

**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-26.1, Section 460(4).

between:

Decor Construction Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER

D. Pollard, MEMBER

I. Zacharopoulos, 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 2010 Assessment Roll as follows:

ROLL NUMBER:	201151396
LOCATION ADDRESS:	4950 110 Av SE
HEARING NUMBER:	60448
ASSESSMENT:	\$925,000

This complaint was heard on the 17th day of January, 2011 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

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

Two preliminary matters were raised:

1. Onus

The Complainant presented only evidence with respect to the actual purchase price in July, 2010 and the Respondent submitted that this was *post facto* with no relevance to the 2010 assessment. Therefore, no evidence had been presented to support a reduction in the assessment and the Complainant had not met onus. The Respondent requested the complaint be dismissed.

The Board recessed to consider the request, and determined that the evidence of the purchase price did constitute evidence, and its *post facto* nature would go to weight. Therefore the Board declined to dismiss on the basis of not meeting onus.

2. Disclosure

The Respondent had received the Complainant's disclosure and faxed the Respondent's disclosure to the number on the cover page, which he assumed to be a fax number. In fact it was the Complainant's cell number, and the disclosure was not received by the Complainant until the morning of the hearing. The Respondent stated that this was inadvertent and he had advised the Complainant that he could request a postponement; however the Complainant did not do so.

The relevant legislation is Alberta Regulation 310/2009, Matters Relating to Assessment Complaints Regulation (MRAC) which specifies rules for disclosure:

8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

...

(b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

...

9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

The Board noted that MRAC has provision for abridging the time required:

10(3) A time specified in section 8(2)(a), (b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.

In the subject hearing, the Complainant was asked to confirm whether he agreed to abridge the time requirement of the Respondent's disclosure, and he stated that he did. Accordingly, the hearing proceeded.

Property Description:

The subject is a 1.49 acre vacant industrial property in the DU1 (Dufferin) zone of Southeast Calgary, now called the Eastlake area. It is assessed at the DU1 vacant land rate of \$620,000 per acre. The parcel was owned by the City of Calgary and was exempt from taxation. It was purchased by the Complainant on July 31, 2010 and an amended assessment notice was issued on August 26, 2010, changing the taxation status from Exempt from Taxation to Taxable.

Issues:

The only issue identified on the Complainant form was the assessment amount:

I bought this parcel of land from the City and paid full asking price of 782,250 so I feel the assessment is incorrect or else the City would have tried to sell the land for \$925,000 and it didn't so I feel I should be taxed by what was paid.

Complainant's Requested Value: \$782,250**Board's Decision in Respect of Each Matter or Issue:****Complainant's position:**

The Complainant stated that he had contacted Colliers in February 2010 looking for a parcel on which to relocate his business. At the time there were no parcels available for sale in Dufferin, his preferred location. Colliers subsequently advised that the City of Calgary had released lots for sale. The subject parcel was advertised at the purchase price. The Complainant stated that he had paid the asking price and questions why the City would offer a parcel for less than its market value.

The Complainant stated that the market did not change between July 1, 2009 and the purchase date; therefore the assessment amount should be the purchase price. The reason there were no sales was because until the City released the lots there were no parcels available for sale.

Respondent's position:

The 2010 assessment is based on market value at July 2009. Sales that took place in the two years prior to the valuation date are considered in determining the assessment. Sales that happened after July 2009 are not taken into account for the 2010 assessment but are considered for the following year. The Respondent presented sales of vacant land in DU1 that took place between July 21, 2007 and Dec 18, 2008. The 2007 sales were time adjusted upwards to July 2009 and the 2008 sales were not time adjusted as there were no sales between December 2008 and the valuation date in this area to support a change in market value. The Respondent did not know whether there had been parcels available for sale in during this period as land sales are handled by Corporate Properties not the Assessment Department.

The parcels presented ranged in size from 0.865 to 9.503 acres and sold for a time adjusted price per acre of \$524,834 to \$768,180 for a median value of \$624,210 which supports the assessment of \$620,000/acre.

The sale of the subject parcel is *post facto*, and the transaction value would not have been considered in setting the 2010 assessment. The Respondent further submitted that the only reason the amended notice was issued was due to the change in taxation status, and there had been no change in the assessment amount. If the transaction had occurred between two taxable parties, no amended assessment would have been issued and the purchaser's portion of the property taxes would have been addressed in the statement of adjustments. In a typical transaction, there is no opportunity to appeal the 2010 assessment after March 2010. Therefore the Board should not consider *post facto* sales information and as the only evidence presented is the purchase price in 2010, there is no evidence to support a reduction in the assessment.

Decision and Reasons:

Section 293 of the *Municipal Government Act* sets out requirements for preparing an assessment and an amended assessment:

293(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, ...

305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,
(a) the assessor may correct the assessment roll for the current year only, and
(b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.

...
(3) If exempt property becomes taxable ..., the assessment roll must be corrected and an amended assessment notice must be prepared and sent to the assessed person.

Alberta Regulation 2004/220 *Matters Relation to Assessment and Taxation* sets the valuation and other standards:

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

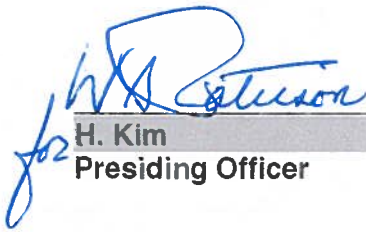
4(1) The valuation standard for a parcel of land is
(a) market value, ...

Therefore, the 2010 assessment must be an estimate of market value on July 1, 2009 and is set in late 2009 and mailed out in early January 2010. The subject sale occurred in July 2010, and the Complainant did not submit evidence to support his position that sale price reflected market value in July 2009. The Board accepts there may not have been parcels available for sale in July 2009; however in the absence of other supporting evidence, the lack of sales cannot support a position that a drop in value one year later would have been anticipated by the market.

Board's Decision:

The complaint is denied and the assessment is confirmed at \$925,000.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF February 2011.


H. Kim
Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE BOARD:

NO.	ITEM
C1	Complainant Form
C2	Complainant's submission
R1	Respondent's submission

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING	CAPACITY
John Harder	Decor Construction Ltd., Complainant
Jason Lepine	Assessor, City of Calgary, Respondent

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.*