



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:

2137569 Ontario Inc. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***H. Kim, PRESIDING OFFICER
J. Kerrison, BOARD MEMBER
P. Pask, 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:	097006191
LOCATION ADDRESS:	7120 Barlow Trail SE
FILE NUMBER:	72577
ASSESSMENT:	\$15,290,000

This complaint was heard on the 20th day of June, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *D. Mewha*

Appeared on behalf of the Respondent:

- *J. Tran*
- *I. McDermott*

Property Description:

[1] The subject is an industrial property located in the Foothills industrial area in the Southeast quadrant of the City. It has exposure to Barlow Trail and access from 70th and 72nd Avenues SW. It is assessed as a multi-building Industrial Warehouse with one 222,570 sf building assessed at \$62.29/sf and two 5,400 sf buildings assessed at \$133.51 and \$132.07/sf respectively. The large building is fully occupied by Ice River Springs Water Co. Inc. which is a related company of the building owner. The two smaller buildings are fully occupied by five different tenants.

Issues:

[2] The Complaint was filed by the owner of the property, who subsequently retained the agent to appear at the hearing. The Reasons for Complaint in the Assessment Review Board Complaint form stated:

The assessed value of this property is too high (assessed at \$15,290,000). We request that the property be re-assessed at fair market value. This property was purchased for \$10,150,000 on November 30, 2012.

On Friday, March 1st the assessment was discussed with James Greer. He did not feel a reassessment was warranted. Based on the significant difference between the assessed value and the actual market value (sale price), we request the property be reassessed.

[3] The issues identified at the hearing were:

- a. Was the sale a valid market sale?
- b. Should the assessment reflect the purchase price?

Complainant's Requested Value: \$10,150,000

Board's Decision:

[4] The assessment is reduced to \$10,150,000

Position of the Parties

Complainant's Position:

[5] The Complainant presented a transfer document for the subject property dated November 23, 2012 from Calgary Industrial Properties Ltd. to 2137569 Ontario Inc. c/o Ice River Springs Water Co Inc. for \$10,150,000. Corporation Search information for the vendor and purchaser were included to show that Calgary Industrial Properties Ltd. is 100% owned by Dundee Properties Limited Partnership and unrelated to the purchaser.

[6] This was a valid market sale. It was an arm's length transaction between unrelated parties that occurred in the assessment year, albeit after the valuation date. The Complainant presented two sales of industrial property that, while dissimilar from the subject, were very similar to each other. One occurred on August 30, 2012 for \$2,993,000 at \$200/sf and the other on December 10, 2012 for \$2,993,000 at \$197/sf. These sales demonstrate that there was no movement in the market between the valuation date and the latter part of 2012, therefore the sale price accurately reflects the value of the subject property at the July 1, 2012 valuation date.

[7] The Courts have found that the best evidence of value is a recent sale of the subject, as evidenced in *697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512 in which Madam Justice L.D. Acton set aside a decision of the Municipal Government Board (MGB) stating:

[30] In my view, the foregoing errors demonstrate a failure on the part of the MGB to reasonably apprehend and apply the evidence before it to the principles of valuation set out in the applicable legislation. In particular, the MGB unreasonably refused to consider evidence of a recent sale that fell squarely within the statutory definition of market value.

[8] The \$10,150,000 sale price is the best indicator of the market value of the subject property at the valuation date, and the 2012 assessment should be reduced to that amount.

Respondent's Position:

[9] The Respondent presented the Assessment Request for Information return indicating that Ice River Springs had leased the large building from November 1, 2009. The Respondent spoke to the property manager at the time of sale by telephone and determined that Ice River Springs was interested in purchasing the building at the start of their lease. The reason for the long closing period was issues related to financing and timing of the mortgage renewal to avoid penalties. The Respondent said that there were atypical motivations in the sale, and that a landlord/tenant relationship existed between the vendor and purchaser. Therefore, the Respondent submitted that this was not a market sale, and if it were, the deal had likely been made in 2009 and not at the valuation date. In any event, the registration date, which the Respondent uses, was December 4, 2012 fully five months after the valuation date.

[10] The assessments for multi-building properties are prepared using sales of single-building properties of similar characteristics as the individual buildings in the multi-building property, adding their values and deducting an allowance for not being separately titled. The assessment of the subject property is calculated as follows:

Address	Parcel Size	Bldg Area	AYOC	Finish %	Site Coverage	Valuation Date	Assessment	Assmt/sf
7120 Barlow Tr SE	10.11	222,570	1978	0	52.98	07/01/2012	13,864,564	62.29
7120 Barlow Tr SE		5,400		47			720,958	133.51
7120 Barlow Tr SE		5,400		12			713,178	132.07

[11] The Respondent could not provide the specific allowance applied, but presented five sales, all industrial buildings zoned I-G in the Foothills area around the age of the subject buildings. One was a multi-building sale and the others were single building sales:

Address	Parcel Size	Bldg Area	AYOC	Finish %	Site Coverage	Sale Date	Sale Price	TASP	TASP/SF
4949 76 Ave SE	9.22	71,164	1981	0.39	22.91	05/11/2010	9,950,000	11,118,528	106.89
4949 76 Ave SE		14,375	1981	0.13					
4949 76 Ave SE		18,480	1981	0					
7803 35 St SE	10.21	179,418	1977	0.05	40.09	07/27/2011	12,750,000	13,567,777	75.62
6160 40 St SE	1.22	21,449	1977	0.21	40.43	06/11/2010	2,800,000	3,170,699	147.83
4415 64 Ave SE	0.59	9,000	1980	0.15	35.17	02/11/2010	1,250,000	1,382,183	153.58

[12] The sales support the assessment and demonstrate that an appropriate allowance is applied for multi building properties compared to their sale prices.

Complainant's Rebuttal

[13] The Complainant questioned the validity and comparability of the Respondent's sales. The offering brochure for 4949 76 Ave SE indicated it was a complete manufacturing facility and the purchase price included many cranes and equipment that would not be assessable. The second sale was one of two properties in a portfolio sale. The third sale was a 5-bay multi-bay warehouse significantly different in size from any of the buildings in the subject. The fourth sale was a business with property and also included value that would not be assessable.

[14] The landlord/tenant relationship between the parties is not a relationship that would impact whether this was a market sale. It sold by one of the largest property owners, brokered by CB to an unrelated party. The Complainant cited other examples of sales involving a landlord and tenant, indicating this is not unusual in the marketplace.

[15] The Complainant further suggested that even if the agreement were struck in 2009, of which no evidence was presented, the City's time adjustment would result in a TASP of \$10,900,000 which is still significantly less than the assessment.

Board's Reasons for Decision:

[16] The Board finds, on the evidence, this was a valid market sale between unrelated parties. The landlord/tenant relationship between the vendor and purchaser would not be expected to impose greater duress on the part of one party over the other causing either not to be a willing vendor or a willing purchaser.

[17] The Board agrees that the best evidence of value available is the sale of the subject property. While it transferred five months after the valuation date, it did occur within the assessment year. The Board agrees that the transfer took place too late to be considered in the City's analysis for determining the assessment, however does not agree that it should be disregarded as being *post facto*. The Respondent's practice of assessing multiple building properties based on the aggregate value of each building using sales of single titled properties is reasonable, but its accuracy would rely on the appropriateness of the adjustment applied for not having separate titles. In the subject hearing, the Respondent could not supply the amount of adjustment for multiple buildings on a single title, nor was evidence presented to show that this unknown amount was sufficient. Further, the Board accepted the reported data indicated

that the sales presented by the Respondent may have had values that included a substantial component of non-assessable property. Thus, the best evidence of the market value of the subject site at the valuation date is the amount that was paid.

[18] The Board considered the possibility that the amount may have been agreed to at the time of the lease in 2009, but in the absence of any evidence to support this hypothesis declined to apply a time adjustment to the purchase price.

DATED AT THE CITY OF CALGARY THIS 17th DAY OF July 2013.



H. Kim
Presiding Officer

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

NO.	ITEM
1. C1	Complaint Form
2. C2	Complainant's Disclosure
3. C3	Complainant's Rebuttal
4. 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.*