

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaints against the property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000.

between:

1456214 Alberta Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

**I. Zacharopoulos, PRESIDING OFFICER
J. Rankin, MEMBER
R. Roy, MEMBER**

[1] These are complaints to the Calgary Assessment Review Board in respect of a property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:	ASSESSMENT:
201485695	2176 8800-VENTURE AV SE	62592	\$555,500
201485711	2192 8800-VENTURE AV SE	62594	\$492,500
201485703	2184 8800-VENTURE AV SE	62595	\$555,500

[2] These complaints were heard by a Composite Assessment Review Board on October 12th, 2011 at the office of the Board located at 4th floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

[3] Appeared on behalf of the Complainant:

- Mr. J. Babra 1456214 Alberta Ltd.
 - Mr D. Pandher 1456214 Alberta Ltd.
- Mr. K. Bootland observed the hearing.

[4] Appeared on behalf of the Respondent:

- Mr. J. Lepine City of Calgary Assessment

BOARD'S DECISION IN RESPECT OF PROCEDURAL OR JURISDICTIONAL MATTERS:

[5] The records shows the subject complaints were rescheduled from September 22, 2011 in order to allow full disclosure between the parties. At the onset of the hearings the parties informed this Board there was a common basis for all complaints and the parties proposed to progress their respective evidence and arguments before the Board once and then, in the interests of conciseness, expect the Board to carry forward said evidence and arguments to all 3 similar properties. It was accepted that the Board's findings and decision basis would therefore be common to all properties. The Board found this to be an appropriate approach to the matters at hand.

PROPERTY DESCRIPTION:

[6] The subject properties are warehouse/office condos within the Shepard Business Park in SE Calgary. The records shows units 2176 and 2184 offer 2,601 square feet (sf) of ground floor area and 900sf of office mezzanine. Unit 2192 offers 2,749 sf of main floor area and no mezzanine. The condos are all assessed through the Direct Sales Comparison approach to value.

REGARDING BREVITY:

[7] In the interests of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

MATTERS/ISSUES:

[8] The matter identified by the Complainant as the basis for these complaints is "an assessment amount".

[9] The Board finds the Complainant has presented the following issues for deliberation:

1. Have the mezzanine areas been properly addressed within the assessments?
2. Does the market evidence produce an appropriate market value basis for assessment purposes for the subject properties as of July 1, 2010?

COMPLAINANT'S REQUESTED VALUE:

[10] The Complainant has not identified specific valuations for the properties under complaint but looks to the sale of Unit 2160 as discussed below as a basis for the valuation of the subject properties.

BOARD'S DECISION IN RESPECT OF EACH MATTER OR ISSUE:

[11] In addition to the evidence the parties presented at the hearing the Board referenced the Municipal Government Act and associated Regulations in arriving at its decision. We found the following to be particularly applicable to the complaint before us:

- **Municipal Government Act** (MGA) Part 9 and Part 11.
- **Matters Relating to Assessment and Taxation Regulation 220/2004** (MRAT) Section 1; Part 1 and Part 5.1.
- **Matters Relating to Assessment Complaints Regulation 310/2009** (MRAC) Division 2 and Schedule 1.

[12] Jurisprudence has established the onus of showing an assessment is incorrect rests with the Complainant. Evidence and argument was put before the Board by the Complainant in that regard; to show the assessment is incorrect and to provide an alternate market value as of July 1, 2010 (see line [10] above). The Board is to determine if (within the direction of the MGA and associated Regulations) it has been swayed to find the assessment is incorrect and if the assessment, being a market value determination as of July 1st 2010, should be revised.

[13] With regard to the individual issues identified above the Board's findings are as follows:

1. Have the mezzanine areas been properly identified within the assessments?

[14] The Complainant presented under Doc. C-1 copies of the structural plans for the development to show mezzanine space was built into units 2176 and 2184 but not unit 2192. The Complainant therefore suggests that all condos of similar size should be valued alike in that construction is similar for all except unit 2192 (see C-1, pgs 1 and 2).

[15] The Respondent replied that mezzanine space is only assessed if "finished" (i.e. completed and utilized as office space). The base mezzanine structure is not valued if left "unfinished" and used for storage purposes.

[16] Upon questioning the Respondent indicated that "finish" is deemed as per building permits. The Respondent could not say if the subject properties have been inspected by the Assessor.

[17] The Complainant testified that a number of building permits exist for mezzanine space within the complex as a whole and the assessment records (as per Doc. R-1, pg 12) is incorrect.

[18] The Board finds the record of the subject properties is correct as per C-1, pgs 1 and 2 and the mezzanine areas have been properly identified. The mezzanine argument at large will also be addressed under 2. To follow.

2. Does the market evidence produce an appropriate market value basis for assessment purposes for the subject properties as of July 1, 2010?

[19] The Complainant provided 2 transactions within C-2:

- An *Amendment to Real Estate Purchase Contract* and related *Certificate of Title (CoT)* certified copy to show that unit 2160 transferred effective December 23, 2010 for \$390,000.
- A CoT to show that unit 2168 sold effective October 7, 2010 for \$510,300.

[20] Under Doc. R-1, pg 12 the Respondent provided 5 time relevant and 3 post-facto sales in support of the assessment. The analysis includes a breakdown for each sold property and the associated value allocation.

[21] The Complainant referenced the area breakdown within the Respondent's market data with regard to the mezzanine areas and repeating (as per issue 1. above) that the Assessor's records are incorrect and have led to erroneous value conclusions. In particular, the Complainant looks to the Respondent's analysis regarding the inclusion (or exclusion) of the mezzanine areas for specific properties while the Complainant submits mezzanine space is prevalent throughout the development as per C-1.

[22] Upon review of the contract and CoT regarding unit 2160 the Board notes that (i) the contract appears to be a renegotiation of an agreement between the parties dated April 15, 2009 as per C-2, pg 1; (ii) the CoT transfer date is post-facto to the valuation date of July 1, 2010 as per C-2, pg 4, and (iii) the CoT notes the transaction and consideration as "Order" as per C-2, pgs 4 and 6. For these reasons the Board is not prepared to rely on this evidence as indicative of market value.

[23] The Board finds the Complainant's sale reference to unit 2168 is also produced by the Respondent under R-1, pg 12. The Board finds the Respondent's #s 6 and 7 under R-1, pg 12 are substantially post-facto and not appropriate references for the subject assessments.

[24] Upon review of R-1, pg 12 the Board finds the Respondent has included within its analysis an allocation of mezzanine space. Further to [21] above the Board finds a lack of evidence to determine (i) market support for the Respondent's value allocation to mezzanine space ; (ii) any evidence from either party to clarify the condition of mezzanine space within the cumulative market data, and (iii) market support for value allocation as per the condition of the mezzanine space. The Board is not equipped to address the mater of mezzanine value without such evidence.

[25] The Board finds no disagreement between the parties on the sales data included within R-1, pg 12. The Board finds sale #1 (\$510,300 on October 7, 2009) mirrors the condition of units 2176 and 2184, while sale #8 (\$445,000 five days after the valuation date) best mirrors the condition of unit 2192. The Board therefore accepts these sales as the best market evidence for the subject properties.

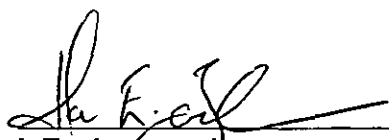
[26] The Complainant made reference to the level of municipal services and taxes at the subjects' location. The Board finds the issue before us - as per [8] above - is to determine assessed value as per the **MGA** and associated Regulations and this been addressed above. A determination of municipal services and taxes is not within this Board purview.

BOARD'S DECISION:

[27] The assessments are reduced as follows (all rounded):

ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:	ASSESSMENT:
201485695	2176 8800-VENTURE AV SE	62592	\$510,000
201485711	2192 8800-VENTURE AV SE	62594	\$445,000
201485703	2184 8800-VENTURE AV SE	62595	\$510,000

DATED AT THE CITY OF CALGARY THIS 1st DAY OF November 2011.


I. Zacharopoulos
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. Doc. C-1	Complainant's Submission
2. Doc. C-2	Complainant's Rebuttal
3. Doc. R-1	Respondent's 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.*