



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:

EMR ECONOMY MAINTENANCE & REPAIR LTD.
(as represented by Inval Property Tax Assessment Consulting)

COMPLAINANT

and

THE CITY OF CALGARY

RESPONDENT

before:

T. SHANDRO, PRESIDING OFFICER
J. RANKIN, BOARD MEMBER
A. ZINDLER, 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 2014 Assessment Roll as follows:

ROLL NUMBER: 068117001

LOCATION ADDRESS: 339 – 10 Avenue SE

FILE NUMBER: 74216

ASSESSMENT: \$4,270,000

This complaint was heard on July 2, 2014, at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- J. D. Sheridan, Agent, Inval Property Tax Assessment Consulting

Appeared on behalf of the Respondent:

- V. LaValley, Assessor, The City of Calgary
- N. Sunderji, Assessor, The City of Calgary

Procedural or Jurisdictional Matters

[1] There were no preliminary or jurisdictional matters arising in this matter.

Property Description

[2] The subject property is warehouse located in the Beltline constructed in 1904 and designated in the Property Assessment Detail Report as "Mini Storage" with an assessable area of 29,566 square feet ("SF").

[3] It was assessed using the Income Approach. The Respondent designated the entire assessable area with the Subcomponent "Office Warehouse" and used the market rental rate of same at \$11.50/SF and a vacancy rate of 10.50%.

Issues

[4] The Board identified the issue as follows:

1. What are the correct Subcomponents for the assessable areas of the subject property?

Complainant's Requested Value

[5] In the Complaint Form, the Complainant requested a reduced assessment of \$1,770,000. At the hearing the Complainant amended the requested value to \$1,790,000.

Board's Decision

[6] The Board reduces the assessment of the subject property to \$2,030,000.

Legislative Authority, Requirements and Considerations

[7] Section 293 of the Act requires that:

- (1) In preparing an 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.

[8] Section 4 of the *Matters Relating to Assessment and Taxation Regulation* ("MRAT") states:

- (1) The valuation standard for a parcel of land is
 - (a) market value, or
 - (b) if the parcel is used for farming operations, agricultural use value.

Complainant's Position

[9] The Complainant argued that the Respondent had erred in determining the subject property to be entirely Office Warehouse and using the rental rate of \$11.50/SF. Instead 28,574 SF should have been designated as Storage and a rate of \$5.50/SF should have been used.

[10] The Complainant provided the assessment history of the subject property beginning in 2009:

- (a) In 2009, \$2,270,000;
- (b) In 2010, \$3,900,000;
- (c) In 2011, \$2,270,000;
- (d) In 2012, \$1,360,000; and
- (e) In 2013, it was assessed at \$4,010,000, which was appealed and reduced by this Board in CARB 70566P-2103 to \$1,770,000.

[11] The Complainant further submitted pictures of the interior of the subject property. Built in three phases, there are no windows in the second and third "buildings", as the Complainant called them. The use as mini-storage began in 1982, and the Complainant argued a retrofit to another use would require significant alteration.

[12] The photographs provided by the Complainant show that the interior consists of bare walls and ceilings and that the only improvements appear to be the wood and mesh cages used for client storage.

[13] The Complainant submitted that 992 SF should be assessed as Office Warehouse with a rental rate of \$15.00/SF and the remaining should be assessed as "Storage" with a rental rate of \$5.50/SF. The Complainant provided a suggested modified calculation of the assessment only changed the area and rental rates for these two areas (992 SF at \$15.00/SF and 28,574 SF at \$5.50/SF). The vacancy rate, capitalization rate and all other variables in the Income Approach calculation remained the same as they appeared in the Respondent's calculation.

[14] The Complainant also provided:

- (a) 12 equity comparables in nearby Beltline buildings, which showed a market

rental rate of \$5.50 for spaces between 428 and 5,459 SF; and

(b) the Assessment Request for Information, which showed that the monthly rent for the subject property from April 2012 to March 2013 was \$10,000 per month, paid by the tenant, Downtown Self Storage; and

(c) the Board decision from last year for the subject property, which included identical issues as this hearing, and in which that panel determined that a rental rate of \$5.00/SF was the correct rate.

Respondent's Position

[15] The Respondent submitted the following arguments.

[16] First, the Respondent questioned the date of the actual rent for the subject property. It appeared the Respondent was arguing that the Board should not be placing a significant amount of weight on this information.

[17] Second, most of the comparables provided by the Complainant include storage in the basement. The Respondent argued that "Storage" as a Subcomponent for which the Respondent will assess a different rental rate, is only for space below grade. "Storage" cannot, she argued, be assigned for space which is above-grade. Or, if it is (as appears to be the case for three of the Complainant's comparables), this would be a mistake which the Respondent would correct in the next assessment year. Page 19 of Exhibit R-1 includes as a footnote that the Respondent will be reviewing these properties, and at the hearing the Respondent said it is seeking to have these areas assessed as something other than Storage Space.

[18] Third, a warehouse is just unfinished space. It appeared the Respondent was arguing that use was irrelevant: if the subject property is unfinished space, it should be assessed as Office Warehouse. In essence, the purpose of warehouse space is just to store items anyway.

[19] Fourth, the Respondent submitted information regarding the sale and redevelopment of a nearby warehouse, the Biscuit Block (formerly known as Furniture Warehouse Centre). It was sold on January 6, 2012, for \$4,500,000, and redeveloped with construction costs estimated in building permit applications to be over \$8,000,000. The point being that buildings such as the subject property are desirable and there are buyers willing to spend money to buy them.

[20] The Respondent appeared to be arguing that the highest and best use is something different than its current use. The Respondent was asked what the highest and best use of the subject property would be, but could not answer.

Reasons for Decision

[21] The heart of this issue is an ontological problem: what does it mean to be storage space or warehouse space? When does storage space become warehouse space? Is the Subcomponent of "Storage" meant to include businesses which sell storage space to the public?

[22] But the concern is that this is no more difficult a question as any category used in the Income Approach for determining (a) what Subcomponent should be used, and (b) what is the market rental rate, vacancy rate, capitalization rate, etc., for that Subcomponent. The answer will always be determined by market evidence.

[23] If the Respondent wants to categorize the subject property as Office Warehouse, there

needs to be the market evidence to support such a claim. If the Respondent believes the actual rent is for some reason not indicative of the market, there must be some evidence to support such a claim.

[24] Here, from the information before the Board, the subject property is easily distinguishable from the Office Warehouse Subcomponent, and insufficient information was provided by the Respondent to suggest it was similar enough. Simply being "unfinished" does not make something a warehouse. To say that some warehouses can store therefore all storage spaces are warehouses is a fallacy of scope.

[25] The Respondent's claim that above-grade storage does not exist and/or is a mistake is curious for a number of reasons. It is not unheard of for members of the panel to see files where the Income Approach was used and above-grade storage has been assessed to a portion of the assessable area. That is, it is commonly known to exist. Why else would the Respondent distinguish the below-grade storage Subcomponent as being below-grade? It appeared to the Board that the Respondent may have been overzealous in this argument.

[26] Whether the Respondent wants to review above-grade storage in future assessment years is the Respondent's prerogative. But these spaces, based on the information before the Board in this matter, are clearly distinguishable from Office Warehouse. The question more properly would be whether above-grade and below-grade storage should be assessed at different rates. Unfortunately there was insufficient information before the Board regarding that question.

[27] Highest and best use is limited by what is legally permissible, physically possible and financially feasible. Further, "highest and best use" must be read in conjunction with s. 289 of the Act, which requires that the assessment for the subject property reflect the characteristics and physical conditions of the property on December 31. There is no evidence before the Board that before December 31, 2013, it was legally permissible or physically possible to change the use of the subject property to anything other than self-storage.

[28] Regarding the issue of the sale of and redevelopment of Biscuit Block, the Respondent appeared to be chasing a sale. There was insufficient information before the Board to agree that characteristics and physical conditions of the subject property as at December 31, 2013, were substantially similar enough to Biscuit Block or that the 2012 purchase of what is now Biscuit Block indicates anything about the market value of the subject property.

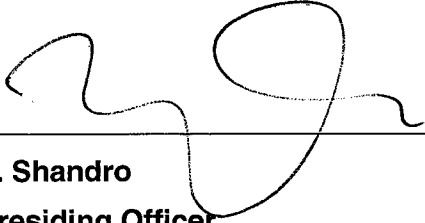
[29] The Board therefore determines that the correct market rental rates for the subject property is 992 SF at \$15.00/SF and 28,574 SF at \$5.50/SF.

[30] At the end of the hearing the Respondent raised the issue of why the Complainant in its calculation only changed the assessable areas and rental rates. That is, it kept the vacancy rate the same as that which was used by the Respondent. But vacancy rates are different for Office Storage than they are for Office Warehouse.

[31] The Complainant agreed and conceded that was a mistake in its submissions and agreed that the vacancy rate should be amended to the appropriate Subcomponent, namely 8%.

[32] The Board therefore reduces the assessed value of the subject property to \$2,030,000.

DATED AT THE CITY OF CALGARY THIS 19th **DAY OF** August **2014.**



T. Shandro
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
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 Purposes Only

Property Type	Property Sub-Type	Issue	Sub-Issue
Retail	Vacant	Sales	Land Value