

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:

***GPM REAL PROPERTY (9) LTD., COMPLAINANT
MONDOW (9) INC., COMPLAINANT
C/O HUMFORD MANAGEMENT INC., COMPLAINANT
(as represented by AEC Property Tax Solutions)***

and

The City Of Calgary, RESPONDENT

before:

***BOARD CHAIR: P. COLGATE
BOARD MEMBER: B. BICKFORD
BOARD MEMBER: H. ANG***

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: 116018995

LOCATION ADDRESS: 4915 77 AVENUE SE

FILE NUMBER: 71192

ASSESSMENT: \$5,660,000.00

This complaint was heard on the 18th day of June, 2013 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:

- *Brock Ryan, AEC Property Tax Solutions*

Appeared on behalf of the Respondent:

- *James Greer, City of Calgary*

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

Preliminary Matter:

[2] The preliminary matter raised in File Number 71185, Roll Number 115063000, 6703 30 Street SE was a request for portions of the presentations and the resulting questions be carried forward to the remaining nine hearings before the Board. The Complainant and the Respondent made this request jointly.

[3] The Board accepted the request of the Respondent and the Complainant and will carry forward the information received for the hearing File Number 71185 to the following nine hearings:

| File | Roll Number | Address |
|-------|-------------|------------------------|
| 70947 | 090089004 | 4616 Manhattan Road SE |
| 71164 | 077028207 | 2525 16 Street SE |
| 71167 | 033001108 | 4612 6 Street NE |
| 71169 | 090066291 | 4319 1 Street SE |
| 71178 | 034188797 | 635 46 Avenue NE |
| 71181 | 033039801 | 1216 36 Avenue NE |
| 71187 | 200477016 | 7910 51 Street SE |
| 71192 | 116018995 | 4915 77 Avenue SE |
| 72253 | 092019702 | 1607 41 Avenue SE |

The Board noted the carrying forward of information does not mean the decisions will be the same for each hearing, for each must stand upon its own merits.

[4] The Board accepted the Complainant's revision of the Assessment Review Board Complaint to reflect only Matter 3 – 'an assessment amount' as the only matter to be placed before the Board.

Property Description:

[5] The subject property contained an industrial warehouse (IN0701) constructed in 1981. The structure, rated as 'C+' quality, is located at 4915 77 Avenue SE in the Foothills Industrial area. The structure, situated on a 2.75 acre parcel, has an assessable area of 55,180 square feet, with 7% finish. Site coverage is 45.99%. The land use designation is I-G, Industrial - General. The subject property has been assessed, based on the Direct Comparison Approach, for \$5,660,610.00 (rounded to \$5,660,000.00) or a rate per square foot of \$102.58.

Issues:

[6] The primary issue placed before the Board is one of equity with comparable properties near the subject property.

[7] The Complainant submitted analysis based upon the three approaches to value – direct comparison approach, income approach and cost approach – to present a prima facie case for the inequity of the assessment market value. The Board noted the Complainant's requested assessment was based upon an equity argument with similar properties.

Complainant's Requested Value: \$5,021,000.00**Board's Decision:**

[8] The Board, upon review of the evidence submitted by the Complainant and the Respondent, found sufficient evidence was provided to justify a change to the assessment of the property under complaint.

[9] The Decision of the Board was to amend the assessment to **\$5,290,000.00**

Legislative Authority, Requirements and Considerations:

[10] 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.

[11] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

[12] Both parties also placed Assessment Review Board decisions before this Board in support of their positions. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to these decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Position of the Parties

Complainant's Position:

[13] As previously stated, the Complainant presented analysis of the income approach, the direct comparison approach and the cost approach to support their prima facie case that the assessed value was incorrect. A summary of the Complainant's results follows:

| Value Type | Approach to Value | Indication of Value |
|---------------------|----------------------------|---------------------|
| Market | Income Approach | \$4,807,000 |
| Market | Direct Comparison Approach | \$4,807,000 |
| Market | Cost Approach | \$4,532,925 |
| | | |
| Suggestion of Value | Average (Rounded) | \$4,715,642 |
| | Median (Rounded) | \$4,807,000 |
| | | |
| 2013 Assessment | Direct Comparison | \$5,660,000 |

(C1, Pg. 133)

[14] For the Income Approach, the Complainant presented an analysis of seven (7) sales in determination of a requested capitalization rate of 7.79%. (C1, Pg. 12) The seven properties, located in the northeast and southeast quadrants of the city, had sales ranging from 2011-01-31 to 2012-06-20 with capitalization rates, based upon the Complainant's analysis, ranging from 6.21% to 9.75%. The Complainant employed a vacancy rate of 3.0% obtained from third party reports (C1, Pg. 39-51), operating costs of \$3.50 and a non-recoverable allowance of 2.0%. Rental rates were determined through the analysis of 12 leases from six properties located in the southeast quadrant of the City of Calgary, with a median value of \$7.13 and an average of \$7.18. The Complainant used a typical rate of \$7.25. (C1, Pg. 35)

[15] The Complainant's Direct Comparison Approach entailed a review of the sale price per square foot for the seven sales with a resulting average of \$86.26 and a median of \$87.17 per square foot. The Complainant used a rate of \$87.12 per square foot with a suggested assessment of \$4,807,425.00. (C1, Pg. 12)

[16] The Complainant employed a Marshall and Swift costing manual to determine the replacement cost of the structure. (C1, Pg. 58) Based upon the details for the subject property, the land was valued at \$1,608,750.00 and the depreciated building at \$2,924,175, for a combined value of \$4,532,925.00.

[17] Based on the results the Complainant submitted that a prima facie case had been presented to question the validity of the City of Calgary assessment of the subject property. Based upon the findings the Complainant submitted an equity argument for a revised assessment with a suggested value of \$5,021,380.00. (C1, Pg. 134)

[18] The basis for the Complainant's requested assessment was based upon an analysis of four (4) equity comparables of warehouses located in the northeast quadrant of the city, which suggested an average rate per square foot of \$91.00 and a median rate of \$91.00 per square foot:

| Roll Number | Address | Effective Age | Assessable Land Area (sq. ft.) | Total Building Area (sq. ft.) | Floor Area Ratio | Assessment per Square Foot Building Area | 2013 Assessment |
|---------------------------------|----------------|---------------|--------------------------------|-------------------------------|------------------|--|-----------------|
| 116018995 (Subject) | 4915 77 Ave SE | 1981 | 119,995 | 55,180 | 0.46 | \$103 | \$5,660,000 |
| Summary of 4 equity comparables | | | | | | | |
| Average | | 1978 | 118,807 | 58,936 | 0.50 | \$91 | \$5,327,500 |
| Median | | 1980 | 110,791 | 53,999 | 0.51 | \$90 | \$4,950,000 |
| | | | | | | | |
| 116018995 (Subject Revised) | 4915 77 Ave SE | 1981 | 119,995 | 55,180 | 0.46 | \$91 | \$5,021,380 |

(C1, Pg. 134)

[19] The Complainant submitted a rebuttal document (C2) in which it presented an argument of the Respondent's sale comparable at 6213 39 Street SE should have additional recognition for excess land which would reduce its effective rate per square foot to \$99.97. (C2, Pg. 3)

Respondent's Position:

[20] The Respondent argued that the Complainant had failed to make any time adjustments for the older sales to bring them in line with the July 1, 2012 valuation date and submitted a City of Calgary Assessment Business Unit document on time adjustments for the 2013 industrial properties. (R1, Pg. 54)

[21] In response to the Complainant's income approach presentation, the Respondent submitted a review of the leases used by the Complainant to establish the rental rate. The Respondent determined the weighted average of the leases was \$6.12, whereas the complainant employed a rate of \$7.25. (R1, Pg.25)

[22] The Respondent further submitted an analysis of the Complainant's income approach, which indicated the resulting Assessment to Sales Ratio (ASR) would have a range of values from 0.61 to 1.11, with a median of 0.83, below the legislated ratio of 0.95 to 1.05. (R1, Pg. 27)

[23] The Respondent submitted into evidence a table of four sales comparables, which showed the time adjusted sale price per square foot rate with a median of \$104.93, supporting the rate for the subject with an assessment rate of \$102.58 per square foot. (R1, Pg. 20) The Respondent argued the subject property, at a rate of \$102.58, falls within the range of the sales and is lower than the median value of the sales.

[24] The Respondent submitted a table of the Complainant's equity comparables to highlight discrepancies in the Complainant's data. The noted comparable 1 – 3716 56 Ave SE - used a larger assessable area than used by the city in the determination of the assessment. Further noted, comparable 3 – 4380 76 Avenue SE – used an incorrect total assessment when calculating the rate per square foot. When the corrections were made, the rate per square foot increased to \$100.22, compared to the subject being assessed at a rate of \$102.58. (R1, Pg. 22)

[25] The Respondent submitted a table, with eight equity comparables, located in the

Foothills Industrial area, in support of the subject's current assessment. It was the argument of the Respondent the subject property falls within the range of rates per square foot for the first equity comparable table and is lower than the median rate per square foot for their equity comparables. A second table combined the all twelve (12) equity comparables from both the Complainant and the Respondent, with the Respondent correcting errors in the Complainant's data, to determine median values.

| Roll Number | Address | Effective Age | Assessable Land Area (acres) | Total Building Area (sq. ft.) | Site Coverage (%) | Finish (%) | Assessment per Square Foot Building Area | 2013 Assessment |
|--|----------------|---------------|------------------------------|-------------------------------|-------------------|------------|--|-----------------|
| 116018995 (Subject) | 4915 77 Ave SE | 1981 | 2.75 | 55,180 | 45.99 | 7 | \$102.58 | \$5,660,610 |
| | | | | | | | | |
| Comparables | | | | | | | | |
| Median – Respondent's 8 | | 1981 | | 56,088 | 32.75 | 13 | \$108.04 | |
| Median – combined Complainant and Respondent | | 1980 | | 55,500 | 37.78 | 16 | \$106.53 | |

(R1, Pg. 23-24)

Board's Reasons for Decision:

[26] The Board first notes the continuing problem the City of Calgary has in its published information with respect to the details attributed to the properties in its inventory. The Board found the City of Calgary website's "Property Assessment Detail Report" and the Assessment Business Unit's "Assessment Explanation Supplement" showed a difference in building areas. The result of this discrepancy created requests made by the Complainant based upon faulty information provided by the City of Calgary. Both the Complainant and the Respondent agreed to use the area supplied by the Assessment Explanation Supplement, if the Board decided an adjustment is warranted. The Board strongly encourages the City of Calgary to resolve this on-going problem, which has existed for a number of years.

[27] The Board in its deliberation looked to the Complainant's establishment of a prima facie case, in that the assessed value assigned to the subject property was not reasonable, lacking fairness and equity. While the Complainant employed the three approaches, the Board found a number of flaws in the application of the analysis. In the case of the Direct Comparison Approach, the Complainant provided a simple mathematical analysis of the sale price per square foot. A proper analysis would recognize the differences between the properties for characteristics such as building size, lot size, and site coverage and adjust the sale prices. For the Income Approach, the Respondent raised challenges with respect to the rental rate and the capitalization rate. No issues were raised with the Cost Approach as submitted by the Complainant, except a verbal statement that cost analysis did not always correspond to the market value.

[28] While the Board found existing flaws in the Complainant's presentation on the three

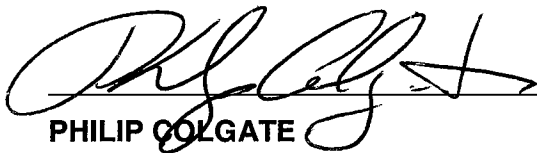
approaches to value, there was sufficient evidence to support the review of the assessment.

[29] During the Board's review of the evidence submitted, it was found the analysis of the ASR's for the sales submitted by both parties showed a constant pattern of falling outside the quality standard range of 0.95 to 1.05 for a median assessment ratio. The Board found of the nine sales reviewed from the evidence that eight had ASR's ranging from 1.07 to 1.52 and one had an ASR of 0.87. The median for the sales was determined to be 1.15, indicating the sales were over assessed as a submitted sample of comparable properties. The Board applied a 10% reduction based upon the perceived over assessment.

[30] The Board, after having reviewed the different equity comparables submitted by the Complainant and the Respondent and having received insufficient evidence to exclude any of the comparable properties, accepted the median rate per square foot of \$106.53.

[31] The Board in reaching its decision took into consideration the rates for the equity comparable properties and the consistent over assessment of properties based on the presented sales. The Board found a revised rate of \$95.88 for 55,180 square feet is an appropriate assessment rate and amends the assessment to \$5,290,000.00.

DATED AT THE CITY OF CALGARY THIS 23rd DAY OF July 2013.



PHILIP COLGATE

Presiding Officer

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

| NO. | ITEM |
|------------|------------------------|
| 1. C1 | Complainant Disclosure |
| 2. C2 | Complainant Rebuttal |
| 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 | Cost/Sales Approach | Equity |

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.