

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:

TES Investments LTD. (as represented by B. Macson), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER

A. Wong, BOARD MEMBER

R. Cochrane, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER: 200460988

LOCATION ADDRESS: 6900 – 112 AV SE

FILE NUMBER: 70019

ASSESSMENT: \$11,320,000

This complaint was heard on 4th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- No one appeared

Appeared on behalf of the Respondent:

- *J. Tran – Assessor – City of Calgary*

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

[1] Prior to the commencement of the hearing the Respondent advised the Board that he had spoken directly to the property owner (Complainant) last week. The owner confirmed to the Respondent that he was not going to be able to appear at this hearing. Therefore the Board proceeded with the hearing with only the Respondent present pursuant to section 463 of the Municipal Government Act (MGA) which states:

"Absence from hearing

463 If any person who is given notice of the hearing does not attend, the assessment review board must proceed to deal with the complaint if

- (a) all persons required to be notified were given notice of the hearing, and
- (b) no request for a postponement or an adjournment was received by the board or, if a request was received, no postponement or adjournment was granted by the board."

Property Description:

[2] The subject is a 49,636 square foot (SF) single-tenant industrial warehouse constructed in 2002 on 8.08 acres of land. It is located in the Dufferin (DU1) industrial park, has 4.28 acres of "Extra Land", 57,700 SF of assessable building area; 28% building "finish" and 30% site coverage. The property is assessed at \$196.30 per SF, with an extra land adjustment of \$2,504,803, for a total assessed value of \$11,326,677 (\$11,320,000 rounded).

Issue:

[3] What is the correct assessed value of the subject, given its purchase/sale on October 12, 2012 for \$10,600,000.

Complainant's Requested Value:

[4] The Complainant requests an assessment of \$10,600,000 based on the purchase/sale of the subject on October 12, 2012.

Board's Decision:

[5] The Board confirmed the assessment at \$11,320,000.

Legislative Authority, Requirements, and Considerations:

[6] Under the *Municipal Government Act* (MGA), the Board cannot alter an assessment which is fair and equitable.

[7] MGA 467 (3) states:

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration the valuation and other standards set out in the regulations, the procedures set out in the regulations; and the assessments of similar property or businesses in the same municipality."

[8] The Board examines the assessment in light of the information used by the assessor and the additional information provided by the Complainant. The Complainant has the obligation to bring sufficient evidence to convince the Board that the assessment is not fair and equitable. The Board reviews the evidence on a balance of probabilities. If the original assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the Board will not alter the assessment. Within each case the Board may examine different legislative and related factors, depending on what the Complainant raises as concerns.

Positions of the Parties**(a) Complainant's Position:**

[9] The Complainant was not in attendance to speak to the appeal or to respond to questions from the Board and/or Respondent. Neither had the Complainant engaged in an exchange of written information with the Assessor subsequent to filing his appeal via the complaint form. Therefore the only information available to the Board in this hearing was that written on the Initial Complaint form.

[10] Consequently the Board reviewed the limited evidence contained in the Complaint Form as initially provided by the Complainant. It was noted that attached to his Complaint Form the

Complainant submitted a copy of a "Revised Statement of Adjustments" dated October 1, 2012 and related to the purchase/sale of the subject for \$10,600,000. He also submitted a copy of an Alberta Land Titles "Transfer of Land" document evidently signed and dated by a signatory to the transaction, demonstrating the same value.

[11] The Board noted that there was no evidence in the Complainant's submission that the purchase/sale of the subject had transacted on the open market by a willing buyer and willing seller; that the parties were unrelated; or that the subject had been listed for sale by a qualified broker. Moreover, because the Complainant was not in attendance, neither the Board or Respondent could query the Complainant regarding any facet of the purchase/sale.

[12] The Board noted, and the Respondent confirmed that the purchase/sale of the subject occurred after the July 1, 2012 valuation date for assessment purposes, and hence is considered to be a *Post Facto* sale which would not have been used in the assessment process for 2012.

(b) Respondent's Position:

[13] The Respondent clarified that he had no information whatsoever regarding the Complainant's purchase/sale of the subject.

[14] The Respondent provided his information package R-1 in support of the assessment for the record but, given the option by the Board, opted not to go through it in detail.

Board's Reasons for Decision:

[15] The Board finds that the onus for demonstrating that the assessment as prepared by the Respondent under the Mass Appraisal process and in accordance with the Municipal Government Act is either incorrect, inequitable, or unfair, lies with the Complainant. Section 460(1) states in part:

"460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(7) A complainant must

- (a) indicate what information shown on an assessment notice or tax notice is incorrect,
- (b) explain in what respect that information is incorrect,
- (c) indicate what the correct information is, and
- (d) identify the requested assessed value, if the complaint relates to an assessment.

[16] The Board finds that it received insufficient information from the Complainant pursuant to the requirements of the MGA as outlined in [15] above.

[17] The Board finds that the Complainant relied solely on the *Post Facto* sale of the subject, which sale would not have been considered by the Respondent in its analysis of the market as it prepared for the current assessment cycle ending July 1, 2012.

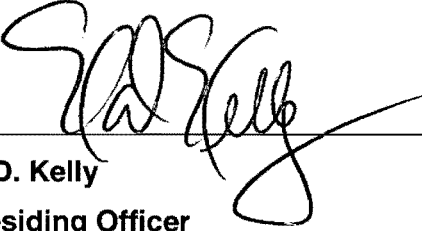
[18] The Board finds that there is insufficient information in the Complainant's initial complaint form to determine important background information regarding the purchase/sale of the subject in 2012. Information such as whether or not;

1. the subject sale was listed on the open market and broadly advertised as a result;
2. it was purchased/sold by a willing buyer/seller;
3. the parties to the transaction are known/unknown to each other;
4. the sale was a "motivated" sale; etc.

[19] The Board finds therefore that it received insufficient information about the specific circumstances of the purchase/sale of the subject to make any determination regarding whether or not it demonstrates an over-assessment of the subject.

[20] The Board finds that overall, the Complainant provided insufficient information to demonstrate that the assessment is either incorrect or inequitable.

DATED AT THE CITY OF CALGARY THIS 31 DAY OF July 2013.



K. D. Kelly
Presiding Officer

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

| NO. | ITEM |
|--------------|--|
| 1. File item | Complainant Disclosure (initial complaint form only) |
| 2. R-1 | 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 Only

| Appeal Type | Property Type | Property Sub-type | Issue | Sub-Issue |
|--------------------|----------------------|--------------------------|--------------|-----------------------------------|
| CARB | industrial | Industrial warehouse | market value | <i>Post Facto</i> sale of subject |