

**REVISED  
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:**

**The City Of Calgary, *COMPLAINANT***

**and**

***Chrysler Canada Ltd.(as represented by AEC International Inc.), RESPONDENT***

**before:**

***D. Trueman, PRESIDING OFFICER***

***Y. Nesry, MEMBER***

***D. Morice, 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 2011 Assessment Roll as follows:

**ROLL NUMBER: 066185307**

**LOCATION ADDRESS: 1920 Bow Trail SW**

**HEARING NUMBER: 63251**

**ASSESSMENT: \$8,490,000**

This complaint was heard on 19th day of September, 2011 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. Lidgren*

Appeared on behalf of the Respondent:

- *A Kiegler*

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

There were no procedural or jurisdictional issues raised prior to commencement hearing.

**Background:**

This decision outlines a Composite Assessment Review Board hearing on September 19, 2011 with respect to an application made by the complainant, the City of Calgary, in a letter to the Assessment Review Board dated August 18, 2011. The application letter requests costs for a hearing held August 17, 2011 which the City (current complainant) alleges that AEC International (the complainant on August 17) had no reasonable chance of success. Various sections of the Municipal Government Act (MGA) and its' regulations Matters Relating to Assessment Complaints (MRAC) provide for a Composite Assessment Review Board to award prescribed costs if it finds in favour of the complainant. As the roles of Complainant and Respondent have been reversed for this hearing, from the previous hearing, the City will be referred to as the Complainant for this current hearing and AEC International Inc. will be referred to as the Respondent. When referencing the former hearing the City of Calgary will be referred to as City and AEC International will be referred to as AEC.

On January 4, 2011 an assessment notice of \$1,210,000 was sent to the assessed person. On February 17, 2011 an amended assessment notice of \$11,620,000 was sent to the assessed person. The complaint process was initiated and followed its due course until August 2, 2011 when the city assessor advised the assessed person's agent of a revised offer of assessment to \$8,490,000.

At hearing, on August 17, 2011, the parties agreed to the latest revised assessment of \$8,490,000 and provided the Board with such written agreement. An Assessment Roll Correction and Amended Notice was sent to the assessed person the same day, August 17, 2011.

**Issues:**

Did the Respondent abuse the complaint process, resulting in additional or unnecessary expense by the Complainant?.

**Complainant's Requested Cost Amount:** \$5,500.00

Complainant's position

The Complainant pointed out that on August 4th he and the Respondent discussed the latest revised assessment. The Respondent replied by saying that it would be necessary for him to confer with his client before he could agree to that new amount. There was no further communication with the Respondent prior to the commencement of the hearing. The Complainant went on to point out, from a transcript of the hearing which he had obtained, that AEC had been questioned by the panel with respect to their acceptance of the latest revised assessment. AEC responded to the panel saying that they thought the assessment was still too high and that they would like to proceed with the hearing. The hearing started at 9 AM and at approximately 11 AM as the City questioned AEC on its rebuttal evidence, AEC replied by saying that 'they were now of the opinion that their evidence actually supported the City's latest revised amount' which they now deemed reasonable and were willing to accept. The Complainant advised the Board that he thought the Respondent had abused the complaint process and especially the "scarce and valuable resources" of the City. He supplied the Board with a copy of the schedule 3 table of costs from MRAC and pointed out the prescribed amounts of \$4000 as preparation for hearing and \$1500 as one half day hearing costs in the appropriate column. He therefore claimed costs in the amount of \$5500.

Respondent position

The Respondent argued that the Complainant was the author of their own costs misfortune as a result of not responding to an AEC e-mail dated March 30 in respect of the subject property. Instead the City chose to prepare a 364 page document which supported its latest revised offer of assessment on August 2, discussions taking place on August 4. The Respondent argued that the latest revised assessment was proof that their complaint had succeeded. Further, the City produced the 364 page document of their own volition in preparation for hearing and had they been responsive in March it was possible that a settlement could have been reached thus rendering their costs for hearing preparation allegation moot. The Respondent argues that they were 'never offered an amended assessment notice agreement form' and 'that awarding costs would set a negative precedent, precluding parties to any appeal from ever agreeing to settle for fear of costs awards'.

**Board's Decision in Respect of Each Matter or Issue:**

The Board relied upon the testimony of the Complainant that the Respondent had been clearly asked, by the panel, prior to the commencement of the hearing if the settlement amount was agreeable to him. The Board decides that AEC had adequate notice upon which they could have accepted the City's corrected assessment. The Board notes that "schedule 3, table of costs" from MRAC provides for \$1500 costs for up to one half day of hearing time. With respect to costs for preparation for hearing it was learned by the panel at hearing, that the subject property was part of an inventory of properties which included a similar auto dealership property with similar physical characteristics across the street, complained about for this year and handled by the same assessor. The Board is critical of AEC for not discharging its responsibility to provide adequate market evidence for a reduced assessment at hearing; and not dealing with an offered reduction, some 13 days prior to the hearing date. However, it is also critical of the City for requesting full preparation costs when preparation for the subject complaint had been done in conjunction with a similar complaint across the street. As well, a response in a more timely manner to the March 30th e-mail inquiry might have produced better results for everyone. On balance, the Board has decided that the City had likely provided the more reliable market data upon which it would have made its decision, if that had been the outcome of the hearing

and for this reason thinks that it is reasonable to award hearing preparation costs to the City. The Board notes that MRAC, Part 6, General Matters, section 52, paragraph (4) says "*any costs that the composite assessment review board or the Municipal Government Board award are those set out in schedule 3*, and that this would seem to limit the discretion of the composite assessment review board to finding for the Complainant in the entire amount of his request of \$4000. With its only alternative being to find for the Respondent and set the award amount for preparation costs at zero. Instead, the Board decides that, the balance of probabilities suggests that, the market data upon which the Board might have made its decision was more likely prepared by the City and that in the absence of cogent evidence of its own, part of these preparation costs should be borne by AEC. Given the evidence received, the Board decides that, although somewhat arbitrary, preparation costs in the amount of \$1000 should be awarded to the Complainant in this case. The Board looks to section 52(2) where the regulations provide that '*in deciding whether to grant an application for the award of costs, in whole or in part, the composite assessment review board*' etc. (emphasis added) for its authority to award a portion of the costs applied for.

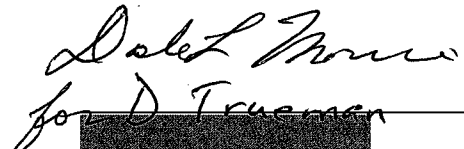
The aggregate of the costs awarded are therefore \$1500 hearing time plus \$1000 preparation for hearing, or \$2500, as a reasonable dispensation of this cost application.

**Board's Decision:**

Costs in the total amount of \$2500 are awarded to the complainant.

It is so ordered

DATED AT THE CITY OF CALGARY THIS 29<sup>th</sup> DAY OF September 2011.

  
for D. Trueman  
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 USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue