

**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:

***ENMAX CORPORATION, COMPLAINANT
(Represented by DuCharme, McMillen & Associates, Inc.)***

and

The CITY OF CALGARY, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member A. WONG***

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: 201514551

LOCATION ADDRESS: 435 9 AVENUE SE

HEARING NUMBER: 63018

ASSESSMENT: \$6,460,000.00

This complaint was heard on 8 day of November, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- Ian Fluney, DuCharme, McMillen & Associates, Inc. – *Representing Enmax Corporation*
- Greg Abbott, DuCharme, McMillen & Associates, Inc. – *Representing Enmax Corporation*

Appeared on behalf of the Respondent:

- Dan Satoor – *Representing the City of Calgary*
- Andy Czechowskyj – *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 property, identified as the Calgary Downtown District Energy Centre, is located at 435 9th Avenue SE in the community known as the East Village. The structure, rated as excellent quality, is assessed as a 19,550 square foot warehouse with 785 square feet of interior office area and a basement area of 2,700 square feet. Construction of the structure was commenced in September of 2008 and completed March 2010.

The 2011 assessment is based upon a cost approach with land and building values determined separately. The building cost was determined through the computer application of the Marshall and Swift Cost Manual.

The property, encompassing 25,188 square feet in area, is zoned IH- Heavy Industrial.

Issue:

1. Has the building been overbuilt for its present use and suffers from functional obsolescence?
2. Are adjustments to the Basement area for Heating, Ventilation and Cooling (HVAC) and sprinkler systems been correctly applied in the Marshall and Swift calculation?
3. Are the Marshall and Swift calculations for the elevator correct?

The Board noted there was no issue with respect to the land component of the assessment.

Complainant's Requested Value: \$5,360,000.00

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

In the interest 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.

Both the Complainant and the Respondent submitted background material in the form of ground level and interior photographs, site maps and 2011 City of Calgary Assessment Detail Reports and Marshall and Swift summary Report.

ISSUE 1: Has the building been overbuilt for its present use and suffers from functional obsolescence?

Complainant's Evidence:

The Complainant requested a 25% functional obsolescence be applied to the subject building.

The Complainant submitted the subject property was constructed with future development in the East Village area in mind, so areas for extra boilers and generators were constructed to meet the need. (C1, Pg 12)

The Complainant submitted the "height of the building is much greater then it needed to be. This was done so that the building could be toured by visitors and public to have an aesthetic view to it." (C1, Pg. 12) The Complainant stated the structure height could have been reduced if the management decision had not required the extra height.

The complainant submitted there is a combined area of 3,500 square feet out of the total area of 19,500 square feet which is unusable.

The Complainant entered that the future intent of the project was to include residential floors built over the energy plant. The intent was to construct emergency stairwells to serve the residential floors, but was not construction as those floors are no longer planned. With the lack of construction the areas "are dead unused space that did not need to be built." (C1, Pg 12)

Further the Complainant stated the area set aside for the fourth boiler was unusable space.

The Complainant stated the facility is operating at only 5 megawatts per day not the projected 30 megawatts per day "due to pipeline issues, market fluctuations, and consumption forecasts."

The Complainant referenced two Decisions – Municipal Government Board DL 106/06 on the Sun Newspaper building and a decision on a Sun life building. Decision DL 106/06 was submitted in its entirety, but the Sun life Decision was only reference with one paragraph not the entire document.

Respondent's Evidence:

The Respondent contended the Complainant had submitted no physical or market evidence in support of the requested obsolescence. (R1, Pg 8)

The argument that the “dead space” for stairwells and boilers has reduced value is not supported through market evidence showing a loss in value and during a tour of the building the areas were being utilized for storage. (R1, Pg 9)

Findings of the Board

This Board found there was no evidence submitted to show any special construction occurred in the subject structure. The Board found the owners had made an informed management decision as to the height of the structure and deliberately build to that height. The Complainant's representatives now contended that obsolescence should be granted as the height is more than ‘normal’ and could have been built lower.

The Board did not accept the position taken on height, for wall height can vary between warehouses and the photographs submitted clearly indicated the entire height was currently being utilized by the owners.

The Board did not accept the argument that the area originally set aside for the stairwells or boiler is unusable space as the area is now open floor area suitable for storage. In fact the photographic evidence submitted by the Complainant shows storage shelves in the area described as unusable.

The Board notes the Complainant verbally explained the process used to arrive at the 25% request, but failed to include in the written disclosure this evidence to show the calculation of wall height adjustment and floor area adjustment.

The Board found that obsolescence for a new building, built to owner's specifications, is not justified by the evidence submitted. The Complainant had explained the construction was based upon management decisions of future demand, which have at this time changed due to market conditions and forecasts. The Board found these reasons could be reversed at any time in the future as the market changes.

The Board noted the introduction of Municipal Government Board Decision DL106/06 by the Complainant. The Decision dealt with the Sun Newspaper building and the assessment and the methodology of its calculation. The Board will briefly review the details of the assessment placed on the structure and the findings of the Assessment Review Board and the Municipal Government Board:

1. Building space is comprised of office space and a warehouse area and a printing press area.
2. The warehouse area contained special construction features necessary for the printing presses – thicker floors, rail lines and depressions in the floor for the presses – which were not installed.
3. In the area where presses were not install the rails were removed and the depressions filled with concrete.
4. Building assessment was based upon depreciated construction cost of the structure.
5. Appellant requested structure to be assessed as a typical warehouse using capitalized income approach or sales comparison approach.
6. Assessment confirmed by Assessment Review Board and Decision appealed to the

Municipal Government Board.

7. At MGB the Appellant submitted the area was not unique and could be converted to a standard warehouse. Examples of conversions were submitted to the Board.
8. The MGB was presented with typical market rental rates for similar warehouse structures.
9. The MGB found the structure would trade in the market place as a typical warehouse.
10. Decision was to base assessment on typical warehouse rental rates, vacancy allowance, and management fee and capitalization rate.

The Board found the Decision cited by the Complainant does not support the position taken on the subject property. The Decision for DL 106/06 lowered the assessment value based upon the assessment being calculated using the capitalized income approach for typical warehouses. The Board found the Complainant in the current case before it did not present an argument for the use of the income approach or present any income evidence, but rather used the cost approach to value as employed by The City of Calgary. The Decision did not grant any form of functional obsolescence in the calculation of the assessment but based the calculation on the income of a typical warehouse.

Accordingly the Board place little weight on the Decision DL 106/06.

The Complainant referenced a Decision on the Sun Life property, but provided only a single paragraph from the Decision. The Complainant failed to provide the entire Decision for the Board to review with respect to the arguments put forward and the evidence submitted. The Board is not prepared to accept the Decision when the document in its entirety was not submitted.

The Board found the Complainant had presented insufficient evidence to support the request for additional obsolescence being applied to the assessment. The Complainant failed to prove to the satisfaction of the Board that a functional obsolescence existed within the structure assessed as a warehouse.

ISSUE 2: Are adjustments to the Basement area for Heating, Ventilation and Air Conditioning (HVAC) and sprinkler systems correctly applied in the Marshall and Swift calculation?

Complainant's Evidence:

The Complainant requested a removal of \$81,945 from the assessment for the lack of HVAC or Sprinklers in the basement area as determined using Marshall and Swift.

The Complainant submitted a written statement that an inspection of the basement area found there was no HVAC or sprinkler system in place, as listed in the City of Calgary Marshall and Swift valuation of the structure. (C1, Pg. 13)

Respondent's Evidence:

No inspection of the basement was carried out when the Respondent was toured through the structure. The Respondent stated the Complainant did not mention the lack of HVAC and sprinklers at the time of the inspection.

The assessment for the HVAC and the sprinklers were based upon the submitted and approved plans given to the City of Calgary Planning Business Unit.

The Respondent noted the no evidence was present to support the claim the HVAC and sprinklers were missing from the 2,700 square foot basement area other than verbal testimony.

The Respondent noted the change to the assessment would be only -1.2% of the total assessment. (R1, Pg 10)

Findings of the Board

Complainant's Submission:

The Board noted the lack of confirming evidence by the Complainant in the form of photographs, construction notes or engineers reports. The Board found, with the number of photos submitted by the Complainant, that views of the basement area would not have been difficult to obtain to support the argument brought forward. This truly would be a case of one picture is worth a thousand words, as well as providing the missing physical evidence for the Board to review.

Based upon the lack of evidence, the Board found no support for the requested reduction to the basement space for HVAC or sprinkler systems.

The Board further found the amount of adjustment requested was not sufficiently significant in the overall amount of the assessment, at only 1.2%, to warrant a change.

ISSUE 3: Are the Marshall and Swift calculations for the elevator correct?

Complainant's Evidence:

The Complainant requested the assessment value for the elevator be reduced from \$98,307.00 to \$68,357.00, a total of \$29,950.00. The Complainant request for a reduction was based upon an averaging of the range of values in the Marshall and Swift Cost Manual. (C1, Pg 13).

No additional evidenced was submitted to the Board.

Respondent's Evidence:

The Respondent stated the "default and standard inputs for valuing an elevator" in the quality rated building were used to determine the Marshall and Swift value. (R1, Pg. 10). A photograph of the exterior of the elevator was included in the submission. (R1, Pg. 16)

The Respondent noted the requested change to the assessment for the elevator would equate to 0.4% of the total assessment.

Findings of the Board

The Board found the Complainant failed to supply any evidence in support of the rates used in the calculation. Evidence in the form of actual costs for the elevator would have carried weight with the Board to adjust the assessment. These costs should have been readily available from the owners.

Based upon the lack of compelling evidence the Board found no grounds to alter the assessment calculation for the elevator in the subject building.

Board's Decision:

An area of discussion by the City of Calgary was the total cost of the project. Copies of media releases pertaining to the project states the overall cost was between \$30,000,000.00 and \$50,000,000.00. While the Board found this information interesting, it found the documents had no relevancy to the complaint before the Board. With the lack of detailed cost breakdowns there was no ability to relate those amounts to the assessment before the Board. The Board can only deal with the assessment and the issues placed before it in evidence. Accordingly, the Board places no weight on the presentation and excluded the discussion from the deliberations.

The Board found the presentation of testimonial evidence without supporting documentation did not satisfy the burden of proof placed upon the Complainant. The failing of verbal testimony by the Complainant is the denied right of the Respondent to prepare a response or the opportunity to research the statements made by the Complainant.

The Board confirms the assessment at \$6,460,000.00

DATED AT THE CITY OF CALGARY THIS 18 DAY OF November 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	Speciality Property	Cost/Sales Approach	- Improvement Calculation - 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,