



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:

Surefire Industries Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Myron Chilibeck, PRESIDING OFFICER

T. Livermore, BOARD MEMBER

T. Usselman, 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: 094207008

LOCATION ADDRESS: 4700 – 47 ST SE

FILE NUMBER: 73109

ASSESSMENT: \$40,010,000.

This complaint was heard on 10th day of June, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *D. Mewha*
- *F. Huynh*

Appeared on behalf of the Respondent:

- D. Kozak
- E. Wu
- I. McDermott
- T. Nguyen

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

[1] Neither party raised any objections to a member of the Board hearing the subject complaint.

Preliminary Matter:

[2] The Respondent advised the Board that the cranes and crane-ways located on the subject property are classed as manufacturing machinery and equipment as they are used in the manufacturing that takes place on the subject property.

[3] The subject assessment under complaint does not include any value for the cranes and crane-ways

[4] The Complainant agreed with the Respondent's position.

Property Description:

[5] The subject is a large oil and gas manufacturing facility housed in a 317,750 sq ft building constructed in 1998 on a parcel of land containing 40.04 acres located in the south east quadrant of the City of Calgary.

[6] The building is comprised of two parts; one part is the manufacturing portion of 238,193 sq ft and the other part is a three storey office of 67,894 sq ft.

[7] The assessment was calculated using the cost method of valuation.

Issues:

[8] The Complainant identified several matters that apply to the complaint on the complaint form and attached a schedule listing several reasons (grounds) for the complaint. At the outset of the hearing the complainant advised that only the matter of the assessment amount is under complaint and identified the following issue:

- 1) The sale of the subject property in September, 2011, which is within ten months of the valuation date of July 1, 2012, less the value of the machinery and equipment and the chattels, is the best evidence and indicator of its market value.

Complainant's Requested Value: \$34,550,000.

Board's Decision:

[9] The Board's decision is to change the assessment to \$36,860,000.

Legislative Authority, Requirements and Considerations:

[10] The Composite Assessment Review Board (CARB) derives its authority from Part 11 of the Municipal Government Act (MGA) RSA 2000:

Section 460.1(2): Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

[11] For purposes of the hearing, the CARB will consider MGA Section 293(1):

In preparing the assessment, the assessor must, in a fair and equitable, manner,

- (a) apply the valuation and other standards set out in the regulations, and*
- (b) follow the procedures set out in the regulations*

[12] The Matters Relating to Assessment and Taxation Regulation (MRAT) is the regulation referred to in MGA section 293(1)(b). The CARB consideration will be guided by MRAT Part 1 Standards of Assessment, Mass appraisal section 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*
- (c) must reflect typical market conditions for properties similar to that property*

Complainant's Position:

[13] The Complainant argued that the subject's sale price of \$38 million in September, 2011, less the value of the cranes and crane-ways and chattels (office furniture), is the best evidence and indicator of its market value.

[14] The depreciated replacement cost of the 32 cranes and related crane-ways was determined by using the Marshall and Swift cost manual at \$2,919,510.

[15] The value of the office furniture was determined by applying a unit rate of value obtained from the subject owner to the furniture inventory at \$528,000.

[16] The cost of the cranes and crane ways and the value for the furniture was deducted from the sale price which resulted in the requested value of \$34,550,000.

[17] The Complainant made reference to Court of Queen's Bench of Alberta decision, 2005 ABQB 512, in support of the position that a recent sale price is the most realistic and most reliable method of establishing market value.

[18] Also reference was made to a 2012 CARB decision on the subject property, from the Calgary Assessment Review Board, CARB 1790-2012-P, that changed the assessment based on the sale price of the subject.

[19] The Complainant applied the replacement cost method and determined that the depreciated replacement cost of the subject building using the Marshall & Swift cost manual is \$23,198,904, similar to the Respondent's cost of \$23,108,750.

[20] However, the Complainant disputed the land value. He provided three 2011 sales that resulted in a median final adjusted rate per acre of \$300,000 versus the subject assessed at \$422,000 per acre.

[21] Also, the Complainant provided four historic sales from 2007 and 2008 with a median of \$332,000 per acre and asserted this supports the rate per acre for the subject land at \$300,000 for a total value of \$12,012,000

[22] The land value plus the building value equals \$35,210,904 which is less than the assessed value of \$40,010,000. This supports the value determined by using the sale price hence, the request to reduce the assessment to \$34,550,000.

Respondent's Position:

[23] The Respondent valued the subject by using the depreciated replacement cost method wherein the land, at market value, was valued at \$16,904,000 and the building, at depreciated replacement cost, was valued at \$23,108,000.

[24] The land value was calculated at a base rate of \$585,000 for the first ten acres and adjusted negatively in increments of ten acres to recognize diminishing returns as the parcel area increases, plus a positive adjustment for being a corner parcel.

[25] Four sale comparables, three of which contain eleven acres and one of which contains 31 acres, were provided in support of the assessed base rate and one sale comparable with 56 acres in support of the diminishing returns table/calculation methodology.

[26] The Complainant's 2011 sale comparables were refuted on the basis that one sale is of land zoned at I-H versus the subject at I-G, and that the analysis did not recognize diminishing returns when the parcels are greater than ten acres in area.

[27] The sale of 9620R – 68 St is actually the combination of two parcels of land that are narrow and long, each having a width of 252 feet and a depth of 2,593 feet. The configuration (shape) and area of 30 acres of this comparable is not similar to the subject.

[28] The I-G lands are valued at a base rate of \$585,000 per acre whereas the I-H lands are valued at a base rate of \$350,000 per acre.

[29] The Complainant's sales are of parcels containing 30, 56 and 24 acres versus the subject at 40 acres. The overall sale prices per acre should be trended to recognize diminishing returns as parcel size increases above 10 acres.

[30] The third sale is of a 56 acre parcel and an adjustment for the size difference should be made to compare to the subject of 40 acres. A calculation of the assessed value for this comparable using the diminishing returns methodology showed a reasonable relationship between the assessment per acre and the adjusted sale price.

[31] The Respondent argued that because the City of Calgary levies a business tax, the machinery and equipment is not taxed and therefore is not assessed.

[32] Because the cranes and crane ways are classed as machinery and equipment, they would be valued according to the 2012 Machinery & Equipment Assessment Minister's Guidelines that requires the cost be determined in accordance with the 2005 Construction Cost Reporting Guide. This guide requires the costs of construction, in this case the cranes and crane ways, to be reported by the company to the assessor, that in this case were not reported and therefore they are not able to make a deduction to the subject's sale price.

[33] If the cranes and crane ways were not classed as machinery and equipment, then it would be appropriate to use the Marshall & Swift cost manual.

Board's Reasons for Decision:

[34] The Board finds merit in the Complainant's position that the recent sale price of the subject property deserves considerable weight in determining the assessed value for the subject property.

[35] The Board is persuaded to place considerable weight on the subject sale as determined by CARB decision 1790-2012-P on the subject property and Court of Queen's Bench of Alberta decision 2005 ABQB 512.

[36] In 2005 ABQB 512 Madam Justice Acton considered the issue of correctness of an assessed value versus the sale price of the property. The Board finds paragraphs 24 and 25 of this decision relevant in this case and quotes as follows:

*"[24] In my view, the MGB's failure to rely on the evidence of value provided by the recent sale of the Property fails to meet the test of reasonableness. I agree with the following comments from **Re Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd. et al.** (1984), 47 O.R. (2d) 766 (Ont. H.C.J. Div. Ct.) at p. 767:*

It seems to me to be worth remembering that where the Assessment Act, R.S.O. 1980, c. 31 requires the determination of what a property might be expected to realize if sold on the open market by a willing seller to a willing buyer (s. 18(2)), the price paid in a recent free sale of the subject property itself, where, as in this case, there are neither changes in the market nor to the property in the interval, must be very powerful evidence indeed as to what the market value of the property is. It is for that reason that the recent free sale of a subject property is generally accepted as the best means of establishing the market value of that property.

...

...I think that generally speaking the recent sales price, if available as it was in this case, is in law and, in common sense, the most realistic and most reliable method of establishing market value.

*[25] I also agree that where, as in this case, there is sufficient evidence of actual market value, there is no need to engage all of the factors set out in section 12 of the Regulation. I agree with the reasoning of Fraser J. in **Mountain View (County) v. Alberta (Municipal GovernmentBoard)**, supra, that where there is a conflict between the actual market value and the factors set out in section 12, the market value as defined by the Act should govern."*

[37] The recent sale (September, 2011) falls within the 12 month analysis period prior to the valuation date of July 1, 2012 and this sale was used by the CARB in making their decision in 2012.

[38] There were no significant changes to the property between the sale date and the valuation date.

[39] The Board accepts the Respondent's time adjustment factor to adjust the sale to indicate a value as of July 1, 2012. This results in a time adjusted sale price of \$39,786,000 which is almost identical to the assessed value of \$40,010,000.

[40] The Board accepts that the sale included the cranes and crane ways and this is supported by the purchase agreement and the Alberta Data Search sale report provided by the Complainant.

[41] The Board accepts the Complainant's value for the cranes and crane ways at \$2,919,510. This value was not contested by the Respondent other than to say that this value is not appropriate since the improvement is not considered to be a part of the building but is classed as machinery and equipment.

[42] The Board does not accept the Respondent's argument that the cranes and crane ways would be valued one way when considered to be a structure within the building and another way when considered to be machinery and equipment.

[43] The Marshall and Swift cost manual provides costs for the subject cranes and crane ways and the use of these costs results in a fair and equitable value between properties with similar improvements.

[44] The Board was not convinced to make an allowance for the office furniture as requested by the Complainant.

[45] No evidence was provided by the Complainant to support the list of furniture included in the subject's sale price and to support the derivation of furniture unit prices.

[46] The unit prices for the furniture were provided by the property owner who has a direct interest in the outcome of this complaint rather than an independent third party who has no direct interest in the outcome.

[47] Therefore, the Board's assessment of \$36,860,000. is calculated as follows:

Subject's time adjusted sale price	\$39,786,266.
Less cranes and crane ways	<u>\$ 2,919,510.</u>
Net Assessment	\$36,866,756.
Final Assessment, truncated	\$36,860,000.

DATED AT THE CITY OF CALGARY THIS 10th DAY OF JULY, 2013.

A handwritten signature in black ink, appearing to read "M. Chilibeck", written over a horizontal line.

M. Chilibeck
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure
2. C2	Complainant's Disclosure
3. R3	Respondent's Disclosure
4. C4	Complainant's Rebuttal
5. C5	Complainant's – Manufacturing Classification
6. C6	Complainant's Rebuttal
7. C7	Complainant's Rebuttal

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.*

CARB Identifier Codes

Decision No. 73109P-2013			Roll No. 094207008	
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Industrial	Plant	Cost Approach	Improvement Value

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