

**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:

**Foothills Equities Inc. c/o Tonko Realty Advisors Ltd.
(as represented by Altus Group Ltd.), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**J. Krysa, PRESIDING OFFICER
B. Bickford, MEMBER
R. Kodak, MEMBER**

This is a complaint to the Calgary Assessment Review Board in respect of the property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	097017305
LOCATION ADDRESS:	5820 48 Street SE
HEARING NUMBER:	67786
ASSESSMENT:	\$13,280,000

The complaint was heard on July 03, 2012, in Boardroom 3 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- J. Smiley; M. Robinson

Appeared on behalf of the Respondent:

- I. McDermott

Board's Decision in Respect of Procedural or Jurisdictional Matters

[1] There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

Property Description

[2] The subject property is a 7.61 acre parcel of land, improved with a 177,002 sq.ft. (square foot) multi-tenanted industrial warehouse constructed in 1995, reflecting a site coverage (building : land ratio) of 53.39%. The assessment equates to a rate of \$75.03 per sq.ft. of improvement area.

Issues

[3] The Complainant raised the following matters in section 4 of the complaint forms:

3. an assessment
4. an assessment class

[4] However, at the hearing the Complainant withdrew matter 4 and led evidence and argument only in relation to matter 3, an assessment amount. The Complainant set out 15 grounds for the complaint in section 5 of the complaint form with a requested assessment value of \$10,620,000; however, only the following issue was in dispute at the hearing:

- Is the assessment of the subject property equitable in relation to the assessments of properties of similar size, utility and functionality?

Complainant's Requested Assessment

At the hearing, the Complainant requested an assessment of \$12,030,000.

[5] The Complainant argued that the subject is inequitably assessed in relation to similar industrial warehouses with similar physical characteristics. In support of the argument, the Complainant provided the Board with a summary of the physical attributes and assessments of eleven industrial warehouse properties located in the southeast region of the municipality. The improvements, constructed between 1990 and 2000, range in size from 159,260 to 618,460 sq.ft. and exhibit site coverage ratios ranging from 53% to 63%. The assessments range from \$11,310,000 to \$42,020,000, and equate to a range of \$60 to \$71 per sq.ft. of improvement area, in contrast to the assessment rate of the subject of \$75 per sq.ft.

[6] The Complainant argued that the property located at 6025 51 Street SE, and assessed at a rate of \$68 per sq.ft., is the most comparable property to the subject, as it is located directly adjacent to the subject property and displays similar characteristics as set out below:

Address (SE)	Assessable Improvement Area	Land Area (Acres)	Site Coverage	Year Built	Finish %	Assessment	Per Sq.Ft.
6025 51 St	191,551 sq.ft.	7.44	59%	1995	6%	13,020,000	\$ 68
5820 48 St	177,002 sq.ft.	7.61	53%	1995	5%	13,280,000	\$ 75

[7] The Complainant provided overhead photographs of the comparable and the subject to illustrate that the physical characteristics of the two properties were similar. The Complainant further argued that the \$7.00 per sq.ft. variance in the rate of assessment represents a value premium of \$1,250,000 for the subject property that could not reasonably be explained by the 6% variance in site coverage resulting from the subject's 0.17 acre larger parcel size.

[8] The Respondent argued that the Complainant is not entitled to put forward an "equity" argument in the absence of first establishing the subject's market value with market evidence. The Respondent submitted that this prerequisite has been clearly established in the matters of *Bramalea Ltd. v. British Columbia (Assessor for Area 9 (Vancouver))* (B.C.C.A.), [1990] B.C.J. No.2730, and *Bentall Retail Services et al v. Assessor of Area #09 – Vancouver, 2006 BCSC 424*, and provided the Board with a two page document entitled, "Bramalea and Bentall Decision Overview", setting out the Respondent's position in detail.

[9] In response to the Complainant's equity comparables, the Respondent argued that the subject property is superior to the Complainant's sample of industrial properties, and the subject's overall assessment rate of \$75.03 properly reflects the value of the subject's superior attributes. In support of the argument the Respondent provided a comparison of the median measure of the sample attributes to the corresponding attributes of the subject property, as detailed below:

	Assessable Improvement Area	Site Coverage	Year Built	Finish %	Assessment Per Sq.Ft.
Median	177,553 sq.ft.	59.34%	1996	4.6%	\$ 68
Subject	177,002 sq.ft.	53.39%	1995	5.2%	\$ 75

[10] The Respondent also provided CARB 1834/2011-P, and submitted that a similar equity argument was rejected by the Board at the subject's 2011 assessment complaint hearing.

[11] With respect to the Respondent's contention that the Complainant is not entitled to put forward an "equity" argument in the absence of first establishing the subject's market value with market evidence, the Complainant submitted that there is no dispute that the assessments in evidence properly reflect market value; the issue is only whether those estimates of market value are equitable in relation to one another.

[12] In summation, the Complainant argued that the Complainant's onus or burden of proof has been met, as the evidence of the Complainant demonstrates that the assessment of the subject falls outside the range evident from eleven typical industrial properties at page 12 of C1. The Complainant further argued that the burden of proof has shifted to the Respondent, who failed to provide any evidence to the Board to demonstrate that the assessment is equitable in relation to the assessments of similar properties, and the only evidence before the Board is that of the Complainant.

Decision:

[13] The Board finds that the assessment of the subject property is not equitable in relation to the assessments of similar properties.

[14] The Board rejects the Respondent's submission that the Complainant is not entitled to advance an "equity" argument before the Board in the absence of first establishing the subject's market value with market evidence. Where the Complainant concedes that the Respondent's assessments properly reflect the market values of the properties, it makes little sense to compel the Complainant to provide market evidence, only to confirm the Respondent's estimates of value before an equity comparison can be examined. The Board notes that in this instance, both parties agreed that the assessment values in evidence represent market value as required by the legislation, and neither party presented market evidence to support or refute the market value assessments before the Board.

[15] The evidence of the Complainant demonstrates assessments of industrial warehouse properties equating to a range of \$60 to \$71 per sq.ft. of improvement area, in contrast to the assessment rate of the subject at \$75 per sq.ft.

[16] The Board was particularly persuaded by the Complainant's evidence of the adjacent property located at 6025 51 St SE, assessed at \$13,020,000. This property shares common assessable attributes with the subject including location, year of construction, multi-tenant configuration, single building property, extent of interior finish (5.64% v. 5.20%), and parcel size (7.44 Ac v. 7.61 Ac.). However, although the improvement on the subject property is 14,549 sq.ft. smaller than the comparable, the assessment of the subject at \$13,280,000, is \$260,000 greater than that of the comparable.

[17] The Board notes that the Respondent failed to provide any evidence to demonstrate that the subject is equitably assessed in relation to similar properties. Although the Respondent argued that the subject property is superior to the Complainant's sample of properties, the Respondent's analysis of the Complainant's sample properties indicated that the median attributes of the improvements in the sample were almost identical to the subject property, with the exception of the site coverage ratio, at 6% points higher.

[18] In contrast to CARB 1834/2011-P, the Respondent in this matter failed to provide any evidence of similar properties assessed at similar rates to the subject property.

The assessment is **REVISED** from: \$13,280,000 to: **\$12,030,000.**

DATED AT THE CITY OF CALGARY THIS 14 DAY OF AUGUST, 2012.



J. Krysa,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission (16 pages)
2. R1	Respondent's Submission (130 pages)
3. C2	Complainant's Rebuttal Submission (18 pages)
4.	Jonas v. Gilbert [1881] S.C.J. No. 5
5.	County Strathcona (#20) v. AAAB [1995] A.J. No. 369
6.	Assessor for Area 9 (Vancouver) v. Bramalea Ltd. [1990] C.A.V. 00992
7.	Mountain View County v. Alberta (MGB) [2000] ABQB 594
8.	Bentall Retail Services et al v. Assessor of Area 9 – Vancouver 2006 BCSC 424
9.	Dutchcad Bil Investments Ltd et al v. Area 19 (2008 PAABBC 20081270)
10.	Pinkiewicz et al v. Area 14 (2009 PAABBC 20090993)
11.	Tannant v. Area 17 (2009 PAABBC 20091224)
12.	Peard et al v. Area 01 (2010 PAABBC 20100332)
13.	Stade v. Area 23 (2010 PAABBC 20100567)
14.	CARB 1358/2011-P

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
CARB	Warehouse	Multi Tenant	Equity	