision this Board may make.

The Board does not agree that this matter must be decided before the hearing of the merits can proceed. The Board finds it is properly appointed pursuant to the current legislation in place, and will hear the merits of the complaint properly before it.

Respondent's Matter

Counsel for the Respondent raised an objection with respect to portions of the Complainant's rebuttal evidence submission; specifically exhibit C2, pp. 6, 7, 13-15, 18, 21-23, and exhibit C3 in its entirety. The Respondent argued that the evidence was not proper rebuttal, but rather, new evidence that ought to have been included in the original disclosure of evidence.

The Complainant argued that the evidence is proper rebuttal to the Respondent's submission, as it rebuts the Respondent's argument regarding the accuracy of estimates in the original submission. The Complainant further argued that the rebuttal evidence is comprised of the municipality's own assessment records and the municipality's chosen costing manual, therefore there is no prejudice to the Respondent.

Board's Decision:

The Board finds that the Complainant's evidence, including exhibit C2, pp. 6, 7, 13-15, 18, 21-23, and exhibit C3 in its entirety, is proper rebuttal evidence.

The Board agrees that the Complainant could have, and perhaps should have included accurate data in the original submission rather than estimated data. However, in light of the Respondent's unsupported argument regarding the dissimilarity of the comparables and the accuracy of the Complainant's estimates in the original submission, the Board accepts that the Complainant is entitled to provide rebuttal evidence in direct response to those arguments.

Property Description:

The subject property is a 3 acre parcel of land, improved with a 19,002 sq.ft. (square foot) full service auto dealership structure constructed in 2007. The property has been assessed by means of the cost approach to value whereby the land and improvement components are valued independently, with the sum of the components reflecting market value.

Issues:

The Complainant identified matters 1 through 7 in section 4 of the complaint form; however, at the commencement of the hearing all of the matters set out were withdrawn with the exception of matter 3, an assessment amount, remaining to be decided by the Board.

The Complainant set out two grounds for the complaint in section 5 of the complaint form; however, at the hearing the Complainant withdrew the second ground related to the land value, leaving only the following issue before the Board:

- The market value of the improvements is too high in consideration of other similar properties.

Complainant's Requested Value:

The Complainant requested an assessment value of \$3,623,847 [C1, p.1].

Parties' Positions

The Complainant argued that the subject has been assessed by means of the cost approach to value, and the assessed value of the improvement is inequitable in relation to the assessed improvement values of similar and competing properties.

The Complainant submitted that the subject's improvement is assessed at a rate of \$169.66 per sq.ft., determined as follows:

(C1, p.7)	Improvement Assessment	\$3,160,562
(C1, p.6)	Improvement Total Area (sq.ft.)	18,629
	Assessment per sq.ft.	\$169.66

In support of the equity argument, the Complainant provided the assessment details of two similar automobile dealerships, one adjacent to the subject, exhibiting estimated improvement assessments of \$85.04 and \$ 91.09 per sq.ft. in contrast to the assessment of the subject improvement at \$169.66 per sq.ft. The Complainant argued that the comparable properties were personally inspected, and in the Complainant's opinion are not inferior to the subject property. The details are set out below:

Address	Year Built	Assessed Quality	Improvement Assessment (Estimated)	Improvement Area (sq.ft.)	Improvement \$/sq.ft.
888 Meridian Rd NE	2005	B	\$ 5,115,731	60,157	\$ 85.04
7770 110 Ave NW	2008	Good	\$ 2,115,454	23,225	\$ 91.09
Subject	2007	Average	\$ 3,160,562	18,629	\$ 169.66

The Complainant submitted that the improvement assessment of the comparable property located at 7770 110 Ave NW, adjacent to the subject, demonstrates an improvement value of approximately \$92.00 per sq.ft. Applied to the subject property, this rate would result in an improvement value of \$1,713,868, (18,629 sq.ft. x \$92.00).

In response to the Complainant's submissions, the Respondent argued that the Complainant failed to establish a prima facie case, as there is no relevant documentation in support of the Complainant's requested assessment. The Respondent further argued that the Complainant's analysis is flawed as it is based on estimated improvement values derived from historical data.

The Respondent submitted that the subject property is 19,002 sq.ft. in total area, and provided a Marshall and Swift summary report setting out the subject's improvement assessment details, with a depreciated cost of \$3,318,590, equating to \$174.64 per sq.ft. The Respondent noted that this value would require a negative adjustment to deduct the GST included in the Marshall and Swift manual costs. The Respondent further argued that the subject property is of superior construction as it has a fireproof structural steel frame in contrast to the Complainant's comparables, which are of masonry construction. [R1, p.18]

The Respondent submitted a RealNet transaction summary indicating that the subject land was transferred in a non-arms length transaction in November 2007 for \$1,912,500. [R1, pp.33-35]

The Respondent also submitted a record of the subject's building permit, exhibiting a value of \$2,142,000 and a completion date of October 22, 2007. [R1, p.24]

The Respondent further provided a Land Titles Office transfer document related to a non-arms length transfer, dated May 31, 2011, including a sworn affidavit of the transferee setting out a current opinion of value of the subject land (and improvements affixed to the land) at \$4,200,000. [R1, p.24-28]

In cross examination the Respondent conceded that neither the subject property nor the comparables were inspected by the Respondent's witnesses for the hearing, therefore they could not confirm the differences in construction types, as argued.

In rebuttal, the Complainant argued that the subject improvement is a typical auto dealership, with similar utility to the comparables submitted in evidence, and that the evident wide variance in assessed rates per sq.ft. illustrates that the subject is inequitably assessed. In response to the Respondent's argument regarding the historical data upon which the original analysis in C1 was based, the Complainant submitted a revised analysis with current data to demonstrate that the original analysis based on estimates, is relevant, as set out below:

Address	Year Built	Assessed Quality	Improvement Assessment (Estimated)	Improvement Area (sq.ft.)	Improvement \$/sq.ft.
888 Meridian Rd NE	2005	B	\$ 6,400,000	60,157	\$ 106.39
7770 110 Ave NW	2008	Good	\$ 2,085,465	23,225	\$ 89.79
11 Richard Way SW	1999	A2	\$ 2,415,605	23,503	\$ 106.39
Subject	2007	Average	\$ 3,160,562	18,629	\$ 169.66

Board's Decision in Respect of the Issue:

The Board finds that the subject improvement is assessed inequitably in relation to the similar and competing properties in evidence.

The Complainant provided evidence of three similar and competing properties that exhibit improvement assessments ranging from \$85.04 to \$91.09 (\$89.79 to \$106.39 adjusted) per sq.ft., in contrast to the subject's improvement assessment of \$169.66 per sq.ft. The Board finds this evidence is compelling and would lead a reasonable person to conclude that there might be a problem of equity with the subject assessment; consequently, the evidentiary onus is shifted to the Respondent.

Although the Respondent argued that the Complainant's analysis was flawed, no relevant evidence was provided to refute the analysis, or to demonstrate that the subject improvement is assessed equitably in relation to similar and competing properties.

The Board was not persuaded by the Respondent's argument that the subject property is superior to the Complainant's comparables, and therefore warrants a higher rate of assessment. The Complainant's testimony regarding similarity was preferred to that of the Respondent, as the Complainant inspected the subject property and the comparables prior to the hearing, whereas the Respondent did not.

The Board further notes that the Complainant's comparable improvements are all assessed at significantly lower rates per sq.ft. than the subject improvement, although they appear to be physically superior to the subject with respect to several assessed attributes. These include the assessor's selected "Rank" (quality) classifications, as well as the comparables' 15 to 24 foot wall heights, in contrast to the subject's 10 and 16 foot wall heights.

The Board finds the Respondent's market evidence consisting of two, non-arms length transactions and a development permit value do not support the assessment, but rather, demonstrate that the assessment of the subject is greater than its market value.

	Source	R1, pp.24, 33-35	R1, pp. 25-28	Assessment
Land Value		\$ 1,912,500		
Improvement (Permit) Value		<u>\$ 2,242,000</u>		
Indicated Market Value		\$ 4,154,500	\$ 4,200,000	\$ 5,140,000

The Board accepts that the subject improvement should be assessed at a rate not greater than that applied to the adjacent comparable at \$89.79 per sq.ft.; however, the Board does not accept that the rate is appropriately applied to the subject's total area exclusive of mezzanine areas. The Board notes that the Complainant's analysis and conclusion is founded on total improvement areas including mezzanine areas.

As a result, the Board finds that the rate of \$89.79 per sq.ft. is applicable to the subject's total area of 21,427 sq.ft. (including the 2,425 sq.ft. mezzanine area), resulting in an improvement value of \$1,923,930, and a reduction in assessment of \$1,236,632, (\$3,160,562 - \$1,923,930).

The total assessment value is therefore revised, as follows:

Current Assessment:	\$5,140,000
Improvement Adjustment:	- <u>\$1,236,632</u>
Revised Value:	\$3,903,368

Board's Decision:

The assessment is **revised** from: \$5,140,000 to: **\$3,900,000.**

DATED AT THE CITY OF CALGARY THIS 29 DAY OF NOVEMBER, 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
3. C2	Rebuttal Evidence (1)
4. C3	Rebuttal Evidence (2)
5. C4	Satellite Photograph
6.	Bramalea Ltd. v. British Columbia (BCCA)
7.	CARB 0918/2010-P

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	Auto Dealership	Cost Approach	Equity