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:

Capri Car Wash Ltd. (as represented by Durant Consulting), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
J. Rankin, MEMBER
A. Zindler, 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:	**057251001**
LOCATION ADDRESS:	**107 – 4 ST NE**
HEARING NUMBER:	**62793**
ASSESSMENT:	**$1,100,000**

This complaint was heard on 20th day of June, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *Mr. D. Durant – Durant Consulting – Valuation Advisory Services*

Appeared on behalf of the Respondent:

- *Mr. T. Johnson - Assessor*

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

The Respondent took issue with the Complainant's brief document C-1, arguing that elements of it had not been properly disclosed pursuant to relevant portions of Sections 8 and 9 of Alberta Regulation AR310/2009 being "Matters Relating to Assessment Complaints Regulation" (MRAC). These Sections state in part:

> **"Disclosure of evidence**
> **8(1)** In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.
>
> **(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:
>
> (a) the complainant must, at least 42 days before the hearing date,
>
> (i) disclose to the respondent 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 complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, ...
>
> (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, ...

(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent 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 complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

Failure to disclose

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

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

The Respondent argued that the Complainant had failed to disclose several comparable properties that were intended to be introduced into the Hearing in Brief C-1, and therefore this evidence, and any associated with it should not be allowed into the hearing. He clarified that while the property owner had submitted the original complaint form containing certain evidence, the agent had opted to expand his presentation to include data (comparable properties) which had not been disclosed pursuant to Sections 8 and 9 of MRAC.

The Complainant noted that in his engagement with his client, it may not have been completely clear as to what had previously been provided to the Board on the complainant form by the owner, and what was contained in Document C-1 which he had prepared for him. He outlined for the Board and Respondent his history of involvement with the file.

The Board recessed the hearing and reviewed the arguments presented to it by the parties regarding this matter.

Upon re-convening the hearing, the Board advised that after due consideration, it concurred with the Respondent that the several comparable properties proposed to be advanced by the Complainant did not appear to have been properly disclosed pursuant to Sections 8 and 9 of MRAC. Therefore the Board directed that they should be deleted from the document. Nevertheless, the Board concluded that the remaining portions of Document C-1 could be admitted into evidence.

Property Description:

The subject is a 1962 era coin-operated drive-through, concrete block wall and wooden-roofed wand-type carwash containing 5 bays. It is constructed "slab-on-grade" with 2,240 Square Feet (SF) of wash area and 144 SF of office, for a total building area of 2,384 SF. The building is reputed to be some 48 years old. It is located on an L-shaped 15,433 SF corner parcel, the subject appearing to be part of a larger contiguous and integrated building which appears demised to also accommodate an automotive repair and sales facility.

The subject car wash is assessed using the Cost Approach to Value using a computerized version of Marshall and Swift to achieve an assessed value of $1,100,000.

Issues:

The Complainant raised the following issues:

1. Both the subject and its locale appear to be in physical and social decline and the assessed value fails to recognize this.

2. The subject suffers from access issues that are not recognized in the assessed value.

3. The subject land parcel suffers from a poor "L" shape which is not recognized in the assessment.

4. The City used the Cost Approach to Value methodology but failed to properly account for the age of the subject in its calculations.

5. The land value attributed to the subject in the cost Approach to Value calculations is erroneous.

Complainant's Requested Value: $650,000

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

Issue # 1 "Both the subject and its locale appear to be in physical and social decline and the assessed value fails to recognize this"

The Complainant argued that the neighbourhood in which the subject is located appears to be in general decline due to the age of nearby buildings, their perceived lack of maintenance, and certain social issues. The Complainant argued that the subject is not of newer construction and is reported by the owner to be some 48 years old. He noted that while it has 12 foot ceilings, the roof is constructed of wood which is affected by moisture, particularly in a car wash, whereas newer buildings use steel. He provided an exterior photo of each of the front and back of the structure.

The Respondent argued that in its calculations using Marshall and Swift, the City had calculated the effective age of the subject to be 31 years. And while the Respondent had not been to the subject in an official capacity as an Assessor, he noted he had visited the site on a personal basis to wash his vehicle and was familiar with the property. He noted that while he had not personally completed the assessment on the subject, he could not disagree with its results. Moreover, the Respondent noted that the Complainant had not provided any documentary evidence to support his claims regarding this issue.

The Board noted that the Complainant failed to support his arguments with pictorial or other documentary evidence showing the interior of the subject. Neither did the Complainant submit a

report or statement from a qualified professional identifying the alleged structural and other inadequacies in the subject, or any "cost to cure". Nor did the Complainant submit any documented evidence from recognized sources, of market value impact the alleged social issues were said to be having on the subject and its general locale.

Moreover, the Complainant failed to provide any Market evidence illustrating the difference in market value between the subject and its locale, and any area or areas not so afflicted. Therefore the Board was unable to confirm the nature and extent of the deficiencies the Complainant alleged, nor attach any value to them.

Consequently, on balance, the Board considered it received insufficient information to find for the Complainant on this issue.

Issue # 2 "The subject suffers from access issues that are not recognized in the assessed value."

The Complainant noted that while the subject is situated on a corner lot, it is adversely affected by a small strip of City-owned land some 2.91 Metres (M) in width and 15.24 M in length which, he argued, effectively restricts access and egress to/from the site along 1 AV NE. He noted that while there are no access easements or agreements in place, the City has not restricted movement over the parcel, but could do so at any time if it wished – all of which would have a negative effect on the value of the subject land.

The Complainant also argued that the site suffers from the generally-restricted access caused by one-way traffic on southbound 4th ST NE, and the poorly-configured street pattern in the area which causes much of the vehicular traffic to miss the car wash. However, the Complainant was unable to quantify the net financial effect this issue had on the subject, particularly in comparison to other sites which are perhaps not so afflicted.

The Respondent noted that there was no "Traffic Study" or "Report" from a qualified source submitted by the Complainant to support his position in this matter. Therefore the Board should not rely on evidence which is largely conjecture. Moreover, the Respondent noted that the site has legal access on two abutting streets and therefore is not negatively affected as alleged.

In its consideration of this issue, the Board noted that no documentary evidence prepared by qualified individuals had been submitted by the Complainant in support of his arguments on this issue. Indeed, the arguments raised by the Complainant, while detailed, were largely unsupported. In addition, the Board noted that the site currently enjoys at least two points of legal access and does not therefore appear to be disadvantaged in this regard. Therefore the Board was unable to find for the Complainant in this matter.

Issue # 3 "The subject land parcel suffers from a poor "L" shape which is not recognized in the assessment."

The Complainant argued that the "L" shaped nature of the subject severely restricts its use (and hence its value) in comparison to other more conventional commercial sites with square or rectangular shapes. He suggested that the "Commercial Corridor 2" (C-COR2) Zoning on the site (and many nearby properties along 4th ST NE) while it allowed for many auto-oriented commercial uses, the "L" shaped nature of the site, and its limited access/egress, severely restricted what could reasonably be built on the site under the Zoning. Moreover, he suggested that the subject had not received a discount from the City for having a negative shape or

topographical limitation, but should have.

The Respondent noted that the C-COR2 zoning on the site and much of the adjacent locale along 4th ST NE, provided for many types of "Permitted" and "Discretionary" uses. He guided the Board and Complainant through several excerpts of C-COR 1,2,3 Zoning Categories from the City's Land Use Bylaw 1P2007 July 23, 2007. It was his opinion that with the multitude of uses identified in the Bylaw, shape of the parcel was not necessarily a disadvantage in re-development. Moreover, it was noted that the Complainant had not demonstrated via market or other evidence that the current zoning and shape of the subject would be a negative influence on the subject's value in this location.

The Board noted that the Complainant had not supported his arguments by any market or related evidence confirming that the shape of the parcel was a negative impact on the value of the subject. It appeared to the Board and it was confirmed by the Complainant that the latter's views were formed as a result of his professional opinion and judgement that "Location" is the most important factor in land value and that the subject was "disadvantaged" in that regard.

Therefore, on balance, and without documented market data, the Board was unable to find for the Complainant in this matter.

Issue #4 "The City used the Cost Approach to Value methodology but failed to properly account for the age of the subject in its calculations."

The Complainant argued that the City had misinterpreted the effective age of the improvements on the land. He noted that he had manually completed a Cost Approach to Value calculation using the "Marshall and Swift Service Manual" "in order to estimate the Replacement Cost New and the accrued depreciation". He noted that according to the owner the building was chronologically 48 years old as of July 1, 2010, if not older. Therefore while he argued the subject buildings are 22 to 27 years past the 80% depreciation factor identified for such properties in Marshall and Swift, he nevertheless opted to select that rate in his calculations. In summary therefore he concluded that the value of the improvement on the site was $25,062 instead of the Respondent's $48,479. Thus, when his revised value for the improvement is added to the land value, he concluded the subject was over-assessed.

The Respondent noted that the City uses a more up-to-date computerized version of the Marshall and Swift Manual which allows for more accurate calculations. He argued that while the Complainant had completed his calculations manually which is acceptable, he had not submitted his "working documents" into evidence. Therefore they could not be examined by either the Respondent or the Board.

The Respondent further argued that the City had fully-disclosed its "working documents" on pages 21 – 23 of its Brief R-1. Therefore he argued, while the City's calculations are easily reviewed, the Complainant's conclusions in this issue cannot be confirmed. The Respondent further suggested that given the age of the improvements, the predominant value of the site is in the land.

The Board noted that there was conflicting evidence concerning the "effective age" of the site improvements. However, the Respondent was the only participant who submitted documentary evidence of its calculations for the Board's review. Therefore the Board had no alternative but to accept the Respondent's position in this issue.

Issue # 5 "The land value attributed to the subject in the Cost Approach to Value calculations is erroneous"

The Complainant provided a matrix of 8 sales/listings of land parcels from various areas of the City. Four were said to be zoned for commercial purposes; one for Industrial; and three were zoned "Direct Control". He noted the general locations of the parcels in the City, and described their individual "locational influences" which he suggested is the most critical factor affecting value. He also noted that the three "DC" zoned parcels were not Market sales, but rather were Real Estate "Listings" which nevertheless provided an indication of value. Based on his analysis of this evidence, he suggested that in his professional judgement, the site value should be $50 per SF and not the City's $65 per SF. Therefore, in his Marshall and Swift calculations, he concluded that the 15,433 SF of land should be valued at $771,650 and not $1,053,302.

The Respondent noted that only the first two of the Complainant's 8 land sale comparables zoned C-COR 2 and C-COR3, were considered valid sales, having occurred prior to July 1, 2010. However, sales 3, 4, and 5, were Post Facto – two of which transacted in 2011. He also noted that land parcels 6, 7, and 8 were merely listings, not sales, and thus could not be relied upon as indicators of market value. In addition, he noted that parcel #3, while a Post Facto sale, was zoned I-R – an industrial zoning which is not comparable to the subject.

Therefore he concluded, the data derived from this sample provided by the Complainant should not be relied upon for land values to be compared to the subject. Moreover, he noted that the "best" Complainant comparable was at 7217 Macleod Trail SE which had identical zoning to the subject and other similar characteristics. He noted that this parcel sold for $65 per SF – the same as the assessed value on the subject. He concluded therefore that one of the two valid sales in the Complainant's data appears to support the assessment.

The Respondent provided his matrix containing eight valid (as to time) and time-adjusted market sales from various commercial corridors in the city – all of which were similarly zoned C-COR1, or 2, or 3. He noted that they had been time-adjusted at a negative 1.25% per month to ultimately provide an indicated value of $65 per SF which was used in calculating the market value of the land. He noted that an additional 5% was added to the value because the subject is a corner lot, and this is a common practice for such parcels. He identified certain site influences for each of the parcels and argued that they supported the $65 per SF valuation for the land portion of the Cost Approach to value calculations used to assess the subject.

The Board reviewed the sales/market data supplied by both parties and concluded that the Respondent's data appeared to be more reliable as an indicator of value for the land portion of the assessment calculation. The Complainant's market data appears to contain only two "valid" in-time sales, one of which is zoned very similarly, if not identical to the subject, and while not time-adjusted, is valued by the market at $65 per SF – the same as the assessed value. None of the Complainant's market comparables are time-adjusted which is normally required under accepted Appraisal practice as noted by the Respondent. The remainder of the Complainant's market comparables are either incorrectly zoned, post facto, and/or are merely listings, and not sales. Therefore the Board concurs that they appear to be unreliable as indicators of market value for the subject.

In addition, the Board notes that the Respondent's eight market sales data has been time-adjusted, and the negative 1.25% per month value used by the City was uncontested by the

Complainant. Moreover, the 8 sales provided by the Respondent were all similarly zoned, in-time sales with indicated site influences, such that the resultant market values could be clarified.

On balance therefore, the Board considered that the Respondent's market value data supported the assessed value of the land portion of the assessment. Thus, the Board finds for the Respondent in this issue.

Board Conclusions

In consideration of the written and verbal evidence before it, on balance the Board concludes that the Complainant provided insufficient information to demonstrate that the assessment is incorrect.

Board's Decision:

The assessment is Confirmed at $1,100,000

DATED AT THE CITY OF CALGARY THIS 7 DAY OF July 2011.

K. D. Kelly
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Complainant Disclosure Brief
2. R-1	Respondent Disclosure Brief
3. R-2	Respondent coloured pictures

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.