



Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaints against the property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 [the Act].

between:

Artis Calgary Dominion Ltd.
(as represented by Fairtax Realty Advocates Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER
K. B. Bickford, BOARD MEMBER
T. Livermore, BOARD MEMBER

These are complaints to the Composite Assessment Review Board [the Board] in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER:	070028501	070028907
LOCATION ADDRESS:	615 18 ST SE	405 18 ST SE
FILE NUMBER:	74773	74774
ASSESSMENT:	\$4,800,000	\$2,800,000

These complaints were heard on 17th day of July, 2014 at the office of the Calgary Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- S. Storey *Agent, Fairtax Realty Advocates Inc.*
- B. Boccaccio *Agent, Fairtax Realty Advocates Inc.*

Appeared on behalf of the Respondent:

- C. MacMillan *Assessor, City of Calgary*

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

[1] The Complainant and Respondent agreed to hear both complaints in one hearing as they are the same property owner and share the same complaint issues.

[2] There are no additional preliminary, procedural, or jurisdictional issues.

Property Description:

[3] The subject properties are adjacent to each other and form one site for the Complainant in the NE Non-Residential Zone [NRZ] of Mayland Industrial Park – MY3.

[4] The first building is located at 615 18 ST SE. It is comprised of 45,916 square feet of land with a 30,933 square foot building built in 1975. The Respondent has stratified the property as a Suburban Office of a 'B' quality. It is currently being assessed using the Income Approach to Value with no influence reductions.

[5] The second building is located at 405 18 ST SE. It is comprised of 94,439 square feet of land with a 17,187 square foot building built in 1966. The Respondent has stratified the property as an Industrial Warehouse of 'C-' quality. It is currently assessed using the Direct Sales Comparison Approach to Value with no influence reductions.

Issues:

[6] The single issue before the Board is in regards to site contamination. The Complainant would like a 23% reduction on each assessment for contamination as a result of ground water flow believed to be from a closed landfill site.

Complainant's Requested Value: 615 18 ST SE	\$3,740,000
405 18 ST SE	\$2,156,000

Board's Decision:

[7] The Board found no evidence to warrant a reduction based on the issue of contamination. Therefore the original assessments are confirmed as follows:

615 18 ST SE	\$4,800,000
405 18 ST SE	\$2,800,000

Legislative Authority, Requirements, and Considerations:**The Act****Interpretation**

1(1) In this Act,

(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Position of the Parties**Complainant's Position:**

[8] The Complainant presented no concerns with the typical parameters of the assessment calculation of each subject property. However, the request is to receive a 23% reduction to each assessment for contamination.

[9] The Complainant provided photographs and subject property details (C1 pp. 1-6).

[10] The Complainant reviewed the history of the subject properties and explained the issue of contamination including an assertion that the Respondent has in its possession documents to establish contamination within the subject lands and chooses not to provide the evidence (C1 pp 8-10).

[11] The Complainant disclosed an engineering report that establishes the contamination history prior to 2004. The report does not establish any recourse or future mitigation costs (C1 pp 10-29 and C2 final two-thirds of package).

[12] The Complainant reported that an agreement has been reached with the Respondent wherein the Respondent acknowledges contamination that requires remediation and monitoring, agrees to pay for monitoring, and likely is responsible for remediation. The agreement is unsigned and is expected to be signed in its present form shortly (C1 pp. 30-47).

[13] The Complainant reviewed the court ordered sales agreement of November 23, 2010 and the real estate listing to show the purchase price when equated to an income stream, resulted in a 9% capitalisation rate. When a 9% capitalisation rate is imported into the Income Approach to Value, it calculates a 23% lower assessment for 615 18 ST SE, when compared to the actual assessment using 7% capitalisation rate. The Complainant argued that the Board could apply the 9% capitalisation rate to 615 18 ST SE and provide a similar discount to 405 18 ST SE to accommodate the contamination (C1 pp. 48-57).

[14] The Complainant provided a '2012 Non-Residential Non-Core Land Influence Table' to show that environmental concerns, when recognised by the Respondent, receive a negative

assessment adjustment of up to 30% (C1 p. 59).

[15] The Complainant disclosed the '2014 Property Assessment Notice' and the 'Property Assessment Detail Report' for both properties along with the specific calculations for each property; '2014 Assessment Explanation Supplement – Industrial' and 'Non-Residential Properties – Income Approach Valuation' (C1 pp. 60-66).

[16] The Complainant argues that when the sites were purchased the disclosed contamination reports were available showing the potential for contamination and the knowledge that the Respondent is likely responsible for any remediation if necessary. Since the purchase, the Complainant is now aware of actual contamination and asks the Board to recognise it with a 23% reduction in lieu of actual remediation cost evidence. This request is based on the knowledge of potential contamination, resulting in a 9% capitalisation rate in November 2010; therefore, with the current knowledge of actual contamination, the capitalisation rate cannot be any lower than it was at the time of purchase.

Respondent's Position:

[17] The Respondent reviewed the process for dealing with environmental concerns including contamination. There are four items the Respondent will accept to consider an assessment reduction for environmental concerns: 1) a Phase II Environmental Report, less than two years old at the time of valuation; 2) a remediation cost estimate or Phase III Environmental Report; 3) testimony from an environmental consulting firm substantiating the cost to resolve environmental concerns; or 4) litigation documentation against the polluter to recover damages (R1 pp. 4-5 and 33).

[18] The Respondent presented the calculations and factual information regarding the assessments (R 1 pp. 9-22).

[19] The Respondent disclosed the sale transaction details as reported by a third party reporting agency called RealNet Canada Inc., wherein details show the sale price in November 2010 was \$10,600,000 and the current assessment is nearly 30% less (R1 pp.24-26).

[20] The Respondent argued that there is no current evidence as to the extent or severity of the contamination and that it appears that the Respondent may be responsible for any remediation. Therefore, there is no loss to the Complainant.

Board's Reasons for Decision:

[21] The Complainant in its request for a 9% capitalisation rate failed to demonstrate how an actual capitalisation rate in 2010 using actual income equates to 2014 with typical income. The Board requires more than a mere suggestion in order to make an adjustment.

[22] The Board found that providing a ten-year-old contamination report is insufficient evidence to grant a reduction for contamination as requested.

[23] The Board found that the requirements established by the Respondent to provide recognition of contamination and hence an adjustment to an assessment are onerous, but there is a system in place.

[24] The Board notes both parties acknowledge there was some disclosure of the contamination on site at the time of purchase by the current owner. It was also in evidence that the transaction was pursuant to a court order, suggesting some element of distress.

[25] The Board was not provided any evidence that the current utility of the subject properties (the ability to generate income) is hampered by the presence of the contamination.

[26] The Board finds it irrational that the Respondent acknowledges the existence of contamination on the subject properties but refuses to make any valuation adjustment simply because it is unable to quantify a cost to cure.

[27] The Board examined the 2010 purchase of the properties by the Complainant for a distress price of \$10,600,000. The purchase was made with knowledge that some contamination existed on the properties. Either by chance or by intent, the current assessments total \$7,600,000. The Board is of the opinion this valuation is of sufficient discount from the 2010 purchase price to recognise a fair and reasonable estimate of market value as of the valuation date.

DATED AT THE CITY OF CALGARY THIS 13 DAY OF August 2014.



Jeffrey Dawson

Presiding Officer

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

NO.	ITEM
1. C1 – 66 pages	Complainant Disclosure
2. C2 – ~200 pages	Complainant Disclosure
3. R1 – 56 pages	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.*

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Low Rise	Contamination	Other Contamination