

Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint against the 2013 supplementary property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

411403 Alberta Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
J. Rankin, BOARD MEMBER
A. Zindler, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a supplementary property assessment prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

ROLL NUMBER:	024000804
LOCATION ADDRESS:	1530 Aviation Rd NE
FILE NUMBER:	73952
PRORATED SUPPLEMENTARY ASSESSMENT:	\$2,264,170

This complaint was heard on 28th day of April, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *Steve Eisenberg, Owner*

Appeared on behalf of the Respondent:

- *Florin Taciune, Assessor*

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

[1] The Board as constituted to hear and decide on this matter was acceptable to both parties.

[2] Exhibit C1 was not disclosed prior to the hearing in accordance with Section 8, Matters Related to Assessment Complaints (MRAC). This is a five page document of speaking notes and three photographs prepared by the Complainant to provide more detail to the matters raised in the Assessment Review Board Complaint Form. The Complainant and the Assessor (Respondent) conducted a site visit and discussed the basis of the complaint prior to the hearing. The Respondent indicated that the speaking notes did not introduce any new information, that the Respondent was aware of the material in the speaking notes and therefore did not object to this document being entered as evidence. The Board accepted the document, marking it as Exhibit C1.

Property Description:

[3] The subject property is located at 1530 Aviation Road NE, adjacent to the south end of the Calgary International Airport and north of McKnight Blvd. NE. The property configuration is a rectangle, one acre in size. The property was a former gas station purchased by the owner some years ago, and decontaminated. In about June 2011, the owner began to develop the subject property by constructing a steel-frame "shop" portion of 12,000 square feet (sf), and a attached wood-frame, two storey office/storage portion with a footprint of 1,500 sf. There is also a second floor mezzanine of about 2,000 sf used for storage (page 49, Exhibit C1). The total assessable area is 14,529 sf, including the 12,000 sf shop area and 2,529 sf of office space. The remaining area is considered mezzanine and is not assessed. The property is uniquely outfitted and used by the owner as an automotive shop with some office and retail space, as well as storage space.

[4] According to the 2013 Assessment Explanation Supplement (page 9, Exhibit R1) the land use is Industrial-General (I-G), with a building footprint of 13,145 sf, an assessable area of 14,529 sf, year of construction is 2012, 22% finish, and 30.89% site coverage. The assessment of the land and buildings (as finished) is based on a rate of \$219.04/sf for at total value of \$3,182,500.

[5] The 2013 property tax assessments were derived using a Sales Comparison methodology. The original 2013 Property Assessment Notice (page 7, Exhibit R1) reflects only the bare land value, with an assessed value of \$712,500. The Supplementary 2013 Property Assessment Notice (page 8, Exhibit R1) reflects the value of the building on the property, "...on December 31 of the year prior to the year in which a tax is imposed.." (Section 289(2) of the Act) for an assessed value of \$2,264,170. The supplementary 2013 assessed value is calculated by taking the difference between the 2013 assessment of both land and building (as finished) of \$3,182,500, subtracting the original assessment for land only of \$712,500, leaving a remainder of \$2,470,000 reflecting the contributory value of the building (as completed). However, since as of December 31, 2012, the building was near completion but not yet occupied, the building value is adjusted by a factor of 11/12, which is a rate that indicates that as of December 31, 2013, the building was about a month away from being complete. Multiplying this remainder of \$2,470,000 by 11/12 results in the supplementary assessment of \$2,264,167, rounded to \$2,264,170 on the Supplementary 2013 Property Assessment.

Issues:

[6] The Complainant's position is that the Supplementary 2013 Property Assessment is too high because the subject is an inferior property to the Comparable Sales properties used by the City to derive the assessed rate of \$219.04/sf. Specifically, the subject is inferior due to noise from the airport, greater than typical setbacks from the airport lands that limit site coverage, inferior access via roads that are legally closed resulting in the property owner having to pay for snow removal, lack of street lights, lack of developed storm water drainage, and inadequate signage due to City bylaws. A number of other topics were raised by the Complainant, but were not relevant to the issue of the value of the assessment.

Complainant's Requested Value:

\$1,800,000

[7] The Complainant noted that the requested assessed value of \$2,200,000 that appears in Section 5 of the Assessment Review Board Complaint Form was incorrectly entered; a mistake made by the company's Controller because she was not familiar with the form. At the hearing the Complainant stated that the requested assessed value is \$1,800,000.

Board's Decision:

[8] The Supplementary 2013 Assessment of \$2,264,170 is confirmed. While the Board agrees that the subject property may be inferior to the "typical" industrial property type used by the City to derive its assessment, the Complainant did not provide any market evidence to indicate what the correct assessed value should be or to quantitatively support the requested assessed value of \$1,800,000.

Legislative Authority, Requirements and Considerations:

[9] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as "the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer." Section 467(3) of the Act states that "an assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the valuation and other standards set out in the regulations". The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[10] The Board notes that the words "fair" and "equitable" are not defined in the MGA or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard and applied to all properties in that property category.

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

[11] The Complainant presented Exhibit C1, which is an expansion of the issues identified in the Assessment Review Board Complaint Form. The position of the Complainant is that the subject property suffers from a number of negative characteristics, which results in the subject property being inferior to the typical industrial properties used by the City to prepare the 2013 Property Assessment. If adjustments are made for these inferior characteristics, the Complainant suggested that the Supplementary 2013 Property Assessment should be reduced by about 25%, to a requested assessed value of \$1,800,000. The Complainant did not provide any detailed explanation as to specifically what adjustments should be made, the quantum of these adjustments, nor how the requested assessed value is calculated.

[12] The Complainant stated that access into the parking area on the subject property is via portions of 15th Street NE and 48th Avenue NE, both roads that are legally closed by the City. The City does not maintain these roads or do any snow removal, therefore the owner of the subject property contracts a private snow removal company to keep these roads clear so customers have access into the subject property. The quality of these and other roads in the immediate area is poor (photographs presented in Exhibit C1 showing potholes, etc.), with no curbs or storm water sewers to properly handle runoff. There are no street lights along the closed roads resulting in the owner having to provide additional lighting on and around the property for security purposes.

[13] Regarding airport related issues, the setback from the airport lands (north side of the property) are larger than typical setbacks from property boundaries resulting in the building footprint on this property being smaller than would be the case on an industrial property not adjacent to airport land. The proximity to the airport runways and landing areas results in considerable noise, which apparently prevents the owner from renting the vacant office space available in the subject building. Furthermore, the closed roads are used by the public to view aircraft landing and taking off resulting in much garbage and debris being scattered around the subject property, which blows into the subject property and required constant attention.

[14] For the reasons discussed, the Complainant is of the opinion that the subject property is not comparable to the Comparable Sales used by the City to prepare the assessment. The Complainant suggested that the Beaver Dam and Greenview Industrial Districts are comparable to the subject property regarding quality of access and some other characteristics and Comparable Sales should have been taken from that area.

[15] The Complainant indicated that he tried to sell the subject bare land property or sell a "build to suit" type of property and that there were no interested parties after being exposed to the market for some six months. No further details were presented regarding the asking price or details of the marketing efforts.

[16] In response to questions from the Board, the Complainant stated that the mortgage on the subject property presented in the Respondent's disclosure (page 41-43, Exhibit R1) included a value for property and equipment, as well as other "business" assets. This was not a typical mortgage based solely on a portion of the value of the property.

Respondent's Position:

[17] The Respondent's position is that the subject property is a typical industrial property, and therefore the per square foot rate of assessable area for this property type reflects the market value of the subject property with completed improvements. The Supplementary 2013 Property Assessment reflects an adjustment to recognize that as of December 31, 2012, the building was about a month from being "complete", based on the Occupancy Permit being issued in January 2013.

[18] Regarding the issue of legal access, the Respondent stated that access is provided via Aviation Road NE to the southwest corner of the subject property. The Respondent argued that the Complainant made a decision to construct the building on the west portion of the subject property and to have the access into the parking area on the eastern portion of the subject property, requiring the use of a portion of the closed 48th Avenue NE to physically get into the parking area. This was a management decision and therefore the City considers access to be typical for this property type.

[19] The Respondent provided a copy of the Transfer documents from 1992, when the owner purchased the property (page 24-28, Exhibit R1); a copy of the Land Title Certificate (pages 29-31, Exhibit R1); a copy of Instrument 731079418 which is a caveat in favour of the City of Calgary indicating that the City is not liable for any changes in traffic or traffic noise as a result of realigning McKnight Blvd. (page 32-40, Exhibit R1); and a copy of Instrument 121139671 a copy of the May 2012 Mortgage Amending Agreement on the property (page 41-43, Exhibit R1). The purpose of these documents was to suggest that the mortgage value of \$2,600,000 in the Mortgage Amending Agreement supports the \$3,182,500 assessment value for the land and building (as completed).

[20] 2013 Industrial Sales Comparables are presented on page 49, Exhibit R1. One set of four Sales Comparables is located in the "northeast" industrial market area, and shows a time adjusted price per square foot of assessable area averaging \$221.94, with a median of \$212.43. The Respondent noted that these four sales were of properties with a much older building than the subject, because most new buildings in the northeast area are much larger than the subject. A set of four sales from the southeast quadrant of the City are also presented, being properties of a similar size, and with buildings constructed in the last 16 years of a similar size. This set of four sales indicates an average sale price of \$214.07 and median sale price of \$214.58 per square foot of assessable building area. The Respondent presented this information to support the subject assessed rate of \$219.04 per square foot of assessable building area, but conceded that the Comparable Sales were not very similar to the subject property.

Board's Reasons for Decision:

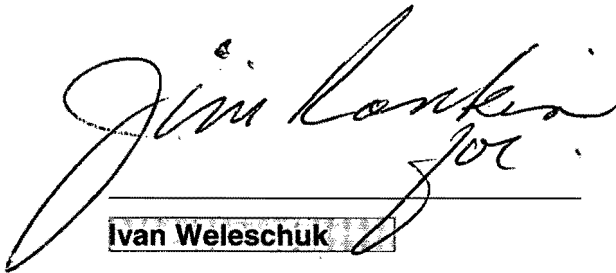
[21] The Board acknowledges that the description of the subject property provided by the Complainant indicates that the subject property is inferior to "typical" industrial properties that form the basis of the City's assessment rate for this property type for at least some of the characteristics discussed. However, the Board was not provided with any evidence regarding the quantum of specific adjustments that should be applied to specific characteristics. The Complainant stated that the value of the Supplementary 2013 Assessment should be reduced by 25% to \$1,800,000 (as requested) but it is not clear to the Board how this 25% reduction is derived or what the 25% reduction is based on.

[22] The standard for the assessment is market value, as described in Part 1 of Matters Relating to Assessment and Taxation Regulation (MRAT), and specifically Section 4(1). While the Board understands the argument presented by the Complainant, no market evidence was presented to indicate or support the requested reduction of the Supplementary 2013 Property Assessment by 25%. In the absence of such evidence, the Board has no basis on which to change the Supplementary 2013 Property Assessment and confirms that assessment of \$2,264,170.

[23] There was much discussion regarding access to the subject property and specifically whether legal access exists. The Board notes that legal access to the property boundary exists via Aviation Road NE, but that a portion of the closed road along 48th Avenue NE is used to access the parking area on the subject property. In essence, the closed road is an extension of the "driveway" into the parking area. For the purpose of this decision, the Board finds that legal access to the property exists.

[24] The Board notes that the value of a mortgage is not considered as evidence of the market value of a property. The amount loaned via mortgage has nothing to do with market value and does not meet the definition of fair market value. The Board gives the mortgage document presented in Exhibit R1 no weight.

DATED AT THE CITY OF CALGARY THIS 12 DAY OF May 2014.



Ivan Weleschuk
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.*

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Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Industrial	Warehouse – Single tenant	Supplementary	Value of improvements