

**COMPOSITE
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:

Caliber Ventures Inc. (as represented by Colliers International), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***C. J. Griffin, PRESIDING OFFICER
S. Rourke, MEMBER
J. Pratt, MEMBER***

This is a complaint to the Composite 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: 054001805

LOCATION ADDRESS: 1616 Meridian Road NE

HEARING NUMBER: 61192

ASSESSMENT: \$8,700,000.

This complaint was heard on 16 day of June, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *D. Porteous*

Appeared on behalf of the Respondent:

- *M. Berzins*

Property Description:

The subject property consists of two industrial buildings located on one common site with one common legal description. Building #1 was originally constructed in 1998. According to the 2011 Assessment Explanation Sheet this building has an assessable area of 45,338 Sq. Ft. This building has a clear ceiling height of approximately 30 ft. There are twelve 16' x 18' grade level overhead doors configured in such a manner so as to allow for easy drive through. The building features approximately 36% office finish. The shop area is fully sprinklered, has modern sodium lighting and has the availability of compressed air throughout.

The second building on site was constructed in 1968 and contains approximately 39,193 Sq. Ft. of assessed area. This building has 16 Ft. ceiling height and is equipped with eighteen 14' x 14' overhead doors. Lighting is the older style vapour system throughout.

Issues:

While a number of inter-related issues were outlined on the Assessment Review Board Complaint form, at the Hearing and in their submission the Complainant reduced these to:

- 1) An arms-length sale of the subject property was recorded on January 15, 2010 (within the base year) at \$4,800,000 representing a value of \$58/Sq. Ft. as opposed to the assessed value of \$8,700,000 equating to \$103/Sq. Ft.

Complainant's Requested Value: \$4,800,000 (revised at the Hearing)

Complainant's Position

The Complainant contends that an arms-length sale of the subject property, within the appropriate base year, is the best evidence as to the market value of that property. In their Exhibit C-1 pgs. 26 – 29 the Complainant provides the sale summary of the subject property as reported by two independent real estate data services, RealNet Canada Inc. and Alberta Data Search. Neither of these data supply organizations report anything related to the sale which might be construed as suggesting the sale was anything other than arms-length. Additionally, the Alberta Data Search summary points out (Exhibit C-1 pg. 29) that the property had been "listed with Barclay Street for \$8,500,000 in 2007". Exhibit C-1 pgs. 30 – 32 show a copy of the *Transfer of Land* document as registered under the Alberta Land Titles Act which does not suggest anything other than a typical arms-length transaction. Pages 34 through 37 of Exhibit C-1 are corporate searches showing the parties to the sale are unrelated. The Complainant further provides copies of the Certificate of Title (Exhibit C-1 pgs 38 – 41) and the registered mortgage document (Exhibit C-1 pgs 42 – 62) both of which provide no indication of this sale being anything other than an open market, arms-length transaction.

Respondent's Position

In defence of the assessed value the Respondent submitted their Exhibit R-1. It is the Respondent's position that application of the Sales Approach has resulted in a fair and correct assessed value for the subject property. The Respondent provided 4 comparable sales (Exhibit R-1 pg 29) of industrial buildings with a median year of construction of 1997, being comparables for the subject building #1 and, on that same page, a further 6 sales with a median year of construction of 1980 being comparables for the subject building #2. In the first grouping of comparable sales the median sales price was \$152/Sq. Ft. and in the second grouping the median sales price was \$105/Sq. Ft., both of which the Respondent contends supports the

current assessment of the property. The sale of the subject building is noted on this same page of their Exhibit R-1 and is denoted as being an "*extreme outlier, not representative of market*". It is this latter statement that forms the basis for this complaint.

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

The CARB finds that:

- 1) There was no evidence to show that the sale of the subject property was anything other than an open market, arms-length transaction.

Board's Decision:

The assessment is **reduced** to: **\$4,800,000**.

Reason(s) for Decision

The only issue the CARB had to deal with is the matter of the sale of the subject property. There is no question that the property appears to have sold at a price that is significantly lower than one might otherwise expect and this is essentially why the Assessor has deemed the sale to be an outlier and not indicative of the market value of the subject property. The Complainant has gone to some length to provide evidence to the CARB that the referenced sale was an open market, arms-length transaction that represents the best evidence as to the market value of the property. The Board also takes note of the reference to the fact that the property had previously been listed, in 2007, at the now assessed value and it did not attract any buyers (Exhibit C-1 pg.29). The CARB is of the judgment that the sale of the subject, while perhaps an outlier insofar as the Assessor's modelling program is concerned, does not mean that it is not a valid comparable worthy of consideration. Following the doctrine of *Stare Decisus* (the doctrine of precedent), the CARB referred to the decision of *Madam Justice L. D. Acton in 2005 ABQB 512*, a July 2005 decision, in which she agrees with the comments from **Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd et al** which states:

"It seems to me worth remembering that where the Assessment Act, R.S.O. 1980, c. 31 requires the determination of what a property might be expected to realize if sold on the open market by a willing seller to a willing buyer (s. 18(2)), the price paid in a recent free sale of the subject property itself, where, as in this case, there are neither changes in the market nor the property in the interval, must be very powerful evidence indeed as to what the market value of the property is. It is for that reason that the recent free sale of a subject property is generally accepted as the best means of establishing the market value of that property.

...

...I think that generally speaking the recent sales price, if available as it was in this case, is in law and, in common sense, the most realistic and the most reliable method of establishing market value."

DATED AT THE CITY OF CALGARY THIS 29 DAY OF June 2011.


C. J. Griffin
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.*