



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:

***Western Securities Limited
(represented by Altus Group), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***Ms. V. Higham, PRESIDING OFFICER
Mr. J. Kerrison, BOARD MEMBER
Mr. J. Massey, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary (the City) and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER:	112142625
LOCATION ADDRESS:	7101 5 Street SE Calgary, Alberta
FILE NUMBER:	74426
ASSESSMENT:	\$7,640,000

This complaint was heard on August 13, 2014 at the office of the Calgary Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta, 4th Floor, Boardroom 5.

Appeared on behalf of the Complainant:

- **Mr. B. Neeson** **Agent, Altus Group**

Appeared on behalf of the Respondent:

- **Mr. M. Ryan** **Assessor, City of Calgary**
- **Mr. R. Tharakan** **Assessor, City of Calgary**

Procedural or Jurisdictional Matters:

- [1] Neither party objected to the composition of the Board as introduced at the hearing.
- [2] The Board notes an executed Agent Authorization Form present in the file.
- [3] All disclosure materials were received in a timely fashion.
- [4] No preliminary issues were raised by either party.
- [5] During the Respondent's summary, the Complainant introduced a motion to strike certain testimonial evidence delivered verbally by Mr. Ryan, respecting a CARB decision submitted by the Complainant (1617/2011-P *Glenmore Inn Holdings v. The City of Calgary*).
- [6] Mr. Ryan submitted as a statement of fact that the Board in that decision ordered a 30% reduction to the value of the contaminated *land only*, rather than reducing the entire assessed value by 30%.
- [7] Mr. Neeson objected to this oral evidence on the grounds that it is "new evidence" not disclosed by the Respondent in the City's submissions, introduced for the purpose of advancing the Respondent's case, to the procedural and substantive disadvantage of the Complainant.
- [8] The Board heard comments from both parties, then briefly recessed the hearing to consider the motion. After reconvening the hearing, Board denied the Complainant's motion, and concluded that since the Complainant referenced the decision in his rebuttal, section 8(2)(c) of the *Matters Relating to Assessment Complaints* (the *MRAC*) provides for some manner of surrebuttal by the Respondent "at the hearing."
- [9] Having allowed the Respondent's comments into the record, the Board advised both parties that it would assign appropriate weight to the comments upon a review of all the evidence and arguments during deliberations.

Property Description:

- [10] The subject is assessed as an A- quality low rise suburban office property (CS0302), located at 7101 5 Street SE on 2.0 acres of land. The parcel is improved by one commercial building, comprising 26,999 square feet (sf) of office space. The subject is assessed on the income approach to value, with an applied rental rate of \$17 per square foot (psf), and a capitalization (cap) rate of 6%, neither of which is contested. The Complainant requests a negative 30% environmental adjustment be applied to the assessment for environmental contamination on the subject property.

Issues:

[11] The Complainant identified one matter on the Complaint Form as under complaint, being the assessment amount. During the hearing, the Complainant requested a different assessment amount (\$5,340,000) than originally noted on the Complaint Form (\$6,240,000), and raised the following sole issue for the Board's consideration:

- a) Should a negative 30% environmental adjustment be applied to the subject assessment for contamination on the property?

Complainant's Requested Value: \$5,340,000

Board's Decision: The Board varies the subject assessment from \$7,640,000 down to a truncated value of **\$5,340,000**.

Legislative Authority, Requirements and Considerations:

[12] A Composite Assessment Review Board (CARB) derives its authority from the *Act*, section 460.1, which reads as follows:

- (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).

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.

Sections 2 and 4 of the *Matters Relating to Assessment and Taxation Regulations* (the *MRAT*) state:

- (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.
- 4(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.

Position of the Parties

Issue: Should a negative 30% environmental adjustment be applied to the subject assessment for environmental contamination on the property?

Complainant's Position:

[13] The Complainant submitted a Phase II Environmental Site Assessment study, dated February, 2011 conducted by the professional firm of Pinchin LeBlanc Environmental Limited, which concluded that the subject property was then contaminated with excessive concentrations of benzene and ethylbenzene in the soil, as well as excessive concentrations of benzene, toluene, ethylbenzene and xylenes (BTEX) and petroleum hydrocarbon (PHC) in the subject's groundwater.

[14] The study identified a detailed timeframe totalling 58 days for site remediation on two properties (the subject and a neighbouring parcel at 7120 Blackfoot Trail SE), commencing on March 21, 2014 and concluding on May 28, 2014 (C1, p.76)

[15] The Complainant submitted a table describing nine specific influence factors for which the City applies a negative assessment adjustment (including "Environmental"), as well as a table describing percentage amounts applied for the various influence adjustments, noting a negative 30% adjustment for "Environmental" (both tables were obtained from the City).

[16] The Complainant also submitted CARB 73791/P-2013, as well as a table of former gas bar land sales comparables (comps), along with supporting third party reports, in support of his argument that:

- a) contaminated parcels bear less market value psf than non-contaminated sites; and
- b) contaminated parcels bear more onerous financial restrictions relative to purchase financing than do non-contaminated sites.

[17] In rebuttal, the Complainant submitted CARB 1617/2011-P and Municipal Government Board (MGB) Order 060/10 as precedent decisions wherein a 30% environmental adjustment was applied to contaminated properties.

[18] In summary, the Complainant argued that the Respondent proffered no evidence to support the assertion that even if the Board were to apply a 30% adjustment, it should be applied *only* to the land value component of the subject property, and not to the entire assessment.

Respondent's Position:

[19] The Respondent did not contest the fact of contamination on the subject property, but argued that the Complainant provided no persuasive evidence to establish a negative market value impact to the subject as a result of the contamination.

[20] The Respondent argued that the subject is a high quality, "fully-functioning" commercial office property bearing higher market leases throughout the building (all over \$20 psf) than the typical rate applied in the assessment (\$17 psf). Thus, it appears to have suffered no negative economic impact as a result of the contamination, even respecting financing considerations.

[21] The Respondent referenced a page in his submissions entitled, "The City of Calgary's Response to the Subject Property's Contamination Issue" (Response Letter), sent to the Complainant after the advanced consultation period (ACP), which reads:

It is the City of Calgary's position that this report alone [Phase II Environmental Report], which concludes some traces of contamination on the subject's lands, does not justify a -30% to the entire assessed value of the property. There is no indication of where the contamination is on the site; the extent of the contamination on the site; or the cost to remediate any contamination of the site.

[22] The Response Letter further clarified that the City would not consider applying a 30% adjustment until the Complainant submitted the following information for the City's review:

- a) Current, complete Phase II Environmental report in its entirety (within the past 12-24 months);
- b) A recent remediation cost estimate or a Phase III Environmental Report;
- c) Testimonial from an environmental consulting firm substantiating the cost to cure; and

- d) Any polluter liability litigation (typically the person to pay remediation is the polluter which in this case would be the City of Calgary. No evidence has been submitted to show that the remediation costs will fall to the property owner). (R1, p.32)

[23] The Respondent submitted CARB 0741/2012P wherein that Board denied an adjustment for contamination, because the Complainant provided no follow-up to a dated Phase II report, and more particularly, no cost estimate to remediate the property.

[24] Additionally, the Respondent submitted that the -30% adjustment, if accepted, should be applied to land only portions of the subject assessment and not to the entire assessed value of the property, since there is no evidence of any negative economic impact to the office building.

[25] The Respondent also submitted sales and equity tables in response to the Complainant's evidence, arguing that the subject is fairly and equitably assessed in spite of the contamination.

BOARD'S FINDINGS AND REASONS:

[26] The Board finds that a negative 30% environmental adjustment should be applied to the subject assessment for contamination on the property.

[27] The fact of the contamination is not disputed by either party. The issue before the Board is whether the contamination on the property (since remediated) would have negatively affected an estimate of the subject's market value as of the valuation date, July 1, 2013. The Board is satisfied that it would have, and that this ought to be reflected in the 2014 assessment by applying the City's typical adjustment for environmental influences (30%) to the entire assessment.

Economic Impact:

[28] The Board was not persuaded by the Respondent's argument that the property suffered no economic impact as a result of the contamination since the building appeared to be performing well, with secure financing, and tenants in place at higher rental rates than the typical rate applied in the assessment.

[29] Upon questioning, the Complainant confirmed that the subject's contamination was not discovered until early 2011, with the Phase II report dated February 2011. Reviewing the subject's 2012 Assessment Request for Information (ARFI), the Board notes that all the property's leases were signed in 2008 or 2009 for five or six year terms – well before contamination was even discovered. Additionally, the Board notes that the subject's mortgage financing document is dated March 2010, prior to the contamination discovery.

[30] Thus, the Board concludes that the solid economic appearance of the subject property is based on leases and financing considerations that were secured years in advance of the tenants' or mortgagor's knowledge of site contamination.

City's Response Letter – Stigma:

[31] The Respondent argued that the Complainant's Phase II Environmental report provided evidence of some contamination, as well as detailed timelines for remediating the site, but the report failed to provide an estimate of the costs to cure the property, nor did the Complainant submit any evidence respecting these costs after the fact.

[32] Upon questioning, the Respondent acknowledged that the Response Letter was drafted for the Complainant on a *site-specific basis*, and does not necessarily represent City *policy* respecting contaminated sites or how the City typically applies the negative 30% environmental adjustment.

[33] The Board was not persuaded that this adjustment should only be applied if all the stipulations identified in the Response Letter were met by the landowner. Specifically, while details about cost to cure estimates and polluter liability are useful supporting evidence, they are not required by city policy for the application of an environmental adjustment in every case – as evidenced in CARB decisions 73791/P-2013 and CARB 1617/2011-P.

[34] The subject property in CARB 73791/P-2013 received the City's 30% reduction to the assessed value for contamination without *"any professional report showing the cost to remediate the site"* (paragraph 14). In CARB 1617/2011-P, identified comparable properties received the 30% adjustments for *"petroleum hydrocarbon contamination without the requirement to quantify the loss in value or establish the level of contamination"* (page 4 of 8).

[35] In CARB 1617/2011-P, the Board quoted a 2009 MGB oral decision involving the Calgary Glenmore Inn, which noted that the assessor had applied the City's 30% environmental reduction *"although the precise effects of market value are unknown"* (transcript, p.19 lines 5-11).

[36] The Board concludes that prospective purchasers or tenants would regard a contaminated site with increased caution and due diligence, attaching a burden of market *stigma* to the subject property that is not necessarily quantifiable. This would appear to justify the 30% reduction applied to properties in these CARB cases, notwithstanding the lack of definitive market evidence or cost to cure estimates.

Adjustment Applied to "Land Only":

[37] The Respondent argued that even if the Board were to accept the requested -30% adjustment, it should be applied *only* to the land component of the subject assessment. The Respondent offered testimonial evidence at the hearing that the 30% negative adjustment ordered by the Board in CARB 1617/2011-P) was applied to the land only component of that property.

[38] The Board finds no evidence to substantiate this assertion, and concludes from a simple mathematical calculation that the 30% environmental adjustment was applied to the entire assessed value of that property (Board varied the assessment from \$9,900,000 down to \$6,930,000).

[39] Thus, the Board finds that the 30% environmental adjustment should be applied to the entire subject assessment.

Conclusion:

[40] The Board is persuaded on the facts of this case, that the stigma of contamination on the subject property may well have negatively affected an estimate of the subject's market value on the valuation date, which should have been reflected in the 2014 subject assessment by applying the City's typical adjustment for environmental influences. In any event, the Board is persuaded that the subject has not been fairly and equitably assessed, given the preponderance of evidence submitted at the hearing.

[41] Thus, the Board finds that the best indicator of market value for the subject property at that snapshot in time is derived by applying the typical negative 30% environmental adjustment to the entire subject assessment, resulting in a truncated value of \$5,340,000.

Board's Decision:

[42] For reasons outlined herein, the Board varies the subject assessment from \$7,640,000 down to a truncated value of **\$5,340,000**.

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


V. Higham, Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure
3. C2	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.*

For Administrative Use Only – Roll Number 201139383

Municipal Government Board Use Only: Decision Identifier Codes				
Municipality/Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary CARB	Office	Low Rise	Contamination	Petrochemical Contamination