



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:

AMVIC HOLDINGS INC.
(as represented by DuCharme, McMillen and Associates Canada Ltd.)

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: 091001503

LOCATION ADDRESS: 3839 Ogden Road SE

FILE NUMBER: 77305

ASSESSMENT: \$5,260,000

This complaint was heard on July 3, 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:

- M. Pierson, Agent, DuCharme, McMillen and Associates Canada Ltd.

Appeared on behalf of the Respondent:

- T. Luchak, 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 a parcel located in Alyth which is improved upon by a single-tenant warehouse which is 115,666 square feet ("SF") and was built in 1965. It is assessed using Sales Comparison Approach.

[3] The subject property was sold in 2013, with a Transfer of Land executed by the previous owner on August 14, 2013, an Affidavit of Transferee sworn August 27, 2013, and title for the subject property indicates that the Land Titles Office registered the transfer on September 4, 2013. Information from the Complainant indicated the sale was arms-length.

[4] A 2014 Property Assessment Notice was issued to the Complainant which assessed the subject property at \$7,520,000. An Amended Property Assessment Notice was issued a month later in the amount of \$5,260,000.

Issues

[5] The Board identified the issue as follows:

1. Does the Amended Property Assessment Notice reflect the market value for the subject property?

Complainant's Requested Value

[6] The Complainant requested a reduced assessment of \$4,500,000.

Board's Decision

[7] The Board reduces the assessment of the subject property to \$4,500,000.

Legislative Authority, Requirements and Considerations

[8] 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.

[9] 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.

[10] Several Court decisions and past orders of this Board, but of particular note is para. 24 of *697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512 ("697604"), in which Justice Acton decided, in a situation where a sale occurring on July 18, 2000, was not considered to be indicative of market value:

"In my view the [Municipal Government Board]'s failure to rely on evidence of value provided by recent sale of the Property fails to meet the test of reasonableness."

Complainant's Position

[11] The Complainant provided the sales documents, including the title, the Transfer of Land, the Affidavit of Transferee and the listing documents. The listing price was \$4,800,000. The Complainant also provided an appraisal of the subject property dated July 31, 2013, from Colliers International, which valued the land as \$4,690,000.

[12] The Complainant therefore argued that the post facto sale was the most compelling evidence regarding the market value of the subject property and, despite being post facto, should be given deference by the Board.

[13] The Complainant further argued that Justice Acton's decision in *697604* and the other decisions and orders relied upon by the Complainant provided that the Board would be unreasonable to not consider the post facto sale of the subject property.

Respondent's Position

[14] The Respondent submitted that when the sale of the subject property was brought to his attention, he realized that the 2014 Assessment needed to be investigated and reconsidered. At that time, the Respondent did just that, and the result was the Amended Assessment.

[15] The Respondent argued that the market information supported the Amended Assessment, and that the subject property should be assessed as at the physical condition on December 31, 2013. After the purchase of the subject property, the Respondent argued there

were a number of improvements to the subject property. The Respondent submitted as evidence a screenshot from what appeared to be a computer application for the Planning Department of the Respondent. The computer application can search properties within the City of Calgary and list various permits (for example, development permits, building permits, electrical permits), their statuses and some (but not all dates). The names for each column were not included in the screenshot, but it appeared to include, from left to right, the permit numbers, the reason for or name of the application, the municipal address of the property, the status (which was either Completed, Issued Permit, or Approved) and three columns of dates. Some dates were included in the three columns with dates, and some times the dates were missing and instead showed "mmm dd, yyyy".

[16] The Respondent was unable to provide the exact date on which the screenshot was taken, but the Board determines from the information provided to it that the screenshot was taken on or after February 5, 2014.

[17] The Respondent did not remember all of the names of each column, but the Respondent argued that this screenshot showed that there was significant work done to the subject property. Further, the Respondent argued that if you added the costs of each of the completed permits to the Colliers appraisal dated July 31, 2013, you arrive at a calculation which supports the assessed amount. To support this argument, the Respondent provided the Board with a copy of a Building/Use Permit Information for BP2013-15472, which is regarding the subject property. It indicates Victory Fire Protection applied for a permit to update the sprinkler system for the subject property. The field titled "Total Estimated Value of Construction" had a handwritten amount of \$215,000. The permit was signed and dated by a Plan Examiner on October 15, 2013.

[18] The Respondent also advised the Board that he attended the subject property in or about January 2014. It was his evidence that the sprinkler system work appeared completed at that time and therefore his assumption was that it would have been completed or substantially completed on or before December 31, 2013.

Reasons for Decision

[19] There is some discrepancy regarding the information provided by the Respondent and the permits applied for and approved, issued, or completed. The Board cannot tell, e.g., whether mechanical permit MP2013-03591 for HVAC work, which has a status of "Issued Permit" means that the work was completed and approved on or before December 31, 2013. The third column has no date, and there is insufficient information before the Board to determine if a situation such as this indicates whether the work is completed. Assumedly if the status does not state "Completed", the work is not yet completed.

[20] The sprinkler system building permit (BP2013-15472) is a similar situation. It has a status of "Issued Permit", not "Completed". Does "Issued Permit" mean that the work is permitted to begin or whether (as the Respondent claimed) was completed before December 31, 2013? The Respondent argued that the Plan Examiner signed the permit on October 15, 2014, which means that it must have been completed and approved by the Respondent's Planning Department at that time. There is however insufficient information to confirm this claim. On a balance of probabilities, the Board determines that the Plan Examiner likely examined the plan for the sprinkler system, not the completion of same. The Board therefore cannot agree that the sprinkler system was completed on or before December 31, 2013.

[21] There is further a question about the costs of each permit application. The only

information provided regarding cost is for BP2013-15472. Not to mention that the information is sparse, limited only to a handwritten estimate by a Victory Fire Protection which appears to be at the beginning of the work.

[22] The third concern with the Respondent's argument is that he is conflating the Sales Approach with the Cost Approach. Does construction cost for updating a sprinkler system (or HVAC, etc.) equal market value? It does not. The Respondent has determined that the subject property should be assessed using the Sales Approach, not the Cost Approach. To cherry pick between two approaches and use them both in the same assessment is both unfair and inequitable.

[23] Which leaves the Board with the sales information and appraisal provided by the Complainant. The sale is post facto with a Transfer of Land dated August 14, 2013. The Board agrees with the Complainant's submissions regarding 697604. The Board further determines we must consider the amount of time beyond July 1 to determine the weight which must be given to such a post facto sale. Considering all of the information (or lack thereof) before the Board, it is determined that it is the most accurate information to determine the market value as at July 1, 2013, with the physical condition of the subject property as at December 31, 2104.

[24] The Board considered that the appraisal was dated July 31, 2013, and the sale was dated after that. Should the appraisal, because it was dated closer to July 1 than the sale, be given more deference? The Board determined based on the information before it that it should not. A sale outweighs an appraisal dated two weeks apart.

[25] The Board therefore reduces the assessment value of the subject property to \$4,500,000.

DATED AT THE CITY OF CALGARY THIS 14th 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
Warehouse	Single Tenant	Sales	Land Value