



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:

359711 Alberta LTD. (as represented by R. Love), 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:	055511240
LOCATION ADDRESS:	#2 – 1709 – 8 AV NE
FILE NUMBER:	71523
ASSESSMENT:	\$2,690,000

This complaint was heard on 2nd 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:

- *R. Love - Owner/President – 359711 Alberta LTD.*

Appeared on behalf of the Respondent:

- *B. Brocklebank - Assessor, City of Calgary*

REGARDING BREVITY:

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None

Property Description:

[3] The subject is a two-storey 23,070 square foot (SF) industrial condominium unit used for office and fitness club purposes (Fitness Plus) in the Mayland 3 industrial area. The subject has an underground parkade containing an unknown number of parking stalls. The complete condo complex totals approximately 32,000 SF, therefore the subject represents about 75% of the overall site. The condo complex, and hence the subject, was built in 1980 (year of construction – YOC) and is therefore approximately 33 years old. The subject condo unit is composed of 15,874 SF of ground floor finished area, and 7,196 SF of finished mezzanine area, all of which is assessed at \$117 per SF for a total assessed value of \$2,690,000 (rounded).

Issues:

[4] What is the correct assessed value when one considers the unique interior configuration and the deteriorated physical condition of the subject?

Complainant's Requested Value:

[5] The Complainant requests that the assessment be reduced to \$2,220,000.

Board's Decision:

[6] The Board confirmed the assessment at \$2,690,000.

Legislative Authority, Requirements and Considerations:

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

[8] MGA 467 (3) states:

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations; and

(c) the assessments of similar property or businesses in the same municipality."

[9] 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:**

[10] The Complainant argued that the year-over-year assessment change, which elevated the assessment from \$2,220,000 in 2012 to the current \$2,690,000, represented a \$470,000 or an approximately 25% increase. He argued that this is excessive.

[11] The Complainant suggested that because the subject is currently a "single-purpose" building specially outfitted with saunas, showers, weight training and related equipment for fitness use, it cannot be readily converted to other uses without incurring considerable cost. In addition, he noted, the property lies under a major and active flight path for the Calgary International Airport which restricts certain uses on such properties. Therefore, he argued,

these factors not only render the subject less valuable in the market, but also makes it extremely difficult for both the City and himself, to find good comparable properties to which the subject can be compared.

[12] The Complainant argued that the subject is a major part of a 30 year old building, and suffers from several deferred maintenance issues related to doors; sump pumps and affiliated electrical components; rooftop HVAC/air conditioning; and roof leaks, all of which currently require repair. He clarified that he had been a tenant in the structure since 1983, until he bought it about ten years ago. Therefore he is quite familiar with the nature of the repairs it requires.

[13] The Complainant provided selected photos he had personally taken of damaged areas, as well as several detailed cost-to-cure estimates from several contractors to complete the various components of the repair work. He noted that the cost to replace the building's three HVAC/air conditioning units alone was estimated to be about \$520,000. He clarified that because the HVAC/air conditioning component of the repairs was for three A/C units which serve the entire complex, he would be required to pay for 75% of that cost.

[14] The Complainant requested that the assessment be reduced to \$2,220,000.

(b) Respondent's Position:

[15] The Respondent clarified that the difficulty in comparing the subject to other properties in NE Calgary is primarily because of its size. He noted that while there are not a lot of 23,070 SF industrial condos with finished ground floor and mezzanine areas in this part of the city, he has nevertheless been able to compare the subject to several other properties which he considers are comparable to the subject. He argued that the Complainant has not provided any market evidence to support his request for a reduced assessment for the subject.

[16] The Respondent provided two matrices of industrial Condo sales comparables – one with "finished" and the other with "unfinished" ground floor areas. The first matrix contained seven properties circa 1978 YOC which sold between 2009 and 2012. They have ground floor "finished" areas ranging from 608 to 1,600 SF, and finished mezzanine areas ranging from 582 to 1600 SF. He noted that these properties sold on the open market for values ranging from \$117 per SF to \$257 per SF. By comparison, the subject is assessed at \$117 per SF and has 15,874 SF of finished ground floor, and 7,196 SF of finished mezzanine space.

[17] The Respondent reviewed his second matrix containing two market sales which sold in each of 2010 and 2012. They had ground floor finished areas of 5,419 SF and 2242 SF, and 2,167 SF and 2,592 SF of finished mezzanine respectively. He compared them to the subject.

[18] The Respondent argued that the subject is assessed equitably, not only with the other units in the overall complex, but also with other similar properties in NE Calgary. With specific reference to the subject's complex itself, the Respondent provided a matrix containing the assessed values of five other units in the complex. He noted that the assessed values of the units ranged from \$219 per SF to \$252 per SF whereas the subject benefits from economies of scale and is assessed at \$117 pr SF.

[19] The Respondent provided a matrix of five industrial condo properties from NE Calgary having a YOC circa 1980 to 1997. One of the properties consisted of 41,327 SF of ground floor finished area and 5,018 SF of upper finished area. It sold for \$142 per SF. A second property contained 20,882 SF of finished ground floor space and sold for \$141 per SF. Two other properties in the matrix contained 11,086 and 10,970 SF of upper floor finished area respectively (no ground floor finished area) and each sold for \$255 per SF. The Respondent argued that these sales values support the assessment of the subject at \$117 per SF.

[20] The Respondent argued that properties are assessed in the City's computerized assessment model based on their market values under the Provincially-mandated Mass Appraisal process. He noted that maintenance issues specific to an individual property are not categorically identified and accounted for in this process. The Respondent provided copies of Calgary Assessment Review Board decision LARB 0179/2011-P which dealt specifically with this principle. It stated in part:

"The Board accepts the Respondent's argument that windows are treated as short lived replacement items within the assessment model. The model accounts for the gradual depreciation and replacement of such items (windows, roof, etc.) and so to reduce an assessment that already includes a depreciation factor, by the cost to replace the depreciated item, would amount to a double reduction."

[21] The Respondent argued that Municipal Government Board decision No. DL 165/05 also supports this principle:

"The Appellant brought the appeal forward on two major grounds: condition and location of the property. As far as condition is concerned, the MGB agrees that the property suffers from deferred maintenance. It is however, the Appellant's choice not to deal with the indicated repairs and not spend necessary funds. It would be completely unreasonable, as well as unfair to other taxpayers, to reward the Appellant for his decision not to undertake the repairs by granting a reduced assessment"

[22] The Respondent argued that the percentage year-over-year increase in the assessment of the subject is not relevant to the current assessed value of the property. He clarified that each year is a new assessment year and the "typical values" used in assessing comparable properties which did not sell in the preceding year, must be generated from those open market sales which did occur in the preceding three years. He argued that this mandated Mass Appraisal technique was used to assess the subject, and the process is deemed by the Province and City to result in assessments that are fair and equitable.

[23] The Respondent requested that the assessment be confirmed at \$2,690,000.

Board's Reasons for Decision:

[24] The Board finds that it concurs with the Respondent that the Complainant provided no market evidence to demonstrate that the subject is either over-assessed, or the assessment is not fair and equitable.

[25] The Board finds that the Respondent's valid market sales and equity evidence in the four matrices he presented, supports the assessment.

[26] The Board finds that Calgary Assessment Review Board Decision LARB 0179/2011-P and Municipal Government Board Decision DL 165/05 are relevant. They support the City's argument that because the City's computerized Mass Appraisal assessment model already accounts for property "maintenance issues", to reduce the assessment further on the basis of maintenance issues, amounts to a double reduction in assessment which would be unfair and inequitable.

[27] The Board finds that the Complainant demonstrated that the subject does, and other units in the host complex do, appear to suffer from deferred maintenance issues. However, the evidence presented by the Respondent demonstrates that the subject is fairly and equitably assessed with respect to all other condominium property units in the same complex.

[28] The Board finds that a percentage year-over-year increase in assessment of a property is not, in and of itself, sufficient valid reason to reduce an assessment which has been prepared using valid and current market data in the Mass Appraisal process.

[29] The Board finds that the Complainant provided no comparative market information to demonstrate that the interior configuration of the subject for "fitness" use hinders its market value.

[30] The Board finds that the Complainant provided no market evidence to demonstrate that the market value of the subject suffers from its location under a Calgary International Airport flight path as he had argued in his presentation.

[31] The Board finds that the Complainant provided insufficient information to demonstrate that the assessment of the subject is either incorrect, unfair, 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. C-1	Complainant Disclosure
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.*

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Industrial property	Large Industrial condo bay	Market value	Deferred maintenance