

**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:**

***WESTLAND INVESTMENT CO. LTD., COMPLAINANT  
(Represented by COLLIERS INTERNATIONAL)***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***Board Chair P. COLGATE  
Board Member J. JOSEPH***

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: 090078502**

**LOCATION ADDRESS: 3919 BRANDON STREET SE**

**HEARING NUMBER: 61158**

**ASSESSMENT: \$7,290,000.00**

This complaint was heard on 22 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:

- *David Porteous, Colliers International – Representing Westland Investment Co. Ltd.*

Appeared on behalf of the Respondent:

- *Paul Sembrat – 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 matters were raised at the outset of the hearing.

The Board notes the merit hearing was conducted with only two Board members. Neither the Complainant nor the Respondent objected to the composition of the two member Board.

The Board proceeded to hear the merits of the complaint.

**Property Description:**

The subject property is a uniquely shaped parcel, triangular in shape, located in the North Manchester Industrial Area. A total of five warehouses, with a combined assessable area of 43,355 square feet are situated on the southern end of the parcel.

**Issue:**

1. Is the percentage allowance for site contaminated sufficient?
2. Should a shape allowance be applied to the parcel?
3. What is the correct site size?
4. Are the rates fair and equitably applied to the buildings on the site?

**Complainant's Requested Value:** \$4,950,000.00 (Revised during the hearing)

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

The Board will address each issue separately, based upon the evidence submitted.

**ISSUE 1.** Is the percentage allowance for site contaminated sufficient?

Complainant's Evidence:

The Complainant testified the site was contaminated due to the historical use of the site as a

gas station, which had introduced hydrocarbons into the soil.

The Complainant requested an increase in the negative allowance applied to the subject property from -10% to -20%.

The Complainant submitted a number of documents which discuss the contamination issue on the site. (C1, Pg. 49-212) The Complainant testified he was "not an engineer" and so would not be presenting details of the documents, but would leave it to the Board to review in its deliberations. The Complainant stated to the Board these documents were not presented to the 2010 Composite Assessment Review Board (CARB)

An August 24, 2009 document from Tiamat Environment Consultants Ltd. addressed the history of the contamination on the site and the "one-time treatment of soil containing refined petroleum hydrocarbons." (C1, Pg.49-67)

Further documentation is presented in the correspondence from The City of Calgary – "RE: Groundwater Disposal to Sanitary Sewer", (C1, Pg. 69-73) with respect to an application for a ground water disposal permit application. The application indicated remediation would be completed in late 2010.

A number of emails between a representative of Alberta Environment and Tiamat Environmental sent in 2009 were submitted into evidence with respect to the application for remediation work. (C1, Pg 74-76)

The Complainant submitted the report from AGRA Earth and Environmental, dated March 1998, which provided the onsite test results. (C1, Pg. 77-211) The report indicated remediation work had been ongoing from 1996 to the time of the report. (C1, Pg 77)

#### **Respondent's Evidence:**

The Respondent submitted evidence, in the form of testimonial evidence and the 2011 Assessment Explanation Supplement, the subject property was currently granted a -10% allowance for the contamination issue. (R1, Pg. 13). The percentage adjustment was agreed to by both parties at the 2010 Composite Assessment Review Board hearing of October 25, 2010 (R1, Pg. 223-225) and was applied to the 2011 assessment.

The Respondent testified The City of Calgary reviews each case of contamination to determine the degree of severity from the contaminants and the effect on the market value.

The Respondent stated a review of the subject had been conducted and no evidence was found to indicate a change to the market value allowance.

#### **Findings of the Board**

##### **Complainant's Submission:**

In questioning of the Complainant, the Board attempted to relate the maps contained in the reports to the actual site of the subject property to determine the points of contamination. The

location was critical in the decision of the Board as the Complainant requested a size adjustment for the assessable area. If the lot is reduced and the excluded land area included the contaminated portion then there would be no need for a contamination allowance.

In reviewing the evidence the Board notes the following statements and site maps from the Respondent submission –

“The portion of the work site that is contaminated is part of a larger triangular shaped land parcel with the intersection of Highfield Road and Dartmouth Road SE at the north end.” (C1, Pg 51)

“Presently, the site facilities include two small buildings founded on a concrete slab with no basement, a skidded remedial equipment trailer and a fence area for the storage of construction materials lies on the north section. Other commercial warehousing is situated to the south with the nearest building about 3 m south of the contaminated area.” (C1, Pg 51)

A site map titled, “Proposed Remedial Work Plan 3611 Brandon Street SE, Calgary, AB. – Site Plan Showing Adjacent Land Use” (C1, Pg. 60) clearly shows the area of contamination as being to the north of the warehouse structures.

## “2.0 SITE DESCRIPTION

### 2.1 Location

The project site is part of a larger property and is located on the west side of 4<sup>th</sup> Street SE and is south of the intersection of Highfield Road. The legal description of the site is Northeast 1/4, Section 3, township 24, Range 1, West of the 5<sup>th</sup> Meridian. The municipal address of the site is 3611 Brandon Street SE.

The site is bounded on the west by the Canadian Pacific Limited (CPR) track right-of-way, bounded on the east by a utility corridor registered to TransAlta Utilities and 4<sup>th</sup> street SE. Lands to the north and south are legally listed as part of the larger property.” (C1, Pg. 103-104)

### “2.2 Description

The site is presently vacant although there are remnants of the service station (building and Pump Island). The present topography of the site is generally flat and the surrounding land is used for commercial and light industrial businesses.” (C1, Pg. 104)

Based upon the evidence submitted the Board found there is an area of contamination within the boundaries of the subject property, but the area does not encompass all of the lands within the site but only the northern end of the site.

The Board noted there is no outline of the cost to remediate the site include in the evidence provided by the Complainant to support the requested -20% reduction for contamination. It was therefore unclear to the Board how the percentage reduction request was determined.

The Board notes the application for groundwater disposal, part of the remediation process, states, “Anticipated start/end dates: Start: May 2010 End: November 2010.” (C1, Pg 72) The Complainant has provided no information to the Board to show these dates were not met by the applicants and if not when completion is expected. With the exception of a single line –

"Discussions with the landowner (August 10, 2011), the site is still being remediated of hydrocarbon contamination. A reclamation report has been included in this package" (C1, Pg 10), there is no evidence to show the stage of remediation on the site.

The Board would place more weight on the email correspondence if more recent emails had been submitted. The submitted emails are dated in 2009 and left the Board questioning if the application had been approved and remediation work commenced. The statement by the Complainant would indicate approval had been granted and work commenced.

**Respondent's Submission:**

The Board finds the Respondent has provided little information with respect to the contamination, except to acknowledge -10% was agreed to by the parties in 2010 and had been granted for 2011.

When the issue of contamination is taken in conjunction with the assessable land area of the site, the Board found the removal of the contaminated land from the assessment results in the issue becoming null and no longer a factor in the review of the assessment. No evidence was presented to show the remaining land experienced any problems from contamination.

**ISSUE 2. Should a shape allowance be applied to the parcel?**

**Complainant's Evidence:**

The Complainant is requesting a -10% allowance be applied to the subject property due to the unusual shape which is a tapers to a point on the north end of the site. This is clearly shown in the aerial photograph on Pg. 15 of C1.

**Respondent's Evidence:**

The Respondent submitted no evidence with respect to shape as no specific request was made to shape allowance in the disclosure document or the amount being requested.

**Findings of the Board**

**Complainant's Submission:**

The Board found the issue of shape was properly identified in the Complainant's disclosure documents. (C1, PG.2) However, in the disclosure the request was for "a 30% negative influence for contamination." (C1, Pg 47). It was not until the hearing the Complainant provided in testimony the breakdown of 20% negative allowance for contamination and 10% negative allowance for shape.

The Board found that there exists an unusual shape to the site, which under normal circumstances would be taken into consideration when determining the assessment for the entire parcel as it would influence the development of the site. However, with the findings of the Board under Issue 3 on site size, the issue of the shape has been recognized through the reduced site area. The remaining assessable area, while having a slight shape deviation from the normal rectangle, has been fully utilized with the construction of five warehouse structures.

**ISSUE 3. What is the correct site size?**

The issue of site size was indirectly raised during the hearing when the Decision CARB 1907/2010-P was introduced into evidence.

**Complainant's Evidence:**

The Complainant entered into evidence the Decision which removed 6,475.88 square meters or 1.60 acres from the assessment, which represented "the long pointy end of the property." (C1, Pg 224) The removal of the extra land was mutually agreed to by the parties to the 2010 Decision 1907/2010-P.

**Respondent's Evidence:**

The Respondent submitted the 2011 Assessment Explanation Supplement which indicated a site area of 5.02 acres and an extra land area adjustment for 1.47 acres based upon a site coverage of 21.21%.

**Findings of the Board**

No evidence was submitted to show the agreement was carried forward for the 2011 assessment year or why it was not carried forward. In the review of the evidence the Board finds the City of Calgary has not made the adjustment as agreed to in 2010.

The Board looked at this issue as it relates to the issue of the contaminated land within the total parcel and the application of a shape allowance.

The Board found the 2010 Decision was an agreement between the Complainant and the Respondent and therefore will implement the change as part of the 2011 Decision.

	2010	2011
Site Area	5.02 Acres	5.02 Acres
Area Removed	1.60 Acres (6,475.88 m2)	
Total Area	3.42 Acres	5.02 Acres

**The decision of the Board, to reduce the area, had an impact on the issues of contamination, shape and equity.**

**ISSUE 4. Are the rates fair and equitably applied to the buildings on the site?****Complainant's Evidence:**

The Complainant submitted a total of eight equity comparables split equally between a 0 to 10,000 square foot and 10,001 to 15,000 square foot groupings. (C1, Pg 19)

The Warehouses presented represented multi tenant structures of approximately the same age as the subject structures. Supporting documentation for the assessments was submitted as evidence. (C1, Pg 20-27)

The findings of the Respondent are presented in the table below –

	0 – 10,000 Square Feet	10,001 to 15, 000 Square Feet
Maximum Assessment per Square Foot	181.02	153.36
Minimum Assessment per Square Foot	155.46	133.04
Mean Assessment per Square Foot	166.38	145.92
Median Assessment per Square Foot	164.51	148.64

The Complainant had used the median values (rounded up to the next dollar value) in the calculation of the requested assessment. (C1, Pg. 48)

The Complainant also submitted sales on warehouse properties in the area to show market values for the two groupings. (C1, Pg 29) Two sales in the 0 to 10,000 square foot group had sale price per square foot of \$237.07 and \$166.85, for an average sale price of \$201.96 per square foot. The three sales in the 10,001 to 15,000 square foot group had sales of \$132.88, \$109.96 and \$125.85 per square foot, for an average of \$122.90 per square foot.

#### Respondent's Evidence:

The Respondent stated the equity comparables presented by the Complainant failed to take into consideration the effect of site coverage has on the assessment per square foot calculation. By failing to recognize the extra land adjustment the Complainant's median values are lower in relation to the subject.

The Respondent presented a table illustrating the effect of the site coverage on the resulting means and medians for the comparables provided by the Complainant. The results are summarized below -

	0 – 10,000 Square Feet	10,001 to 15, 000 Square Feet
Maximum Assessment per Square Foot	193.41	172.96
Minimum Assessment per Square Foot	208.53	189.00
Mean Assessment per Square Foot	201.69	178.88
Median Assessment per Square Foot	202.41	176.78

The Respondent submitted four sales of industrial properties to support the rate applied to the subject property. The sales showed time adjusted sale prices between \$149.00 and \$251.00 per square foot of assessable building area, for a median value of \$213.00 per square foot of assessable building area



**Findings of the Board**

Upon review, the Board found the assessment rates applied to the warehouses on the subject property to be fair and equitable. The failure of the Complainant to take into consideration the extra land incorporated in the assessment resulted in lower rates per square foot for the comparables in relation to the subject.

The Board, in reaching its decision on the land size of the subject parcel, looked at the assessment rates and the impact of removing the extra land. With the removal of the extra land, the assessment rate per square foot of assessable building area dropped to a range of \$148.10 to \$161.51 per square foot, for a median value of \$160.00. These values are very similar to the values requested by the Complainant.

**Board's Decision:**

1. Is the percentage allowance for site contaminated sufficient?
2. Should a shape allowance be applied to the parcel?
3. What is the correct site size?
4. Are the rates fair and equitably applied to the buildings on the site?

The Board in its deliberation took the following findings into consideration –

1. There is contamination on the parcel under complaint, as shown by the documents submitted by the Complainant. The Board finds the contamination is restricted to only a portion of the total parcel.
2. The assessable area of the parcel should be reduced, as all parties agreed to in the Decision 2010 CARB 1907/2010-P, to 3.42 acres.
3. Based upon the evidence submitted by the Complainant the contaminated land is located within the portion of the site removed from the assessable area.
4. The Complainant provided no market evidence to support the requested increase in the allowance for contaminated land.
5. The total parcel does exhibit unusual shape and a restriction to development.
6. When the Board reduced the assessable area, the shape of the remaining assessable area does not restrict development as evident from the construction of five warehouses on the assessable area.
7. The assessment rates applied to the subject are fair and equitable.

The decision of the Board is to reduce the assessable area of the subject parcel. As a result, the Board removes the allowance applied for contamination, as the area has been removed from the assessment.



The Board in recalculating the assessment of the subject arrived at a value of \$7,263,881.00. The resulting difference is not sufficiently significant to justify a change to the current assessment.

The Board confirms the assessment to **\$7,290,000.00**

DATED AT THE CITY OF CALGARY THIS 8 DAY OF November 2011.

  
Philip Colgate  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
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 Multi Tenant	-Income Approach -Contamination	-Equity Comparables -Petrochemical Contamination -Net Market Rent/Lease Rates -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.